



AGENDA YAKIMA CITY COUNCIL

February 20, 2024

City Hall -- Council Chambers - 129 N 2nd Street, Yakima, WA

5:30 p.m. Regular Meeting | 6:00 p.m. Public Hearings --- This meeting will be conducted in person, live streamed at www.yakimawa.gov/council/live-stream/ and telecast live on Y-

PAC, Spectrum Cable Channel 194. You may also participate via Zoom:

<https://cityofyakima.zoom.us/j/97032086214> or call in by dialing 1-253-215-8782 | Webinar ID: 970 3208 6214 | Passcode: 208806 --- Individuals who wish to provide public comment remotely are encouraged to submit a Public Comment Request Form online at:

www.yakimawa.gov/council/public-comment no later than 3:00 p.m. on the day of the meeting. If you wish to provide public comment in-person, please fill out a "Request for Appearance" form and hand it to the City Clerk before you address City Council.

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- 1. Roll Call**
 - 2. Pledge of Allegiance**
 - 3. Interpreter Services**
 - 4. Public Comment**

There will be 35 minutes allotted for public comment with two and a half (2 1/2) minutes per speaker in order to allow as much opportunity as possible for audience participation. Written communication and e-mail messages are strongly encouraged.

- 5. Open Discussion for the Good of the Order**
- 6. Council Reports**
- 7. Consent Agenda**

Items listed are considered routine by the City Council and will be enacted by one motion without discussion. A Council member may request to remove an item from the Consent Agenda and, if approved, it will be placed on the regular agenda for discussion and consideration.

- A. Approval of minutes from the February 6, 2024 City Council regular meeting and February 13, 2024 study session
- B. January 2024 Investment Transaction Report
- C. Approve payment of disbursements for the period January 1-31, 2024
- D. Project Completion and Contract Acceptance with Knobel's Electric Inc for the Lions Pool Emergency Electrical Repair Project 2600
- E. Set date of March 19, 2024 for a closed record public hearing to consider the Hearing Examiner's recommendation regarding the preliminary plat of "Marylyn Place" submitted by WM Real Property Holdings, LLC

- F. Set date of March 19, 2024 for a closed record public hearing to consider the Hearing Examiner's recommendation regarding the preliminary plat of "Champions Park Phase 1" submitted by Prickly Pear Holdings, LLC
- G. Resolution accepting and approving 4th Quarter 2023 Claim Report
- H. Resolution authorizing Task Order No. 2022-02 with HLA Engineering and Land Surveying, Inc. for water and wastewater systems design in low-income and unserved areas
- I. Resolution authorizing Supplemental Agreement 2 to the Professional Services Agreement with Haley & Aldrich Inc for Tiger Oil Project EV2999
- J. Resolution authorizing a Professional Services Agreement HLA Engineering and Land Surveying Inc for Systemic Pedestrian and Bicyclist Data Collection Project 2674

DEPARTMENT ITEMS

- 8. Resolution authorizing a Grant Agreement with the Department of Commerce for the development of Gloria's Park, a new City Park adjacent to the SOZO Sports Complex
- 9. Ordinance granting a non-exclusive Franchise to Falcon Video Communications, L.P. I/k/a Charter Communications to operate and maintain a Cable Communications System throughout the city of Yakima

10. Other Business

11. Adjournment

The next meeting is a City Council study session on February 27, 2024, at 5:00 p.m. in the City Hall Council Chambers

12. Council General Information

- A. Council General Information
- B. Code Administration Division Report - Monthly Building Permits Issued - January 2024
- C. 2023 Clean City Program 4th Quarter and Year Total Reports

Any invocation that may be offered before the official start of the Council meeting shall be the voluntary offering of a private citizen, to and for the benefit of the Council. The views or beliefs expressed by the invocation speaker have not been previously reviewed or approved by the Council, and the Council does not endorse the religious beliefs or views of this, or any other speaker.

A Council packet is available for review at the City Clerk's Office and on-line at www.yakimawa.gov. The City provides special accommodations, such as hearing devices, wheelchair space or language interpreters, for City meetings. Anyone needing special assistance please contact the City Clerk's office at (509) 575-6037 at least two business days prior to the meeting. All meetings are live streamed on the City of Yakima website at www.yakimawa.gov and telecast live on Y-PAC, Spectrum Cable Channel 194.



**BUSINESS OF THE CITY COUNCIL
YAKIMA, WASHINGTON
AGENDA STATEMENT**

Item No. 7.A.
For Meeting of: February 20, 2024

ITEM TITLE: Approval of minutes from the February 6, 2024 City Council regular meeting and February 13, 2024 study session

SUBMITTED BY: Rosalinda Ibarra, City Clerk

SUMMARY EXPLANATION:

See attached.

ITEM BUDGETED:

STRATEGIC PRIORITY:

APPROVED FOR SUBMITTAL BY THE CITY MANAGER

RECOMMENDATION:

Approve minutes.

ATTACHMENTS:

Description	Upload Date	Type
2-6 draft minutes	2/12/2024	Backup Material
2-13 draft minutes	2/16/2024	Backup Material



MINUTES YAKIMA CITY COUNCIL

February 6, 2024

City Hall – Council Chambers - 129 N 2nd Street, Yakima, WA

4:30 Executive Session; 5:30 p.m. Regular Meeting conducted in person and virtually via
Zoom

EXECUTIVE SESSION

1. Executive Session regarding collective bargaining pursuant to RCW 42.30.140

MOTION: Brown moved and Deccio seconded to adjourn to Executive Session for one hour to discuss collective bargaining pursuant to RCW 42.30.140. The motion carried by unanimous vote.

Present for Executive Session: Mayor Byers, Assistant Mayor Brown, and Councilmembers Berg (present at 4:40 p.m.), Deccio, Glenn (attending remotely), Herrera, and Roy.

Executive Session was held at 4:32 p.m. and adjourned at 5:20 p.m.

1. **Roll Call**

Present: Mayor Patricia Byers presiding; Assistant Mayor Matt Brown and Councilmembers Reedy Berg, Janice Deccio, Rick Glenn (attending remotely via Zoom), Danny Herrera and Leo Roy

Staff: Interim City Manager Dave Zabell, City Attorney Sara Watkins and Acting City Clerk Brandy Bradford

2. **Pledge of Allegiance**

Mayor Byers led the Pledge of Allegiance.

3. **Interpreter Services**

Mayor Byers introduced Jorge Villaseñor who announced interpreter services are available in Spanish.

4. **Public Comment**

David Macias, resident, AFSCME Local 1122 President and City Wastewater Division employee; Tim Sears, City Equipment Rental Division employee; Brian Dean, City of Yakima Corrections Officer; and Nathan Wallace, Transit Division employee, spoke regarding longevity, pay and benefit disparities amongst AFSCME represented City employees, working conditions, competitive wages, the City's inability to retain City employees, staff burnout and risk, and the impact to community event services such as the shuttle service cancellation for the Luminaria event.

John Cooper, President and CEO of Yakima Valley Tourism, presented the Yakima Valley Tourism 2023 Annual Report highlights.

Mark Petersen, non-resident, spoke on recently reported City personnel issues and asked Council to do a thorough review on City Manager candidates.

Corie Ratliff, resident and downtown business owner, showed appreciation to the City Council for the recent study session on downtown parking and expressed her view of positive changes with this new Council.

5. Open Discussion for the Good of the Order

A. Proclamations

i. Black History Month proclamation

Councilmember Herrera proclaimed the month of February 2024 as "Black History Month" and Reesha Cosby accepted the proclamation.

ii. Draft Welcome Home Vietnam Veterans Day proclamation

MOTION: Brown moved and Deccio seconded to approve the proclamation. The motion carried by unanimous vote.

6. Council Reports

A. Upcoming Chamber State of the City event

Councilmembers Brown, Glenn, and Byers confirmed their availability to attend the Yakima Chamber of Commerce State of the City event on March 14, 2024.

B. Discussion on City Manager job description

Councilmembers reviewed a draft job description for the City Manager position and shared feedback regarding alternative qualifications for real world experience. After discussion, Council provided additional direction and requested salary comparisons.

C. Resolution extending the moratorium regarding parking violations within the downtown area of the City of Yakima

City Attorney Sara Watkins briefed the Council on the proposed resolution extending the downtown parking enforcement moratorium.

The City Clerk read the resolution by title only.

MOTION: Brown moved and Herrera seconded to adopt the resolution. The motion carried by a 7-0 roll call vote.

RESOLUTION NO. R-2024-024, A RESOLUTION extending the moratorium regarding parking violations within the downtown area of the City of Yakima.

7. Consent Agenda

Mayor Byers referred to the items placed on the Consent Agenda, questioning whether there were any additions or deletions from Council members present. There were no changes. The City Clerk read the Consent Agenda items, including resolutions and ordinances, by title.

(Items on the Consent Agenda are handled under one motion without further discussion—see motion directly below.)

MOTION: Brown moved and Deccio seconded to approve the consent agenda. The motion carried by a 7-0 roll call vote.

- A. Approval of minutes from the January 16, 2024 City Council regular meeting, January 22, 2024 special meeting and January 23, 2024 study session
- B. Project Completion and Contract Acceptance with Leslie & Campbell Inc for the Yakima Convention & Event Center Roof Replacement Project 2755
- C. Project Completion and Contract Acceptance with Central Washington Asphalt Inc for the Summitview Avenue Project 2566
- D. Resolution ratifying the declaration of an emergency and authorizing Professional Services Agreement with HLA Engineering and Land Surveying, Inc. for the S. 2nd Avenue Waterline Project

RESOLUTION NO. R-2024-025, A RESOLUTION ratifying the declaration of an emergency and authorizing Professional Services Agreement with HLA Engineering and Land Surveying, Inc.

- E. Resolution authorizing a contract agreement with Andrew Kottkamp for Hearing Examiner Pro Tem services

RESOLUTION NO. R-2024-026, A RESOLUTION authorizing a contract agreement with Andrew Kottkamp for Hearing Examiner Pro Tem services.

- F. Resolution accepting an Agreement with KPG Psomas for Division & 3rd Ave Signal Installation Project 2598

RESOLUTION NO. R-2024-027, A RESOLUTION authorizing agreement with KPG Psomas for the S 3rd Ave & Division St. Signalization Project 2598.

DEPARTMENT ITEMS

- 8. 2023 Vacant Building Safety Project 4th Quarter Report

Code Administration Manager Glenn Denman reported on the 2023 4th Quarter Vacant Building Safety Project implementation efforts. After discussion,

MOTION: Glenn moved and Brown seconded to add to a future study session, review of the City Code enforcement rules and language clarifications. Motion carried by unanimous vote.

- 9. Resolution authorizing a Professional Services Agreement with Annie Murphey Consulting LLC to serve as the domestic violence high risk team coordinator

Lieutenant Chad Janis briefed Council on the proposed resolution to hire a domestic violence high risk team coordinator.

The City Clerk read the resolution by title.

MOTION: Brown moved and Deccio seconded to adopt the resolution. The motion carried by a 7-0 roll call vote.

RESOLUTION NO. R-2024-028, A RESOLUTION authorizing a Professional Services Agreement between the City of Yakima and Annie Murphey Consulting LLC to serve as the Domestic Violence High Risk Team Coordinator.

10. Resolution authorizing the City Manager to execute an Interlocal Agreement with the Washington Traffic Safety Commission for funding a Law Enforcement Liaison

Captain Shawn Boyle briefed Council on the proposed resolution accepting funds from the Washington Traffic Safety Commission to assist in promoting the Target Zero program.

The City Clerk read the resolution by title.

MOTION: Brown moved and Deccio seconded to adopt the resolution. The motion carried by a 7-0 roll call vote.

RESOLUTION NO. R-2024-029, A RESOLUTION authorizing the City Manager of the City of Yakima to execute an Interlocal Agreement Between the City of Yakima and the Washington Traffic Safety Commission for funding a Law Enforcement Liaison.

11. Ordinance amending the City of Yakima Municipal Code Section 6.08.015 by adopting Revised Code of Washington 69.50.475, relating to penalties for sales of cannabis by cannabis retail outlets to persons under twenty-one years of age

Senior Assistant City Attorney Jeffrey Schaap briefed Council on the proposed ordinance.

The City Clerk read the ordinance by title.

MOTION: Deccio moved and Herrera seconded to pass the ordinance. The motion carried by a 6-1 roll call vote; Glenn voting no.

ORDINANCE NO. 2024-002, AN ORDINANCE amending the City of Yakima Municipal Code Section 6.08.015 by adopting Revised Code of Washington 69.50.475, relating to penalties for sales of cannabis by cannabis retail outlets to persons under twenty-one years of age.

12. **Other Business**

MOTION: Brown moved and Berg seconded to add to a future study session the topic of zero based budgeting and zero based budgeting policy. The motion carried by unanimous vote.

Interim City Manager Zabell spoke in response to public comments made regarding recent specific City employees, and stated that information may not always be accurate; commended staff with a professional presentation following difficult comments made during public comment. Mr. Zabell assured Council the City will act on what is known as personnel matters progress.

13. **Adjournment**

MOTION: Brown moved and Deccio seconded to adjourn to the next Council study session on February 13, 2024, at 5:00 p.m. in the Council Chambers at City Hall. The motion carried by unanimous vote. The meeting adjourned at 6:45 p.m.

CERTIFICATION

READ AND CERTIFIED ACCURATE BY

COUNCIL MEMBER

DATE

COUNCIL MEMBER

DATE

ATTEST:

CITY CLERK

MAYOR

DRAFT



**MINUTES
YAKIMA CITY COUNCIL
STUDY SESSION
February 13, 2024**

**City Hall -- Council Chambers - 129 N 2nd Street, Yakima, WA
5:00 p.m. Study Session - conducted in person and virtually via Zoom**

1. Roll Call

Present: Mayor Patricia Byers, presiding; Assistant Mayor Matt Brown and Councilmembers Reedy Berg, Janice Deccio Rick Glenn, Danny Herrera and Leo Roy (attending remotely via Zoom)

Staff: Interim City Manager Dave Zabell, City Attorney Sara Watkins and City Clerk Rosalinda Ibarra

2. Public comment (allow 15 minutes)

Daylene Ackerman urged Council not to implement the Climate Action Plan developed by the Sustainable Yakima Committee.

3. Discussion regarding Council Boards, Committees, and Commissions

City Attorney Sara Watkins outlined the roles and responsibilities of liaisons to boards, committees, and commissions and shared the councilmember liaison job description utilized by the City of Bainbridge Island for Council's information. The various boards, committees, and commissions were discussed at length, including background, requirement for participation, benefits, and potential downsides.

It was Council consensus to designate Assistant Mayor Brown to serve as an ex-officio member on the Tourism Promotion Area (TPA formerly Hotel/Motel Commission), and Councilmember Berg to serve as an alternate on the Council Nominating Committee and as the liaison to the Yakima Valley Conference of Government (YVCOG) General Membership board.

After further discussion,

MOTION: Brown moved and Deccio seconded to direct staff to prepare an ordinance to expand the Yakima Planning Commission to eleven members and two non-voting Council representatives. The motion carried by unanimous vote.

Councilmember Deccio and Glenn expressed an interest to serve as the Council representatives to the Yakima Planning Commission when the changes are implemented.

MOTION: Brown moved and Berg seconded to direct staff to create an ordinance to move the Historic Preservation Commission, the Bike and Pedestrian Committee, and the Yakima Tree Board as subcommittees in the ordinance for the Yakima Planning Commission. The motion carried by unanimous vote.

MOTION: Brown moved and Berg seconded to direct staff to remove the Community Integration Committee and the Sustainable Yakima Committee out of the City code. The motion carried by unanimous vote.

4. Consideration of Naches Avenue Historic Overlay Zone Standards

Planning Manager Joseph Calhoun briefed Council on the Naches Avenue Historic Overlay Zone Standards. He provided background information regarding the inventory of the North and South Naches corridors adjacent to the Naches Avenue median which was achieved using grants from the Washington State Department of Archaeology and Historic Preservation (DAHP). The inventory study noted there is not enough historic significance to warrant a new historic district but recommended Historic Overlay Zone (HOZ) standards to preserve existing historic structures.

There are six primary purposes of the HOZ zone which include: retain/increase housing density; retain architectural integrity; encourage investment in existing buildings and multi-family infill; strengthen the historic role of Naches Avenue; prioritize rehabilitation of contributing buildings; and, prioritize rehabilitation or replacement of noncontributing buildings built during the period of significance. Implementation of these standards will require text amendments to the Zoning Ordinance (YMC Title 15) and the Historic Preservation Ordinance (YMC Ch. 11.62).

After Council discussion regarding housing density and parking concerns,

MOTION: Deccio moved and Brown seconded to direct staff to begin the implementation process for the Naches Avenue Historic Overlay Zone. The motion passed 6-1; Glenn voting no.

5. Council discussion on memberships

Interim City Manager Dave Zabell and City Attorney Sara Watkins briefed Council on the current memberships that the City of Yakima partners with and described the benefits of the membership services the City receives. They include the Chamber of Commerce, Yakima County Development Association (YCDA), Yakima Valley Conference of Governments (YVCOG), Association of Washington Cities (AWC), National League of Cities (NLC), and the Yakima Homeless Network.

After Council discussion,

MOTION: Glenn moved and Brown seconded to eliminate participation in the National League of Cities. The motion carried by unanimous vote.

6. Adjournment

MOTION: Glenn moved and Deccio seconded to adjourn to the next Council regular meeting on February 20, 2024 at 5:30 p.m. in the Council Chambers at City Hall. The motion carried by unanimous vote. The meeting adjourned at 6:19 p.m.

CERTIFICATION

READ AND CERTIFIED ACCURATE BY

COUNCIL MEMBER DATE

COUNCIL MEMBER DATE

ATTEST:

CITY CLERK

MAYOR

DRAFT



**BUSINESS OF THE CITY COUNCIL
YAKIMA, WASHINGTON
AGENDA STATEMENT**

Item No. 7.B.
For Meeting of: February 20, 2024

ITEM TITLE: January 2024 Investment Transaction Report
SUBMITTED BY: Rosylen Oglesby, Interim Director of Finance and Budget

SUMMARY EXPLANATION:

This monthly report is in compliance with RCW 35.39.032 which requires *“The responsible official or committee shall make a monthly report of all investment transactions to the city legislative authority”*. A complete Treasury report is provided to City Council quarterly that provides a complete position listing with further analysis, economic outlook and strategy updates.

ITEM BUDGETED: NA
STRATEGIC PRIORITY: Public Trust and Accountability

APPROVED FOR SUBMITTAL BY THE CITY MANAGER

RECOMMENDATION:

Review only. Submitted for routine transparency and accountability.

ATTACHMENTS:

Description	Upload Date	Type
 Investment Transaction Summary	2/2/2024	Backup Material



FINANCE

ATE: February 1, 2024

TO: Mayor and City Council

FROM: Kimberly Dominé Financial Services Manager

RE: January 2024 Investment Transactions

The investment transactions for January 2024 were:

Matured:

- \$1,000,000 FAMCA matured 1/10/24
- \$1,000,000 FHLB matured 1/30/24

Called:

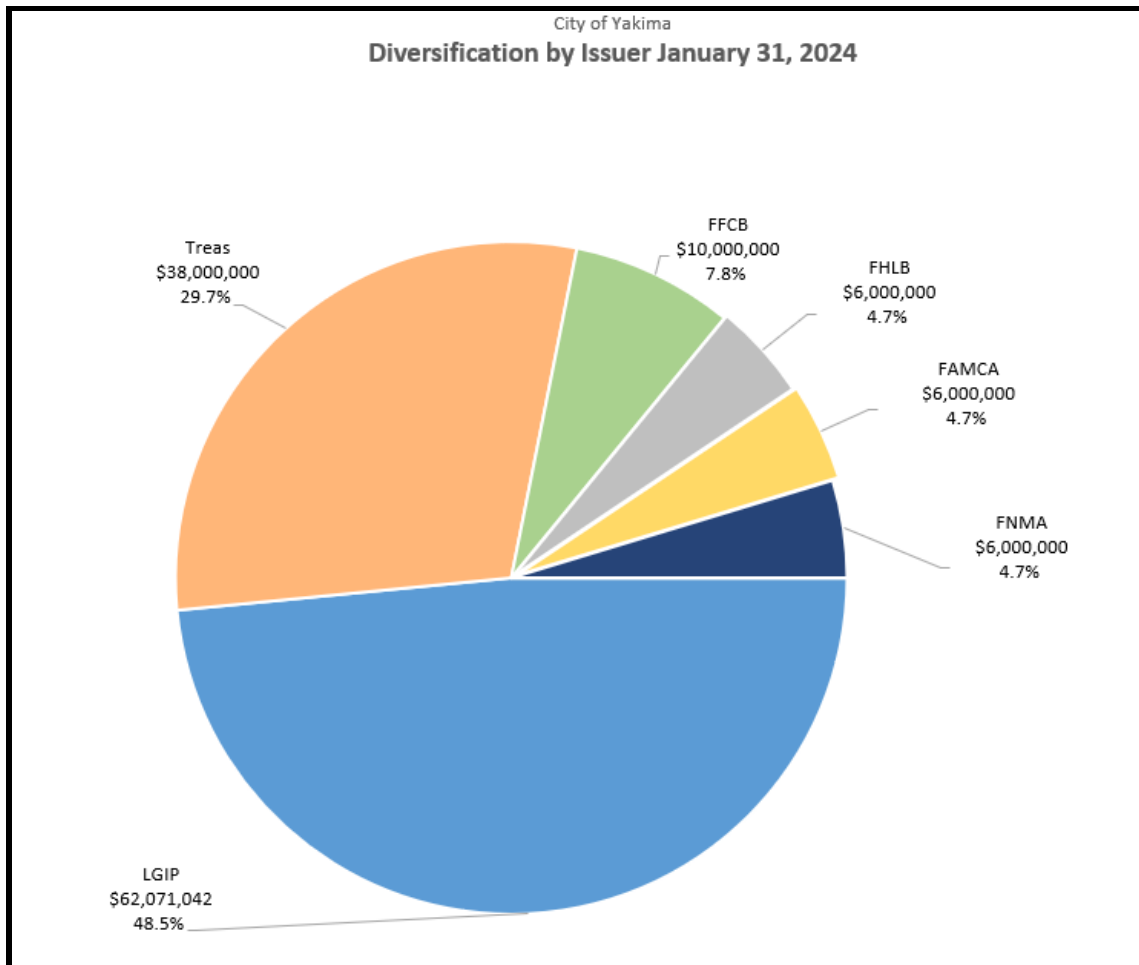
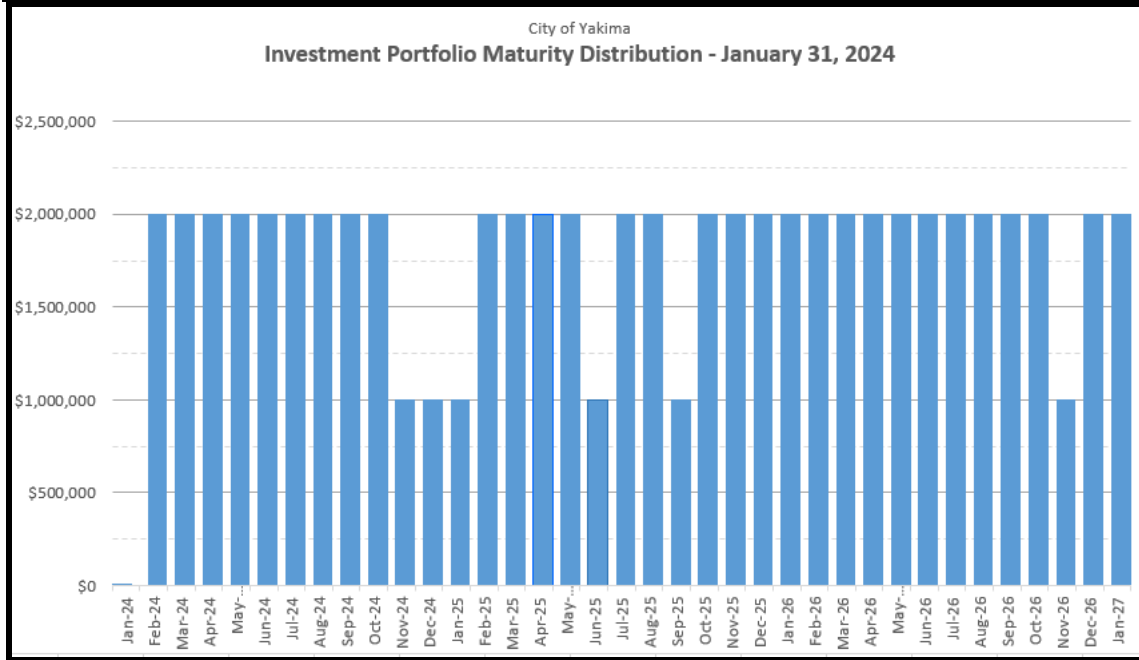
- none

Purchased:

- \$2,000,000 FFCB matures 1/19/27

The focus of investments now is to fill maturity gaps in a shortened (3-4-year maturity horizon, instead of 5-year pre-COVID) ladder to minimize reinvestment risk subject to rates at any one point in time and hedging against further decreasing rate exposure.

This monthly memorandum of all investment transactions complies with RCW 35.39.032 ("The responsible official or committee shall make a monthly report of all investment transactions to the city legislative authority").





**BUSINESS OF THE CITY COUNCIL
YAKIMA, WASHINGTON
AGENDA STATEMENT**

Item No. 7.C.
For Meeting of: February 20, 2024

ITEM TITLE: Approve payment of disbursements for the period January 1-31, 2024

SUBMITTED BY: Rosylen Oglesby, Interim Director of Finance and Budget

SUMMARY EXPLANATION:

RCW 42.24 governs the process for audit and review of payroll and claims payments for the City. RCW 42.24.180 requires the review and approval of all payments at a regularly scheduled public meeting on a monthly basis. The State Budgeting, Accounting and Reporting Systems (BARS) Manual outlines the following format for approval by the City Council.

REPORT OF DISBURSEMENTS:

The following amounts were budgeted, and sufficient funds were available to cover these payments:

Electronic Payments - Key Bank	#789 - 798	\$ 1,695,153.97
Electronic Payments - US Bank	#13105 - 13143	\$ 8,978,681.18
Electronic Purchasing Card	January 2024	\$ 214,264.71
Accounts Payable Checks	#196846 - 197339	\$ 9,740,090.87
Payroll Account Checks	#425381 - 426117	\$ 274,013.50
Payroll Account Checks - Cayenta	#5829 - 5847	\$ 113,414.66

Background and description of this process is attached.

ITEM BUDGETED: Yes

STRATEGIC PRIORITY: Public Trust and Accountability

APPROVED FOR SUBMITTAL BY THE CITY MANAGER

RECOMMENDATION:

Approve disbursements.



**BUSINESS OF THE CITY COUNCIL
YAKIMA, WASHINGTON
AGENDA STATEMENT**

Item No. 7.D.
For Meeting of: February 20, 2024

ITEM TITLE: Project Completion and Contract Acceptance with Knobel's Electric Inc for the Lions Pool Emergency Electrical Repair Project 2600

SUBMITTED BY: Scott Schafer, Director of Public Works
* Ken Wilkinson, Parks and Recreation Manager

SUMMARY EXPLANATION:

City Project #2600 provided for the emergency electrical repair necessary to replace the electrical service panel associated with the new air handler and cooling unit serving the City of Yakima's Lions Pool.

Final inspection for the project was made and the recommendation is that the project be accepted. Project completion is subject to issuance of Certificate of Payment by the Department of Revenue and authorizations from state agencies allowing final payment. A final payment of \$3,357.44 is due from the City to the contractor for retainage.

Project Manager: Ken Wilkinson
Contractor: Knobel's Electric Inc
EPO Awarded: 12/11/23
Total Contract Cost: \$ 72,722.12
Retainage Due: \$ 3,357.44

The total contract cost is for construction only and does not include engineering and other costs. City Council action is required to accept the project and approve the final construction costs.

ITEM BUDGETED: Yes

STRATEGIC PRIORITY: Public Safety

APPROVED FOR SUBMITTAL BY THE CITY MANAGER

RECOMMENDATION:

Accept Project.

ATTACHMENTS:

Description		Upload Date	Type
	Completion Letter	1/30/2024	Backup Material

**DEPARTMENT OF PUBLIC WORKS**

*129 North Second Street
Yakima, Washington 98901
(509) 575-6111*

January 25, 2024

Knobel's Electric Inc
801 Tennant Lane
Yakima WA 98901

Re: Lions Pool Emergency Work
City of Yakima Project No. 2600 EPO 2313E (2311E)

Notice of Physical Completion

Dear Knobel's Electric Inc:

Be advised that work on the above referenced project was considered physically complete on December 1, 2023.

Thank you for the service your company provided for the City of Yakima, we look forward to working with you again.

Should you have any questions, please contact me at 509-576-6416.

Sincerely,

Ken Wilkinson
Park and Recreation Manager
City of Yakima



**BUSINESS OF THE CITY COUNCIL
YAKIMA, WASHINGTON
AGENDA STATEMENT**

Item No. 7.E.
For Meeting of: February 20, 2024

ITEM TITLE: Set date of March 19, 2024 for a closed record public hearing to consider the Hearing Examiner's recommendation regarding the preliminary plat of "Marylyn Place" submitted by WM Real Property Holdings, LLC

SUBMITTED BY: Joan Davenport, AICP, Community Development Director
Joseph Calhoun, Planning Manager
*Eric Crowell, Senior Planner

SUMMARY EXPLANATION:

HLA Engineering & Surveying, on behalf of WM Real Property Holdings LLC, submitted a preliminary long plat application to subdivide approximately 22.19 acres into 83 single-family residential lots on September 21, 2023. The subject property is located in the vicinity of Ahtanum Rd. & S. 58th Ave. The application was reviewed at an open record public hearing held on January 11, 2024. The Hearing Examiner's recommendation was received on January 25, 2024.

ITEM BUDGETED: NA

STRATEGIC PRIORITY: Neighborhood and Community Building

APPROVED FOR SUBMITTAL BY THE CITY MANAGER

RECOMMENDATION:

Set date.

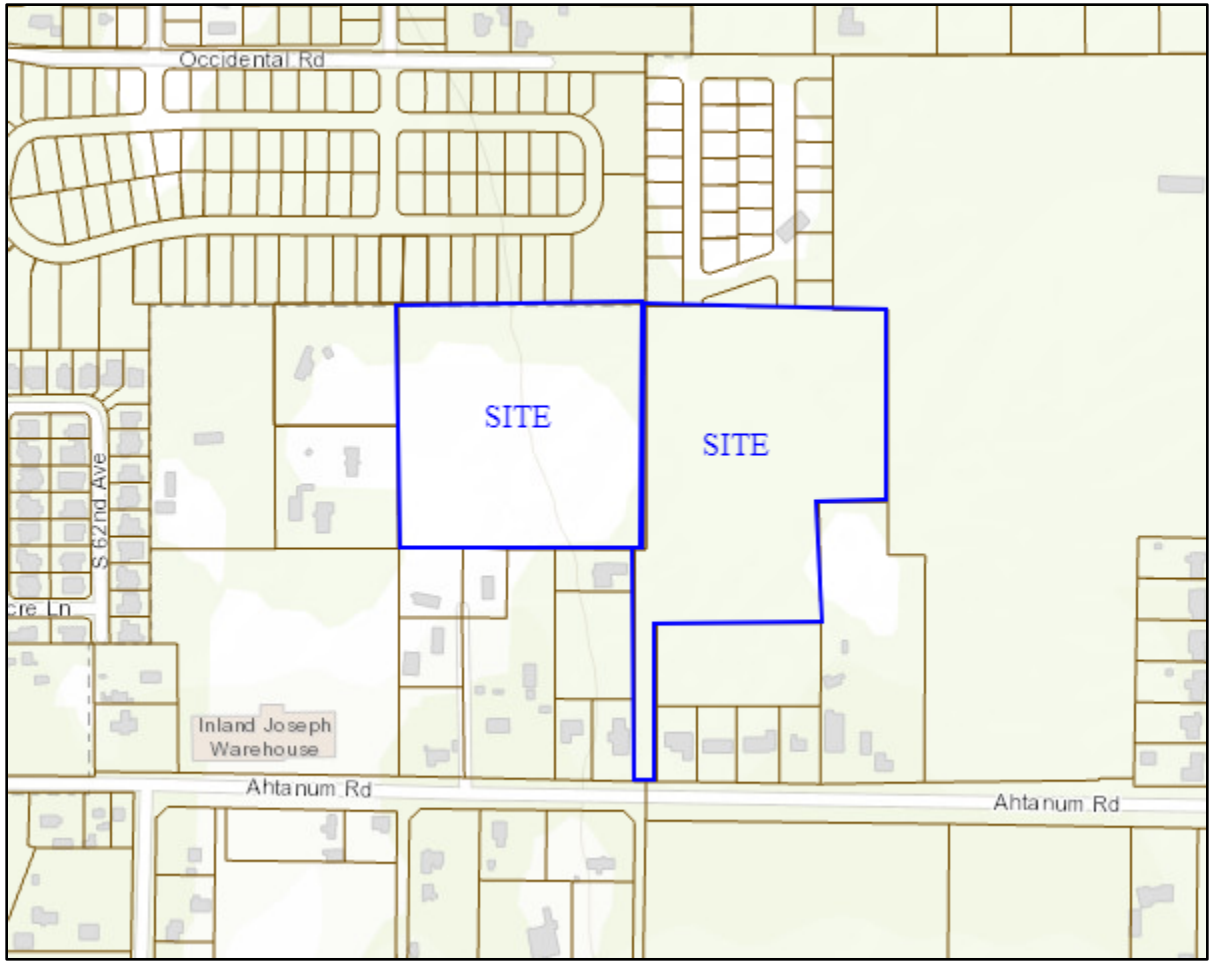
ATTACHMENTS:

Description	Upload Date	Type
 Vicinity Map	2/8/2024	Backup Material

Project Name: NOVOBIELSKI SURVIVORS TRUST - "PLAT OF MARYLYN PLACE"
Site Address: LOWER AHTANUM/53RD
File Number(s): PLP#001-23
Proposal: Proposed preliminary long plat to subdivide 22.1 acres into 83 lots in the R-2 zoning district.



VICINITY MAP





**BUSINESS OF THE CITY COUNCIL
YAKIMA, WASHINGTON
AGENDA STATEMENT**

Item No. 7.F.
For Meeting of: February 20, 2024

ITEM TITLE: Set date of March 19, 2024 for a closed record public hearing to consider the Hearing Examiner's recommendation regarding the preliminary plat of "Champions Park Phase 1" submitted by Prickly Pear Holdings, LLC

SUBMITTED BY: Joan Davenport, AICP, Community Development Director
Joseph Calhoun, Planning Manager
*Connor Kennedy, Assistant Planner

SUMMARY EXPLANATION:

HLA Engineering & Surveying, on behalf of Prickly Pear Holdings, LLC, submitted a preliminary long plat application to subdivide approximately 21.06 acres into 93 single-family lots, including 46 common wall dwellings on October 9, 2023. The property is located in the vicinity of 4607 & 4701 Ahtanum Rd. The application was reviewed at an open record public hearing held on January 11, 2024. The Hearing Examiner's recommendation was received on January 25, 2024.

ITEM BUDGETED: NA

STRATEGIC PRIORITY: Neighborhood and Community Building

APPROVED FOR SUBMITTAL BY THE CITY MANAGER

RECOMMENDATION:

Set date.

ATTACHMENTS:

Description	Upload Date	Type
 Vicinity Map	2/15/2024	Backup Material

Project Name: PRICKLY PEAR HOLDINGS LLC "PLAT OF CHAMPIONS PARK PHASE 1"

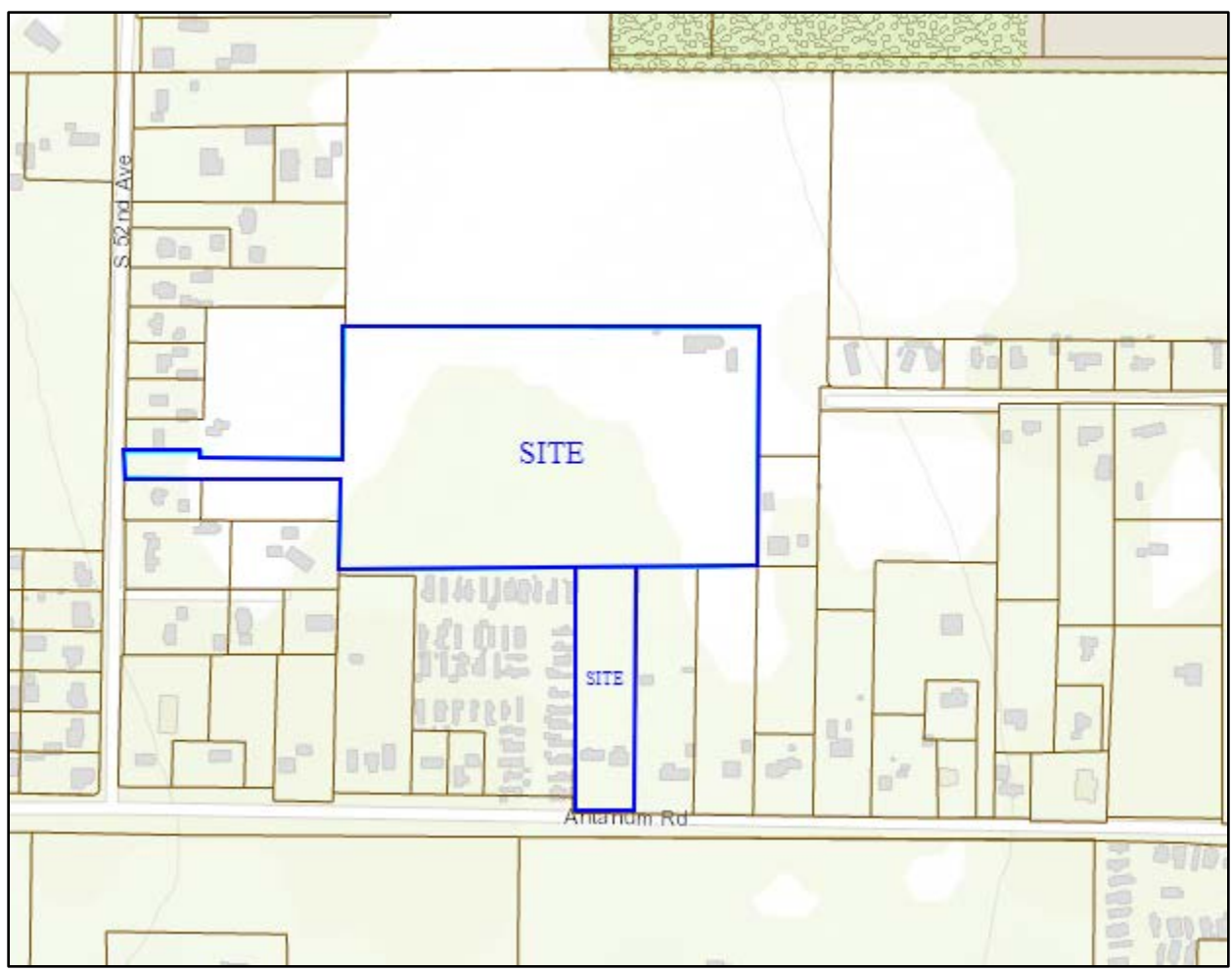
Site Address: 4607 & 4701 LOWER AHTANUM RD

File Number(s): PLP#002-23, CL2#038-23, SEPA#011-23, TCO#008-23

Proposal: Proposed preliminary long plat to subdivide 21.06 acres into 93 single-family lots and environmental review in the R-1 and R-2 zoning districts.



VICINITY MAP





**BUSINESS OF THE CITY COUNCIL
YAKIMA, WASHINGTON
AGENDA STATEMENT**

Item No. 7.G.
For Meeting of: February 20, 2024

ITEM TITLE: Resolution accepting and approving 4th Quarter 2023 Claim Report

SUBMITTED BY: Ryan Bleek, Senior Assistant City Attorney

SUMMARY EXPLANATION:

The purpose of this report is to provide information on claims that were closed during the 4th Quarter 2023. All claims listed in this report were resolved and settled pursuant to Resolution No. R-2022-008 authorizing the City Manager to settle claims against or by the City in an amount of \$100,000 or less. All payment amounts listed on the CIAW report show the amount paid by the City of Yakima and CIAW toward the settlement, with the City of Yakima paying up to its \$100,000 insurance deductible. Intermountain Claims is the City's Third Party Administrator on claims with incidents beginning December 1, 2019.

The report includes the following information for the 4th quarter 2023: (1) Intermountain Claims summary by type of claim; (2) Intermountain Claims summary by department; (3) Intermountain Claims closed claims for the 4th Quarter 2023; (4) CIAW summary by type of claim; (5) CIAW summary by department; (6) CIAW closed claims for the 4th Quarter 2023; and, (7) WSTIP Closed Claims for the 4th Quarter 2023. Adopting the attached claims resolution affirms and ratifies the payments made by the City of Yakima on claims closed during the 4th Quarter of 2023 as listed in the reports.

ITEM BUDGETED: Yes

STRATEGIC PRIORITY: Public Trust and Accountability

APPROVED FOR SUBMITTAL BY THE CITY MANAGER

RECOMMENDATION:

Adopt Resolution.

ATTACHMENTS:

Description	Upload Date	Type
<input type="checkbox"/> Res-4th Quarter 2023 Claim Report	2/2/2024	Resolution
<input type="checkbox"/> 4th Qtr 2023 Claim Report	2/2/2024	Backup Material

RESOLUTION NO. R-2024-

A RESOLUTION accepting and approving the 4th Quarter 2023 Claim Report for the City of Yakima.

WHEREAS, the City of Yakima previously was self-insured as to most claims; and

WHEREAS, the City of Yakima was a member of the Cities Insurance Association of Washington ("CIAW") for most liability claims from December 14, 2015 through November 30, 2019, subject to a deductible amount; and

WHEREAS, the City of Yakima has been insured by Safety National for most liability claims since December 1, 2019 for incidents beginning on that date, subject to a deductible amount; and Intermountain Claims, Inc. is the third party administrator on those claims; and

WHEREAS, the Transit Division is in the Washington State Transit Insurance Pool ("WSTIP") for Transit claims, effective September 1, 2005, with liability coverage which is not subject to a deductible amount; and

WHEREAS, pursuant to an annual Resolution that has been adopted by the City Council, the City Manager is authorized to settle claims against or by the City in an amount of \$100,000 or less; and

WHEREAS, the attached Claim Report contains information on and the disposition of the various claims submitted to the City of Yakima; now, therefore,

BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF YAKIMA:

The attached 4th Quarter 2023 Claim Report, together with payments and disbursements listed therein, is hereby accepted, approved, and ratified.

ADOPTED BY THE CITY COUNCIL this 20th day of February, 2024.

ATTEST:

Patricia Byers, Mayor

Rosalinda Ibarra, City Clerk

CITY OF YAKIMA
4th Quarter Claim Report
2023

**INTERMOUNTAIN CLAIMS
SUMMARY
BY TYPE OF CLAIM
10/01/2023 TO 12/31/2023**

INTERMOUNTAIN

Closed Claims by Coverage

Quarterly - October 1, 2023 to December 31, 2023

Claim Number	Claimant	Status	Settlement Amount	Expense Paid	Total Paid
Coverage: Auto Liability					
YAK22-02233-01	Jose Mendoza Acevedo	Closed	30,713.87	0.00	30,713.87
YAK22-02233-02	Keyla Joanna Mendoza Bravo	Closed	11,008.13	0.00	11,008.13
YAK22-02225-01	Yuri Rodriguez	Closed	22,916.81	0.00	22,916.81
YAK22-02225-03	Kataleya Esther Zaragoza	Closed	2,234.00	1,120.00	3,354.00
YAK22-02225-02	Gianni Leopoldo Zaragoza	Closed	2,234.00	1,120.00	3,354.00
YAK23-02444	Diana Lee Cantu	Closed	442.13	0.00	442.13
YAK23-02438	Renelto Weikel	Closed	1,794.62	0.00	1,794.62
Totals for Auto Liability - 7 Claims		7	71,343.56	2,240.00	73,583.56
Coverage: General Liability					
YAK23-02404	James Lee Sandall	Closed	0.00	0.00	0.00
YAK23-02418	Progressive Insurance a/s/o Maria Garcia	Closed	0.00	0.00	0.00
YAK23-02424	William Wayne Overturf	Closed	0.00	0.00	0.00
YAK23-02429	Anna M Maricle	Closed	0.00	0.00	0.00
YAK23-02401	Jose G Mondragon and Maria de Lourdes Patino	Closed	2,058.11	0.00	2,058.11
YAK23-02397	Victor and Jazmin Larios	Closed	3,679.36	0.00	3,679.36
Totals for General Liability - 6 Claims		6	5,737.47	0.00	5,737.47
Coverage: Law Enforcement Liability					
YAK23-02412	Dionicio Tobia	Closed	15,000.00	0.00	15,000.00
Totals for Law Enforcement Liability - 1 Claim		1	15,000.00	0.00	15,000.00
Grand Totals - 14 Claims		14	92,081.03	2,240.00	94,321.03

**INTERMOUNTAIN CLAIMS
SUMMARY
BY DEPARTMENT
10/01/2023 TO 12/31/2023**

INTERMOUNTAIN

Closed Claims by Department

Quarterly - October 1, 2023 to December 31, 2023

Department / Division	Closed	Settlement Amount	Expense Paid	Total Paid
Location Number and Name: 031.COYA - GL - Police Department				
Police Department	Closed	30,713.87	0.00	30,713.87
Police Department	Closed	11,008.13	0.00	11,008.13
Police Department	Closed	22,916.81	0.00	22,916.81
Police Department	Closed	2,234.00	1,120.00	3,354.00
Police Department	Closed	2,234.00	1,120.00	3,354.00
Police Department	Closed	15,000.00	0.00	15,000.00
Police Department	Closed	0.00	0.00	0.00
Police Department	Closed	1,794.62	0.00	1,794.62
Totals for 031.COYA - GL - Police Department - 8 Claims	8	85,901.43	2,240.00	88,141.43
Location Number and Name: 141.COYA - GL - Streets Division				
Streets Division	Closed	0.00	0.00	0.00
Totals for 141.COYA - GL - Streets Division - 1 Claim	1	0.00	0.00	0.00
Location Number and Name: 471.COYA - GL - Refuse Division				
Refuse Division	Closed	442.13	0.00	442.13
Totals for 471.COYA - GL - Refuse Division - 1 Claim	1	442.13	0.00	442.13
Location Number and Name: 474.COYA - GL - Water Division				
Water Division	Closed	2,058.11	0.00	2,058.11
Totals for 474.COYA - GL - Water Division - 1 Claim	1	2,058.11	0.00	2,058.11
Location Number and Name: 475.COYA - GL - Irrigation Division				
Irrigation Division	Closed	3,679.36	0.00	3,679.36
Totals for 475.COYA - GL - Irrigation Division - 1 Claim	1	3,679.36	0.00	3,679.36
Location Number and Name: 561.COYA - GL - Public Works Department				
Public Works Department	Closed	0.00	0.00	0.00
Public Works Department	Closed	0.00	0.00	0.00
Totals for 561.COYA - GL - Public Works Department - 2 Claims	2	0.00	0.00	0.00
Grand Totals - 14 Claims	14	92,081.03	2,240.00	94,321.03

**INTERMOUNTAIN CLAIMS
CLOSED CLAIMS
10/01/2023 TO 12/31/2023**

Quarterly - October 1, 2023 to December 31, 2023

Type Of Claim	Claim Number	Loss Date	TPA Received	Close Date	Event Description	Claimant Full Name	Settlement Amount	Expense Paid	Total Paid
Coverage: Auto Liability									
Location Number and Name: 031.COYA - GL - Police Department									
Auto Liab- BI PD	YAK22-02225-01	9/1/2022	9/16/2022	10/13/2023	IV allegedly struck CV	Yuri Rodriguez	22,916.81	0.00	\$22,916.81
Auto Liability BI	YAK22-02225-02	9/1/2022	9/16/2022	10/19/2023	IV allegedly struck CV	Gianni Leopoldo Zaragoza	2,234.00	1,120.00	\$3,354.00
Auto Liability BI	YAK22-02225-03	9/1/2022	9/16/2022	10/13/2023	IV allegedly struck CV	Kataleya Esther Zaragoza	2,234.00	1,120.00	\$3,354.00
Auto Liab- BI PD	YAK22-02233-01	9/15/2022	10/3/2022	10/4/2023	IV allegedly struck CV	Jose Mendoza Acevedo	30,713.87	0.00	\$30,713.87
Auto Liability BI	YAK22-02233-02	9/15/2022	10/3/2022	10/4/2023	IV allegedly struck CV	Keyla Joanna Mendoza Bravo	11,008.13	0.00	\$11,008.13
Auto Liability PD	YAK23-02438	11/12/2023	11/17/2023	12/29/2023	IV allegedly struck CV	Renelto Weikel	1,794.62	0.00	\$1,794.62
Totals for 031.COYA - GL - Police Department - 6 Claims							70,901.43	2,240.00	\$73,141.43
Location Number and Name: 471.COYA - GL - Refuse Division									
Auto Liability PD	YAK23-02444	10/30/2023	11/29/2023	12/27/2023	Alleged PD	Diana Lee Cantu	442.13	0.00	\$442.13
Totals for 471.COYA - GL - Refuse Division - 1 Claim							442.13	0.00	\$442.13
Totals for Auto Liability - 7 Claims							71,343.56	2,240.00	\$73,583.56
Coverage: General Liability									
Location Number and Name: 031.COYA - GL - Police Department									
Gen Liab PD	YAK23-02424	10/1/2023	10/18/2023	10/30/2023	Alleged improper impound	William Wayne Overturf	0.00	0.00	\$0.00
Totals for 031.COYA - GL - Police Department - 1 Claim							0.00	0.00	\$0.00
Location Number and Name: 141.COYA - GL - Streets Division									
Gen Liab BI	YAK23-02429	10/11/2023	10/26/2023	10/31/2023	Alleged PI	Anna M Maricle	0.00	0.00	\$0.00
Totals for 141.COYA - GL - Streets Division - 1 Claim							0.00	0.00	\$0.00
Location Number and Name: 474.COYA - GL - Water Division									
Gen Liab PD	YAK23-02401	8/17/2023	8/28/2023	11/27/2023	Alleged PD	Jose G Mondragon and Maria de Lourdes Patino	2,058.11	0.00	\$2,058.11
Totals for 474.COYA - GL - Water Division - 1 Claim							2,058.11	0.00	\$2,058.11
Location Number and Name: 475.COYA - GL - Irrigation Division									
Gen Liab PD	YAK23-02397	8/18/2023	8/18/2023	12/6/2023	Alleged PD	Victor and Jazmin Larios	3,679.36	0.00	\$3,679.36
Totals for 475.COYA - GL - Irrigation Division - 1 Claim							3,679.36	0.00	\$3,679.36
Location Number and Name: 561.COYA - GL - Public Works Department									
Gen Liab PD	YAK23-02404	8/29/2023	9/1/2023	10/13/2023	Alleged PD to CV	James Lee Sandall	0.00	0.00	\$0.00

Quarterly - October 1, 2023 to December 31, 2023

Type Of Claim	Claim Number	Loss Date	TPA Received	Close Date	Event Description	Claimant Full Name	Settlement Amount	Expense Paid	Total Paid
Gen Liab PD	YAK23-02418	8/13/2023	10/2/2023	10/12/2023	Alleges PD	Progressive Insurance a/s/o Maria Garcia	0.00	0.00	\$0.00
Totals for 561.COYA - GL - Public Works Department - 2 Claims							0.00	0.00	\$0.00
Totals for General Liability - 6 Claims							5,737.47	0.00	\$5,737.47
Coverage: Law Enforcement Liability									
Location Number and Name: 031.COYA - GL - Police Department									
Gen Liab BI	YAK23-02412	7/11/2023	9/18/2023	10/27/2023	alleges false arrest	Dionicio Tobia	15,000.00	0.00	\$15,000.00
Totals for 031.COYA - GL - Police Department - 1 Claim							15,000.00	0.00	\$15,000.00
Totals for Law Enforcement Liability - 1 Claim							15,000.00	0.00	\$15,000.00
Grand Totals - 14 Claims							92,081.03	2,240.00	\$94,321.03

**CIAW CLAIMS SUMMARY
BY TYPE OF CLAIM
10/01/2023 TO 12/31/2023**

City of Yakima
CIAW Closed Claims Summary by Type of Claim
Fourth Quarter 2023
October 1, 2023 through December 31, 2023

Auto Bodily Injury (ABI)	
Total Number of Claims:	0
Total Dollars Paid:	\$0.00
Automobile Liability - Property Damage (ALPD)	
Total Number of Claims:	0
Total Dollars Paid:	\$0.00
Employment Practices Liability (EPL)	
Total Number of Claims:	0
Total Dollars Paid:	\$0.00
General Liability - Bodily Injury (GLBI)	
Total Number of Claims:	0
Total Dollars Paid:	\$0.00
General Liability - Property Damage (GLPD)	
Total Number of Claims:	0
Total Dollars Paid:	\$0.00
Law Enforcement (LE)	
Total Number of Claims:	1
Total Dollars Paid:	\$0.00
Wrongful Acts (WA)	
Total Number of Claims:	0
Total Dollars Paid:	\$0.00
TOTAL NUMBER OF CLAIMS:	1
TOTAL DOLLARS PAID:	\$0.00

**CIAW CLAIMS SUMMARY
BY DEPARTMENT
10/01/2023 TO 12/31/2023**

City of Yakima
CIAW Closed Claims Summary by Department
Fourth Quarter 2023
October 1, 2023 through December 31, 2023

Department/Division	Closed	Total Paid
Animal Control Division	0	\$0.00
Codes Division	0	\$0.00
Community Development Department	0	\$0.00
Engineering Division	0	\$0.00
Finance Department	0	\$0.00
Fire Department	0	\$0.00
Other (City of Yakima)	0	\$0.00
Parks and Recreation Division	0	\$0.00
Planning Division	0	\$0.00
Police Department	1	\$0.00
Public Works Department	0	\$0.00
Refuse Division	0	\$0.00
Streets Division	0	\$0.00
Wastewater Division	0	\$0.00
Water/Irrigation Division	0	\$0.00
Utility Services Division	0	\$0.00
TOTAL:	1	\$0.00

CIAW CLOSED CLAIMS 10/01/2023 TO 12/31/2023



City of Yakima Closed Loss Run 10/1/23 to 12/31/23 as of 1/2/2024

	Department/Division	Claim Number	Event Date	Date of Claim	Coverage	Sub-Coverage	Date Closed	Claimant Full Name	Event Description	Status	
Location: Yakima Police Department											
Coverage: Law Enforcement Liability											
	Yakima Police Department	C1823	10/2/2017	11/12/2021	General Liability		10/2/2023	Joe Daniels	Violation of Constitutional Rights	C	\$0.00
Totals for Law Enforcement Liability - 1 Claims											\$0.00
Totals for Yakima Police Department - 1 Claims											\$0.00
Grand Totals - 1 Claims											

**WSTIP CLOSED CLAIMS
10/01/2023 TO 12/31/2023**

Yakima Transit Closed Claims – 10/01/2023 – 12/31/2023

Claim/Event Number	Event Date	Date of Claim	Claimant	Dept.	Location	Type	Status	Description	Date Closed	Total Paid to Claimant by WSTIP	Outcome
23-048460-3	05/15/2023	11/07/2023	Lawrence-Berry, Robert	Yakima Transit	N. 40 th Ave. and Englewood	ALPD (3 rd Pty)	Closed	Claimant alleged property damage	12/19/2023	\$1,178.33	Settled
23-047424-3	09/13/2023	10/30/2023	Harrington, Devin	Yakima Transit	E. I St. and N. 1 st Street	ALBI (3 rd Pty)	Closed	Claimant alleged bodily injury	10/23/2023	\$0.00	Denied

The City of Yakima WSTIP Transit Insurance has a \$0 deductible for non-employment claims on its WSTIP insurance. For first-party claims, any amounts above the city's \$5,000.00 deductible were paid by the City.

Yakima Paratransit claims after January 1, 2012, involve the current contractor for ADA paratransit services, Medstar, LLC. Prior to January 1, 2012, the contractor for paratransit service was A-1 Tri-City Taxi, Inc.



**BUSINESS OF THE CITY COUNCIL
YAKIMA, WASHINGTON
AGENDA STATEMENT**

Item No. 7.H.
For Meeting of: February 20, 2024

ITEM TITLE: Resolution authorizing Task Order No. 2022-02 with HLA Engineering and Land Surveying, Inc. for water and wastewater systems design in low-income and unserved areas

SUBMITTED BY: Scott Schafer, Director of Public Works
*Mike Shane, Water/Irrigation Manager

SUMMARY EXPLANATION:

City of Yakima (City) Projects AC2570 and SC2605 provide for the design of public water distribution and wastewater collections systems, respectively, in underserved low-income areas of Yakima.

On August 17, 2022, the City entered into a Professional Services Agreement with HLA Engineering and Land Surveying, Inc. for the Water/Irrigation and Wastewater Divisions Low-Income and Unserved Utility Areas project (City Contract No. 2022-140 and Resolution R-2022-10), which included Task Order 2022-01. Proposed Task Order No. 2022-02 includes design services for water and wastewater collection systems in the Northcentral area of the City, as well as funding source recommendations and application assistance to provide possible funding for construction of the designed project.

With Task Order No. 2022-02, funding for the design of water distribution systems is from the Water Capital Fund 477 in an amount not to exceed \$141,100. Funding for the wastewater collection systems is from the Wastewater Capitol Fund 476 in an amount not to exceed \$157,300. The total amount for Task Order No. 2022-02 between Water and Wastewater is not to exceed \$298,400.

Task Order No. 2022-02 Agreement between the City and HLA Engineering and Land Surveying, Inc., in an amount not to exceed \$298,400 is attached for City Council review.

ITEM BUDGETED: Yes

STRATEGIC PRIORITY: Public Safety

APPROVED FOR SUBMITTAL BY THE CITY MANAGER

RECOMMENDATION:

Adopt Resolution.

ATTACHMENTS:

Description		Upload Date	Type
	Resolution HLA Unserved Areas Task Order 2022-02	2/8/2024	Resolution
	Water & Wastewater Unserved Areas - Task Order 2022-02	2/7/2024	Cover Memo

RESOLUTION NO. R-2024-_____

A RESOLUTION authorizing the City Manager to execute Task Order No. 2022-02 with HLA Engineering and Land Surveying, Inc. to provide engineering services for the design of water distribution systems and wastewater collection systems in low income and underserved areas in Yakima.

WHEREAS, the City of Yakima (City) maintains and operates water distribution and wastewater collection systems in accordance with applicable Federal, State and Local regulations; and

WHEREAS, there are several areas within Yakima considered low income that are not currently served by water distribution and wastewater collection systems maintained by the City; and

WHEREAS, the City entered into an Agreement with HLA Engineering and Land Surveying, Inc. on August 17, 2022 for the Water/Irrigation and Wastewater Divisions Low-Income and Unserved Utility Areas, including Task Order 2022-01, as part of City Contract No. 2022-140 and Resolution R-2022-109; and

WHEREAS, the City Water/Irrigation and Wastewater Divisions have identified additional areas within the City that require water distribution and wastewater collection systems; and

WHEREAS, HLA Engineering and Land Surveying, Inc. has provided Task Order No. 2022-02 to provide the design services for the water distribution (\$141,100) and wastewater collection systems (\$157,300) or a total amount not to exceed \$298,400; and

WHEREAS, the City Council has determined that it is in the best interest of the City of Yakima to enter into Task Order No. 2022-02 Agreement with HLA Engineering and Land Surveying, Inc., to perform the design of water distribution systems and wastewater collection systems in low income and underserved areas in Yakima; now, therefore

BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF YAKIMA:

The City Manager is hereby authorized to execute Task Order No. 2022-02 with HLA Engineering and Land Surveying, Inc., in an amount not to exceed Two Hundred Ninety-Eight Thousand Four Hundred Dollars (\$298,400), to provide engineering services for the design of water distribution systems and wastewater collection systems in low income and underserved areas in Yakima, which is attached hereto and by this reference made a part hereof.

ADOPTED BY THE CITY COUNCIL this 20th day of February, 2024.

Patricia Byers, Mayor

ATTEST:

Rosalinda Ibarra, City Clerk

For City of Yakima Use Only:

Contract No. 2022-140 TO2
 Project No. AC2570 / SC2605
 Resolution No. 2024-
 SOQ No. 12215Q

TASK ORDER NO. 2022-02

REGARDING AGREEMENT BETWEEN CITY OF YAKIMA
 (CITY CONTRACT NO. 2022-140, RESOLUTION NO. R-2022-109)

AND

HLA ENGINEERING AND LAND SURVEYING, INC.

PROJECT DESCRIPTION:**Water/Irrigation and Wastewater Divisions****Unserved Utility North West Area – Water and Wastewater System Expansion****AC2570 and SC2605****HLA Project No. 24031E**

The City of Yakima (CITY) desires to make available both domestic water and sanitary sewer in low-income and currently unserved areas of north west Yakima. Improvements are to consist of water distribution mains, sanitary sewer collection mains, service lines to existing right of way, associated improvements, and surfacing repair.

The project is located in the north west area generally falling east of N. 32nd Avenue, west of N. 20th Avenue, north of Englewood Avenue and south of Fruitvale Boulevard.

SCOPE OF SERVICES:

At the direction of the CITY, HLA Engineering and Land Surveying, Inc. (HLA), shall provide professional engineering and land surveying services for the Unserved Utility North West Area – Water and Wastewater System Expansion (PROJECT). HLA shall provide the following services:

1.0 Funding Source Recommendations and Applications

- 1.1 Assist CITY with identifying funding sources applicable to the PROJECT.
- 1.2 As directed, assist the CITY with preparation and submittal of funding application(s).

2.0 Design Engineering

- 2.1 Provide complete project management to deliver the PROJECT within mutually determined expectations.
- 2.2 Attend kick-off meeting with the CITY to identify extent and type of improvements.
- 2.3 Provide preliminary cost estimate(s) for CITY selected initial improvements.
- 2.4 Perform detailed topographic survey of the PROJECT area(s) as required to complete design, plans, and specifications, including call for utility locates and obtaining invert elevations of existing infrastructure (no potholing is anticipated to be performed).
- 2.5 Research and identify existing easements and right of way limits for the PROJECT.
- 2.6 Perform field investigations necessary to design the identified improvements.

- 2.7 Complete review of the existing system, connection locations and looping alternatives, and provide any change in improvement recommendations from CITY selected initial improvements.
- 2.8 Review and identify public and private utilities within the PROJECT area.
- 2.9 Perform the preliminary design. Present, review, and discuss preliminary plans, cost estimates, and specifications, with the CITY at 30%, 60%, and 90% completion.
- 2.10 Provide quality assurance and quality control review for each level of design completion (30%, 60%, and 90%).
- 2.11 Coordinate CITY reviews and incorporate CITY comments for each level of design completion (30%, 60%, and 90%).
- 2.12 Based on approved preliminary plans, perform the final design, and provide final plans and specifications to the CITY in electronic format suitable for printing and use at time of bid advertisement. It is anticipated HLA will prepare one (1) complete set of plans and specifications for one bid call; additional bid packages will be considered additional services.
- 2.13 Prepare the Engineer's Estimate of construction cost and update at all design submission levels.
- 2.14 Prepare specifications at the 90% and final submission levels.

3.0 Bidding Services

Bidding services will be added by an amendment to this task order once the CITY moves forward with construction.

4.0 Construction Engineering

Construction engineering may be added by an amendment to this task order once the CITY moves forward with construction.

5.0 Additional Services

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

6.0 Items to be Furnished and Responsibility of CITY

The CITY will provide or perform the following:

- 6.1 Provide full information as to CITY requirements of the PROJECT.
- 6.2 Provide all available information pertinent to the PROJECT relative to completion of design of the PROJECT.
- 6.3 Provide staff and equipment to pothole at specific areas of potential conflict or interest, necessary to confirm the design.
- 6.4 Contact property owners affected by the PROJECT and gain necessary access to property for field investigation, design, and construction of improvements.
- 6.5 Examine all documents presented by HLA and provide written decisions within a reasonable time so as not to delay the work of HLA.

- 6.6 Obtain approval of all required governmental authorities with jurisdiction over the PROJECT and approvals and consents from other individuals or bodies as necessary for completion of the PROJECT.

TIME OF PERFORMANCE:

The services called for in this Task Order shall be completed as follows:

1.0 Funding Source Recommendations and Applications

These services shall begin immediately following receipt of the signed task order and continue until funding is secured for bidding and construction of the PROJECT. Once a funding source is identified, the associated funding application will be completed within a mutually agreeable timeframe.

2.0 Design Engineering

Plans, specifications, and cost estimate for this phase shall be completed within one-hundred sixty (160) working days following receipt of signed task order. It is anticipated one complete bid package will be prepared for all improvements. If the City directs a portion of the work and/or multiple bid packages, then time of completion to prepare multiple bid packages will be mutually agreed and included by amendment to this task order.

3.0 Bidding Services

Time of completion for work directed by the CITY for bidding services shall be negotiated and mutually agreed upon when services are requested by the CITY and per execution of an amendment to this task order.

4.0 Construction Engineering

Time of completion for work directed by the CITY for construction engineering shall be negotiated and mutually agreed upon when services are requested by the CITY and per execution of an amendment to this task order.

5.0 Additional Services

Time of completion for work directed by the CITY for additional services shall be negotiated and mutually agreed upon when services are requested by the CITY.

FEE FOR SERVICE:

For services furnished by HLA as described in this task order, the CITY agrees to pay HLA up to the not to exceed fees as set forth below. The amounts listed may be revised only by written agreement of both parties. A fee breakdown is provided in EXHIBIT 1 attached. Current published HLA hourly rates will be utilized at the time of invoicing. As a baseline, HLA rates for calendar year 2024 are attached as EXHIBIT 2.

WATER/IRRIGATION DIVISION

1.0 Funding Source Recommendations and Applications

Work directed by the CITY for this phase shall be performed on a time-spent basis at the current hourly billing rates, plus reimbursement for direct non-salary expenses as described in section 5.1.1 of the Agreement for Professional Services (City Contract No. 2022-140, Resolution No. R-2022-109) for the estimated maximum fee of \$23,400.

2.0 Design Engineering

Work directed by the CITY for design engineering shall be performed on a time-spent basis at the current hourly billing rates, plus reimbursement for direct non-salary expenses as described in section 5.1.1 of the Agreement for Professional Services (City Contract No. 2022-140, Resolution No. R-2022-109) for the estimated maximum fee of \$117,700. It is anticipated one complete bid package will be prepared for all improvements. If the CITY directs a portion of the work and/or multiple bid packages, then efforts to prepare multiple bid packages will be performed as additional services or under an amendment to this task order.

3.0 Bidding Services

Work directed by the CITY for bidding services shall be negotiated and mutually agreed upon when services are requested by the CITY and per execution of an amendment to this task order.

4.0 Construction Engineering

Work directed by the CITY for construction engineering shall be negotiated and mutually agreed upon when services are requested by the CITY and per execution of an amendment to this task order.

5.0 Additional Services

Additional work requested by the CITY not included above shall be authorized by the CITY and agreed to by HLA in writing prior to proceeding with services. HLA shall perform additional services as directed/authorized by the CITY on a time-spent basis at the current hourly billing rates, plus reimbursement for direct non-salary expenses such as laboratory testing, printing expenses, out of town travel costs, and outside consultants.

WASTEWATER COLLECTIONS DIVISION

1.0 Funding Source Recommendations and Applications

Work directed by the CITY for this phase shall be performed on a time-spent basis at the current hourly billing rates, plus reimbursement for direct non-salary expenses as described in section 5.1.1 of the Agreement for Professional Services (City Contract No. 2022-140, Resolution No. R-2022-109) for the estimated maximum fee of \$19,400.

2.0 Design Engineering

Work directed by the CITY for this design engineering shall be performed on a time-spent basis at the current hourly billing rates, plus reimbursement for direct non-salary expenses as described in section 5.1.1 of the Agreement for Professional Services (City Contract No. 2022-140, Resolution No. R-2022-109) for the estimated maximum fee of \$137,900. It is anticipated one complete bid package will be prepared for all improvements. If the CITY directs a portion of the work and/or multiple bid packages, then efforts to prepare multiple bid packages will be performed as additional services or under an amendment to this task order.

3.0 Bidding Services

Work directed by the CITY for bidding services shall be negotiated and mutually agreed upon when services are requested by the CITY and per execution of an amendment to this task order.

4.0 Construction Engineering

Work directed by the CITY for construction engineering shall be negotiated and mutually agreed upon when services are requested by the CITY and per execution of an amendment to this task order.

5.0 Additional Services

Additional work requested by the CITY not included above shall be authorized by the CITY and agreed to by HLA in writing prior to proceeding with services. HLA shall perform additional services as directed/authorized by the CITY on a time-spent basis at the current hourly billing rates, plus reimbursement for direct non-salary expenses such as laboratory testing, printing expenses, out of town travel costs, and outside consultants.

CITY OF YAKIMA

HLA ENGINEERING AND LAND SURVEYING, INC.

Signature

Signature

Printed Name: _____

Printed Name: Michael T. Battle, PE

Title: City Manager

Title: President

Date: _____

Date: 2/2/2024

Attest _____
Rosalinda Ibarra, City Clerk

EXHIBIT 1 – PROFESSIONAL SERVICES

Unserved Utility North West Area AC2570 and SC2605 Task Order No. 2022-02

HLA Project No. 24031E

For the services described in this Task Order, compensation shall be paid per Section 5 of the Agreement (City Contract No. 2022-140, Resolution No. R-2022-109) and attached EXHIBIT 2. The following spreadsheet shows the estimated time and expenses to perform said services.

Project Title: Low-Income and Unserved Utility Areas										
Client: City of Yakima										
Task Order No. 2022-02										
Date: January 23, 2024				ENGINEER'S HOURLY ESTIMATE						
Task No.	Project Task	Senior Principal Engineer	Licensed Principal Engineer	Project Engineer I	Licensed Land Surveyor	Two Man Survey Crew	Senior Planner	Admin/ Clerical	Total Hours	Task Direct Costs
		\$263	\$235	\$174	\$191	\$270	\$157	\$102		
WATER/IRRIGATION DIVISION										
1.0 Funding Source Recommendations and Applications										
1	Assist City with identifying funding sources applicable to the PROJECT	4	8	8	0	0	16	8	44	\$7,652
2	Prepare and submit funding applications	4	8	40	0	0	32	8	92	\$15,732
Labor Subtotal		8	16	48	0	0	48	16	136	\$23,384
										\$23,400
1.0 Funding Source Recommendations and Applications										
Task No.	Project Task	Senior Principal Engineer	Licensed Principal Engineer	Project Engineer I	Licensed Land Surveyor	Two Man Survey Crew	CAD Technician	Admin/ Clerical	Total Hours	Task Direct Costs
		\$263	\$235	\$174	\$191	\$270	\$153	\$102		
2.0 Design Engineering - Water Division										
1	Project Management	16	16	0	0	0	0	0	32	\$7,968
2	Project Kick-off Meeting	2	4	4	0	0	0	0	10	\$2,162
3	Preliminary cost estimates for identified improvements	4	4	8	0	0	0	0	16	\$3,384
4	Detailed topographic survey	0	4	8	18	40	16	0	86	\$19,018
5	Review existing easements and right-of-way	4	4	8	16	8	8	0	48	\$9,824
6	Field investigations	4	8	8	0	0	0	0	20	\$4,324
7	Review and provide improvement recommendations	4	8	8	0	0	0	0	20	\$4,324
8	Review public and private utilities	0	8	16	8	8	0	0	40	\$8,352
9	Preliminary Engineering Design (30%, 60% and 90%)	4	16	50	0	0	16	8	94	\$18,776
10	In-house project review, quality control (30%, 60% and 90%)	8	16	8	8	0	16	8	64	\$12,048
11	Review w/and Incorporate Agency comments (30%, 60% and 90%)	4	8	40	0	0	8	16	76	\$12,748
12	Final design, plans, and specifications	4	16	24	0	0	8	8	60	\$11,028
13	Prepare Engineer's Estimate of construction cost	4	8	16	0	0	0	0	28	\$5,716
Labor Subtotal		58	120	198	50	56	72	40	594	\$117,672
EXPENSES:										
Expenses:		Cost/Unit	Ground	Days	Days	Miles	Units			
Mileage		\$0.66				100				\$70
										\$117,700
2.0 Design Engineering										\$117,700
TOTAL WATER/IRRIGATION DIVISION										\$141,100

EXHIBIT 1 – PROFESSIONAL SERVICES (Continued)

**Unserved Utility North West Area,
AC2570 and SC2605
Task Order No. 2022-02
HLA Project No. 24031E**

Project Title: Low-Income and Unserved Utility Areas										
Client: City of Yakima										
Task Order No. 2022-02										
Date: January 23, 2024				ENGINEER'S HOURLY ESTIMATE						
Task No.	Project Task	Senior Principal Engineer	Licensed Principal Engineer	Project Engineer I	Licensed Land Surveyor	Two Man Survey Crew	Senior Planner	Admin/ Clerical	Total Hours	Task Direct Costs
		\$263	\$235	\$174	\$191	\$270	\$153	\$102		
WASTEWATER COLLECTIONS DIVISION										
1.0 Funding Source Recommendations and Applications										
1	Assist City with identifying funding sources applicable to the PROJECT	4	4	8	0	0	8	4	28	\$5,048
2	Prepare and submit funding applications	4	8	32	0	0	32	8	84	\$14,340
Labor Subtotal		8	12	40	0	0	40	12	112	\$19,388
1.0 Funding Source Recommendations and Applications										\$19,400
Task No.	Project Task	Senior Principal Engineer	Licensed Principal Engineer	Project Engineer I	Licensed Land Surveyor	Two Man Survey Crew	CAD Technician	Admin/ Clerical	Total Hours	Task Direct Costs
		\$235	\$210	\$155	\$170	\$240	\$136	\$91		
2.0 Design Engineering - Wastewater Collections Division										
1	Project Management	16	16	0	0	0	0	0	32	\$7,968
2	Project Kick-off Meeting	4	4	4	0	0	0	0	12	\$2,688
3	Preliminary cost estimates for identified improvements	4	4	8	0	0	0	0	16	\$3,384
4	Detailed topographic survey	0	4	8	16	80	16	0	124	\$29,436
5	Review existing easements and right-of-way	0	4	8	16	8	10	0	46	\$9,078
6	Field Investigations	2	4	12	0	0	0	0	18	\$3,554
7	Review and provide improvement recommendations	2	16	8	0	0	0	0	26	\$5,678
8	Review public and private utilities	0	8	16	16	8	8	0	56	\$11,104
9	Preliminary Engineering Design (30%, 60% and 90%)	8	16	48	4	0	12	12	100	\$18,040
10	In-house project review, quality control (30%, 60% and 90%)	8	16	8	8	0	16	16	72	\$12,864
11	Review w/and Incorporate Agency comments (30%, 60% and 90%)	4	8	40	0	0	12	8	72	\$12,544
12	Final design, plans, and specifications	6	16	40	2	0	12	12	86	\$15,740
13	Prepare Engineer's Estimate of construction cost	4	8	16	0	0	0	0	28	\$5,716
Labor Subtotal		58	124	216	62	96	86	48	690	\$137,794
EXPENSES:										
Expenses:		Cost/Unit	Ground	Days	Days	Miles	Units			
Mileage		\$0.66				200				\$130
										\$0
2.0 Design Engineering										137,900
TOTAL WASTEWATER COLLECTIONS DIVISION										\$157,300

EXHIBIT 2**SCHEDULE OF RATES FOR****HLA Engineering and Land Surveying, Inc.****Effective January 1, 2024, through December 31, 2024**

Senior Principal Engineer	\$263.00 per hour
Licensed Principal Engineer	\$235.00 per hour
Licensed Principal Land Surveyor	\$235.00 per hour
Licensed Professional Engineer	\$212.00 per hour
Other Licensed Professional	\$212.00 per hour
Project Engineer II	\$194.00 per hour
Construction Supervisor	\$194.00 per hour
Licensed Professional Land Surveyor	\$191.00 per hour
Project Engineer I	\$174.00 per hour
Contract Administrator III	\$159.00 per hour
Senior Resident Engineer	\$159.00 per hour
Senior Planner	\$157.00 per hour
CAD Technician	\$153.00 per hour
Engineering Technician III	\$143.00 per hour
Planner	\$143.00 per hour
Resident Engineer	\$143.00 per hour
Surveyor	\$141.00 per hour
Surveyor on Two Man Crew	\$135.00 per hour
Contract Administrator II	\$133.00 per hour
Engineering Technician II	\$123.00 per hour
Surveyor on Three Man Crew	\$118.00 per hour
Contract Administrator I	\$102.00 per hour
Engineering Technician I	\$102.00 per hour
Administrative/Clerical	\$102.00 per hour
Vehicle Mileage	Federal Rate

Schedule of Rates may be adjusted during the term of this Agreement to the HLA Standard Hourly Rates in effect at the time.



**BUSINESS OF THE CITY COUNCIL
YAKIMA, WASHINGTON
AGENDA STATEMENT**

Item No. 7.I.
For Meeting of: February 20, 2024

ITEM TITLE: Resolution authorizing Supplemental Agreement 2 to the Professional Services Agreement with Haley & Aldrich Inc for Tiger Oil Project EV2999

SUBMITTED BY: Scott Schafer, Director of Public Works
*Bill Preston, City Engineer

SUMMARY EXPLANATION:

The City of Yakima (City) has been working with the Department of Ecology (DOE) to clean up the former Tiger Oil site located at 2312 W Nob Hill Blvd. Task 2 will include a Nutrient Enhanced Biological Stimulation (NEBS) Work Plan and updated Task 2 Work Order for Targeted Reduction of Residual LNAPL.

The City recommends entering into Supplemental Agreement 2 with Haley & Aldrich Inc to continue the design and remediation of the 2312 W Nob Hill Blvd Site Cleanup project, which includes Task 2. Attached for City Council review is Supplemental Agreement 2 with Haley & Aldrich Inc in an amount not to exceed \$454,796 to be funded with a DOE grant requiring a 10% match.

ITEM BUDGETED: Yes

STRATEGIC PRIORITY: Public Safety

APPROVED FOR SUBMITTAL BY THE CITY MANAGER

RECOMMENDATION:

Adopt Resolution.

ATTACHMENTS:

Description	Upload Date	Type
<input type="checkbox"/> Resolution	2/8/2024	Resolution
<input type="checkbox"/> HA Supplement Agreement 2	2/8/2024	Backup Material

RESOLUTION NO. R-2024-

A RESOLUTION authorizing Supplemental Agreement 2 to the Professional Services Agreement with Haley & Aldrich Inc to perform the design and remediation for the former Tiger Oil site at 2312 W Nob Hill Boulevard.

WHEREAS, the City of Yakima previously entered into a contract with Haley & Aldrich Inc (C-2022-225) to provide remediation work on the environmental cleanup and redevelopment of the former Tiger Oil site at 2312 W Nob Hill Boulevard; and

WHEREAS, the City of Yakima previously approved Supplemental Agreement 1 to the Professional Services Agreement with Haley & Aldrich Inc (R-2023-141) which included a pilot study work plan and groundwater monitoring event for the former Tiger Oil site at 2312 W Nob Hill Boulevard; and

WHEREAS, Supplement 2 provides for the continued cleanup efforts of the site utilizing the Nutrient Enhanced Biological Stimulation (NEBS) Work Plan submitted, and approved by the Department of Ecology, by updating the Task 2 Work Order for Targeted Reduction of Residual LNAPL; and

WHEREAS, the City of Yakima has previously received grant funding from the Department of Ecology (DOE) to aid in the cleanup of this site requiring a 10% match of local funds; and

WHEREAS, the Scope of Work included in this Supplemental Agreement with Haley & Aldrich Inc meets the needs and requirements of the City of Yakima for this project; and

WHEREAS, the City Council of the City of Yakima finds that it is in the best interests of the City and its residents to enter into Contract Supplement 2 of the Professional Services Agreement with Haley & Aldrich Inc for tasks associated with remediation of the environmental cleanup of the former Tiger Oil site at 2312 W Nob Hill Boulevard; now, therefore,

BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF YAKIMA:

The City Manager is hereby authorized to execute Supplemental Agreement 2 with Haley & Aldrich Inc, attached hereto and incorporated herein by this reference, not to exceed Four Hundred, Fifty-Four Thousand, Seven Hundred and Ninety-Six Dollars (\$454,796) to provide the Professional Services as described in the Supplemental Agreement 2.

ADOPTED BY THE CITY COUNCIL this 20th day of February, 2024.

Patricia Byers , Mayor

ATTEST:

Rosalinda Ibarra, City Clerk

Contract Supplemental Agreement

Supplemental Agreement Number: 2	Organization and Address: Haley & Aldrich Construction Services 3131 Elliott Ave, Ste 500 Seattle, WA 98121
Original Contract Number: 2022-225	Execution Date of Supplement:
City Engineering Project Number: 2999	Completion Date of Supplement: 03/31/2025
Project Title: Nob Hill Blvd (Tiger Oil) Site Cleanup	Maximum Amount Payable this Supplement: \$454,796
Maximum Total Amount Payable for the Agreement:	\$717,415 (\$150,057+\$112,562, \$454,796)

Section 1: Supplemental Agreement

The City of Yakima, Washington desires to supplement the contract agreement entered into with **Haley & Aldrich Construction Services, Inc.**, and executed on **12/14/2022** by Resolution No. **2022-174** and identified as **Contract 2999**. All provisions in the basic contract remain in effect except as expressly modified by this supplement. The changes to the agreement are described as follows:

Section 2: Scope of Services

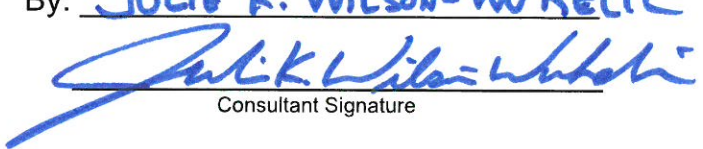
See attached Scope of Work dated 12/1/2023.

Section 6: Compensation

Payment for this supplemented work will, as shown on Exhibit A is not to exceed **\$454,796**, bringing the total amount of the Agreement to **\$717,415**

Section 8: Project Schedule and Budget

If you concur with this supplement and agree to the changes as stated above, please sign the appropriate spaces below and return to this office for final action.

By: JULIE K. WILSON-WHYTE

 Consultant Signature

By: _____

 City Manager

 Date



HALEY & ALDRICH, INC.
300 West 15th Street
Vancouver, WA 98660
360.448.4189

1 December 2023
File No. 0204793-002

City of Yakima, Office of the City Clerk
Yakima City Hall
129 North 2nd Street
Yakima, Washington 98901

Attention: Bill Preston, P.E.
Yakima City Engineer

Subject: Former Tiger Oil West Nob Hill Site
Facility Site ID: 469, Cleanup Site ID: 4919
2312 West Nob Hill Boulevard, Yakima, Washington 98902
Updated Task 2 Work Order
Targeted Reduction of Residual LNAPL - Nutrient Enhanced Biological Simulation Pilot Study

Dear Bill Preston:

Haley & Aldrich, Inc. (Haley & Aldrich) is pleased to submit this proposal for engineering and environmental services in connection with the above-referenced site (the Site). The updated Task 2 Work Order is comprised of tasks requested by the City of Yakima (City) and the Washington State Department of Ecology (Ecology).

Scope of Services

A pilot study is proposed for targeted reduction of residual light nonaqueous-phase liquid (LNAPL) at the Site (Ecology Facility Site No. 469, Cleanup Site No. 4919, located at 2312 West Nob Hill Boulevard, in Yakima, Washington; refer to Figure 1) involving nutrient-enhanced biological stimulation (NEBS) remedial technology. This technology, developed by the U.S. Department of Energy in concert with the Savannah River Technology Center in 1995, uses PHOSter nutrient injection technology, as well as air and gas-phase nutrients, to promote cell division of indigenous microbes to sufficient numbers to quickly oxidize carbon-based contaminants such as petroleum hydrocarbons and chlorinated solvents. The gas-phase nutrient injections are injected as pulsed air sparges with controlled dosages of air/oxygen, nitrous oxide, triethyl phosphate, and methane/propane/butane. The indigenous microbes use the injected air and nutrients to aerobically degrade petroleum contamination, reducing the mass of petroleum hydrocarbons and associated volatile organic compounds (VOCs; benzene, toluene, ethylbenzene, and xylenes [BTEX]) and producing biomass, carbon dioxide, and water.

An overview of the scope of services for Task 2 is as follows:

- Prepare a Targeted Reduction of Residual LNAPL – NEBS Pilot Study scope of services, budget estimate, coordination plan, and project logistics.
- Conduct data analysis and discussions of the preliminary findings from the QuantArray-Petro and QuantArray-Chlor microbial analyses.
- Attend Task 2 Kick-Off Meeting at the City office.
- Prepare an Underground Injection Control (UIC) registration application, injection data packet, and obtain a UIC permit.
- Drill/install three NEBS injection wells (refer to Figures 2 and 3).
- Conduct the NEBS pilot study, which will be an active remediation treatment for the targeted area, at the Site for four months. Smith Monitoring & Maintenance Engineering, Inc. (SMME) will lead the operations, maintenance, and monitoring (OM&M) of the NEBS remedial system.
- Conduct monthly OM&M activities on the NEBS system to tailor the remediation nutrient analysis and its use in nutrient dosage control and evaluate key geochemical and groundwater quality parameters.
- Conduct a post-NEBS pilot study groundwater monitoring event within approximately one month after the completion of the NEBS pilot study to collect groundwater samples from the Site's network of 17 compliance monitoring wells for the Site's constituents of concern (COCs). Analyze specific groundwater samples (from YMW-1, S-1, S-2, and KMW-6; refer to Figure 2) within the treatment zone using QuantArray-Petro and QuantArray-Chlor microbial analyses to compare the data findings of before- and after-NEBS remedial action impacts on the types of bacteria that can express enzymes used in oxidation or reduction of the targeted petroleum contaminant and an understanding of the existence of microbial community within the subsurface. Laboratory analytical results and findings from the baseline groundwater monitoring event and follow-up groundwater monitoring event will provide the necessary data for analyzing the impacts and benefits of the NEBS pilot study.
- Prepare the Targeted Reduction of Residual LNAPL NEBS Pilot Study Report.
- Manage investigation-derived waste (IDW - soil cuttings and purged groundwater) by containing in 55-gallon drums, storing on Site, and disposing of in one pickup and disposal event.

Assumptions:

- The Kick-Off Meeting, to be held in person, will take place at the City Office. A Site walk for the Haley & Aldrich and SMME team will be conducted following the Kick-Off Meeting to evaluate the Site logistics for the NEBS remedial system, electrical requirements, and system set up, operation, and OM&M.
- Site access will be provided for drilling and installation of three NEBS injection wells (IW1 through IW3; refer to Figure 2).

- The UIC permit will be issued by Ecology within approximately four to six weeks after submittal of the UIC Work Plan and/or be provided no later than January 2024 in order to provide adequate notice for the timing required to construct the tailored NEBS remedial system for the Site and for the remaining site logistics, including electrical permitting, site access, kick-off meeting, shipping of the NEBS remedial system, NEBS pilot study operations start up, and scheduling of the monthly OM&M tasks.
- Monthly progress reports will be provided for the four months of the active NEBS remediation operations and two months after the active remediation pilot study period. Note: progress reports will be provided on a quarterly basis for the subsequent six quarterly periods during the quarterly groundwater monitoring and sampling events phase of work. The scope of services and budget estimate for the quarterly groundwater monitoring events task will be provided in a separate task work order.
- Usage and operation of the recently installed electrical power pole will be available during the sub-slab depressurization pilot test. An electrical power service rated for either 240- or 208-volt/single-phase/60-amp service connection will be obtained. An estimate of power use is a maximum of 1,500 kilowatts per hour per month.
- The monthly OM&M activities will involve groundwater monitoring/sampling at three selected designated monitoring wells (YMW-1, S-1, and S-2) to evaluate key geochemical parameters (nitrate, orthophosphate, ferrous iron, and alkalinity) and groundwater quality parameters. The findings from this set of data will be evaluated for the tailoring of nutrient dosages applied during the NEBS pilot study.
- Project status conference calls will be held on an as-needed basis.

TASK 2A – QUANTARRAY-PETRO AND QUANTARRAY-CHLOR DATA ANALYSES, DISCUSSIONS, AND PRELIMINARY FINDINGS

Haley & Aldrich will conduct and review data analyses of the baseline groundwater monitoring event in concert with the laboratory analytical results from the microbial analyses, QuantArray-Petro and QuantArray-Chlor, from selected monitoring wells (YMW-1, S-1, S-2, and KMW-6; refer to Figure 2) with SMME and Microbial Insight.

Scope:

- Conduct and complete data validation and data analysis.
- Conduct data analysis.
- Discuss data results and preliminary findings with SMME and Microbial Insight.
- Provide an email summary of data findings to the City and Ecology.

TASK 2B – NEBS PILOT STUDY SCOPE OF SERVICES, BUDGET ESTIMATE, COORDINATION, AND PROJECT LOGISTICS

Haley & Aldrich will prepare the scope of services and budget estimate for the NEBS Pilot Study proposal including project logistics and coordination plan with all subcontractors and electrical utilities.

Scope:

- Discuss and coordinate with subcontractors (including SMME, Microbial Insights, Thunder Electric, Inc. [Thunder Electric], MF Fencing, Inc. [MF Fencing], Guardian Security, Holt Services, Inc., OnSite Environmental, Inc., ACTEnviro, and an internet provider) to outline the proposed scope of services, Site logistics, and associated tentative schedule for conducting the necessary field tasks prior to conducting the NEBS pilot study, subsequent monthly OM&M activities, and laboratory analyses.

TASK 2C – PROJECT LOGISTICS AND MANAGEMENT, KICK-OFF MEETINGS, PREPARE WORK ORDER AND MONTHLY PROGRESS REPORTS

Haley & Aldrich will facilitate and attend the Kick-Off Meeting and ongoing communication between the City, Ecology, and the Haley & Aldrich team to update the entire team of Task 2 progress, data interpretation, preliminary findings, and final evaluations throughout the NEBS pilot study.

Scope:

- Attend the Kick-Off Meeting (in person) at the City office with the City Engineer, Ecology Site Manager, and SMME.
- Attend an onsite meeting with Thunder Electric to discuss electrical permitting needs, NEBS remedial system electrical requirements, Site logistics, and tentative pilot study schedule.
- Participate in meetings and/or conference calls with the City and Ecology, and schedule and coordinate with Haley & Aldrich staff, Ecology, City, and other appropriate parties to complete this scope of services.
- Provide monthly project progress reporting, budget management, and invoicing.
- Respond to City and/or Ecology communications related to the assigned task's project work updates, invoicing, budget tracking, and other requests.

Deliverables for this task will include:

- Monthly project progress reports.

TASK 2D – DRILLING/INSTALLATION OF NEBS INJECTION WELLS & SOIL SAMPLING ANALYSES

The NEBS injection well with Schumasoil screen will be specifically designed to allow the injected gasses to migrate easily into the soil formation (refer to Figure 3) to enable the sparging of nutrients (nitrous oxide and monopotassium phosphate) to propagate bacteria which can express monooxygenase and hydroxylase enzymes used to break down petroleum hydrocarbons associated with VOCs, specifically BTEX, and remaining hydrocarbon constituents. Haley & Aldrich will meet and coordinate with the local electrical subcontractor to complete necessary Site work to attain a power service rated for a 240- or 208-volt/single-phase/60-amp service for the NEBS remedial system.

Scope:

- Coordinate with adjoining business owners/tenants to lead the effort in obtaining Site access for drilling and installation of injection wells IW1 through IW3 and to discuss the proposed NEBS pilot study Site activities and tentative schedule.
- Conduct a public one-call underground utilities check and retain a private underground utilities contractor for specific clearance of proposed drilling locations.
- Drill three borings, each to 25 feet below ground surface, and complete as established 1-inch injection wells IW1 through IW3 via a hollow stem auger drilling rig with oversight from a Haley & Aldrich Licensed Geologist/Licensed Hydrogeologist.
- Collect and submit deep soil samples, from near the bottom of the sparged zone, for laboratory analyses of gasoline-range total petroleum hydrocarbons (TPH-G), BTEX constituents, and halogenated VOCs.
- Conduct and complete data validation and data analysis.
- Manage IDW (soil cuttings and purged groundwater) by containing in 55-gallon drums and storing on Site.
- Coordinate and meet with Thunder Electric for Site work to attain electrical power supply for the NEBS remedial system.
- Coordinate and meet with MF Fencing for construction of a temporary chain-link fence enclosure for the NEBS remedial system.
- Coordinate and meet with Guardian Security and an internet provider for remote camera security coverage for the NEBS remedial system.

TASK 2E – PREPARE UIC REGISTRATION APPLICATION, INJECTION DATA PACKET, OBTAIN UIC PERMIT

Haley & Aldrich will prepare a UIC registration application and permit plan.

Scope:

- Complete the required Ecology permit documentation to obtain the UIC permit.
- Prepare a UIC injection points data packet to submit to Ecology.

Deliverables:

- UIC permit packet submittal to Ecology.

TASK 2F – NEBS PILOT STUDY, REMEDIAL SYSTEM OPERATIONS START UP

Haley & Aldrich will begin the NEBS pilot study by setting up the NEBS remedial system, conduct system operations start up, and establish a bacteria population and aerobic treatment zone that will oxidize or reduce TPH and BTEX constituents as a direct carbon-hydrogen source.

Scope:

- Coordinate with the City, Ecology, and adjoining business owners/tenants to obtain access for NEBS remedial system set up, operations, and the four months of pilot study operations assessments.
- Set up and install NEBS remedial system, auto dialer, cell modem, and compressor and electrical systems.
- Conduct system start up and evaluate dosing nutrients (nitrous oxide and monopotassium phosphate).
- Air sparge at injection wells (IW1 through IW3) on independently timed intervals.
- Evaluate subsurface conditions during sparging activities to tailor sparging nutrient dosages.
- Monitor groundwater samples for dissolved oxygen, pH, temperature, oxygen reduction potential at key monitoring wells (YMW-1, S-1, and S-2). Collect groundwater samples for analysis of nitrate, phosphate, ferrous iron, and alkalinity.

Schedule:

- The NEBS remedial system requires a six-week notice to tailor the system to accommodate for three injection wells and the necessary equipment for nutrient injection.

TASK 2G – NEBS MONTHLY OPERATION, MAINTENANCE AND MONITORING (OM&M) AND MONITORING/SAMPLING OF SELECTED MONITORING WELLS

Haley & Aldrich will conduct OM&M on the NEBS remedial system for four months to complete routine preventative maintenance essential for system operations. We will also conduct groundwater quality monitoring/sampling activities at key monitoring wells to support evaluation of the aerobic zone of treatment and changes to subsurface groundwater quality conditions.

Scope:

- Conduct monthly OM&M activities throughout a four-month period of assessments.
- Analyze and review residual nutrient concentrations in the treatment zone wells.
- Make appropriate process adjustments to the NEBS remedial system.
- Perform three months of groundwater monitoring/sampling activities at key monitoring wells (YMW-1, S-1, and S-2).
- Monitor for dissolved oxygen, pH, temperature, and oxygen reduction potential at key monitoring wells (YMW-1, S-1, and S-2).
- Submit groundwater samples on a monthly basis for laboratory analyses of nitrate, phosphate, ferrous iron, and alkalinity.
- Complete data validation and data analysis following each monthly OM&M Site visit.
- Disconnect the NEBS remedial system upon completion of the fourth (total) monthly OM&M.

TASK 2H – NEBS PILOT STUDY MONTHLY DATA ANALYSIS, QA/QC, AND PRELIMINARY FINDINGS

Haley & Aldrich will perform monthly evaluation of the nutrient dosage, changes to the NEBS remedial system operations, and key groundwater quality and geochemical parameters.

Scope:

- Conduct data analysis of the changes in the nutrient dosage of nitrous oxide and orthophosphate.
- Evaluate the preliminary findings and indicators of biodegradation from data analysis of the key groundwater quality data and geochemical parameters.
- Evaluate potential changes to the nutrient dosages, as applicable, based on the preliminary findings.

Deliverables:

- Progress reports (three total) presenting monthly assessments and preliminary findings.

TASK 2I – POST NEBS PILOT STUDY GROUNDWATER MONITORING EVENT WITH MICROBIAL SAMPLING/ANALYSES

Haley & Aldrich will conduct a post groundwater monitoring event within approximately one month after completion of the NEBS pilot study. We will conduct groundwater quality monitoring/sampling activities at the Site's designated 17 compliance monitoring wells and at selected monitoring wells (YMW-1, S-1, S-2, and KMW-6; refer to Figure 2) for microbial sampling/analyses to evaluate changes to subsurface groundwater quality conditions and microbial population after completion of the NEBS pilot study.

Scope:

- Measure static water level at the Site's 23 monitoring wells (Figure 1) using a water level probe.
- Measure the thickness of LNAPL (i.e., free product) in monitoring wells, if encountered, using an oil/water interface meter.
- Conduct groundwater monitoring/sampling activities at the Site's designated 17 compliance monitoring wells.
- Observe and document the integrity of each well seal and cap to ensure potential surficial contaminants will not enter the well.
- Conduct groundwater monitoring and sampling activities in general accordance with industry standard sampling protocols and consistent with the Site's Groundwater Compliance Monitoring Plan, with at least one pore volume extracted from each well and field parameters stabilized before sample collection.
- Measure the water quality parameters with a YSI meter and a turbidity meter before sample collection and record the data on field sampling data sheets.

- Collect groundwater samples using low-flow sampling techniques involving a peristaltic pump and the recently installed dedicated disposable tubing.
- Collect a field duplicate groundwater sample at YMW-2.
- Analyze groundwater samples from non-LNAPL containing monitoring wells for the following COCs and geochemical parameters:
 - Gasoline-range TPH-G by Northwest TPH Method Gx;
 - Petroleum fuel associated VOCs, specifically BTEX and naphthalene, by U.S. Environmental Protection Agency (EPA) Method 8260D;
 - Halogenated VOCs by EPA Method 8260D;
 - Nitrate by EPA Method 353.2;
 - Total manganese by EPA Method 200.8;
 - Sulfate by American International Society for Testing and Materials (ASTM) D516-07;
 - Methane by EPA National Risk Management Research Laboratory Method 175; and
 - Ferrous iron will be measured in the field, using a Hach test kit (Model IR-18C).
- Submit groundwater samples from selected monitoring wells (YMW-1, S-1, S-2, and KMW-6) for Microbial Insights QuantArray-Petro and QuantArray-Chlor microbial analyses.
- Monitor the Site's four soil vapor point monitoring wells (SVP-01 through SVP-04) screened interval (shallow, medium, and deep) using a multi-gas meter.
- Manage IDW, such as purge water, into 55-gallon Department-of-Transportation-approved drums and temporarily store on Site. The waste will be disposed of once a sufficient number of drums (at least four) have been accumulated and the characterization of the IDW has been completed and approved by the regulated disposal facility.

TASK 2J – NEBS PILOT STUDY REPORTING

Haley & Aldrich will prepare a NEBS Pilot Study Report summarizing the tasks completed, NEBS remedial system Site operations, data analysis, findings, conclusions, and recommendations.

Scope:

- Review data and discuss preliminary data findings with SMME and Microbial Insight.
- Conduct data analysis of groundwater analytical results and Microbial Insight QuantArray-Petro and QuantArray-Chlor analytical results (at four selected monitoring wells: YMW1, S1, S2, KMW6) following completion of the NEBS pilot study. The Site-wide groundwater monitoring event will be conducted approximately one month after the pilot study to compare and evaluate the baseline and subsequent changes to the Site's groundwater quality conditions and insights into the microbial population conditions at selected monitoring wells located within and downgradient of the proposed NEBS pilot study remedial action.
- Compile data and documentation.
- Conduct data quality assurance/quality control (QA/QC) and data validation.
- Prepare Site figures and fieldwork data sheets.
- Prepare the NEBS Pilot Study Report.
- Conduct follow-up discussions and correspondence with the City and Ecology.

Deliverables:

- NEBS Pilot Study Report.

Project Schedule

The proposed schedule for this task will be as follows:

- The baseline groundwater monitoring event to collect selected groundwater samples from the Site's designated 17 compliance monitoring wells and specifically from YMW-1, S-1, S-2, and KMW-6 (refer to Figure 1) for analyses of QuantArray-Petro and QuantArray-Chlor microbial analyses was conducted on 9 through 11 October 2023.
- The NEBS Pilot Study Work Plan will be submitted to the City and Ecology for review and approval in December 2023.
- The drilling and installation of the three proposed injection wells is tentatively scheduled for late February to early March 2024.
- The four-month NEBS pilot study is tentatively scheduled to begin in March to April 2024.

Proposed Budget and Terms and Conditions

Haley & Aldrich will provide the scope of services for Tasks 2A through 2J will be conducted on a time- and materials-basis for a total estimated fee of **\$454,796**, including a 15-percent contingency cost. A breakdown of the estimated fee is provided in the table below.

Task No.	Task Description	Haley & Aldrich Labor	Subcontractors	Total Budget
2A	QuantArray-Petro and QuantArray-Chlor Data Analyses, Discussions, Preliminary Findings	\$7,700	\$4,830	\$12,530
2B	NEBS Pilot Study Scope of Services, Budget Estimate, Coordination, Project Logistics	\$12,500	--	\$12,500
2C	Project Logistics and Management, Kick-Off Meetings, Prepare Work Order, Monthly Progress Reports	\$18,820	\$3,450	\$22,270
2D	Drilling/Installation of NEBS Injection Wells and Soil Sampling Analyses	\$29,000	\$20,500	\$49,500
2E	Prepare UIC Registration Application, Injection Data Packet, Obtain UIC Permit	\$11,915	--	\$11,915
2F	NEBS Pilot Study – Remedial System Operations Start Up	\$21,700	\$84,815	\$106,515
2G	NEBS Monthly OM&M and Selected Monitoring Wells Monitoring	\$39,160	\$23,800	\$62,960
2H	NEBS Pilot Study Monthly Data Analysis, QA/QC, and Preliminary Findings	\$14,160	\$5,000	\$19,160
2I	Post-NEBS-Pilot-Study Groundwater Monitoring Event with Microbial Sampling & Analyses	\$39,550	\$22,100	\$61,650
2J	NEBS Pilot Study Reporting	\$27,825	\$8,650	\$36,475
Sub-Total Budget:		\$222,330	\$173,145	\$395,475
15% Contingency Cost:				\$59,321
Total Budget:				\$454,796

**We reserve the right to negotiate adjustments to the proposed fee amount should the assumptions, information, schedule, or authorized scope change from those noted herein.*

We anticipate that Yen-Vy Van will continue to serve as the Project Manager for this Project.

Closing

This proposal is valid for a period of 60 days from the date of this letter. If acceptance and authorization to proceed are not received within that period, we reserve the right to renegotiate the estimated costs, schedule for completion, and scope of services.

If the above arrangements are satisfactory to you, please indicate your acceptance by signing and returning one copy of this letter. When accepted by you, this proposal together with the attached Terms and Conditions and Fee Schedule will constitute our Agreement.

We appreciate the opportunity to submit this proposal and look forward to our association with you on this project. Please contact the undersigned if you wish to discuss this proposal or any aspect of the project.

Sincerely yours,
HALEY & ALDRICH, INC.



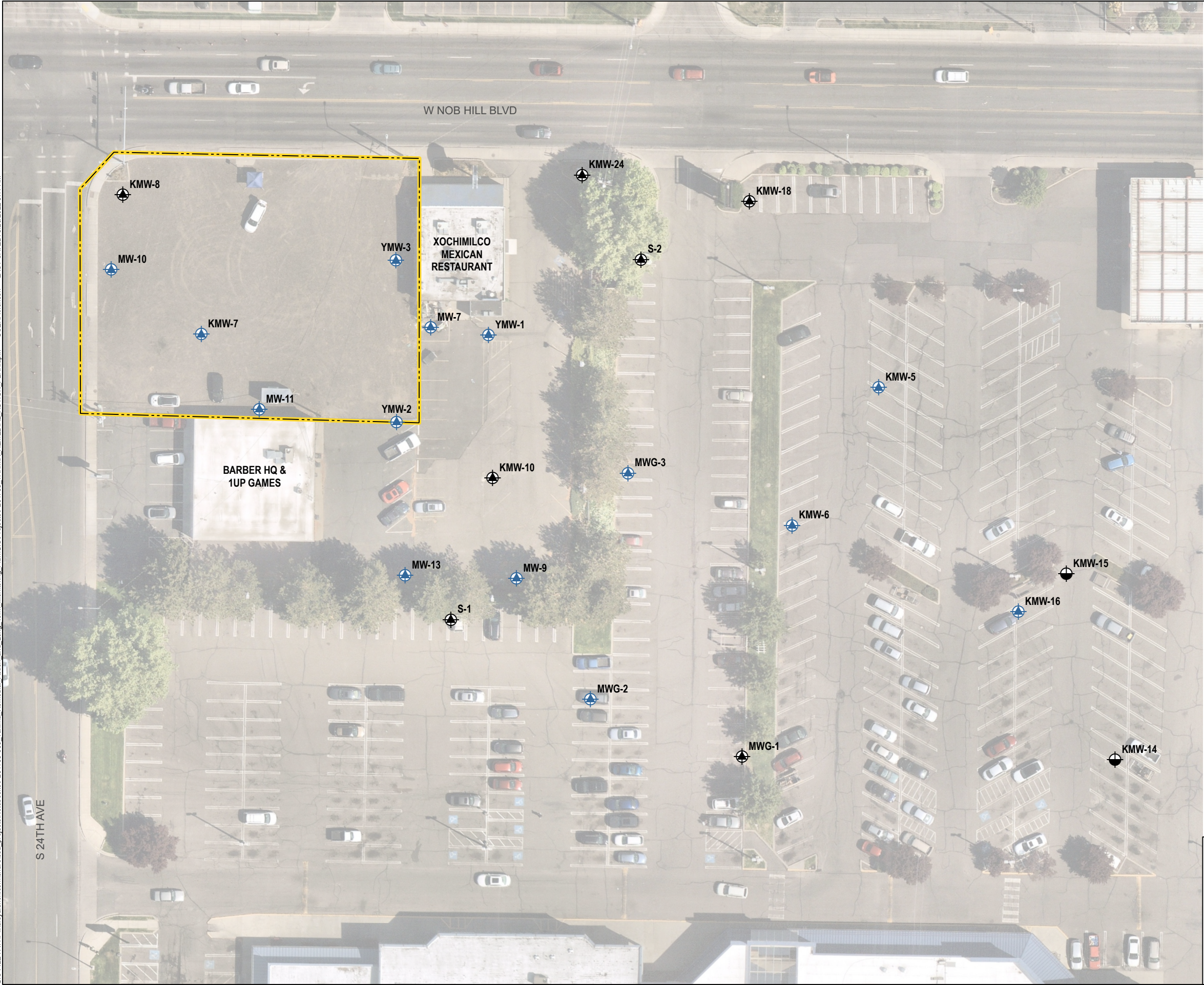
Yen-Vy Van, L.H.G.
Senior Project Manager



Julie K. W. Wukelic
Senior Principal Engineer

FIGURES

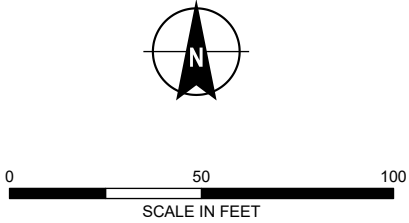
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LEGEND

- GROUNDWATER MONITORING NETWORK WELL
- MONITORING WELL
- SENTRY MONITORING WELL
- FORMER TIGER OIL FACILITY PROPERTY BOUNDARY

- NOTES**
1. ALL LOCATIONS AND DIMENSIONS ARE APPROXIMATE.
 2. ASSESSOR PARCEL DATA SOURCE: YAKIMA COUNTY
 3. SITE DATA SOURCE: MAUL FOSTER & ALONGI, INC., 2016
 4. AERIAL IMAGERY SOURCE: NEARMAP, 11 MAY 2021



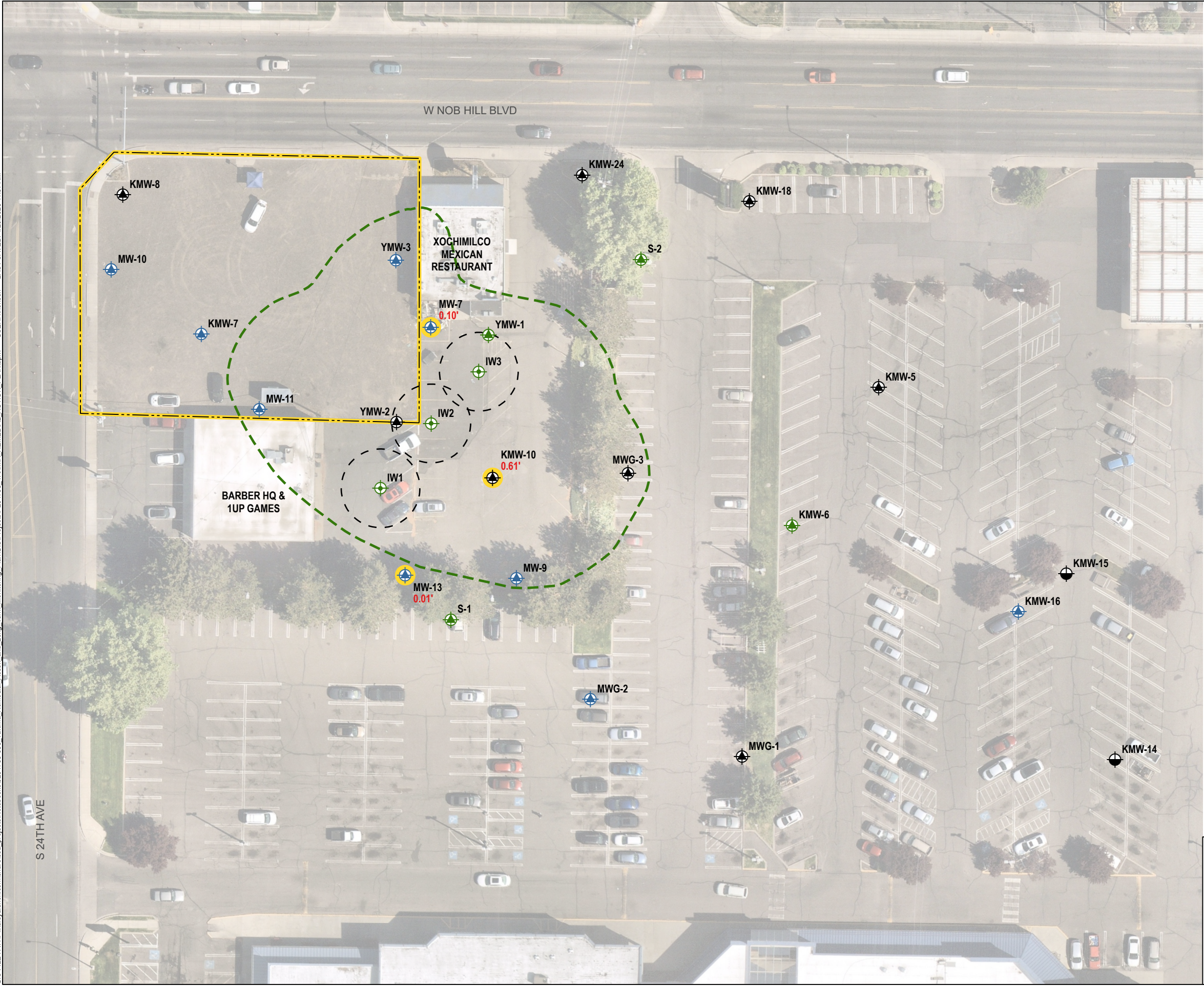
HALEY ALDRICH CITY OF YAKIMA
PROPOSED REMEDIAL ACTION PLAN AND
LONG TERM MONITORING PLAN
YAKIMA, WASHINGTON

**FORMER TIGER OIL
SITE PLAN**

MAY 2022

FIGURE 1

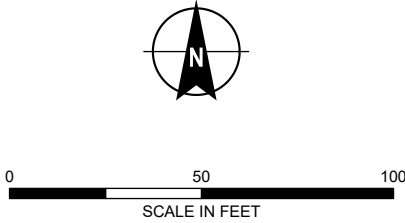
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LEGEND

- PROPOSED MONITORING WELL FOR QUANTARRAY LABORATORY ANALYSIS
- PROPOSED INJECTION WELL
- GROUNDWATER MONITORING NETWORK WELL
- MONITORING WELL
- SENTRY MONITORING WELL
- PRESENCE OF LNAPL WITH APPROXIMATE THICKNESS IN **BOLD RED TEXT**
- APPROXIMATE RADIUS OF INFLUENCE (ROI)
- ESTIMATED RESIDUAL EXTENT OF LNAPL, HALEY & ALDRICH, 2022
- FORMER TIGER OIL FACILITY PROPERTY BOUNDARY

- NOTES**
- ALL LOCATIONS AND DIMENSIONS ARE APPROXIMATE.
 - ASSESSOR PARCEL DATA SOURCE: YAKIMA COUNTY
 - DEFINITIONS:
LNAPL = LIGHT NON-AQUEOUS PHASE LIQUID
NEBS = NUTRIENTS ENHANCED BIOLOGICAL STIMULATION
 - SITE DATA SOURCE: MAUL FOSTER & ALONGI, INC., 2016
 - AERIAL IMAGERY SOURCE: NEARMAP, 11 MAY 2021

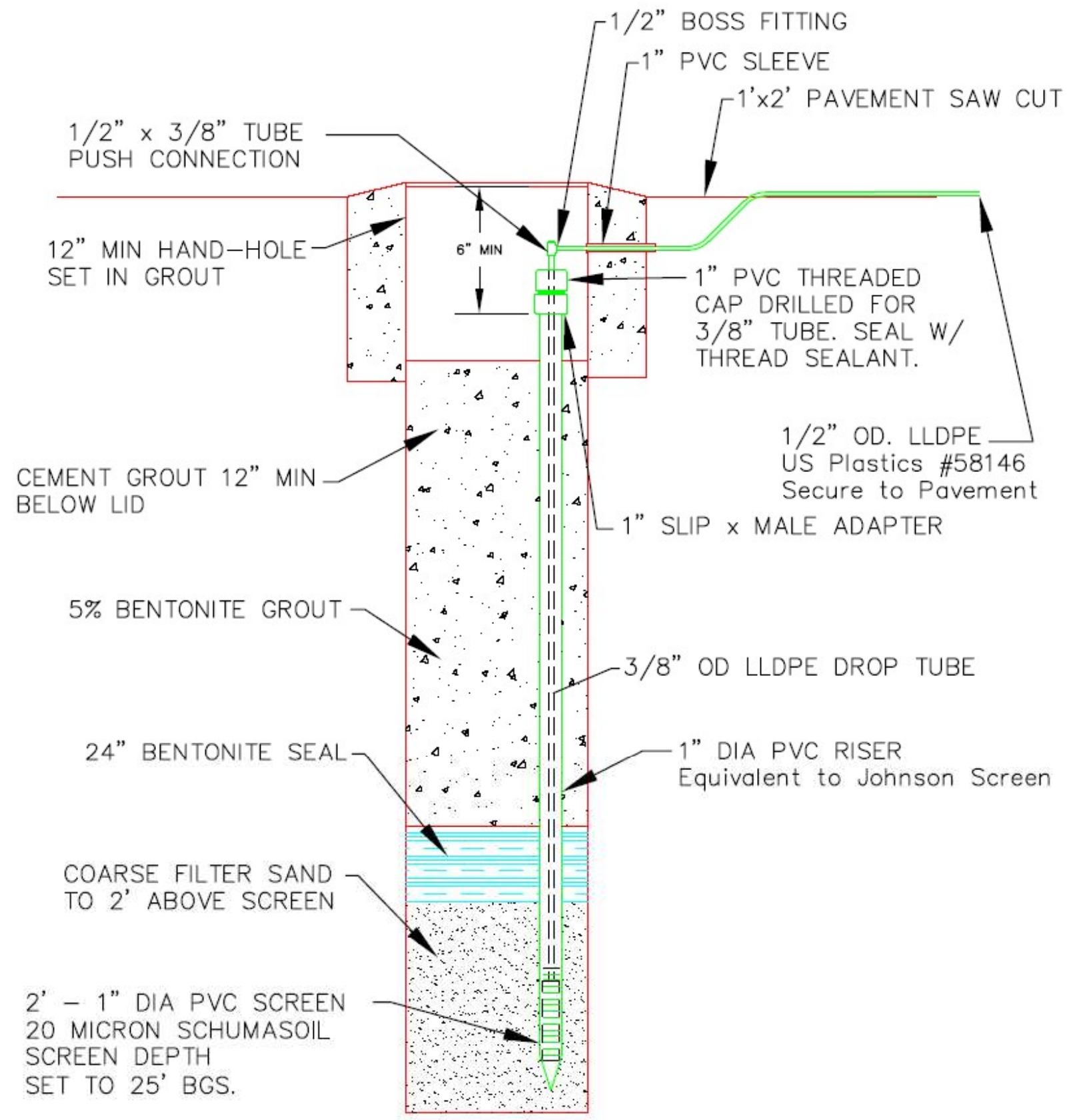


HALEY ALDRICH CITY OF YAKIMA
FORMER TIGER OIL WEST NOB HILL BLVD. SITE
YAKIMA, WASHINGTON

PROPOSED NEBS STUDY
PILOT INJECTION WELLS

APRIL 2023

FIGURE 2



NOTE
AS-BUILT SOURCE: SMITH MONITORING & MAINTENANCE ENG., INC.,
11 APRIL 2023

HALEY ALDRICH
CITY OF YAKIMA
FORMER TIGER OIL WEST NOB HILL BLVD. SITE
YAKIMA, WASHINGTON

PROPOSED INJECTION WELL
AS-BUILT SCHEMATIC

APRIL 2023
NOT TO SCALE

FIGURE 3



**BUSINESS OF THE CITY COUNCIL
YAKIMA, WASHINGTON
AGENDA STATEMENT**

Item No. 7.J.
For Meeting of: February 20, 2024

ITEM TITLE: Resolution authorizing a Professional Services Agreement HLA Engineering and Land Surveying Inc for Systemic Pedestrian and Bicyclist Data Collection Project 2674

SUBMITTED BY: Scott Schafer, Director of Public Works
* Bill Preston, City Engineer

SUMMARY EXPLANATION:

The City of Yakima (City) requests to enter into a Professional Services Agreement with HLA Engineering and Land Surveying Inc for the Systemic Pedestrian and Bicyclist Data Collection Project 2674. Funding is provided by the 2022 City Safety Program funding through the federal Highway Safety Improvement Program (HSIP) for the Systemic Pedestrian and Bicyclist Data Collection Project 2674. Systemic Pedestrian and Bicyclist Data Collection work will consist of the collection of pedestrian and bicyclist count data at intersections citywide. This data will be used to aid with a systemic safety analysis of Yakima streets and to update the Local Road Safety Plan.

This project was brought before the Bike/Ped Committee shortly after the award in early 2023. Engineering updated the Committee regularly throughout 2023 as the project was required to be added to the STIP, obligated by WSDOT, advertised, and ultimately awarded to HLA Engineering. Engineering will regularly keep the Committee updated on the progress of this project.

The project is expected to begin data collection in 2024 and is 100% HSIP funded with no local match required. Enclosed for City Council review is the Agreement with HLA in an amount not to exceed \$255,900.

ITEM BUDGETED: Yes



STRATEGIC PRIORITY: Public Safety

APPROVED FOR SUBMITTAL BY THE CITY MANAGER

RECOMMENDATION:

Adopt Resolution.

ATTACHMENTS:

Description		Upload Date	Type
	Resolution	1/31/2024	Resolution
	Agreement	2/5/2024	Contract

RESOLUTION NO. R-2024-

A RESOLUTION authorizing an agreement with HLA Engineering & Land Surveying Inc for the City Safety Systemic Pedestrian and Bicycle Data Collection Project No. 2674.

WHEREAS, the City of Yakima desires to enter into a Professional Services Agreement with HLA Engineering & Land Surveying Inc (HLA) to perform engineering services for collecting and providing to the city pedestrian and bicyclist data to update the Local Road Safety Program to aid in prioritizing city pedestrian and bicycle safety improvements; and

WHEREAS, the City of Yakima used the procedure established by the State of Washington to select and recommend a professional firm using the Municipal Research and Service Center Professional Services Roster process to select a firm to perform the engineering services; and

WHEREAS, HLA was determined to be qualified to perform the needed professional engineering services; and

WHEREAS, the project is funded with a grant from the Highway Safety Improvement Program (HSIP), requiring no local matching funds; and

WHEREAS, the contract will be null and void if bond and certificate and insurance not received within specified timeframe; and

WHEREAS, the Scope of Work and Budget included in this professional services agreement meet the needs and requirements of the City of Yakima for this project; and

WHEREAS, the City Council of the City of Yakima finds that it is in the best interests of the City and its residents to enter into the contract for the City Safety Systemic Pedestrian and Bicycle Data Collection Project now, therefore,

BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF YAKIMA:

The City Manager is hereby authorized to execute a Professional Services Agreement with HLA Engineering & Land Surveying Inc, attached hereto and incorporated herein by this reference, not to exceed Two Hundred Fifty-Five Thousand Nine Hundred Dollars (\$255,900) to provide the Professional Services as described in the Agreement.

ADOPTED BY THE CITY COUNCIL this 20th day of February, 2024.

Patricia Byers, Mayor

ATTEST:

Rosalinda Ibarra, City Clerk

Date: February 2, 2024

Project No.: 24040E

To: City of Yakima
129 North Second Street
Yakima, WA 98901

Attention: Bill Preston, PE
City Engineer

From: Benjamin A. Annen, PE

Re: Systemic Pedestrian and Bicycle Data Collection
Local Agency Consultant Agreement
Planning and Engineering Services

We are sending you the attached following items:

Two (2) Original Local Agency Consultant Agreements

Comment:

Bill,

Upon review and approval, please execute the attached Local Agency Consultant Agreements for the Systemic Pedestrian and Bicycle Data Collection project. Keep one of the Agreements for your records and return the other to our office.

We very much appreciate the opportunity to work for the City of Yakima. If you have any questions or need additional information, please contact me.

Thank you.

Copy to: _____ Signed: 

Local Agency A&E Professional Services Negotiated Hourly Rate Consultant Agreement

Agreement Number: 24040E

Firm/Organization Legal Name (do not use dba's): HLA ENGINEERING AND LAND SURVEYING, INC. (HLA)	
Address 2803 RIVER ROAD, YAKIMA, WA 98902	Federal Aid Number
UBI Number 600517737	Federal TIN 91-1237188
Execution Date	Completion Date 12/31/2026
1099 Form Required <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No	Federal Participation <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No
Project Title Systemic Pedestrian and Bicycle Data Collection	
Description of Work Planning and engineering services for this FHWA Highway Safety Improvement Program (HSIP) project includes pedestrian and bicycle counts at various locations within the City to develop future local road safety plans. Services include data collection and processing to provide 7-day count summaries, including peak hours, for up to 40 count locations.	
<input type="checkbox"/> Yes <input type="checkbox"/> Yes <input type="checkbox"/> Yes <input type="checkbox"/> Yes	<input checked="" type="checkbox"/> No DBE Participation <input checked="" type="checkbox"/> No MBE Participation <input checked="" type="checkbox"/> No WBE Participation <input checked="" type="checkbox"/> No SBE Participation
Maximum Amount Payable \$ 255,900.00	

Index of Exhibits

Exhibit A	Scope of Work
Exhibit B	DBE Participation
Exhibit C	Preparation and Delivery of Electronic Engineering and Other Data
Exhibit D	Prime Consultant Cost Computations
Exhibit E	Sub-consultant Cost Computations
Exhibit F	Title VI Assurances
Exhibit G	Certification Documents
Exhibit H	Liability Insurance Increase
Exhibit I	Alleged Consultant Design Error Procedures
Exhibit J	Consultant Claim Procedures

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

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

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

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

I. General Description of Work

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

II. General Scope of Work

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

III. General Requirements

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

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

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

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

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

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

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

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

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

If to AGENCY:

Name: BILL PRESTON, PE
 Agency: CITY OF YAKIMA
 Address: 129 NORTH 2ND STREET
 City: YAKIMA State: WA Zip: 98901
 Email: BILL.PRESTON@YAKIMAWA.GOV
 Phone: (509) 576-6754
 Facsimile:

If to CONSULTANT:

Name: MICHAEL T. BATTLE, PE
 Agency: HLA ENGINEERING AND LAND SURVEY
 Address: 2803 RIVER ROAD
 City: YAKIMA State: WA Zip: 98902
 Email: MBATTLE@HLACIVIL.COM
 Phone: (509) 966-7000
 Facsimile:

IV. Time for Beginning and Completion

The CONSULTANT shall not begin any work under the terms of this AGREEMENT until authorized in writing by the AGENCY. All work under this AGREEMENT shall conform to the criteria agreed upon detailed in the AGREEMENT documents. These SERVICES must be completed by the date shown in the heading of this AGREEMENT titled "Completion Date."

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

V. Payment Provisions

The CONSULTANT shall be paid by the AGENCY for completed SERVICES rendered under this AGREEMENT as provided hereinafter. Such payment shall be full compensation for SERVICES performed or SERVICES rendered and for all labor, materials, supplies, equipment, and incidentals necessary to complete SERVICES. The CONSULTANT shall conform to all applicable portions of 48 CFR Part 31 (www.ecfr.gov).

- A. Hourly Rates: Hourly rates are comprised of the following elements - Direct (Raw) Labor, Indirect Cost Rate, and Fee (Profit). The CONSULTANT shall be paid by the AGENCY for work done, based upon the negotiated hourly rates shown in Exhibits "D" and "E" attached hereto and by reference made part of this AGREEMENT. These negotiated hourly rates will be accepted based on a review of the CONSULTANT's direct labor rates and indirect cost rate computations and agreed upon fee. The accepted negotiated rates shall be memorialized in a final written acknowledgment between the parties. Such final written acknowledgment shall be incorporated into, and become a part of, this AGREEMENT. The initially accepted negotiated rates shall be applicable from the approval date, as memorialized in a final written acknowledgment, to 180 days following the CONSULTANT's fiscal year end (FYE) date.

The direct (raw) labor rates and classifications, as shown on Exhibits "D" and "E" shall be subject to renegotiations for each subsequent twelve (12) month period (180 days following FYE date to 180 days following FYE date) upon written request of the CONSULTANT or the AGENCY. The written request must be made to the other party within ninety (90) days following the CONSULTANT's FYE date. If no such written request is made, the current direct (raw) labor rates and classifications as shown on Exhibits "D" and "E" will remain in effect for the twelve (12) month period.

Conversely, if a timely request is made in the manner set forth above, the parties will commence negotiations to determine the new direct (raw) labor rates and classifications that will be applicable for the twelve (12) month period. Any agreed to renegotiated rates shall be memorialized in a final written acknowledgment between the parties. Such final written acknowledgment shall be incorporated into, and become a part of, this AGREEMENT. If requested, the CONSULTANT shall provide current payroll register and classifications to aid in negotiations. If the parties cannot reach an agreement on the direct (raw) labor rates and classifications, the AGENCY shall perform an audit of the CONSULTANT's books and records to determine the CONSULTANT's actual costs. The audit findings will establish the direct (raw) labor rates and classifications that will be applicable for the twelve (12) month period.

The fee as identified in Exhibits "D" and "E" shall represent a value to be applied throughout the life of the AGREEMENT.

The CONSULTANT shall submit annually to the AGENCY an updated indirect cost rate within 180 days of the close of its fiscal year. An approved updated indirect cost rate shall be included in the current fiscal year rate under this AGREEMENT, even if/when other components of the hourly rate are not renegotiated. These rates will be applicable for the twelve (12) month period. At the AGENCY's option, a provisional and/or conditional indirect cost rate may be negotiated. This provisional or conditional indirect rate shall remain in effect until the updated indirect cost rate is completed and approved. Indirect cost rate costs incurred during the provisional or conditional period will not be adjusted. The CONSULTANT may request an extension of the last approved indirect cost rate for the twelve (12) month period. These requests for provisional indirect cost rate and/or extension will be considered on a case-by-case basis, and if granted, will be memorialized in a final written acknowledgment.

The CONSULTANT shall maintain and have accessible support data for verification of the components of the hourly rates, i.e., direct (raw) labor, indirect cost rate, and fee (profit) percentage. The CONSULTANT shall bill each employee's actual classification, and actual salary plus indirect cost rate plus fee.

- A. **Direct Non-Salary Costs:** Direct Non-Salary Costs will be reimbursed at the actual cost to the CONSULTANT. These charges may include, but are not limited to, the following items: travel, printing, long distance telephone, supplies, computer charges, and fees of sub-consultants. Air or train travel will be reimbursed only to lowest price available, unless otherwise approved by the AGENCY. The CONSULTANT shall comply with the rules and regulations regarding travel costs (excluding air, train, and rental car costs) in accordance with the WSDOT's Accounting Manual M 13-82, Chapter 10 – Travel Rules and Procedures, and all revisions thereto. Air, train, and rental card costs shall be reimbursed in accordance with 48 Code of Federal Regulations (CFR) Part 31.205-46 "Travel Costs." The billing for Direct Non-salary Costs shall include an itemized listing of the charges directly identifiable with these SERVICES. The CONSULTANT shall maintain the original supporting documents in their office. Copies of the original supporting documents shall be supplied to the STATE upon request. All above charges must be necessary for the SERVICES provided under this AGREEMENT.
- B. **Maximum Amount Payable:** The Maximum Amount Payable by the AGENCY to the CONSULTANT under this AGREEMENT shall not exceed the amount shown in the heading of this AGREEMENT on page one (1.) The Maximum Amount Payable does not include payment for extra work as stipulated in section XIII, "Extra Work." No minimum amount payable is guaranteed under this AGREEMENT.
- C. **Monthly Progress Payments:** Progress payments may be claimed on a monthly basis for all costs authorized in A and B above. Detailed statements shall support the monthly billings for hours expended at the rates established in Exhibit "D," including names and classifications of all employees, and billings for all direct non-salary expenses. To provide a means of verifying the billed salary costs for the CONSULTANT's employees, the AGENCY may conduct employee interviews. These interviews may consist of recording the names, titles, salary rates, and present duties of those employees performing work on the SERVICES at the time of the interview.
- D. **Final Payment:** Final Payment of any balance due the CONSULTANT of the gross amount earned will be made promptly upon its verification by the AGENCY after the completion of the SERVICES under this AGREEMENT, contingent upon receipt of all PS&E, plans, maps, notes, reports, electronic data, and other related documents, which are required to be furnished under this AGREEMENT. Acceptance of such Final Payment by the CONSULTANT shall constitute a release of all claims for payment, which the CONSULTANT may have against the AGENCY unless such claims are specifically reserved in writing and transmitted to the AGENCY by the CONSULTANT prior to its acceptance. Said Final Payment shall not, however, be a bar to any claims that the AGENCY may have against the CONSULTANT or to any remedies the AGENCY may pursue with respect to such claims.

The payment of any billing will not constitute agreement as to the appropriateness of any item and at the time of final audit all required adjustments will be made and reflected in a final payment. In the event that such final audit reveals an overpayment to the CONSULTANT, the CONSULTANT will refund such overpayment to the AGENCY within thirty (30) calendar days of notice of the overpayment. Such refund shall not constitute a waiver by the CONSULTANT for any claims relating to the validity of a finding by the AGENCY of overpayment. Per WSDOT's "Audit Guide for Consultants," Chapter 23 "Resolution Procedures," the CONSULTANT has twenty (20) working days after receipt of the final Post Audit to begin the appeal process to the AGENCY for audit findings

E. **Inspection of Cost Records:** The CONSULTANT and their sub-consultants shall keep available for inspection by representatives of the AGENCY and the United States, for a period of six (6) years after receipt of final payment, the cost records and accounts pertaining to this AGREEMENT and all items related to or bearing upon these records with the following exception: if any litigation, claim or audit arising out of, in connection with, or related to this AGREEMENT is initiated before the expiration of the six (6) year period, the cost records and accounts shall be retained until such litigation, claim, or audit involving the records is completed. An interim or post audit may be performed on this AGREEMENT. The audit, if any, will be performed by the State Auditor, WSDOT's Internal Audit Office and /or at the request of the AGENCY's Project Manager.

VI. Sub-Contracting

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

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

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

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

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

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

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

VII. Employment and Organizational Conflict of Interest

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

Any and all employees of the CONSULTANT or other persons while engaged in the performance of any work or services required of the CONSULTANT under this AGREEMENT, shall be considered employees of the CONSULTANT only and not of the AGENCY, and any and all claims that may arise under any Workmen's Compensation Act on behalf of said employees or other persons while so engaged, and any and all claims made by a third party as a consequence of any act or omission on the part of the CONSULTANT's employees or other persons while so engaged on any of the work or services provided to be rendered herein, shall be the sole obligation and responsibility of the CONSULTANT.

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

Agreement Number:

24040E

VIII. Nondiscrimination

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

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

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

IX. Termination of Agreement

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

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

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

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

In the event of a termination for default, the amount to be paid to the CONSULTANT shall be determined by the AGENCY with consideration given to the actual costs incurred by the CONSULTANT in performing SERVICES to the date of termination, the amount of SERVICES originally required which was satisfactorily completed to date of termination, whether that SERVICE is in a form or a type which is usable to the AGENCY at the time of termination, the cost to the AGENCY of employing another firm to complete the SERVICES required and the time which may be required to do so, and other factors which affect the value to the AGENCY of the SERVICES performed at the time of termination. Under no circumstances shall payment made under this subsection exceed the amount, which would have been made using the formula set forth in paragraph two (2) of this section.

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

The CONSULTANT shall, within 15 days, notify the AGENCY in writing, in the event of the death of any member, partner, or officer of the CONSULTANT or the death or change of any of the CONSULTANT's supervisory and/or other key personnel assigned to the project or disaffiliation of any principally involved CONSULTANT employee.

The CONSULTANT shall also notify the AGENCY, in writing, in the event of the sale or transfer of 50% or more of the beneficial ownership of the CONSULTANT within 15 days of such sale or transfer occurring. The CONSULTANT shall continue to be obligated to complete the SERVICES under the terms of this AGREEMENT unless the AGENCY chooses to terminate this AGREEMENT for convenience or chooses to renegotiate any term(s) of this AGREEMENT. If termination for convenience occurs, final payment will be made to the CONSULTANT as set forth in the second and third paragraphs of this section.

Payment for any part of the SERVICES by the AGENCY shall not constitute a waiver by the AGENCY of any remedies of any type it may have against the CONSULTANT for any breach of this AGREEMENT by the CONSULTANT, or for failure of the CONSULTANT to perform SERVICES required of it by the AGENCY.

Forbearance of any rights under the AGREEMENT will not constitute waiver of entitlement to exercise those rights with respect to any future act or omission by the CONSULTANT.

X. Changes of Work

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

XI. Disputes

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

XII. Legal Relations

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

The CONSULTANT shall defend, indemnify, and hold the State of Washington (STATE) and the AGENCY and their officers and employees harmless from all claims, demands, or suits at law or equity arising in whole or in part from the negligence of, or the breach of any obligation under this AGREEMENT by, the CONSULTANT or the CONSULTANT's agents, employees, sub consultants, subcontractors or vendors, of any tier, or any other persons for whom the CONSULTANT may be legally liable; provided that nothing herein shall require a CONSULTANT

to defend or indemnify the STATE and the AGENCY and their officers and employees against and hold harmless the STATE and the AGENCY and their officers and employees from claims, demands or suits based solely upon the negligence of, or breach of any obligation under this AGREEMENT by the STATE and the AGENCY, their agents, officers, employees, sub-consultants, subcontractors or vendors, of any tier, or any other persons for whom the STATE and /or the AGENCY may be legally liable; and provided further that if the claims or suits are caused by or result from the concurrent negligence of (a) the CONSULTANT or the CONSULTANT's agents, employees, sub-consultants, subcontractors or vendors, of any tier, or any other persons for whom the CONSULTANT is legally liable, and (b) the STATE and/or AGENCY, their agents, officers, employees, sub-consultants, subcontractors and or vendors, of any tier, or any other persons for whom the STATE and/or AGENCY may be legally liable, the defense and indemnity obligation shall be valid and enforceable only to the extent of the CONSULTANT's negligence or the negligence of the CONSULTANT's agents, employees, sub-consultants, subcontractors or vendors, of any tier, or any other persons for whom the CONSULTANT may be legally liable. This provision shall be included in any AGREEMENT between CONSULTANT and any sub-consultant, subcontractor and vendor, of any tier.

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

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

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

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

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

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

Insurance Coverage

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

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

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

Name: BILL PRESTON, PE
 Agency: CITY OF YAKIMA
 Address: 129 NORTH 2ND STREET
 City: YAKIMA State: WA Zip: 98901
 Email: BILL.PRESTON@YAKIMAWA.GOV
 Phone: (509) 576-6754
 Facsimile:

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

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

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

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

XIII. Extra Work

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

XIV. Endorsement of Plans

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

XV. Federal Review

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

XVI. Certification of the Consultant and the Agency

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

XVII. Complete Agreement

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

XVIII. Execution and Acceptance

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

XIX. Protection of Confidential Information

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

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

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

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

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

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

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

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

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

XX. Records Maintenance

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

For purposes of this AGREEMENT, "documents" means every writing or record of every type and description, including electronically stored information ("ESI"), that is in the possession, control, or custody of the CONSULTANT, including, without limitation, any and all correspondences, contracts, AGREEMENTs, appraisals, plans, designs, data, surveys, maps, spreadsheets, memoranda, stenographic or handwritten notes, reports, records, telegrams, schedules, diaries, notebooks, logbooks, invoices, accounting records, work sheets, charts, notes, drafts, scribbles, recordings, visual displays, photographs, minutes of meetings, tabulations, computations, summaries, inventories, and writings regarding conferences, conversations or telephone conversations, and any and all other taped, recorded, written, printed or typed matters of any kind or description; every copy of the foregoing whether or not the original is in the possession, custody, or control of the CONSULTANT, and every copy of any of the foregoing, whether or not such copy is a copy identical to an original, or whether or not such copy contains any commentary or notation whatsoever that does not appear on the original.

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

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

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

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

Signature

Date



Signature



Date

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

Exhibit A Scope of Work

HLA Engineering and Land Surveying, Inc. (HLA)

1.0 Data Collection and Processing

- 1.1 Provide complete PROJECT management to deliver the PROJECT within mutually determined expectations.
- 1.2 Provide monthly status reports and invoices for work performed.
- 1.3 Attend meetings with the AGENCY to address technical aspects of the work related to scope, data collection, and schedule of the PROJECT. Up to four (4) meetings are anticipated.
- 1.4 Prepare and maintain PROJECT schedule, to be updated monthly or as otherwise requested by the AGENCY.
- 1.5 Attend kickoff meeting with AGENCY to evaluate count locations, timing and prioritization, and consideration of other intersections for up to 40 total locations. HLA will provide count location recommendations for the AGENCY's consideration, including high volume areas and diversity within City Limits.
- 1.6 Perform field investigations necessary to plan camera locations.
- 1.7 At each location, install video camera and program counting period, check each camera once during counting period to ensure camera is functioning properly, and remove camera upon completion of count period. Each location will include a count period of seven continuous days, to capture all days of the week. The AGENCY will advise of any special desired counting periods. For example, if counts are desired for a special event downtown, the event dates will be provided by the AGENCY.
- 1.8 Download camera video files and reprogram camera for next collection location.
- 1.9 Review video footage and tabulate pedestrian and bicycle counts at all locations.
- 1.10 Process count data and prepare count summaries including hourly breakdowns during the 7-day count period. A count summary of ADT (pedestrian and bicycle) and peak hour (AM and PM) will be provided for each count location.
- 1.11 Perform quality control and assurance review of all data collection and count summaries.
- 1.12 Prepare a report summarizing the data collection efforts with an appendix that includes all count summaries. The report will not include volume analysis, conclusions, or recommendations. Analysis of the data collection will be performed by others.
- 1.13 Provide the report and count summaries to the AGENCY in electronic format suitable for printing and use. Count backup spreadsheets will be provided to AGENCY at request.

Count Location List

The following count locations have been identified by the AGENCY as priority locations in the 2022 Local Road Safety Plan. The AGENCY reserves the right to revise count locations for a total of up to 40 intersections. Should surplus funding be available, the AGENCY may add locations beyond the identified 40 intersection locations, as agreed upon by HLA.

1. E. Nob Hill Boulevard and 18th Street
2. N. 1st Street and E. D Street
3. N. 1st Street and E. E Street

Exhibit A - Continued Scope of Work

4. Fruitvale Boulevard and 1400 block (Coleman Fuel)
5. N. 1st Street and E. N Street
6. N. 5th Avenue and W. D Street
7. S. 1st Street and 1200 block (Prestige Motors)
8. W. Lincoln Avenue and N. 5th Avenue
9. W. Mead Avenue and S. 72nd Avenue
10. W. Nob Hill Boulevard and Queen Avenue
11. W. Nob Hill Boulevard and S. 10th Avenue
12. S. 3rd Avenue and Viola Avenue
13. W. Nob Hill Boulevard and S. 11th Avenue
14. W. Nob Hill Boulevard and Rock Avenue
15. S. 6th Street and E. Spruce Street
16. W. Arlington Street and S. 3rd Avenue
17. W. Lincoln Avenue and N. 24th Avenue
18. W. Mead Avenue and S. 3rd Avenue
19. W. Yakima Avenue and S. 7th Avenue/Summitview Avenue
20. N. 4th Avenue and W. A Street
21. E. Chestnut Avenue and S. 17th Street (Walmart Entrance)
22. N. 11th Avenue and Yakima Avenue
23. N. 56th Avenue and Lincoln Avenue
24. N. 6th Street and E. E Street
25. W. Powerhouse Road and Cowiche Canyon Road
26. S. 6th Street and Pacific Avenue
27. N. Gordon Road and N. 6th Avenue
28. S. 82nd Avenue and Tieton Drive
29. E. Nob Hill Boulevard and Fair Avenue
30. N. 16th Avenue and US 12 (S. of Interchange)

Exhibit B
DBE Participation Plan

None.

Exhibit C**Preparation and Delivery of Electronic Engineering and Other Data**

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

I. Surveying, Roadway Design & Plans Preparation Section

A. Survey Data

Planning efforts will not include survey.

B. Roadway Design Files

Planning efforts will not include roadway design files.

C. Computer Aided Drafting Files

Planning efforts will not include CAD files.

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

The Agency will review the product as described in Exhibit A - Scope of Work.

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

Traffic count summaries.

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

1. Provide full information as to AGENCY requirements of the PROJECT.
2. Assist CONSULTANT by placing at their disposal all available information pertinent to the PROJECT, including previous reports, drawings, plats, surveys, utility records, and any other data relative to design and construction of the PROJECT.
3. Examine all studies, reports, sketches, estimates, specifications, drawings, proposals, and other documents presented by CONSULTANT and provide written decisions within a reasonable time as not to delay the work of CONSULTANT.
4. Obtain approval of all governmental authorities with jurisdiction over the PROJECT and approvals and consents from other individuals or bodies as necessary for completion of the PROJECT. Pay for review fees and costs associated with obtaining such approvals.
5. Review and pay for PROJECT bid advertisement costs. None anticipated.
6. Complete all environmental processes required for the PROJECT. None anticipated.
7. Complete all federal funding reimbursement requests.

II. Any Other Electronic Files to Be Provided

On file at CONSULTANT's office.

III. Methods to Electronically Exchange Data

Email, thumb drive, Microsoft OneDrive administered through the CONSULTANT's office, or other FTP site software.

A. Agency Software Suite

Microsoft products and/or Bluebeam Revu.

B. Electronic Messaging System

Microsoft exchange and Outlook.

C. File Transfers Format

.docx, .xlsx, .pdf, and .dwg

Exhibit D
Prime Consultant Cost Computations

See attached Exhibit D.

Exhibit D2

Actuals Not To Exceed Table (ANTE) - 2024

City of Yakima - Systemic Pedestrian and Bicycle Data Collection

HLA Engineering and Land Surveying, Inc.

2803 River Road

Yakima, WA 98902

Job Classifications	Direct Labor Hourly Billing Rate High NTE	Direct Labor Hourly Billing Rate Low NTE	Direct Labor Hourly Billing Rate Used NTE	Overhead NTE		126.05%		Fixed Fee - NTE		35.00%		All Inclusive Billing Rate -NTE		
				High Rate	Low Rate	Used Rate	Used Rate	High Rate	Low Rate	Used Rate	Used Rate	High Rate	Low Rate	Used Rate
Senior Principal Engineer	\$108.00	\$80.00	\$98.30	\$136.13	\$100.84	\$123.91		\$37.80	\$28.00	\$34.41		\$281.93	\$208.84	\$256.61
Licensed Principal Engineer	\$85.00	\$65.00	\$75.50	\$107.14	\$81.93	\$95.17		\$29.75	\$22.75	\$26.43		\$221.89	\$169.68	\$197.09
Licensed Land Surveyor	\$88.00	\$55.00	\$80.50	\$110.92	\$69.33	\$101.47		\$30.80	\$19.25	\$28.18		\$229.72	\$143.58	\$210.15
Licensed Professional Engineer	\$66.00	\$45.00	\$60.00	\$83.19	\$56.72	\$75.63		\$23.10	\$15.75	\$21.00		\$172.29	\$117.47	\$156.63
Other Licensed Professional	\$33.00	\$65.00	\$84.30	\$117.23	\$81.93	\$106.26		\$32.55	\$22.75	\$29.51		\$242.78	\$169.68	\$220.07
Project Engineer (III-I)	\$46.00	\$32.00	\$40.00	\$57.98	\$40.34	\$50.42		\$16.10	\$11.20	\$14.00		\$120.08	\$83.54	\$104.42
Supervisor (Planning, Construction, Other)	\$72.00	\$55.00	\$65.00	\$90.76	\$69.33	\$81.93		\$25.20	\$19.25	\$22.75		\$187.96	\$143.58	\$169.68
Contract Administrator (III-I)	\$50.00	\$22.00	\$45.00	\$63.03	\$27.73	\$56.72		\$17.50	\$7.70	\$15.75		\$130.53	\$57.43	\$117.47
Resident Engineer (Senior, III-I)	\$53.00	\$26.00	\$47.50	\$66.81	\$32.77	\$59.87		\$18.55	\$9.10	\$16.63		\$138.36	\$67.87	\$124.00
Planner (Senior, III-I)	\$42.00	\$25.00	\$38.00	\$52.94	\$31.51	\$47.90		\$14.70	\$8.75	\$13.30		\$109.64	\$65.26	\$99.20
CAD Technician (III-I)	\$32.00	\$22.00	\$28.50	\$40.34	\$27.73	\$35.92		\$11.20	\$7.70	\$9.98		\$83.54	\$57.43	\$74.40
Surveyor (II-I)	\$39.00	\$21.00	\$35.00	\$49.16	\$26.47	\$44.12		\$13.65	\$7.35	\$12.25		\$101.81	\$54.82	\$91.37
Engineering Technician (III-I)	\$29.00	\$18.00	\$28.00	\$36.55	\$22.69	\$35.29		\$10.15	\$6.30	\$9.80		\$75.70	\$46.99	\$73.09
Administrative/Clerical (III-I)	\$37.00	\$16.50	\$30.70	\$46.64	\$20.80	\$38.70		\$12.95	\$5.78	\$10.75		\$96.59	\$43.07	\$80.14



**Washington State
Department of Transportation**

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

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

July 11, 2023

HLA Engineering and Land Surveying, Inc.
2803 River Road
Yakima, WA 98902

Subject: Acceptance FYE 2022 ICR – Risk Assessment Review

Dear Lisa Adams:

Based on Washington State Department of Transportation's (WSDOT) Risk Assessment review of your Indirect Cost Rate (ICR), we have accepted your proposed FYE 2022 ICR of 126.05%. This rate will be applicable for Local Agency Contracts in Washington only. This rate may be subject to additional review if considered necessary by WSDOT. Your ICR must be updated on an annual basis.

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

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

If you have any questions, feel free to contact our office at **(360) 704-6397** or via email consultanrates@wsdot.wa.gov.

Regards;

Schatzie Harvey

Schatzie Harvey (Jul 11, 2023 12:10 PDT)

SCHATZIE HARVEY, CPA
Contract Services Manager

SH:BJO

Exhibit E

Sub-consultant Cost Computations

If no sub-consultant participation listed at this time. The CONSULTANT shall not sub-contract for the performance of any work under this AGREEMENT without prior written permission of the AGENCY. Refer to section VI "Sub-Contracting" of this AGREEMENT.

N/A

Exhibit F - Title VI Assurances Appendix A & E

APPENDIX A

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

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

Exhibit F - Title VI Assurances Appendix A & E

APPENDIX E

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

Pertinent Non-Discrimination Authorities:

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

Exhibit G

Certification Document

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

Exhibit G-1(a) Certification of Consultant

I hereby certify that I am the and duly authorized representative of the firm of
HLA ENGINEERING AND LAND SURVEYING, INC. (HLA)

whose address is

2803 RIVER ROAD YAKIMA, WA 98902

and that neither the above firm nor I have

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

I acknowledge that this certificate is to be furnished to the Washington State Department of Transportation

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

HLA ENGINEERING AND LAND SURVEYING, INC. (HLA)

Consultant (Firm Name)


 Signature (Authorized Official of Consultant)

2/1/2024
 Date

Exhibit G-1(b) Certification of AGENCY OFFICIAL

I hereby certify that I am the:



Other

of the CITY OF YAKIMA, and HLA ENGINEERING AND LAND SURVEYING, INC.

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

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

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

Signature

Date

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

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

HLA ENGINEERING AND LAND SURVEYING, INC. (HLA)

Consultant (Firm Name)



Signature (Authorized Official of Consultant)



Date

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

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

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

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

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

HLA ENGINEERING AND LAND SURVEYING, INC. (HLA)

Consultant (Firm Name)


Signature (Authorized Official of Consultant)

2/1/2024
Date

~~Exhibit G-4 Certification of Current Cost or Pricing Data~~

~~This is to certify that, to the best of my knowledge and belief, the cost or pricing data (as defined in section of the Federal Acquisition Regulation (FAR) and required under FAR subsection 15.403-4) submitted, either actually or by specific identification in writing, to the Contracting Officer or to the Contracting Officer's representative in support of _____^{*} are accurate, complete, and current as of _____^{**}.~~

~~This certification includes the cost or pricing data supporting any advance AGREEMENT's and forward pricing rate AGREEMENT's between the offer or and the Government that are part of the proposal.~~

Firm: _____

Signature

Title

Date of Execution _____^{***}

*Identify the proposal, quotation, request for pricing adjustment, or other submission involved, giving the appropriate identifying number (e.g. project title.)

**Insert the day, month, and year, when price negotiations were concluded and price AGREEMENT was reached.

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

Exhibit H

Liability Insurance Increase

To Be Used Only If Insurance Requirements Are Increased

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

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

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

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

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

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

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

~~Notes: Cost of added insurance requirements: \$ _____.~~

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

Exhibit I

Alleged Consultant Design Error Procedures

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

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

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

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

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

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

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

Step 4 Attempt to Resolve Alleged Design Error with Consultant

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

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

Step 5 Forward Documents to Local Programs

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

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

Exhibit J

Consultant Claim Procedures

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

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

Step 1 Consultant Files a Claim with the Agency Project Manager

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

The consultant's claim must outline the following:

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

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

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

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

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

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

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

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

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

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

Step 5 Informing Consultant of Decision Regarding the Claim

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

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

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



**BUSINESS OF THE CITY COUNCIL
YAKIMA, WASHINGTON
AGENDA STATEMENT**

Item No. 8.
For Meeting of: February 20, 2024

ITEM TITLE: Resolution authorizing a Grant Agreement with the Department of Commerce for the development of Gloria's Park, a new City Park adjacent to the SOZO Sports Complex

SUBMITTED BY: Scott Schafer, Public Works Director

SUMMARY EXPLANATION:

The City of Yakima (City) previously completed the RCO Conversion process at Chesterley Park to allow for the building of the new YMCA Aquatic/Fitness facility. As a result, the City is obligated to develop replacement property as a new public park for the area lost at Chesterley Park.

The City owns approximately 32 acres of property located at 1900 South 36th Avenue (Parcel 181334-42002) adjacent to the SOZO Sports Complex which is the replacement property to be used as a new public park per the RCO requirements. On or about July 12, 2017, the City entered into contracts with SOZO Sports of Central Washington ("SOZO") to lease the property from the City and develop and maintain the property as a public park. SOZO was granted the right to name the public park and named the new public park "Gloria's Park."

Gloria's Park will be a City-owned park open to the public to offer natural trails, open green space, picnic area, restrooms and playground that will be developed and managed at the expense of SOZO per agreement with the City.

The City was awarded a grant from the Department of Commerce in the amount of \$225,040 to fund such activities as site development, construction of restrooms, pathways and parking for the new park. The City will be a pass-through of the grant funding by reimbursing SOZO for expenses they accrue during the development of the park.

Grant Agreement No. 23-96643-141 for the amount of \$225,040 between the City and the Department of Commerce has been attached for City Council review.

ITEM BUDGETED: NA

STRATEGIC PRIORITY: Public Trust and Accountability

APPROVED FOR SUBMITTAL BY THE CITY MANAGER**RECOMMENDATION:**

Adopt Resolution.

ATTACHMENTS:

Description	Upload Date	Type
📎 Resolution DOC Grant Gloria's Park	2/5/2024	Resolution
📎 Agreement between DOC and City	1/22/2024	Contract

RESOLUTION NO. R-2024- _____

A RESOLUTION authorizing a Grant Agreement with the Department of Commerce for the development of Gloria's Park, a new City Park adjacent to the SOZO Sports Complex.

WHEREAS, the City of Yakima (City) previously completed the RCO Conversion process at Chesterley Park to allow for the building of the new YMCA Aquatic/Fitness facility; and

WHEREAS, as a result of the RCO Conversion process, the City is obligated to develop replacement property as a new public park for the area lost at Chesterley Park; and

WHEREAS, the City owns approximately 32 acres of property located at 1900 South 36th Avenue (Parcel 181334-42002) adjacent to the SOZO Sports Complex which is the replacement property to be used as a new public park per the RCO requirements; and

WHEREAS, on or about July 12, 2017, the City entered into contracts with SOZO Sports of Central Washington ("SOZO") to lease the property from the City and develop and maintain the property as a public park; and

WHEREAS, SOZO was granted the right to name the public park and named the new public park "Gloria's Park"; and

WHEREAS, pursuant to the Lease Agreement – Public Park and Recreation Facility between the City and SOZO the park property "shall be used only for public park recreation and community activity and reasonably-related activities allowed by the Agreement, the Airport Master Plan and by the specific zoning of the Property" so that the property is expected to be designed, developed and maintained as a public park; and

WHEREAS, Gloria's Park will be a City-owned park open to the public to offer natural trails, open green space, picnic area, restrooms and playground that will be developed and managed at the expense of SOZO per agreement with the City; and

WHEREAS, the City was awarded a grant from the Department of Commerce in the amount of \$225,040, and the activities to be funded with this grant are to include but not be limited to: site development and construction of restrooms, pathways and parking for the new park; and

WHEREAS, the City will be a pass-through of the grant funding by reimbursing SOZO for expenses they accrue during the development of the park; and

WHEREAS, it is necessary for the City and the Department of Commerce to enter into Grant Agreement No. 23-96643-141 setting forth the terms, conditions, and requirements for allocating this funding; and

WHEREAS, the City Council deems it to be in the best interest of the City of Yakima and its residents to approve Grant Agreement No. 23-96643-141, now therefore

BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF YAKIMA:

The City Manager is hereby authorized to execute Grant Agreement No. 23-96643-141

with the Washington State Department of Commerce, attached hereto and incorporated herein by this reference, not to exceed Two Hundred Twenty-Five Thousand and Forty Dollars (\$225,040) to develop a new City park.

ADOPTED BY THE CITY COUNCIL this 20th day of February, 2024.

Patricia Byers, Mayor

ATTEST:

Rosalinda Ibarra, City Clerk

**Grant to**

City of Yakima

through

The Local and Community Projects Program

For

Yakima YMCA Park Development (Yakima)

Start date: July 1, 2021

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FACE SHEET

Grant Agreement Number: **23-96643-141**
 Project Name: **Yakima YMCA Park Development (Yakima)**

**Washington State Department of Commerce
 Local Government Division
 Community Development Assistance Unit**

1. GRANTEE City of Yakima 129 N 2nd ST Yakima, WA 98901-2937		2. GRANTEE Doing Business As (optional) N/A	
3. GRANTEE Representative Scott Schafer, Public Works Director (509) 576-6411 scott.schafer@yakimawa.gov		4. COMMERCE Representative Mara Isaacson, Grant Manager PO Box 42525, Olympia, WA 98504 (360) 742-7665 mara.isaacson@commerce.wa.gov	
5. Grant Amount \$225,040.00	6. Funding Source Federal: State: X Other: N/A:	7. Start Date July 1, 2021	8. End Date June 30, 2027, contingent on reappropriation; June 30, 2025, if funds are not reappropriated.
9. Federal Funds (as applicable) N/A		Federal Agency N/A	CFDA Number N/A
10. Tax ID # N/A	11. SWV # SWV0007122-02	12. UBI # 397005272	13. DUNS # N/A
14. Grant Purpose The purpose of this performance-based Grant Agreement is to provide funding for a legislatively approved project that furthers the goals and objectives of the Local and Community Projects Program as described in Attachment A – Scope of Work (the “Project”).			
COMMERCE, defined as the Washington State Department of Commerce, and the GRANTEE, as defined above, acknowledge and accept the terms of this Grant Agreement and attachments and have executed this Grant Agreement on the date below to start as of the date and year referenced above. The rights and obligations of both parties to this Grant Agreement are governed by this Grant Agreement and the following other documents incorporated by reference: Grant Agreement Terms and Conditions including Attachment “A” – Scope of Work, Attachment “B” – Certification of Availability of Funds to Complete the Project, Attachment “C” – Certification of the Payment and Reporting of Prevailing Wages, Attachment “D” – Certification of Intent to Enter LEED Process.			
FOR GRANTEE		FOR COMMERCE	
Signature		Mark K. Barkley, Assistant Director Local Government Division	
Print Name		Date	
Title		APPROVED AS TO FORM	
Date		 Dawn Cortez, Assistant Attorney General Washington State Office of the Attorney General	
		Date 1/4/2024	

DECLARATIONS

GRANTEE INFORMATION

GRANTEE Name:	City of Yakima
Grant Agreement Number:	23-96643-141
State Wide Vendor Number:	SWV0007122-02

PROJECT INFORMATION

Project Name:	Yakima YMCA Park Development (Yakima)
Project City:	Yakima
Project State:	Washington
Project Zip Code:	98901-2937

GRANT AGREEMENT INFORMATION

Grant Amount:	\$225,040.00
Appropriation Number:	SSB 5651 SL Section 1026 (2022 Regular Session)
Re-appropriation Number (if applicable):	ESSB 5200 SL Section 6052 (2023 Regular Session)
Grant Agreement End Date:	June 30, 2027, contingent on reappropriation; June 30, 2025, if funds are not reappropriated.
Biennium:	2023-2025
Biennium Close Date:	June 30, 2025

PROJECT PURPOSE

Develop park in City of Yakima.

ADDITIONAL SPECIAL TERMS AND CONDITIONS GOVERNING THIS AGREEMENT

Grant Agreement End Date: In the event funds for the project are reappropriated, the contract end date will be extended pursuant to the reappropriation and consistent with Special Term and Condition 19. Depending on the reappropriation, a contract amendment may be required.

ADDITIONAL RECITALS

N/A

SPECIAL TERMS AND CONDITIONS

GENERAL GRANT STATE FUNDS

THIS GRANT AGREEMENT, entered into by and between the GRANTEE and COMMERCE, as defined on the Face Sheet of this Grant Agreement, WITNESSES THAT:

WHEREAS, COMMERCE has the statutory authority under RCW 43.330.050(5) to cooperate with and provide assistance to local governments, businesses, and community-based organizations; and

WHEREAS, COMMERCE is also given the responsibility to administer state funds and programs which are assigned to COMMERCE by the Governor or the Washington State Legislature; and

WHEREAS, the Washington State Legislature has made an appropriation to support the Local and Community Projects Program in Laws of 2022, Chapter 296, Section 1026, which was reappropriated and amended in Laws of 2023, Chapter 474, Sections 6052 and 7007, and directed COMMERCE to administer those funds; and

WHEREAS, the enabling legislation also stipulates that the GRANTEE is eligible to receive funding for design, acquisition, construction, or rehabilitation.

NOW, THEREFORE, in consideration of covenants, conditions, performances, and promises hereinafter contained, the parties agree as follows:

1. GRANT MANAGEMENT

The Representative for each of the parties is identified on the Face Sheet of this Grant Agreement and shall be responsible for and shall be the contact person for all communications and billings regarding the performance of this Grant Agreement.

2. COMPENSATION

COMMERCE shall pay an amount not to exceed the awarded Grant Amount as shown on the Face Sheet of this Grant Agreement, for the capital costs necessary for or incidental to the performance of work as set forth in the Scope of Work.

3. CERTIFICATION OF FUNDS PERFORMANCE MEASURES

- A. The release of state funds under this Grant Agreement is contingent upon the GRANTEE certifying that it has expended or has access to funds from non-state sources as set forth in ATTACHMENT B (CERTIFICATION OF THE AVAILABILITY OF FUNDS TO COMPLETE THE PROJECT). Such non-state sources may consist of a combination of any of the following:
 - i) Eligible Project expenditures prior to the execution of this Grant Agreement.
 - ii) Cash dedicated to the Project.
 - iii) Funds available through a letter of credit or other binding loan commitment(s).
 - iv) Pledges from foundations or corporations.
 - v) Pledges from individual donors.
 - vi) The value of real property when acquired solely for the purposes of this Project, as established and evidenced by a current market value appraisal performed by a licensed, professional real estate appraiser, or a current property tax statement. COMMERCE will not consider appraisals for prospective values of such property for the purposes of calculating the amount of non-state matching fund credit.
 - vii) In-kind contributions, subject to COMMERCE'S approval.
- B. The GRANTEE shall maintain records sufficient to evidence that it has access to or has expended funds from such non-state sources, and shall make such records available for COMMERCE's review upon reasonable request.

4. PREVAILING WAGE LAW

The Project funded under this Grant Agreement may be subject to state prevailing wage law (RCW 39.12). The GRANTEE is advised to consult the Industrial Statistician at the Washington Department of Labor and Industries to determine whether prevailing wages must be paid. COMMERCE is not responsible for determining whether prevailing wage applies to this Project or for any prevailing wage payments that may be required by law.

5. DOCUMENTATION AND SECURITY

The provisions of this section shall apply to capital projects performed by nonprofit organizations and public benefit corporations that involve the expenditure of over \$250,000 in state funds. Additionally, Commerce reserves the right to review all state-funded projects and to require that projects performed by other entity types comply with this section. Projects for which the grant award or legislative intent documents specify that the state funding is to be used for pre-design or design only are exempt from this section.

- A. Deed of Trust. This Grant Agreement shall be evidenced by a promissory note and secured by a deed of trust or other appropriate security instrument in favor of COMMERCE (the "Deed of Trust"). The Deed of Trust shall be recorded in the County where the Project is located, and the original returned to COMMERCE after recordation within ninety (90) days of Grant Agreement execution. The Deed of Trust must be recorded before COMMERCE will reimburse the GRANTEE for any Project costs. The amount secured by the Deed of Trust shall be the amount of the Grant Agreement as set forth on the Face Sheet.
- B. Term of Deed of Trust. The Deed of Trust shall remain in full force and effect for a minimum period of ten (10) years following the later of: (1) final payment of state funds to the GRANTEE under this grant; or (2) the date when the facility improved or acquired with grant funds, or a distinct phase of the project, is made useable to the public for the purpose intended by the Legislature. Upon satisfaction of the ten-year term requirement and all other grant terms and conditions, COMMERCE shall, upon written request of the GRANTEE, take appropriate action to reconvey the Deed of Trust.
- C. Title Insurance. The GRANTEE shall purchase an extended coverage lender's policy of title insurance insuring the lien position of the Deed of Trust in an amount not less than the amount of the grant.
- D. Covenant. If the project will be partially funded by a loan and the term of said loan is less than the commitment period under this Grant Agreement, COMMERCE may require that GRANTEE record or cause to be recorded a covenant in a superior lien position ahead of the lender's security instrument that restricts use of the facility or property for the purpose(s) stated elsewhere in this contract for at least the term of the commitment period.
- E. Subordination. COMMERCE may agree to subordinate its deed of trust upon request from a private or public lender. Any such request shall be submitted to COMMERCE in writing, and COMMERCE shall respond to the request in writing within thirty (30) days of receiving the request.

6. BASIS FOR ESTABLISHING REAL PROPERTY VALUES FOR ACQUISITIONS OF REAL PROPERTY PERFORMANCE MEASURES

When all or part of the grant is used to fund the acquisition of real property, before funds are disbursed, the GRANTEE shall procure and provide to COMMERCE evidence establishing the value of the real property eligible for reimbursement:

- A. GRANTEE purchases of real property from an independent third-party seller shall be evidenced by a current appraisal prepared by a licensed Washington State commercial real estate appraiser, or a current property tax statement.
- B. GRANTEE purchases of real property from a subsidiary organization, such as an affiliated LLC, shall be evidenced by a current appraisal prepared by a licensed Washington State commercial real estate appraiser or the prior purchase price of the property plus holding costs, whichever is less.

7. EXPENDITURES ELIGIBLE FOR REIMBURSEMENT

Payments to the Grantee shall be made on a reimbursement basis only. The GRANTEE may be reimbursed for the following eligible costs related to the activities identified in the SCOPE OF WORK shown on Attachment A.

- A. Real property, and costs directly associated with such purchase, when purchased or acquired solely for the purposes of the Project;
- B. Design, engineering, architectural, and planning;
- C. Construction management and observation (from external sources only);
- D. Construction costs including, but not limited to, the following:
 - Site preparation and improvements;
 - Permits and fees;
 - Labor and materials;
 - Taxes on Project goods and services;
 - Capitalized equipment;
 - Information technology infrastructure; and
 - Landscaping.
- F. Other costs authorized through the legislation.

8. BILLING PROCEDURES AND PAYMENT

COMMERCE shall reimburse the GRANTEE for eligible Project expenditures, up to the maximum payable under this Grant Agreement. When requesting reimbursement for expenditures made, the GRANTEE shall submit to COMMERCE a signed and completed Invoice Voucher (Form A-19), that documents capitalized Project activity performed for the billing period. The GRANTEE can submit all Invoice Vouchers and any required documentation electronically through COMMERCE's Contracts Management System (CMS), which is available through the Secure Access Washington (SAW) portal.

The GRANTEE shall evidence the costs claimed on each voucher by including copies of each invoice received from vendors providing Project goods or services covered by the Grant Agreement. The GRANTEE shall also provide COMMERCE with a copy of the cancelled check or electronic funds transfer, as applicable, that confirms that they have paid each expenditure being claimed. The cancelled checks or electronic funds transfers may be submitted to COMMERCE at the time the voucher is initially submitted, or within thirty (30) days.

The voucher must be certified (signed) by an official of the GRANTEE with authority to bind the GRANTEE. The final voucher shall be submitted to COMMERCE within sixty (60) days following the completion of work or other termination of this Grant Agreement, or within fifteen (15) days following the end of the state biennium unless Grant Agreement funds are reappropriated by the Legislature in accordance with Special Terms and Conditions Section 19.

If GRANTEE has or will be submitting any of the invoices attached to a request for payment for partial reimbursement under another grant contract, GRANTEE must clearly identify such grant contracts in the transmittal letter and request for payment.

Each request for payment must be accompanied by a Project Status Report, which describes, in narrative form, the progress made on the Project since the last invoice was submitted, as well as a report of Project status to date. COMMERCE will not release payment for any reimbursement request received unless and until the Project Status Report is received. After approving the Invoice Voucher and Project Status Report, COMMERCE shall promptly remit a warrant to the GRANTEE.

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

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

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

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

Duplication of Billed Costs

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

Disallowed Costs

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

9. SUBCONTRACTOR DATA COLLECTION

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

10. CLOSEOUT CERTIFICATION

The GRANTEE shall complete and submit a Closeout Certification Form when:

- A. All activities identified in the SCOPE OF WORK shown on Attachment A are complete and the project is useable to the public for the purpose intended by the Legislature, or
- B. When final payment is made and Grantee has certified that the whole project will be completed and the public benefit described maintained for the term of the commitment period.
- C. Notwithstanding anything in A. or B. above, the right to recapture funds or seek other remedies for failure to make the project usable to the public shall survive the closeout or termination of this contract.

11. INSURANCE

A. Insurance Requirements for Reimbursable Activities

The GRANTEE will maintain appropriate insurance coverage throughout any period in which reimbursable activities are conducted. The intent of the required insurance is to protect the state of Washington should there be any claims, suits, actions, costs, damages or expenses arising from any loss, or negligent or intentional act or omission of the GRANTEE, or Subgrantee, or agents of either, while performing under the terms of this Grant Agreement.

B. Additional Insurance Requirements During the Term of the Grant Agreement

The GRANTEE shall provide proof to COMMERCE of the following insurance coverage as applicable:

Commercial General Liability Insurance Policy. Provide a Commercial General Liability Insurance Policy, including contractual liability, written on an occurrence basis, in adequate quantity to protect against legal liability related to this Grant Agreement but no less than

\$1,000,000 per occurrence. Additionally, the GRANTEE is responsible for ensuring that any Subgrantee/subcontractor provide adequate insurance coverage for the activities arising out of subgrants/subcontracts. Commercial General Liability Insurance coverage shall be maintained in full force and effect during the term of this Grant Agreement and throughout the commitment period described in Special Terms and Conditions Section 5, 15, and 16.

Property Insurance. The GRANTEE shall keep the property insured in an amount sufficient to permit such insurance to be written at all times on a replacement cost basis. Such insurance shall cover the following hazards, as applicable:

- Loss or damage by fire and such other risks;
- Loss or damage from leakage or sprinkler systems now or hereafter installed in any building on the premises;
- Loss or damage by explosion of steam boilers, pressure vessels, oil or gasoline storage tanks or similar apparatus now or hereafter installed in a building or building on the premises.

Property Insurance coverage shall be maintained in full force and effect during the term of this Grant Agreement and throughout the commitment period described in Special Terms and Conditions Section 5, 15, and 16.

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

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

- A. The amount of fidelity coverage secured pursuant to this Grant Agreement shall be \$2,000,000 or the highest of planned reimbursement for the Grant Agreement period, whichever is lowest. Fidelity insurance secured pursuant to this paragraph shall name COMMERCE as beneficiary.
- B. Subgrantees/subcontractors that receive \$10,000 or more per year in funding through this Grant Agreement shall secure fidelity insurance as noted above. Fidelity insurance secured by Subgrantees/subcontractors pursuant to this paragraph shall name the GRANTEE and the GRANTEE's fiscal agent as beneficiary.
- C. Fidelity Insurance coverage shall be maintained in full force and effect during the term of this Grant Agreement.

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

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

During the term of the Grant Agreement, the GRANTEE shall submit renewal certificates not less than thirty (30) calendar days prior to expiration of each policy required under this section.

Professional Liability, Errors and Omissions Insurance. The GRANTEE shall require that any contractors providing professional services that are reimbursable under this Grant Agreement maintain Professional Liability or Errors and Omissions Insurance. The GRANTEE shall require such contractors to maintain minimum limits of no less than \$1,000,000 per occurrence. The state of Washington, its agents, officers, and employees need *not* be named as additional insureds under these policies.

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

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

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

12. ORDER OF PRECEDENCE

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

- Applicable federal and state of Washington statutes and regulations
- Declarations page of this Grant Agreement
- Special Terms and Conditions
- General Terms and Conditions
- Attachment A – Scope of Work
- Attachment B – Certification of the Availability of Funds to Complete the Project
- Attachment C – Certification of the Payment and Reporting of Prevailing Wages
- Attachment D – Certification of Intent to Enter the Leadership in Energy and Environmental Design (LEED) Certification Process

13. REDUCTION IN FUNDS

In the event state funds appropriated for the work contemplated under this Grant Agreement are withdrawn, reduced, or limited in any way by the Governor or the Washington State Legislature, or other funding source, during the Grant Agreement period, Commerce may suspend, amend, or terminate the contract.

14. OWNERSHIP OF PROJECT/CAPITAL FACILITIES

COMMERCE makes no claim to any real property improved or constructed with funds awarded under this Grant Agreement and does not assert and will not acquire any ownership interest in or title to the capital facilities and/or equipment constructed or purchased with state funds under this Grant Agreement; provided, however, that COMMERCE may be granted a security interest in real property, to secure funds awarded under this Grant Agreement. This provision does not extend to claims that

COMMERCE may bring against the GRANTEE in recapturing funds expended in violation of this Grant Agreement.

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

- A. The GRANTEE understands and agrees that any and all real property or facilities owned by the GRANTEE that are acquired, constructed, or otherwise improved by the GRANTEE using state funds under this Grant Agreement, shall be held and used by the GRANTEE for the purpose or purposes stated elsewhere in this Grant Agreement for a period of at least ten (10) years from the later of: (1) the date the final payment is made hereunder; or (2) the date when the facility improved or acquired with grant funds, or a distinct phase of the project, is made useable to the public for the purpose intended by the Legislature.
- B. This provision shall not be construed to prohibit the GRANTEE from selling any property or properties described in this section; **Provided that**, any such sale shall be subject to prior review and approval by COMMERCE, and that all proceeds from such sale shall be applied to the purchase price of a different facility or facilities of equal or greater value than the original facility and that any such new facility or facilities will be used for the purpose or purposes stated elsewhere in this Grant Agreement.
- C. In the event the GRANTEE is found to be out of compliance with this section, the GRANTEE shall repay to the state general fund the principal amount of the grant as stated on the Face Sheet, hereof, plus interest calculated at the rate of interest on state of Washington general obligation bonds issued most closely to the effective date of the legislation in which the subject facility was authorized. Repayment shall be made pursuant to General Terms and Conditions Section 27 (Recapture provision).

16. CHANGE OF USE FOR LEASED PROPERTY PERFORMANCE MEASURE

- A. The GRANTEE understands and agrees that any facility leased by the GRANTEE that is constructed, renovated, or otherwise improved using state funds under this Grant Agreement shall be used by the GRANTEE for the purpose or purposes stated elsewhere in this Grant Agreement for a period of at least ten (10) years from the later of: (1) the date the final payment is made; or (2) the date when the facility improved or acquired with grant funds, or a distinct phase of the project, is made useable to the public for the purpose intended by the Legislature.
- B. In the event the GRANTEE is found to be out of compliance with this section, the GRANTEE shall repay to the state general fund the principal amount of the grant as stated on the Face Sheet,, plus interest calculated at the rate of interest on state of Washington general obligation bonds issued most closely to the effective date of the legislation in which the subject facility was authorized. Repayment shall be made pursuant to General Terms and Conditions Section 27 (Recapture Provision).

17. SIGNAGE, MARKERS AND PUBLICATIONS

If, during the period covered by this Grant Agreement, the GRANTEE displays or circulates any communication, publication, or donor recognition identifying the financial participants in the Project, any such communication or publication must identify "The Taxpayers of Washington State" as a participant.

18. HISTORICAL AND CULTURAL ARTIFACTS

Prior to approval and disbursement of any funds awarded under this Contract, GRANTEE shall cooperate with COMMERCE to complete the requirements of Governor's Executive Order 21-02 or GRANTEE shall complete a review under Section 106 of the National Historic Preservation Act, if applicable. GRANTEE agrees that the GRANTEE is legally and financially responsible for compliance with all laws, regulations, and agreements related to the preservation of historical or cultural resources and agrees to hold harmless COMMERCE and the state of Washington in relation to any claim related to such historical or cultural resources discovered, disturbed, or damaged as a result of the project funded by this Contract.

In addition to the requirements set forth in this Contract, GRANTEE shall, in accordance with Governor's Executive Order 21-02 as applicable, coordinate with Commerce and the Washington State Department of Archaeology and Historic Preservation ("DAHP"), including any recommended consultation with any affected tribe(s), during Project design and prior to construction to determine the existence of any tribal cultural resources affected by Project. GRANTEE agrees to avoid, minimize, or mitigate impacts to the cultural resource as a continuing prerequisite to receipt of funds under this Contract.

The GRANTEE agrees that, unless the GRANTEE is proceeding under an approved historical and cultural monitoring plan or other memorandum of agreement, if historical or cultural artifacts are discovered during construction, the GRANTEE shall immediately stop construction and notify the local historical preservation officer and the state's historical preservation officer at DAHP, and the Commerce Representative identified on the Face Sheet. If human remains are uncovered, the GRANTEE shall report the presence and location of the remains to the coroner and local enforcement immediately, then contact DAHP and the concerned tribe's cultural staff or committee.

The GRANTEE shall require this provision to be contained in all subcontracts for work or services related to the Scope of Work attached hereto.

In addition to the requirements set forth in this Contract, GRANTEE agrees to comply with RCW 27.44 regarding Indian Graves and Records; RCW 27.53 regarding Archaeological Sites and Resources; RCW 68.60 regarding Abandoned and Historic Cemeteries and Historic Graves; and WAC 25-48 regarding Archaeological Excavation and Removal Permits.

Completion of the requirements of Section 106 of the National Historic Preservation Act shall substitute for completion of Governor's Executive Order 21-02.

In the event that the GRANTEE finds it necessary to amend the Scope of Work the GRANTEE may be required to re-comply with Governor's Executive Order 21-02, or Section 106 of the National Historic Preservation Act.

19. REAPPROPRIATION

- A. The parties hereto understand and agree that any state funds not expended by the BIENNIUM CLOSE DATE listed on the Declarations page will lapse on that date unless specifically reappropriated by the Washington State Legislature. If funds are so reappropriated, the state's obligation under the terms of this Grant Agreement shall be contingent upon the terms of such reappropriation.
- B. In the event any funds awarded under this Grant Agreement are reappropriated for use in a future biennium, COMMERCE reserves the right to assign a reasonable share of any such reappropriation for administrative costs.

20. TERMINATION FOR FRAUD OR MISREPRESENTATION

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

21. APPLICABILITY OF COPYRIGHT PROVISIONS TO ARCHITECTURAL/ENGINEERING DESIGN WORK

The "Copyright Provisions", General Terms and Conditions Section 13, are not intended to apply to any architectural and engineering design work funded by this grant.

22. FRAUD AND OTHER LOSS REPORTING

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

23. PUBLIC RECORDS ACT

Notwithstanding General Terms and Conditions Section 11 (Confidentiality/Safeguarding of Information, COMMERCE is a public agency subject to the Public Records Act, RCW 42.56 (the PRA). Under the PRA, all materials relating to the conduct of government or the performance of any governmental or proprietary function prepared, owned, used, or retained by COMMERCE or its functional equivalents are considered public records. The PRA requires that public records responsive to a public records request be promptly produced unless the PRA or an "other statute" exempts such records from production. This Agreement is not intended to alter COMMERCE's obligations under the PRA. The parties agree that if COMMERCE receives a public records request for files that may include confidential information under General Terms and Conditions Section 11, COMMERCE will notify the other party of the request and of the date that the records will be released to the requester unless GRANTEE obtains a court order enjoining disclosure. If the GRANTEE fails to obtain the court order enjoining disclosure, COMMERCE may release the requested information on the date specified. If the GRANTEE obtains a court order from a court of competent jurisdiction enjoining disclosure pursuant to the PRA, COMMERCE shall maintain the confidentiality of the information per the court order.

GENERAL TERMS AND CONDITIONS

GENERAL GRANT STATE FUNDS

1. DEFINITIONS

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

- A. "Authorized Representative" shall mean the Director and/or the designee authorized in writing to act on the Director's behalf.
- B. "COMMERCE" shall mean the Department of Commerce.
- C. "GRANTEE" shall mean the entity identified on the Face Sheet performing service(s) under this Grant Agreement, and shall include all employees and agents of the GRANTEE.
- D. "Personal Information" shall mean information identifiable to any person, including, but not limited to, information that relates to a person's name, health, finances, education, business, use or receipt of governmental services or other activities, addresses, telephone numbers, social security numbers, driver license numbers, other identifying numbers, and any financial identifiers.
- E. "State" shall mean the state of Washington.
- F. "Subgrantee/subcontractor" shall mean one not in the employment of the GRANTEE, who is performing all or part of those services under this Grant Agreement under a separate Grant Agreement with the GRANTEE. The terms "subgrantee/subcontractor" refers to any tier.
- G. "Subrecipient" shall mean a non-federal entity that expends federal awards received from a pass-through entity to carry out a federal program, but does not include an individual that is a beneficiary of such a program. It also excludes vendors that receive federal funds in exchange for goods and/or services in the course of normal trade or commerce.
- H. "Vendor" shall mean an entity that agrees to provide the amount and kind of services requested by COMMERCE; provides services under the grant only to those beneficiaries individually determined to be eligible by COMMERCE and, provides services on a fee-for-service or per-unit basis with contractual penalties if the entity fails to meet program performance standards.
- I. "Grant Agreement" and "Agreement" shall mean the entire written agreement between COMMERCE and the GRANTEE, including any attachments, exhibits, documents, or materials incorporated by reference, and any amendments executed by the parties.

2. ACCESS TO DATA

In compliance with RCW 39.26.180, the GRANTEE shall provide access to data generated under this Grant Agreement to COMMERCE, the Joint Legislative Audit and Review Committee, and the Office of the State Auditor at no additional cost. This includes access to all information that supports the findings, conclusions, and recommendations of the GRANTEE's reports, including computer models and the methodology for those models.

3. ADVANCE PAYMENTS PROHIBITED

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

4. ALL WRITINGS CONTAINED HEREIN

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

5. AMENDMENTS

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

6. AMERICANS WITH DISABILITIES ACT (ADA) OF 1990, PUBLIC LAW 101-336, ALSO REFERRED TO AS THE “ADA” 28 CFR PART 35

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

7. ASSIGNMENT

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

8. ATTORNEYS’ FEES

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

9. AUDIT

A. General Requirements

COMMERCE reserves the right to require an audit. If required, GRANTEEs are to procure audit services based on the following guidelines.

The GRANTEE shall maintain its records and accounts so as to facilitate audits and shall ensure that subgrantees also maintain auditable records.

The GRANTEE is responsible for any audit exceptions incurred by its own organization or that of its subgrantees.

COMMERCE reserves the right to recover from the GRANTEE all disallowed costs resulting from the audit.

Responses to any unresolved management findings and disallowed or questioned costs shall be included with the audit report. The GRANTEE must respond to COMMERCE requests for information or corrective action concerning audit issues within thirty (30) days of the date of request.

B. State Funds Requirements

In the event an audit is required, if the GRANTEE is a state or local government entity, the Office of the State Auditor shall conduct the audit. Audits of non-profit organizations are to be conducted by a certified public accountant selected by the GRANTEE.

The GRANTEE shall include the above audit requirements in any subcontracts.

In any case, the GRANTEE’s records must be available for review by COMMERCE.

C. Documentation Requirements

The GRANTEE must send a copy of the audit report described above no later than nine (9) months after the end of the GRANTEE’s fiscal year(s) by sending a scanned copy to comacctooffice@commerce.wa.gov or a hard copy to:

Department of Commerce
ATTN: Audit Review and Resolution Office
1011 Plum Street SE
PO Box 42525
Olympia WA 98504-2525

In addition to sending a copy of the audit, when applicable, the GRANTEE must include:

- Corrective action plan for audit findings within three (3) months of the audit being received by COMMERCE.
- Copy of the Management Letter.

If the GRANTEE is required to obtain a Single Audit consistent with Circular A-133 requirements, a copy must be provided to COMMERCE; no other report is required.

10. BREACHES OF OTHER STATE CONTRACTS

GRANTEE is expected to comply with all other contracts executed between GRANTEE and the State of Washington. A breach of any other agreement entered into between GRANTEE and the State of Washington may, in COMMERCE's discretion, be deemed a breach of this Agreement.

11. CONFIDENTIALITY/SAFEGUARDING OF INFORMATION

- A. "Confidential Information" as used in this section includes:
 1. All material provided to the GRANTEE by COMMERCE that is designated as "confidential" by COMMERCE;
 2. All material produced by the GRANTEE that is designated as "confidential" by COMMERCE; and
 3. All personal information in the possession of the GRANTEE that may not be disclosed under state or federal law. "Personal information" includes but is not limited to information related to a person's name, health, finances, education, business, use of government services, addresses, telephone numbers, social security number, driver's license number and other identifying numbers, and "Protected Health Information" under the federal Health Insurance Portability and Accountability Act of 1996 (HIPAA).
- B. The GRANTEE shall comply with all state and federal laws related to the use, sharing, transfer, sale, or disclosure of Confidential Information. The GRANTEE shall use Confidential Information solely for the purposes of this Grant Agreement and shall not use, share, transfer, sell or disclose any Confidential Information to any third party except with the prior written consent of COMMERCE or as may be required by law. The GRANTEE shall take all necessary steps to assure that Confidential Information is safeguarded to prevent unauthorized use, sharing, transfer, sale or disclosure of Confidential Information or violation of any state or federal laws related thereto. Upon request, the GRANTEE shall provide COMMERCE with its policies and procedures on confidentiality. COMMERCE may require changes to such policies and procedures as they apply to this Grant Agreement whenever COMMERCE reasonably determines that changes are necessary to prevent unauthorized disclosures. The GRANTEE shall make the changes within the time period specified by COMMERCE. Upon request, the GRANTEE shall immediately return to COMMERCE any Confidential Information that COMMERCE reasonably determines has not been adequately protected by the GRANTEE against unauthorized disclosure.
- C. Unauthorized Use or Disclosure. The GRANTEE shall notify COMMERCE within five (5) working days of any unauthorized use or disclosure of any confidential information, and shall take necessary steps to mitigate the harmful effects of such use or disclosure.

12. CONFLICT OF INTEREST

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

Specific restrictions apply to contracting with current or former state employees pursuant to RCW 42.52. The GRANTEE and their subcontractor(s) must identify any person employed in any capacity by the state of Washington that worked on this Grant Agreement, or any matter related to the project funded under this Grant Agreement or any other state funded project, including but not limited to

formulating or drafting legislation, participating in grant procurement, planning and execution, awarding grants, or monitoring grants, during the 24 month period preceding the start date of this Grant Agreement. Any person identified by the GRANTEE and their subcontractors(s) must be identified individually by name, the agency previously or currently employed by, job title or position held, and separation date. If it is determined by COMMERCE that a conflict of interest exists, the GRANTEE may be disqualified from further consideration for the award of a Grant Agreement.

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

13. COPYRIGHT PROVISIONS

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

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

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

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

14. DISPUTES

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

The request for a dispute hearing must:

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

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

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

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

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

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

15. DUPLICATE PAYMENT

COMMERCE shall not pay the GRANTEE, if the GRANTEE has charged or will charge the State of Washington or any other party under any other grant, subgrant/subcontract, or agreement, for the same services or expenses. The GRANTEE certifies that work to be performed under this contract does not duplicate any work to be charged against any other grant, subgrant/subcontract, or agreement.

16. GOVERNING LAW AND VENUE

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

17. INDEMNIFICATION

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

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

The GRANTEE'S obligation shall not include such claims that may be caused by the sole negligence of the State and its agencies, officials, agents, and employees. If the claims or damages are caused by or result from the concurrent negligence of (a) the State, its agents or employees and (b) the GRANTEE, its subcontractors, agents, or employees, this indemnity provision shall be valid and enforceable only to the extent of the negligence of the GRANTEE or its subcontractors, agents, or employees.

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

18. INDEPENDENT CAPACITY OF THE GRANTEE

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

to such officer or employee under law. Conduct and control of the work will be solely with the GRANTEE.

19. INDUSTRIAL INSURANCE COVERAGE

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

20. LAWS

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

21. LICENSING, ACCREDITATION AND REGISTRATION

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

22. LIMITATION OF AUTHORITY

Only the Authorized Representative or Authorized Representative's delegate by writing (delegation to be made prior to action) shall have the express, implied, or apparent authority to alter, amend, modify, or waive any clause or condition of this Grant Agreement. Furthermore, any alteration, amendment, modification, or waiver of any clause or condition of this Grant Agreement is not effective or binding unless made in writing and signed by the Authorized Representative.

23. NONCOMPLIANCE WITH NONDISCRIMINATION LAWS

During the performance of this Grant Agreement, the GRANTEE shall comply with all federal, state, and local nondiscrimination laws, regulations and policies. In the event of the GRANTEE's non-compliance or refusal to comply with any nondiscrimination law, regulation or policy, this Grant Agreement may be rescinded, canceled or terminated in whole or in part, and the GRANTEE may be declared ineligible for further Grants with COMMERCE. The GRANTEE shall, however, be given a reasonable time in which to cure this noncompliance. Any dispute may be resolved in accordance with the "Disputes" procedure set forth herein. The funds provided under this contract may not be used to fund religious worship, exercise, or instruction. No person shall be required to participate in any religious worship, exercise, or instruction in order to have access to the facilities funded by this grant.

24. PAY EQUITY

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

- a. Employees are "similarly employed" if the individuals work for the same employer, the performance of the job requires comparable skill, effort, and responsibility, and the jobs are performed under similar working conditions. Job titles alone are not determinative of whether employees are similarly employed;
- b. GRANTEE may allow differentials in compensation for its workers if the differentials are based in good faith and on any of the following:
 - (i) A seniority system; a merit system; a system that measures earnings by quantity or quality of production; a bona fide job-related factor or factors; or a bona fide regional difference in compensation levels.
 - (ii) A bona fide job-related factor or factors may include, but not be limited to, education, training, or experience that is: Consistent with business necessity; not based on or derived from a gender-based differential; and accounts for the entire differential.

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

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

25. POLITICAL ACTIVITIES

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

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

26. PUBLICITY

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

27. RECAPTURE

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

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

28. RECORDS MAINTENANCE

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

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

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

29. REGISTRATION WITH DEPARTMENT OF REVENUE

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

30. RIGHT OF INSPECTION

At no additional cost, the GRANTEE shall provide right of access to its facilities to COMMERCE, or any of its officers, or to any other authorized agent or official of the state of Washington or the federal government, at all reasonable times, in order to monitor and evaluate performance, compliance, and/or quality assurance under this Grant Agreement.

31. SAVINGS

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

32. SEVERABILITY

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

33. SITE SECURITY

While on COMMERCE premises, GRANTEE, its agents, employees, or subcontractors shall conform in all respects with physical, fire or other security policies or regulations.

34. SUBGRANTING/SUBCONTRACTING

Neither the GRANTEE nor any subgrantee/subcontractor shall enter into subgrants/subcontracts for any of the work contemplated under this Grant Agreement without obtaining prior written approval of COMMERCE. In no event shall the existence of the subgrant/subcontract operate to release or reduce the liability of the GRANTEE to COMMERCE for any breach in the performance of the GRANTEE's duties. This clause does not include Grants of employment between the GRANTEE and personnel assigned to work under this Grant Agreement.

Additionally, the GRANTEE is responsible for ensuring that all terms, conditions, assurances and certifications set forth in this agreement are carried forward to any subgrants/subcontracts. Every subgrant/subcontract shall include a term that COMMERCE and the State of Washington are not liable for claims or damages arising from a subgrantee's/subcontractor's performance of the subgrant/subcontract. GRANTEE and its subgrantees/subcontractors agree not to release, divulge, publish, transfer, sell or otherwise make known to unauthorized persons personal information without the express written consent of COMMERCE or as provided by law.

35. SURVIVAL

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

36. TAXES

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

37. TERMINATION FOR CAUSE

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

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

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

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

38. TERMINATION FOR CONVENIENCE

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

39. TERMINATION PROCEDURES

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

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

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

After receipt of a notice of termination, and except as otherwise directed by the AUTHORIZED REPRESENTATIVE, the GRANTEE shall:

1. Stop work under the Grant Agreement on the date, and to the extent specified, in the notice;
2. Place no further orders or subgrants/subcontracts for materials, services, or facilities except as may be necessary for completion of such portion of the work under the Grant Agreement that is not terminated;
3. Assign to COMMERCE, in the manner, at the times, and to the extent directed by the AUTHORIZED REPRESENTATIVE, all of the rights, title, and interest of the GRANTEE under the orders and subgrants/subcontracts so terminated, in which case COMMERCE has the right, at its discretion, to settle or pay any or all claims arising out of the termination of such orders and subgrants/subcontracts;
4. Settle all outstanding liabilities and all claims arising out of such termination of orders and subcontracts, with the approval or ratification of the AUTHORIZED REPRESENTATIVE to the extent AUTHORIZED REPRESENTATIVE may require, which approval or ratification shall be final for all the purposes of this clause;
5. Transfer title to COMMERCE and deliver in the manner, at the times, and to the extent directed by the AUTHORIZED REPRESENTATIVE any property which, if the Grant Agreement had been completed, would have been required to be furnished to COMMERCE;

6. Complete performance of such part of the work as shall not have been terminated by the AUTHORIZED REPRESENTATIVE; and
7. Take such action as may be necessary, or as the AUTHORIZED REPRESENTATIVE may direct, for the protection and preservation of the property related to this Grant Agreement, which is in the possession of the GRANTEE and in which COMMERCE has or may acquire an interest.

40. TREATMENT OF ASSETS

Title to all property furnished by COMMERCE shall remain in COMMERCE. Title to all property furnished by the GRANTEE, for the cost of which the GRANTEE is entitled to be reimbursed as a direct item of cost under this Grant Agreement, shall pass to and vest in COMMERCE upon delivery of such property by the GRANTEE. Title to other property, the cost of which is reimbursable to the GRANTEE under this Grant Agreement, shall pass to and vest in COMMERCE upon (i) issuance for use of such property in the performance of this Grant Agreement, or (ii) commencement of use of such property in the performance of this Grant Agreement, or (iii) reimbursement of the cost thereof by COMMERCE in whole or in part, whichever first occurs.

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

All reference to the GRANTEE under this clause shall also include GRANTEE'S employees, agents or subgrantees/subcontractors.

41. WAIVER

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

ATTACHMENT A - SCOPE OF WORK

Funds awarded under this grant will be used for capital expenditures to develop and construct a public park at 1900 S 36th AVE, Yakima, WA 98902 (Parcel no. 18133442002) southwest of the Yakima Airport between S 40th Ave and S 36th.

Activities will include, but not be limited to, site development and construction of restrooms, pathways, and parking.

The City of Yakima is developing the park in partnership with the YMCA of Yakima, and the SOZO Sports Complex. By agreement, the City and SOZO sports will construct, operate, and maintain the new 32 acre public park owned by the City with nature trails, open green space, picnic area, RV hookups, restroom, and playground. Park will allow for greater access to the public for tournaments and events through the SOZO complex, and greater opportunities for leisure and recreation for the community.

This project began in March 2021 and is expected to be complete by November 2024.

Costs related to the work will only be reimbursed to the extent the work is determined by Commerce to be within the scope of the legislative appropriation.

CERTIFICATION PERFORMANCE MEASURE

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

GRANTEE

TITLE

DATE

ATTACHMENT B - CERTIFICATION OF THE AVAILABILITY OF FUNDS TO COMPLETE THE PROJECT

Type of Funding	Source Description	Amount
Grant	Washington State Department of Commerce	\$225,040.00
Other Grants		
Grant #1		\$
Total Other Grants		\$0.00
Other Loans		
Loan #1		\$
Total Loans		\$0.00
Other Local Revenue		
Source #1		\$
Total Local Revenue		\$0.00
Other Funds		
Source #1		\$
Total Other Funds		\$0.00
Total Project Funding		\$225,040.00

CERTIFICATION PERFORMANCE MEASURE

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

GRANTEE

TITLE

DATE

ATTACHMENT C - CERTIFICATION OF THE PAYMENT AND REPORTING OF PREVAILING WAGES

CERTIFICATION PERFORMANCE MEASURE

The GRANTEE, by its signature, certifies that all contractors and subcontractors performing work on the Project shall comply with prevailing wage laws set forth in Chapter 39.12 RCW, as applicable on the date the appropriation becomes effective, including but not limited to the filing of the "Statement of Intent to Pay Prevailing Wages" and "Affidavit of Wages Paid" as required by RCW 39.12.040. The GRANTEE shall maintain records sufficient to evidence compliance with Chapter 39.12 RCW, and shall make such records available for COMMERCE's review upon request.

If any state funds are used by the GRANTEE for the purpose of construction, applicable State Prevailing Wages must be paid.

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

GRANTEE

TITLE

DATE

ATTACHMENT D - CERTIFICATION OF INTENT TO ENTER THE LEADERSHIP IN ENERGY AND ENVIRONMENTAL DESIGN (LEED) CERTIFICATION PROCESS

CERTIFICATION PERFORMANCE MEASURE

The GRANTEE, by its signature, certifies that it will enter into the Leadership in Energy and Environmental Design certification process, as stipulated in RCW 39.35D, as applicable to the Project funded by this Grant Agreement. The GRANTEE shall, upon receipt of LEED certification by the United States Green Building Council, provide documentation of such certification to COMMERCE.

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

GRANTEE

TITLE

DATE

NOT APPLICABLE



**BUSINESS OF THE CITY COUNCIL
YAKIMA, WASHINGTON
AGENDA STATEMENT**

Item No. 9.
For Meeting of: February 20, 2024

ITEM TITLE: Ordinance granting a non-exclusive Franchise to Falcon Video Communications, L.P. I/k/a Charter Communications to operate and maintain a Cable Communications System throughout the city of Yakima

SUBMITTED BY: Randy Beehler, Communications & Public Affairs Director

SUMMARY EXPLANATION:

Charter Communications has operated a cable communications system in the city of Yakima for many years. The current franchise granted to Charter will expire in a few months. After performing due diligence, City staff recommends the grant of a new 10-year franchise to Charter to operate a cable communications system in the city.

ITEM BUDGETED: NA

STRATEGIC PRIORITY: NA

APPROVED FOR SUBMITTAL BY THE CITY MANAGER

RECOMMENDATION:

Pass ordinance

ATTACHMENTS:

Description	Upload Date	Type
<input type="checkbox"/> Ordinance	2/16/2024	Ordinance

City of Yakima

Cable

Communications

Franchise

Ordinance

#_2024---_____

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ORDINANCE NO. _____

AN ORDINANCE granting a non-exclusive Franchise to Falcon Video Communications, L.P. I/k/a Charter Communications to operate and maintain a Cable Communications System throughout the City of Yakima; setting forth provisions, terms and conditions of the grant of Franchise; providing for City regulation and use of the Cable Communications System; prescribing penalties for violation of Franchise provisions; and terminating Ordinance No. 93-115.

BE IT ORDAINED BY THE CITY OF YAKIMA, herein “City” that a Franchise is hereby granted to Falcon Video Communications, L.P. I/k/a Charter Communications, herein “Charter” to operate and maintain a Cable Communications System in the City of Yakima upon the following express terms and conditions:

SECTION 1. DEFINITIONS. For the purposes of this Franchise Ordinance 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 number include the singular number, words in the singular number include the plural number, and the use of any gender shall be applicable to all genders whenever the sense requires. The words "shall" and "will" are mandatory and the word "may" is permissive. Where a term in the Franchise Ordinance is not defined in this Section and there is a definition for the term in the Cable Act, the Cable Act definition shall apply. Other terms in the Franchise Ordinance which are not defined in this Section shall be given their common and ordinary meaning.

1.1 “Affiliate” means another person who owns or controls, is owned by or controlled by, or is under common ownership or control with, Charter.

1.2 “Applicable Law” means any local, State or federal statute, law, regulation, or decision of a court of competent jurisdiction governing any of the matters addressed in this Franchise Ordinance.

1.3 “Basic Service” or “Basic Cable Service” means any service tier which includes the retransmission of local television broadcast signals. Nothing in this definition shall be deemed to limit the rights of Charter or the City with respect to the regulation of rates and charges as permitted by applicable law.

1.4 “Cable Act” means the Cable Communications Policy Act of 1984 (Public Law No. 98-549, 47 USC 521 (Supp.)) as amended by the Cable Television Consumer Protection and Competition Act of 1992, as further amended by the Telecommunications Act of 1996 and as further amended or superseded.

1.5 “Cable Communications System” or “Cable System” or “System” shall have the meaning specified for "Cable Communications System" in the Cable Act. Unless otherwise specified it shall in this document refer to the Cable Communications System constructed and operated in the City under this Franchise Ordinance.

1.6 “Cable Service” means the one-way transmission of video programming or other programming service to Subscribers, and Subscriber interactions, if any, which is required for the selection or use of such video programming or other programming service.

1.7 “Channel” means a portion of the electromagnetic frequency spectrum which is used in a Cable System and which is capable of delivering a television Channel (as television Channel is defined by the FCC).

1.8 “Charter” shall mean Falcon Video Communications, L.P. I/k/a Charter Communications, and its agents, successors and assignees.

1.9 “City” shall mean City of Yakima of the State of Washington and all the incorporated territory within its present and future boundaries.

1.10 “FCC” means the Federal Communications Commission or any successor agency.

1.11 “Franchise” or “Franchise Ordinance” shall mean the right granted by this Franchise Ordinance and conditioned as set forth herein by which the City authorizes Charter to erect, construct, reconstruct, operate, dismantle, test, use and maintain a Cable Communications System in the City. The Franchise granted herein shall be a non-exclusive Franchise.

1.12 “Franchise Area” means the area within the jurisdictional boundaries of the City including any areas annexed by City during the term of this Franchise.

1.13 “Franchise Fee” shall include any tax, fee, or assessment of any kind imposed by the City on a cable operator or cable subscriber, or both, solely because of their status as such. The term Franchise Fee does not include (a) any tax, fee, or assessment of general applicability (including any such tax, fee, or assessment imposed on both utilities and cable operators or their services but not including a tax, fee or assessment which is unduly discriminatory against cable operators or cable subscribers); (b) capital costs which are required by the Franchise to be incurred by Charter for Public, Educational, or Governmental Access; (c) requirements or charges incidental to the awarding or enforcing of the Franchise, including payments for bonds, security funds, letters of credit, insurance, indemnification, penalties, or liquidated damages; or (d) any fee imposed under title 17, United States Code.

1.14 “Generally Accepted Accounting Principles” or “GAAP” means those Generally Accepted Accounting Principles as promulgated and defined by the Financial Accounting Standards Board (FASB), Emerging Issues Task Force (EITF), and/or the Securities and Exchange Commission (SEC). Notwithstanding the foregoing, the City reserves its right to challenge Charter’s calculation of Gross Revenues, including the use or interpretation of GAAP as promulgated and defined by the FASB, EITF and/or the SEC.

1.15 “Gross Revenues” means any and all revenue as determined in accordance with Generally Accepted Accounting Principles (“GAAP”) received by Charter from the operation of Charter's Cable System to provide Cable Services within the City, by Charter or by any affiliate which is a cable operator and only to the extent such amounts are earned from the operation of Charter's Cable System within the City to provide Cable Services. Gross Revenues shall include,

without limitation, amounts for the Basic Cable Service, any other programming service tiers, Pay Services, audio services, subscriber installations and transactions, Leased Access programming fees, advertising, equipment rentals and all other revenues derived from the operation of Charter's Cable System to provide Cable Services within the City. Charter shall report to the City Gross Revenues as determined in accordance with GAAP. To the extent revenues are received by Charter for the provision of a discounted bundle of services which includes Cable Services and non-Cable Services, Charter shall calculate revenues to be included in Gross Revenues using a methodology in accordance with GAAP. Currently, such methodology allocates revenue on a pro rata basis when comparing the bundled service price and its components to the sum of the most recent published rate card for the components, except it is expressly understood that equipment may be subject to inclusion in the bundled price at full rate card value. Gross Revenues which are not directly attributable to specific customers, such as advertising revenue and home shopping commissions, shall be allocated to Systems and jurisdictions on a per subscriber basis measured in a consistent manner from period to period. Gross Revenues, however, shall not be double counted. Gross Revenues of both Charter and an affiliate that represent a transfer of funds between Charter and the affiliated entity, and that would otherwise constitute Gross Revenues of both Charter and the affiliate, shall be counted only once for purposes of determining Gross Revenues. Similarly, operating expenses of Charter which are payable from Charter's revenue to an affiliate and which may otherwise constitute revenue of the affiliate, shall not constitute additional Gross Revenues for purposes of this Franchise. Gross Revenues shall include amounts earned by an affiliate only to the extent that Charter could, in concept, have earned such types of revenue in connection with the operation of Charter's Cable System and recorded such types of revenue in its books and records directly but for the existence of an affiliate. Gross Revenues shall not include sales or other similar taxes imposed by law on subscribers which Charter is not obligated to collect, nor shall they include unrecovered bad debt or credits, refunds and deposits paid to subscribers. Gross revenues shall not include utility taxes collected from subscribers. Neither current nor previously paid Franchise Fees shall be subtracted from the Gross Revenue amount upon which Franchise Fees are calculated and due for any period.

1.16 “Leased Access” shall mean the use on a fee-for-service basis of the Cable System by business enterprises (whether profit, non-profit or governmental) to provide cable programming to the citizens of the City pursuant to Section 612 of the Cable Act.

1.17 “Master Control Center” or “Control Center” means the facility operated by the City to provide public and/or governmental access, including acquisition and maintenance of equipment and facilities as necessary to create and develop PEG access programming and included therein such personnel as may be required for the operation and maintenance of the Master Control Center.

1.18 “Pay Service” or “Premium Service” means programming (such as non-advertiser-supported movie Channels or pay-per-view programs) offered individually to subscribers on a per-Channel, per-program or per-event basis.

1.19 “Person” means any individual, corporation, partnership, association, joint venture or organization of any kind and the lawful trustee, successor, assignee, transferee or personal representative thereof.

1.20 “Public, Educational or Government (PEG) Access Channel” means any Channel or portion of a Channel designated pursuant to this Franchise for Public, Educational or Governmental use by various agencies, institutions, organizations, groups and individuals, including the City and its designated access providers, to acquire, create and distribute video programming, not under Charter’s editorial control, as permitted under Applicable Law.

1.21 “Street” shall mean the surface of and the space above and below the right of way of any public street, road, highway, freeway, easement, lane, path, alley, court, sidewalk, parkway, or driveway now or hereafter existing as such within all incorporated areas of the City.

1.22 “Subscriber” means any Person who legally receives any one (1) or more of the cable services provided by the Cable Communications System.

SECTION 2. FRANCHISE.

2.1 Grant of Franchise. The City hereby grants to Falcon Video Communications, L.P. I/k/a Charter Communications, a non-exclusive Franchise which authorizes Charter, subject to the terms of this Franchise Ordinance, to construct, maintain, and operate a Cable System and offer Cable Service and other services in, along, among, upon, across, above, over, under, or in any matter connected with the Streets located in the City and for that purpose to erect, install, construct, repair, replace, reconstruct, maintain, or retain in, on, over, under, upon, across or along any Street or extensions thereof and additions thereto, such poles, wires, cables, conductors, ducts, conduits, vaults, utility access covers, pedestals, amplifiers, appliances, attachments, and other related property or equipment as may be necessary or appurtenant to the Cable System. Said Franchise shall constitute a right to provide the services of a Cable Communications System as required by the provisions of this Franchise Ordinance.

2.2 Franchise Term. The Franchise and the rights, privileges, and authority hereby granted shall be for a term of ten (10) years commencing on the effective date of this Franchise Ordinance as set forth in Section 12.9, unless extended in accordance with the provisions in Section 2.7 or terminated sooner in accordance with this Franchise Ordinance.

2.3 Franchise Area. The Franchise Area shall be that area within the present or future corporate limits of the City. Service shall be provided to all persons whose homes are within the line extension policy set forth in Section 10 of this Franchise Ordinance and to such further homes or businesses as agreed to by Charter.

2.4 Franchise Non-exclusive. The Franchise granted herein shall be non-exclusive. The City specifically reserves the right to grant, at any time, such additional franchises for a Cable Communications System as it deems appropriate provided, however, such additional grants shall not operate to materially modify, revoke, or terminate any rights previously granted to Charter. The grant of any additional franchise shall not of itself be deemed to constitute a modification, revocation, or termination of rights previously granted to Charter.

2.5 Franchise Required. No Cable System shall be allowed to occupy or use the Streets of the Franchise Area or be allowed to operate without a franchise.

2.6 Equal Protection.

(a) City acknowledges and agrees that City may be required by federal law, and reserves the right, to grant one (1) or more additional franchises to provide Cable Service within the Franchise Area. If any additional competitive franchise is granted by City to provide video programming in Charter's Franchise Area pursuant to the Cable Act, which franchise is for an area where services have been extended by Charter and which contains material terms and conditions that are more favorable or less burdensome than the terms or conditions of this Franchise Ordinance, then, City agrees that it shall amend this Franchise to the mutual satisfaction of City and Charter. The parties agree that this provision may not require a word for word identical franchise or authorization for a competitive entity. The parties agree that, notwithstanding any provision of this subsection, the City may not be obligated to comply with the provisions of this subsection to the extent doing so would cause the City to violate applicable laws or FCC rules. Video Programming services delivered over wireless broadband networks are specifically exempted from the requirements of this Section so long as City does not have lawful authority to regulate such wireless broadband networks within the Franchise Area.

(b) In the event that a competitive franchise is granted by City as described in Section 2.6(a) above which contains material terms and conditions that are more favorable or less burdensome than the terms of this Franchise, and notice thereof is duly provided to Charter within a reasonable timeframe not to exceed twenty (20) days from execution, Charter shall submit to City in writing (1) the basis for Charter's belief that certain provisions of its Franchise place Charter at a competitive disadvantage; (2) the provisions of this Franchise to be amended; and (3) specific language modifying any such Franchise provisions. City and Charter shall negotiate in good faith such amendments to the Franchise within ninety (90) days, unless otherwise agreed to by the parties. If the parties fail to reach agreement in informal negotiations, either party may initiate mediation and the other agrees to participate in mediation in good faith. Each party shall bear its own cost for mediation. In the event the parties are not able to reach agreement in informal negotiations or mediation, Charter may exercise its rights under Subsection (c) below or Charter

may choose to terminate this Franchise and take in its place the same Franchise of a competing provider of video service authorized by the City.

(c) Charter's notice to City under this Subsection (c) shall be deemed to be Charter's renewal notification pursuant to Section 626 of the Cable Act (47 U.S.C. §546). Charter may elect at any time prior to the commencement of the Charter's thirty-six (36) month renewal window provided by 47 U.S.C. §546 to file a written notice indicating an election to shorten the term of this Franchise, and thereafter the term of Charter's Franchise shall, ninety (90) days from Charter's written notice, be shortened so that the Franchise shall be deemed to expire on a date thirty six (36) months from the first day of the month following the date of Charter's notice. Charter shall immediately thereafter secure franchise renewal rights pursuant to 47 U.S.C. §546 with no further notice to the City required. City and Charter shall then enter into proceedings consistent with 47 U.S.C. §546 for renewal of this Franchise. City and Charter shall have all rights and obligations provided under 47 U.S.C. §546).

(d) If any other provider of cable services or video services (without regard to the technology used to deliver such services) is lawfully authorized by any State or federal governmental entity to provide such services using facilities located wholly or partly in the public rights-of-way of the Grantor, Grantee has the right, to the extent it is lawful, to deem this Franchise expired and to negotiate a replacement franchise, license, consent, certificate or other authorization with any other appropriate governmental entity.

2.7 Franchise Renewal or New Franchise. The City may establish appropriate requirements for new franchises or franchise renewals consistent with the provisions of Section 626 of the Cable Act or any such successor statute as well as Applicable Law.

2.8 Periodic Public Review of Franchise and Franchise Modification. The field of requirements and conditions applicable to the services authorized by this Franchise Ordinance are rapidly changing. Therefore, in order to provide for a maximum degree of flexibility in this Franchise Ordinance, and to help achieve a continued advanced and modern Cable System, the following evaluation provision will apply.

(a) During year five (5) of this franchise, and upon request of either party, a public review may be held, should there be a material change to law, technology or services that may have an effect on the terms and conditions of this Franchise Ordinance.

(b) As a result of a periodic review, either party may request a change or amendment in the terms of this Franchise Ordinance. Parties will in good faith, review and negotiate the terms of the change and any amendment required to this Franchise Ordinance. Based on this review, and upon adoption of such a change or new requirement through a mutually acceptable Franchise Ordinance Amendment, the change will become effective.

2.9 Sale or Transfer of Ownership Franchise.

(a) Charter shall not sell, transfer, lease, assign, sublet or dispose of, in whole or in part, this Franchise Ordinance or Cable System or any of the rights or privileges granted by this Franchise Ordinance, without the prior consent of the City upon notification from Charter to City using the forms and procedures applicable pursuant to the Cable Act, rules of the FCC and this Franchise Ordinance, which consent shall not be unreasonably denied or delayed and may be denied only upon a good faith finding by the City that the proposed transferee lacks the legal, technical, or financial qualifications to consummate the transaction and operate the Cable System so as to perform its obligations under this Franchise Ordinance. This provision shall not apply to sales of property or equipment in the normal course of business. Consent from the City shall not be required for a transfer in trust, mortgage, or other instrument of hypothecation, in whole or in part, to secure an indebtedness, or for a pro forma transfer to a corporation, partnership or other entity controlling, controlled by or under common control with Charter.

2.10 Change in Control. Charter shall promptly notify the City through the City Council of any proposed change in actual working control of the Cable System. Such change in control shall be subject to Section 2.9, above.

2.11 Right to Purchase the System.

(a) The Parties will comply with 47 U.S.C 547.

(b) In the event a franchise renewal is denied or terminated for any reason, the City must allow Charter to abandon the facilities, or effect transfer to another purchaser consistent with the franchise transfer provisions of this Franchise Ordinance.

2.12 Continuity of Service Mandatory. It shall be the right of all subscribers to receive all available Cable Services insofar as their financial and other obligations to Charter are honored. In the event that Charter elects to overbuild, rebuild, modify, or sell the System, Charter shall make its best effort to ensure that all subscribers receive continuous uninterrupted service, regardless of the circumstance. In the event of termination, purchase, lease-purchase, condemnation, acquisition, taking over or holding of plant and equipment, sale, lease, or other transfer to any other Person, including any other grantee of a cable communications franchise, Charter shall cooperate fully to operate the Cable System in accordance with the terms and conditions of this Franchise Ordinance for a temporary period sufficient in length to maintain continuity of service to all subscribers.

2.13 Other Codes or Ordinances. Nothing in this Franchise Ordinance shall be deemed to waive the requirements of the other lawful codes and ordinances of the City regarding permits, fees to be paid or manner of construction, to the extent that the provisions of such codes and ordinances do not have the effect of limiting the benefits or expanding the obligations of Charter that are granted by this Franchise Ordinance. This Franchise Ordinance is a contract and except as to those changes which are the result of the City's lawful exercise of its general police power, the City may not take any unilateral action which materially changes the explicit mutual promises in this contract or conflict with Applicable Law. This Franchise Ordinance sets forth the entire agreement between the parties respecting the subject matter thereof. Any changes to this Franchise Ordinance must be made in writing signed by Charter and the City. In the event of any conflict between this Franchise Ordinance and any City ordinance or regulation, this Franchise Ordinance will prevail.

SECTION 3. OPERATION IN STREETS AND RIGHTS-OF-WAY.

3.1 Use of Streets. Charter may, subject to the terms of this Franchise Ordinance, erect, install, construct, repair, replace, reconstruct and retain in, on, over, under, upon, across and along the Streets within the City such lines, cables, conductors, ducts, conduits, vaults, utility access covers, amplifiers, appliances, pedestals, poles, attachments and other property and equipment as are necessary and appurtenant to the operation of a Cable Communications System within the City.

3.2 Construction or Alteration. Charter shall in all cases comply with all lawful City ordinances and regulations regarding the acquisition of permits and such other items as may be reasonably required in order to construct, alter or maintain the Cable System so long as they are non-discriminatory and competitively neutral. Charter shall, upon request, provide information to the City regarding its progress in altering the Cable System.

3.3 Compliance with Codes. All construction practices and installation of equipment shall be done in accordance with all applicable sections of the National Electric Safety Code and the National Electric Code.

3.4 Construction Standards. All of Charter's plant and equipment, including, but not limited to, the antenna site, head-end and distribution system, towers, house connections, structures, poles, wire, cable, coaxial cable, fixtures and appurtenances shall be installed, located, erected, constructed, reconstructed, replaced, removed, repaired, maintained and operated in accordance with good engineering practices and performed by experienced maintenance and construction personnel.

3.5 Safety. Charter shall, at all time, employ ordinary care and shall use commonly accepted methods and devices preventing failures and accidents which are likely to cause damage.

3.6 Non-Interference. Charter shall exert its best efforts to construct and maintain a Cable Communications System so as not to interfere with other use of Streets. Charter shall, where

possible in the case of above ground lines, make use of existing poles and other facilities available to Charter. Charter shall individually notify all residents whose property will be affected by proposed construction prior to commencement of that work where and when this is reasonably possible.

3.7 Use of and Erection of Poles. Charter shall have the right to utilize existing poles, conduits and other facilities whenever possible, and shall not construct or install any new, different, or additional poles, conduits, or other facilities on public property without obtaining all legally required permits of the City.

3.8 Consistency with Designated Use. Notwithstanding the above grant to use Streets, no Street shall be used by Charter if the City determines, in a non-discriminatory and competitively neutral manner, that such use is inconsistent with the terms, conditions or provisions by which such Street was created or dedicated, or presently used under State and local laws.

3.9 Undergrounding. The facilities of Charter shall be installed underground in those service areas where existing telephone and electric services are both underground at the time of system construction. In areas where either telephone or electric utility facilities are installed aerially at the time of system construction, Charter may install its facilities aerially with the understanding that at such time as the existing aerial facilities are required to be placed underground by the City, Charter shall likewise place its facilities underground. In the event that any telephone or electric utilities are reimbursed by the City or any agency thereof for the placement of cable underground or the movement of cable, Charter shall be reimbursed upon the same terms and conditions as any telephone, electric or other utilities unless City funding of such costs have been furnished to the City from an outside source directing the purpose and use of such funding, which cannot be used to reimburse Charter through no fault or neglect of the City.

3.10 Open or Joint Trenching. In cases of new construction or property development where utilities are to be placed underground, the City agrees to require as a condition of issuing a permit for open trenching to any developer or property owner that such developer or property owner give Charter at least thirty (30) days prior notice of such construction or development, and

of the particular dates on which open trenching will be available for Charter's installation of conduit, pedestals and/or vaults, and laterals to be provided at Charter 's expense. Charter shall also provide specifications as needed for trenching. Costs of trenching and easements required to bring service to the development shall be borne by the developer or property owner; except that if Charter fails to install its conduit, pedestals and/or vaults, and laterals within five (5) working days of the date the trenches are available, as designated in the notice given by the developer or property owner, then should the trenches be closed after the five (5) day period, the cost of new trenching is to be borne by Charter.

3.11 Restoration. In case of disturbance by Charter of any Street, public way, paved area or public improvement, Charter shall, at its own cost and expense and in accordance with the requirements of local law, restore such Street, public way, paved area or public improvement to substantially the same condition as existed before the work involving such disturbance took place. Standards and conditions acceptable to the City shall be equally and uniformly applied to Charter as to any other Person in the road rights-of-way and consistent with all applicable City codes as they may apply to the City's Police Power.

With respect to Street restoration, Charter shall, at all times, employ ordinary care and use commonly accepted methods and devices for preventing failures and accidents which are likely to cause damage, injuries, or nuisances to the public, which may include but not be limited to placing a temporary asphalt patch, installing a trench plate or making other temporary repairs until the Street is restored. In the event that Charter, its contractors, or third parties should fail to restore any City road right-of-way consistent with City codes and ordinances, City may, after thirty (30) days' written notice, or such longer time provided by the City in the event weather or other events beyond Charter's control prevent such restoration, make such repairs or restorations as are necessary to return the City road rights-of-way to their pre-work condition, except if in the opinion of the City, Charter's deficient restoration causes an emergency situation resulting in an immediate hazard to public safety, health, or property, the City may repair the deficiency without prior notice to Charter. Charter shall be responsible for reimbursing the City for any and all reasonable costs and expenses incurred by the City to correct any deficiency in Charter's restoration of the Street, whether with notice as set out above or on an emergency basis. Upon presentation of an itemized bill for repairs or restorations, including the costs of labor and equipment, and an explanation of

the basis for the City's determination that emergency restoration action was required to remove an immediate hazard to public safety, health or property, Charter shall pay the bill within sixty (60) days.

3.12 Access Through Private Property. Charter, with twenty-four (24) hour notice to the property owner, shall have the authority to trim trees upon and overhanging Streets, alleys, sidewalks, and public ways so as to prevent the branches of such trees from coming into contact with the wires and cables of Charter.

3.13 Relocation.

(a) Charter shall, upon receipt of reasonable advance written notice, to be not less than ten (10) business days, protect, support, temporarily disconnect, relocate, or remove any of its property when lawfully required by the City pursuant to its police powers. Charter shall be responsible for any costs associated with these obligations to the same extent all other users of the City rights-of-way are responsible for the costs related to the relocation of their facilities.

(b) Charter shall, on the request of any Person holding a lawful permit issued by the City, protect, support, raise, lower, temporarily disconnect, relocate in or remove from the Street as necessary any of its property, provided that the expense of such is paid by any such Person benefiting from the relocation and Charter is give reasonable advance written notice to prepare for such changes. Charter may require such payment in advance. For purposes of this subsection, "reasonable advance written notice" shall be no less than ten (10) business days in the event of a temporary relocation and no less than one hundred twenty (120) days for a permanent relocation.

(c) If funds are available to any Person using the Streets for the purpose of defraying the cost of any of the foregoing, the City shall reimburse Charter in the same manner unless City funding of such costs have been furnished to the City from an outside source directing the purpose and use of such funding, which cannot be used to reimburse Charter through no fault or neglect of the City.

(d) Whenever, in case of fire or other disaster, it becomes necessary in the judgment of the City to remove any of Charter's facilities, no charge shall be made by Charter against the City for restoration and repair, unless such acts amount to gross negligence by the City.

SECTION 4. SYSTEM DESIGN AND CAPACITY.

4.1 Availability of Signals and Equipment. Charter shall, commencing with the effective date of the Franchise Ordinance, comply with FCC requirements regarding provision of parental control technology to subscribers and at a reasonable charge.

4.2 Free Drops and Cable Service. Charter may provide, on a voluntary basis, without charge one (1) cable drop, activated for Basic Cable Service to all elementary and secondary public schools and public libraries within the City and located within one hundred twenty-five (125) feet of Charter's plant. Additionally, Charter shall provide, without charge, one (1) activated outlet of Basic Cable Service at each of the following addresses, so that City may view and monitor PEG Access Programming: City Hall at 129 North Second Street, Yakima, WA 98901; Y-PAC at 124 S. 2nd Street, Yakima, WA 98901; and the Educational Access facility at 106 S. 6th Ave, Yakima, WA, 98902. The locations identified above shall be within one hundred and twenty-five (125) feet of Charter's feeder cable consistent with Section 10.1(b). The Cable Service provided pursuant to this Section shall not be used for commercial purposes and such outlets shall not be located in areas open to the public. The City shall take reasonable precautions to prevent any inappropriate use of or loss or damage to Charter's Cable System. The City shall not install other outlets or make any other alterations to the Cable System installed by Charter.

4.3 Right of Inspection of Construction. The City shall have the right to inspect all construction or installation work performed in the public Streets within the Franchise Area, and to make such tests as it shall find necessary to ensure compliance with the terms of this Franchise Ordinance and other pertinent provisions of law, operating under its lawful police powers.

4.4 Emergency Alert Capability. Charter agrees at all times to comply with federal and state EAS rules as required in 47 C.F.R. Part 11 or as amended. If Charter provides an Emergency Alert System, then the City shall permit only appropriately trained and authorized Persons to operate the EAS equipment and shall take reasonable precautions to prevent any use of Charter's Cable System in any manner that results in inappropriate use thereof, or any loss or damage to the Cable System. The City shall hold Charter, its employees, officers and assigns

harmless from any claims or costs arising out of use of the EAS, including, but not limited to, reasonable attorneys' fees and costs.

4.5 Standby Power. Charter shall provide standby power at the Cable Communications System head-end and at all hubs. Charter shall maintain standby power system supplies, rated at least at two (2) hours duration, throughout the trunk and distribution networks. In addition, Charter shall have in place throughout the Franchise term a plan, and all resources necessary for implementation of the plan, for dealing with outages of more than two (2) hours. This outage plan and evidence of requisite implementation resources shall be presented to the City upon request with reasonable notice.

4.6 Technical Standards. The Federal Communications Commission (FCC) Rules and Regulations, Part 76, Subpart K (Technical Standards), as now or hereafter constituted or amended, shall apply. The City may establish reasonable technical standards for the performance of the Cable System if the FCC permits it to do so.

4.7 Performance Testing. Charter shall perform all System tests at the intervals required by the FCC, and all other tests reasonably necessary to determine compliance with technical standards required by this Franchise Ordinance.

Written records of all System test results performed by or for Charter shall be maintained for three (3) years, and shall be available for City inspection upon request.

The City may observe Charter perform tests of the system for which Charter shall give its cooperation. If more than one (1) of the locations tested fail to meet the performance standards, Charter shall be required to indicate what corrective measures have been taken, and the entire test shall be repeated at the locations which failed, and at least eight (8) additional randomly chosen locations. If a second test results in failure of one (1) or more sites, then the City may seek remedies in accordance with Sections 7.9 and 7.10 unless the circumstances of the failure are caused by conditions which are beyond Charter's control, as determined, acknowledged and verified by the City.

SECTION 5. PROGRAMMING AND SERVICES.

5.1 Categories of Programming Service. Charter shall carry broad categories of video programming, including local news, sports, and entertainment.

5.2 Changes in Video Programming Services. Changes in video programming shall be subject to federal law. Charter shall provide written notice to the City and to subscribers of any proposed changes to programming services in compliance with 47 CFR Sec. 76.1603.

5.3 Obscenity. Subject to applicable federal law, Charter shall not knowingly transmit over the Cable System programming which is obscene or otherwise unprotected by the Constitution of the United States, provided, however, Charter shall in no way be responsible for programming over which it has no editorial control, including Public, Educational and Governmental access programming.

SECTION 6. PUBLIC, EDUCATIONAL AND GOVERNMENTAL ACCESS.

6.1 PEG Access Channels. As of the Effective date of this Franchise Ordinance, Charter shall continue to make available four (4) standard video Channels on the System for Public, Educational and/or Governmental (PEG) access purposes.

(a) All PEG access channels may be delivered by City or its designee to Charter in standard digital format. Charter is only obligated to provide the PEG signal to its Subscribers in the quality in which it receives it from the City.

(b) The City or its designee will utilize PEG Channels authorized by this Franchise for locally scheduled original programming not less than 70% of the time, seven (7) days a week, for any consecutive eight (8) hour block during the hours of 6:00 am to 11:00 pm, as measured on an annual basis. For the purposes of this Section, “locally scheduled original programming” means programming produced or provided by any local resident, the City, its designee, any public or private entity that provides services to residents of the City, any transmission of a meeting or proceeding of any local, state, or federal governmental entity, any transmission of educational or instructional programming provided by an accredited educational institution, and includes the first showing of a program and three (3) repeat showings. The City

or its designee will keep records of the amount of locally scheduled original programming on PEG Channels authorized by this Franchise and will provide a report of same to Charter by request, but not more often than once each year. If Charter believes the PEG Channel utilization criteria described in this Section is not being met on one (1) or more PEG Channels authorized by this Franchise, Charter may provide the City with ninety (90) days written notice of its intent to utilize the PEG Channel(s), at its own discretion, that it believes is (are) not meeting said criteria. If the City is not able to demonstrate to Charter within ninety (90) days of receiving said notice that the PEG Channel utilization criteria described in this Section is being met on the PEG Channel(s) identified in the notice, Charter may, at its own discretion, utilize the PEG Channel(s) identified in the notice. If the City can demonstrate at any point within the term of this Franchise that the PEG Channel utilization criteria described in this Section can be met on the PEG Channel(s) identified in the notice described in this Section, Charter, upon ninety (90) days written notice from the City, will reallocate said channel(s) for utilization by the City or its designee for locally scheduled original programming.

6.2 Management and Control of PEG Access Programming. The City, except as otherwise designated by the City, shall control and manage the use of any and all PEG Access Programming. The City and/or its designee(s) may formulate rules for the operation of the Public, Educational and Government Access Programming, consistent with this Franchise and Applicable Law. Such rules shall not be designed to control the content of PEG access programming.

(a) Subject to Section 6.1, Charter shall not cause any programming to override PEG programming on any PEG Access Channel, except by oral or written permission from the City, with the exception of Emergency Alert System signals.

(b) The City shall not allow commercial use or lease of PEG Access Channels or any use whatsoever that may generate revenue for the City or any other Person or compete with any services provided by Charter without the expressed written permission of Charter.

6.3 Location of PEG Channels. All PEG Channels required under this Franchise shall be carried by Charter on the lowest tier in a manner consistent with Applicable Law.

(a) Charter shall make every reasonable effort to coordinate the cablecasting of Public, Educational and/or Governmental access programming upon the Cable Television System

at the same time and upon the same Channel designations as such programming is currently cablecast within the community.

(b) Charter shall not encrypt the PEG Channels any differently than other commercial and PBS Channels available on the Cable System.

(c) Charter shall provide the City with a minimum of sixty (60) days notice, and use its best efforts to provide ninety (90) days notice, prior to the time Public, Educational, and/or Governmental Access Channel numbers are changed. Charter shall consult with City prior to making a final determination in its sole discretion regarding any changes in PEG Access Channel numbers. Any new Channel numbers for the Public, Educational and/or Governmental Access Channels provided pursuant to this Franchise shall be in full compliance with FCC signal quality and proof of performance standards.

6.4 Digital Channels After Digital Transition. At such time as Charter no longer offers Basic Service in an analog format, Charter shall continue to provide activated downstream Channels for PEG access use in a standard digital format. Charter shall carry standard components of the standard definition access Channel signals provided by the City and/or its designee(s) including, but not limited to, closed captioning and stereo audio. The City and/or its designee(s) shall be responsible for providing the access Channel signal in a standard definition format from the demarcation point at the City to Charter's headend. With respect to signal quality, Charter shall not be required to carry a PEG Access Channel in a higher quality format than that of the Channel signal delivered to Charter, but Charter shall distribute the access Channel signal without degradation.

6.5 Interconnection of PEG Access Channels. Upon request by the City, and based on a demonstrated need, Charter shall work in good faith with the City to interconnect with other cable operators at a designated meet point and not at Charter's headend or hubs in order to hand off PEG Access Channel signals for the purposes of sharing PEG programming throughout the Franchise Area. Such interconnection shall preserve the technical quality of the PEG Access Channels without degradation to Charter's demarcation at the designated meet point of the interconnect.

The City shall not require such interconnection without the prior consent of Charter, which shall not be unreasonably withheld. Charter shall not be obligated to interconnect with any cable operator providing competitive Cable Services within the Franchise Area. Any incremental, direct capital costs incurred by Charter to interconnect shall be paid by the City.

6.6 Technical Quality of PEG Access Channels.

(a) Charter shall maintain, without charge to the City, its system in accordance with FCC technical standards so that PEG programming signals and interconnections of PEG programming signals are at the same level of technical quality and reliability as other commercial and broadcast programming signals carried by Charter, so long as the programming signal comes to Charter at the level of quality. There shall be no significant deterioration in signal from the point of origination upstream to the point of reception downstream.

(b) Within twenty-four (24) hours of a request from the City to Charter identifying a technical problem and requesting assistance, Charter will make every effort to provide technical assistance or diagnostic services to determine whether or not a problem with a PEG signal is the result of matters for which Charter is responsible, and, if so, Charter will make every effort to take prompt corrective action. If the problem persists and there is a dispute about the cause, then the parties shall meet with engineering representation from Charter and the City in order to determine the course of action to remedy the problem.

6.7 Change in Technology. In the event Charter makes any change in the Cable System and related equipment and facilities or in Charter's signal delivery technology which directly or indirectly substantially affects the signal quality or transmission of PEG programming, Charter shall notify the City in writing, at least thirty (30) days in advance.

6.8 Support for PEG Access Channels. To help meet the City's PEG access needs over the term of the Franchise, Charter shall provide the following:

(a) Charter shall pay to the City as capital support for access equipment, replacement and facilities fifty cents (50¢) per Subscriber per month, during the ten (10) year term payable quarterly, within forty-five (45) days of the close of each calendar quarter and transmitted by electronic funds transfer to a bank account designated by the City.

(b) The City will establish an account in special revenue for any PEG access capital contributions from Charter which shall be used for PEG access capital funding.

(c) Should Charter continue to provide Cable Service after the scheduled expiration of the Franchise, until and unless this Franchise is superseded by a renewed Franchise in accordance with Applicable Law, Charter shall continue to make quarterly capital support payments for, and in support of PEG access equipment, replacement and facilities as specified hereinabove.

(d) The capital funds used for PEG programming required by the Franchise shall be used in accordance with 47 U.S.C. § 542(g).

(e) The City recognizes that the capital support for PEG programming required above represent obligations, created under the terms of the Franchise. To the extent provided for in federal law, such costs and fees paid by Charter may be passed through to subscribers and itemized on subscriber bills.

6.9 Annual Report to Grantee. Upon request, the City agrees to provide Charter with a written report detailing annual PEG capital expenditures, which report shall be due to Charter within ninety (90) days after request. (Sample report is attached as Exhibit C.)

SECTION 7. REGULATORY PROVISIONS.

7.1 Intent. The City shall have the right to administer and regulate activities under the Franchise up to the full extent permitted by Applicable Law.

7.2 Delegation of Authority to Regulate. The City reserves the right to delegate its regulatory authority wholly or in part to the federal government and/or to agents of the City, including, but not limited to, an agency which may be formed to regulate several City franchises. However, the City recognizes that the City, not its delegates, are responsible for abiding by the conditions set forth in this agreement and such delegation does not affect Charter's rights under law or this agreement.

7.3 Areas of Administrative Authority. In addition to reserving its right to exercise all regulatory authority concerning the Franchise, the City shall have the right to exercise administrative authority in areas including but not limited to the following:

(a) Administering and enforcing the provisions of this Franchise Ordinance pursuant to Section 2.13, including the adoption of administrative rules and regulations to carry out this responsibility.

(b) Coordination of the operation of Public, Governmental and Educational Channels.

7.4 Right to Regulate. The City expressly reserves the right to regulate Charter's rates and charges in accordance with Applicable Law as such law may provide during the term of the Franchise.

7.5 Notice of Change in Rates and Charges. Throughout the term of the Franchise, Charter shall give the City and all subscribers within the City at least thirty (30) days notice of any intended modifications or additions to subscriber rates or charges consistent with 47 CFR Sec. 76.1603. Nothing in this Subsection shall be construed to prohibit the reduction or waiving of rates or charges in conjunction with promotional campaigns for the purpose of attracting subscribers or users.

7.6 Rate Discrimination Prohibited. Within any category of subscribers, Charter shall not discriminate among subscribers with regard to rates and charges made for any service based on considerations of race, color, creed, sex, marital or economic status, national origin, sexual preference, or neighborhood of residence, except as otherwise provided herein; and for purposes of setting rates and charges, no categorization of subscribers shall be made by Charter on the basis of those considerations. Nevertheless, Charter shall be permitted to establish discounted rates and charges for providing Cable Service to low-income handicapped or low-income elderly subscribers.

7.7 Privacy. Charter shall fully comply with the privacy rights of Subscribers as contained in Cable Act Section 631 (47 U.S.C. § 551) and any other applicable federal or State laws.

7.8 Remedies for Franchise Violations. The City, subject to applicable provisions of this Franchise Ordinance and as described in this Section 7, has the right to assert the following remedies in the event Charter violates any provision of this Franchise Ordinance:

- (a) Commence an action at law for monetary damages or seek other equitable relief.
- (b) In the case of a substantial default of a material provision of this Franchise Ordinance, declare the Franchise to be revoked, consistent with the procedures in Section 7.11.
- (c) Require Charter to correct or otherwise remedy the violation prior to considering the approval of any proposed rate increase if rate regulation is authorized by law and is in effect.
- (d) Seek specific performance of any provision, which reasonably lends itself to such remedy, as an alternative to damages.

In determining which remedy or remedies for Charter's violation are appropriate, the City shall take into consideration the nature and extent of the violation, the remedy needed to prevent such violations in the future, whether Charter has a history of previous violations of the same or similar kind, and such other considerations as are appropriate under the circumstances.

7.9 Procedure for Remedying Franchise Violations.

- (a) In the event that the City believes that Charter has not complied with the terms of this Franchise Ordinance, the City shall notify Charter in writing of the exact nature of the alleged noncompliance.
- (b) Charter shall have thirty (30) days from the receipt of notice described above to (a) respond to the City contesting the assertion of noncompliance, or (b) to cure such default or, in the event that by the nature of the default such default cannot be cured within the thirty (30) day period, initiate reasonable steps to remedy such default and notify the City of the steps being taken and the projected date they will be completed.
- (c) In the event that Charter fails to respond to the notice described herein or cure the default pursuant to the procedures set forth above, the City shall schedule a public hearing to investigate the default. The City shall give Charter twenty (20) calendar days notice of the time

and place of the hearing and provide Charter with an opportunity to be heard. Charter shall have the right to present evidence and to question witnesses. The City shall determine if Charter has committed a violation and shall make written findings of fact relative to its determination. If a violation is found, Charter may petition for *de novo* reconsideration before any competent tribunal having jurisdiction over such matters.

7.10 Minor Violations. Furthermore, the parties hereby agree that it is not the City's intention to subject Charter to penalties, fine, forfeitures or revocation of the Franchise Ordinance for violations of the Franchise Ordinance where the violation was a good faith error that resulted in no or minimal negative impact on the Subscribers within the City, or where strict performance would result in practical difficulties and hardship to Charter which outweighs the benefit to be derived by the City and/or Subscribers.

7.11 Revocation. In addition to any rights set out elsewhere in this document, the City reserves the right to declare a forfeiture or otherwise revoke the Franchise, and all rights and privileges pertaining thereto, in the event that:

(a) Charter is in substantial violation of any material provision of the Franchise and fails to correct the violation after written notice of the violation and proposed forfeiture and a reasonable opportunity thereafter to correct the violation as noted in Section 7.9, Procedure for Remedying Franchise Violations.

(b) Charter is found by a federal or state court to have engaged in any actual or attempted fraud or deceit upon the City, Persons or subscribers.

(c) Charter fails to obtain and maintain any material permit required by any federal or state regulatory body, relating to the construction, maintenance and operation of the System.

Upon the occurrence of one (1) of the events set out above, following sixty (60) days written notice to Charter of the occurrence and the proposed forfeiture and an opportunity for Charter to be heard, the City may by Ordinance or other appropriate document, declare a forfeiture. In a hearing of Charter, Charter shall be afforded due process rights as if the hearing were a contested case hearing subject to Washington law, including the right to cross-examine witnesses and to require that all testimony be on the record. Findings from the hearing shall be written, and

shall stipulate the reasons for the City's decision. If a forfeiture is lawfully declared, all rights of Charter under this Franchise Ordinance shall immediately be divested without a further act upon the part of the City, subject to a *de novo* appeal to a court of law.

7.12 Right to Require Removal of Property. Upon the termination of the Franchise, as provided for by this Franchise Ordinance, the City shall have the right to require Charter to remove, at Charter's own expense, all or any part of the Cable Communications System from all Streets and public ways within the Franchise Area, where the abandoned facilities interfere with reasonable uses of the rights-of-way. If Charter fails to do so, the City may perform the work and collect the cost thereof from Charter. The actual cost thereof, including direct and indirect administrative costs, shall be a lien upon all plant and property of Charter effective upon filing of the lien with the Yakima County Auditor. This section shall not apply in cases where Charter opts to sell or transfer the System pursuant to Section 2.9.

Any order by the City Council to remove cable or conduit shall be mailed to Charter not later than thirty (30) calendar days following the date of termination of the Franchise. Charter shall file written notice with the Clerk of the City Council not later than thirty (30) calendar days following receipt of the Council's order of its intention to remove cable and a schedule for removal by location. The schedule and timing of removal shall be subject to approval and regulation by the City. Removal shall be completed not later than twelve (12) months following the date of termination of the Franchise.

Charter shall not remove any underground cable or conduit which requires trenching or other opening of the Streets along the extension of cable to be removed, except as hereinafter provided. Charter may voluntarily remove any underground cable from the Streets which has been installed in such a manner that it can be removed without trenching or other opening of the Streets along the extension of cable to be removed. Subject to Applicable Law, Charter shall remove, at its sole cost and expense, any underground cable or conduit by trenching or opening of the Streets along the extension thereof or otherwise which is ordered to be removed by the City Council based upon a determination, in the sole discretion of said Council, that removal is required in order to eliminate or prevent a hazardous condition. Underground cable and conduit in the Streets which is not removed shall be deemed abandoned.

7.13 Enforcement. In the event the City, after such hearing, determines that Charter is in default of any provision of this Franchise Ordinance, the City may impose any of the remedies set out in Section 7.8 herein.

7.14 Failure to Enforce. Charter shall not be relieved of any of its obligations to comply promptly with any provision of this Franchise Ordinance by reason of any failure of the City to enforce prompt compliance, and the City's failure to enforce shall not constitute a waiver of rights or acquiescence in Charter's conduct.

7.15 Force Majeure. Charter shall not be held in default or noncompliance with the provisions of the Franchise, nor suffer any enforcement or penalty relating thereto, where such non-compliance or alleged defaults are caused by circumstances reasonably beyond the ability of Charter to anticipate and control. This provision includes, but is not limited to, severe or unusual weather conditions, fire, flood, or other acts of God, strikes, work delays caused by failure of utility providers to service, maintain or monitor their utility poles to which Charter's Cable System is attached, as well as unavailability of materials and/or qualified labor to perform the work necessary.

7.16 Alternative Remedies. No provision of this Franchise Ordinance, including remedies identified in this Franchise Ordinance, shall be deemed to bar the right of either party to seek or obtain judicial relief from a violation of any provision of the Franchise Ordinance or any rule, regulation, requirement or directive promulgated thereunder.

7.17 Compliance with the Laws. Charter shall comply with all federal and state laws and regulations, including regulations of any administrative agency thereof, as well as all general ordinances, resolutions, rules and regulations of the City heretofore or hereafter adopted or established during the entire term of the Franchise as long as they are lawful expressions of the City's police powers and subject to Section 2.13. Nothing in this Franchise Ordinance shall limit or expand the City's right of eminent domain under state law. Nothing in this Franchise Ordinance shall be deemed to waive the requirements of any lawful code or resolution of the City regarding permits, fees to be paid or manner of construction as long as they are generally applicable to all

users of the City's rights-of-way in a non-discriminatory and competitively neutral manner and subject to federal and State law.

SECTION 8. REPORTING REQUIREMENTS.

8.1 Annual Report. Upon request, but no more than once per year, Charter shall present a written report to the City which shall include:

(a) A summary of the previous year's activities for the Franchise Area, including, but not limited to, the total number of subscribers for each category of service, the number of homes passed, other System facilities and equipment constructed, any services added or dropped, and any technological changes occurring in the System.

(b) A summary of complaints received, with a summary of how the complaints have been dealt with.

(c) If City does not request the reports described in this Section, Charter shall maintain the information necessary to produce such reports for inspection by City, upon reasonable notice, for a period of not less than twenty-four (24) months.

8.2 Monitoring and Compliance Reports. Upon request, but no more than once a year, Charter shall provide a written report of any and all FCC technical performance tests for the residential network required in FCC Rules and Regulations as now or hereinafter constituted. In addition, and based on request from City, Charter shall provide reports of the semi-annual test and compliance procedures established by this Franchise Ordinance, no later than thirty (30) days after the completion of each series of tests.

8.3 Public Disclosure. The City agrees to treat any information disclosed by Charter as confidential to the maximum extent permissible under RCW Chapter 42.56, Public Records Act, and only to disclose it to employees, representatives, and agents thereof that have a need to know, or in order to enforce the provisions hereof. If the City believes it must release any such confidential books or records in the course of enforcing this Franchise, and based on the laws of the State of Washington, or for any other reason, it shall advise Charter in advance so that Charter

may take appropriate steps to protect its interests. Charter shall not be required to provide Subscriber information in violation of Section 631 of the Cable Act.

8.4 Communications with Regulatory Agencies. Upon request, a copy of responses or any other communications from the FCC or any other federal or state regulatory commission or agency to Charter or any affiliate pertaining to the Cable System in City shall be provided to the City. In addition, upon request Charter and its affiliates shall provide a copy to the City of any communication to or from any judicial or regulatory agency regarding any alleged or actual violation of a law, regulation or other requirement relating to the Cable System in the City.

SECTION 9. CUSTOMER SERVICE POLICIES.

9.1 Customer Service Standards. Charter shall comply with the customer service standards set forth in 47 C.F.R. § 76.309 of the Federal Communications Commission's Rules and Regulations (FCC customer service standards are attached hereto as Exhibit A), as such may be amended from time to time and as described in Section 9 of this Franchise Ordinance. In addition, the City reserves the right to establish additional specific customer service and consumer protection standards, by separate Ordinance, as allowed by federal law or FCC regulation.

9.2 Customer Service Agreement and Manual. Charter shall provide to subscribers a welcome kit for use in establishing subscriber service. A copy of the welcome kit shall be provided to each subscriber at the time of initial and any re-connection hookup, and at any time the kit is requested by the subscriber. These requirements may be satisfied by posting these documents on Charter's website. Charter shall provide said welcome kit to a subscriber(s) in written form if requested to do so by a subscriber(s).

9.3 Subscriber Billings. Charter shall cause to have printed clearly on each cable bill the telephone number and address of the office designated by the City, for handling unresolved complaints about Cable Service.

SECTION 10. LINE EXTENSION POLICY.

10.1 Standard Installation. Charter shall make service available, within sixty (60) days and at standard installation rates and standard service rates, for every potential subscriber:

- (a) Whose dwelling is one (1) of a minimum of thirty (30) dwelling units per linear cable mile from the nearest existing cable plant; and
- (b) Where connection to the potential subscriber's dwelling from cable plant constructed as required under this Franchise Ordinance requires no more than a one hundred and twenty-five (125) foot aerial drop cable.

10.2 Isolated Areas. Potential subscribers within the Franchise Area requesting service but requiring service extended beyond the standard installation and service provisions under Section 10.1 shall be provided the first one hundred and twenty-five (125) feet of aerial cable at the prevailing installation rate. Cable and service required for a non-standard installation will be provided under the following circumstances:

- (a) Where the potential subscriber, or any group including the potential subscriber, pays in advance the direct and incremental cost of extending the line and making the installation; or
- (b) Where the potential subscriber and Charter reach an independent agreement for the provision of service, so long as the agreement does not violate any other requirements and standards of this Franchise Ordinance.

10.3 Annexation. In the event the City modifies the Franchise Area by annexation or any other means, the City shall provide at least sixty (60) day prior notice to Charter. The City shall also notify Charter of all new Street address assignments or changes within the Franchise Area. Said notice shall be in writing to the address set forth below by U.S. certified mail, return receipt requested. The City shall provide address files and maps in sufficient detail and in an acceptable digital format. Charter shall begin to collect Franchise Fees from Subscribers in any annexed area within one hundred and twenty (120) days of such notice and address information as described above. Charter shall not be obligated to collect and remit Franchise Fees until such notice and information has been received by Charter.

All notices provided under this subsection shall be delivered in accordance with Section 12.7 of this Franchise Ordinance.

Charter shall provide the City written notice of address changes affecting this subsection pursuant to Section 12.7.

SECTION 11. COMPENSATION AND FINANCIAL PROVISIONS.

11.1 Franchise Fees. During the term of the Franchise, Charter shall pay to the City an amount equal to five percent (5%) of Charter's annual Gross Revenues as a Franchise Fee.

(a) Franchise Fees shall be calculated annually and transmitted quarterly by electronic funds transfer to such City of Yakima bank account as designated by the director of finance and budget, to be received not later than the forty-fifth (45th) of each quarter for the preceding calendar quarter. Within thirty (30) days after the payment, Charter shall file with the City a written statement which identifies in detail the sources and amounts of Gross Revenues earned by Charter during the quarter for which payment is made (Franchise Fee Payment Report is attached hereto as Exhibit B). No acceptance of any payment shall be construed as an accord that the amount paid is, in fact, the correct amount, nor shall such acceptance of payment be construed as a release of any claim which the City may have for further or additional sums payable under the provisions of this Section.

(b) If any Franchise payment or recomputed payment is not made on or before the dates specified herein, Charter shall pay an interest charge, computed from the last day of the fiscal year in which payment was due, at the annual rate of one percent (1%) over the prime interest rate.

(c) Throughout the term of the Franchise, including any extensions that may be granted, the City will dedicate all Franchise Fee revenue for allocation to expenditures directly related to costs associated with operation of the City's Master Control Center and/or the provision of Community Relations services, Communications services, and other public information services.

11.2 Inspection of Records. Charter shall permit any duly authorized representative of the City, upon receipt of advance written notice, to examine during normal business hours and

on a non-disruptive basis any and all records that are legally permissible for release and that are reasonably necessary to ensure Charter's compliance with the Franchise. Such notice shall specifically reference the subsection of the Franchise that is under review so that Charter may organize the necessary books and records for access by the City. Charter shall make any records requested by the City available for inspection at Charter's office closest in proximity to City, if possible. Charter shall not be required to maintain any books and records for Franchise compliance purposes longer than two (2) years, except for service complaints, which shall be kept for one (1) year. Charter shall not be required to provide Subscriber information in violation of Section 631 of the Cable Act. The City is a public agency and is subject to the Washington State Public Records Act, Chapter 42.56. RCW ("PRA"), as existing or hereafter amended. To the extent authorized by the PRA, the City agrees to treat as confidential any books, records or maps that constitute proprietary or confidential information to the extent Charter makes the City aware of such confidentiality. If the City believes it must release any such confidential books or records in the course of enforcing this Franchise, to comply with the PRA, or for any other reason, it shall advise Charter in advance so that Charter may take appropriate steps to protect its interests. Until otherwise ordered by a court or agency of competent jurisdiction, the City agrees that, to the extent permitted by State and Federal law, it shall deny access to any of Charter's books and records marked confidential, as set forth above, to any Person. The City, its agents, employees, representatives or any other Person who has access to records provided by Charter shall sign Charter's nondisclosure agreement prior to records review.

11.3 Insurance.

(a) **Coverages.** Charter shall maintain, throughout the term of this Franchise, liability insurance insuring Charter, its officers, employees and agents, with regard to claims and damages, in the minimum amounts as follows:

(1) **Commercial Liability Insurance.** Charter shall provide the City with a certificate of insurance as proof of commercial liability insurance with a minimum liability limit of Two Million Dollars (\$2,000,000) combined single limit bodily injury and property damage per occurrence and Two Million Dollars (\$2,000,000) in the aggregate. Said certificate of insurance shall clearly state who the provider is, the amount of coverage, the policy number and when the policy and provisions provided are in effect and that the insurer will endeavor to provide advance

written notice of cancellation except in the case of non-payment of premium. Notice of cancellation to the certificate holder may be made by any commercially reasonable means, including mail, electronic mail, or facsimile transmission to the contact name and email provided by the City. It is the responsibility of the City to provide Charter with up-to-date contact names and email addresses. Said insurance shall be in effect for the duration of this Franchise Ordinance. The policy shall name the City, its elected officials, officers, agents and employees as additional insureds. The insurance shall be with an insurance company authorized to conduct business in the State of Washington; provided that Charter may obtain the insurance required in this Section through any combination of self-insurance (through the utility insurance pool and provided that such self-insurance is in compliance with state regulations), primary and excess or umbrella liability insurance. If Charter uses any contractors and/or subcontractors to perform any of the work referenced in this Franchise, such contractors and/or subcontractors shall maintain the minimum limits of liability and comply with all insurance requirements in effect at the time such work is performed as established by applicable City law, rule or regulation.

(2) Business Automobile Liability Insurance. Charter shall provide the City with a certificate of insurance as proof of business automobile insurance with a minimum liability limit of Two Million Dollars (\$2,000,000) combined single limit bodily injury and property damage. Said certificate of insurance shall clearly state who the provider is, the amount of coverage, the policy number and when the policy and provisions provided are in effect and the insurer will endeavor to provide advance written notice of cancellation except in the case of non-payment of premium. Notice of cancellation to the certificate holder may be made by any commercially reasonable means, including mail, electronic mail, or facsimile transmission to the contact name and email address provided by the City. It is the responsibility of the City to provide Charter with up-to-date contact names and email addresses. Said insurance shall be in effect for the duration of this Franchise. The policy shall name the City, its elected officials, officers, agents and employees as additional insureds. The insurance shall be with an insurance company or companies authorized to conduct business in the State of Washington; provided that Charter may obtain the insurance required in this Section through any combination of self-insurance (through the utility insurance pool and provided that such self-insurance is in compliance with state regulations), primary and excess or umbrella liability insurance. If Charter uses any contractors and/or subcontractors to perform any of the work referenced in this Franchise, such contractors

and/or subcontractors shall maintain the minimum limits of liability and comply with all insurance requirements in effect at the time such work is performed as established by applicable City law, rule or regulation.

(3) **Umbrella Liability Insurance.** Charter shall maintain umbrella liability insurance coverage, in an occurrence form, over underlying commercial liability and automobile liability. Charter shall provide the City with a certificate of insurance as proof of umbrella coverage with a minimum liability limit of Five Million Dollars (\$5,000,000). The insurance shall be with an insurance company or companies authorized to conduct business in the State of Washington; provided that Charter may obtain the insurance required in this Section through any combination of self-insurance (through the utility insurance pool and provided that such self-insurance is in compliance with state regulations), primary and excess or umbrella liability insurance.

(4) **Professional Liability Insurance.** Charter shall provide the City with a certificate of insurance as evidence of Professional Liability Insurance with coverage of at least One Million Dollars (\$1,000,000.00) claims made and an annual aggregate limit of at least One Million Dollars (\$1,000,000.00). The certificate shall clearly state who the provider is, the amount of coverage, the policy number, and when the policy and provisions provided are in effect. The insurance shall be with an insurance company or companies authorized to conduct business in the State of Washington. If the policy is on a claims made basis, the retroactive date of the insurance policy shall be on or before the inception date of the Franchise. The insurance coverage shall remain in effect during the term of this Franchise and for a minimum of three (3) years following the termination of this Franchise.

Providing coverage in the amounts as set forth above shall not be construed to relieve Charter from liability in excess of those limits.

11.4 Waiver, Indemnity, No Estoppel, No Duty.

(a) Charter hereby waives all claims, direct or indirect, for loss or liability against the City arising out of Charter's franchised or permitted operations; provided, however, such indemnification shall not extend to that portion of any claims, liability, expense of any nature whatsoever including all costs and attorneys' fees caused by or arising directly or indirectly from

or out of the negligence or willful misconduct of the City, its agents, employees, officers, contractors, or subcontractors.

(b) Charter shall, at its sole expense, protect, defend, indemnify and hold harmless the City, its elected officials, and in their capacity as such, the officials, agents, officers and employees of the City from any and all claims, lawsuits, demands, actions, accidents, damages, losses, liens, liabilities, penalties, fines, judgments, awards, costs and expenses arising directly or indirectly from or out of, relating to or in any way connected with the performance or non-performance, by reason of any intentional or negligent act, occurrence or omission of Charter, whether singularly or jointly with others, its representatives, permittees, employees, contractors or subcontractors, whether or not such acts or omissions were authorized or contemplated by this Franchise or Applicable Law, arising from the construction, installation, maintenance, operation, alteration or modification of the Cable Communications System or arising from actual or alleged injury to persons or property, including the loss of use of property due to an occurrence, whether or not such property is physically damaged or destroyed, provided that the City shall give Charter written notice of its obligation to indemnify the City within ten (10) days of receipt of a claim or action pursuant to this Section. In the event any such claim arises, the City shall tender the defense thereof to Charter and Charter shall have the right to defend, settle or compromise any claims arising hereunder and the City shall cooperate fully herein. If the City determined in good faith that its interests cannot be represented by Charter, Charter shall be excused from any obligation to represent the City. Notwithstanding the foregoing, Charter shall not be obligated to indemnify the City for any damages, liability or claims resulting from the willful misconduct or negligence of the City or for the City's use of the Cable System, including any PEG Channels

(c) Whenever any judgment is recovered against the City or any other indemnitee for any such liability, costs, or expenses, such judgment shall be conclusive against Charter, not only as to the amount of such damage, but as to its liability, provided Charter has reasonable notice or actually knew, or should have known, of the pendency of such suit. Under such circumstances, Charter may also request the opportunity to defend or participate in the suit with legal counsel of its choice, at its expense, said request not to be unreasonably denied.

(d) No action, error or omission, or failure to act by the City, its agents, officers, officials or employees, in connection with administering its rights, duties or regulatory functions

related to this Franchise shall be asserted by Charter, directly, indirectly or by way of seeking indemnification or as an assertion that the City has waived or is estopped to assert any municipal right hereunder, against the City, its boards, departments, divisions, officers, officials or employees.

(e) It is not the intent of this Franchise to acknowledge, create, imply or expand any duty or liability of the City with respect to its role as a franchising authority, in the exercise of its police powers or for any other purpose. Any City duty nonetheless deemed created shall be a duty to the general public and not to any specific party, group or entity.

SECTION 12. MISCELLANEOUS PROVISIONS.

12.1 Voluntary Agreement. Charter shall agree that it enters into the Franchise voluntarily in order to secure and in consideration of the grant from the City of a ten (10) year Franchise.

12.2 Governing Law and Venue. The Franchise shall be governed by and construed in accordance with the laws of the State of Washington and Charter consents to jurisdiction and venue in the state and federal courts of the State of Washington. In any action or suit to enforce any right or remedy under the Franchise, the prevailing party shall be entitled to recover its costs, including without limitation reasonable attorneys' fees.

12.3 Separability. If any portion of this Franchise Ordinance shall be declared by a court of competent jurisdiction to be void or unenforceable, then the City and Charter shall negotiate in good faith to modify the Franchise and/or this Franchise Ordinance as may be necessary to meet the requirements of the law. However, such portion shall be deemed a separate, distinct and independent provision and such holding shall not affect the validity of the remaining portions of this Franchise Ordinance.

12.4 Consent. Wherever the consent or approval of either Charter or the City is specifically required in this Franchise Ordinance, such consent or approval shall not be unreasonably withheld or denied.

12.5 Ordinances Terminated. The cable television franchise as originally granted by Ordinance No. 93-115, shall be deemed terminated upon the Effective Date of this Franchise Ordinance, provided that any unpaid Franchise Fees and other outstanding liabilities and obligations of Charter to the City under such pre-existing franchise shall survive such termination.

12.6 No Third Party Beneficiaries. There shall be no third party beneficiaries of this Franchise Ordinance.

12.7 Written Notice. Unless otherwise provided by federal, State or Local law, all notices, reports or demands pursuant to this Franchise Ordinance shall be in writing and shall be deemed to be sufficiently given upon delivery to a person at the address set forth below, or by U.S. certified mail, return receipt requested or by nationally or internationally recognized courier service such as Federal Express. Charter shall provide thirty (30) days' written notice of any changes in rates, programming services or channel positions using any reasonable written means.

If to City: City of Yakima,
129 North Second Street
Yakima, WA 98901

With a Copy to: Attn: Communications & Public Affairs Director
129 North Second Street
Yakima, WA 98901

If to Charter: Attn: Director of Government Affairs
Charter Communications
222 NE Park Plaza Drive, #231
Vancouver, WA 98684

With a Copy to: Charter Communications
Attn: Vice President, Government Affairs
601 Massachusetts Ave. NW, Suite 400W
Washington, DC 20001

Such addresses may be changed by either party upon notice to the other party given as provided in this Section.

12.8 Franchise Ordinance Acceptance. Charter, within sixty (60) days after the date of adoption of the Franchise Ordinance by the City Council, shall execute and return to the City three (3) original Franchise Ordinances, in which Charter shall declare that it has carefully read the terms and conditions of this Franchise Ordinance and accepts all of the terms and conditions of this Franchise Ordinance and agrees to abide by the same. In accepting the Franchise, Charter acknowledges that it has relied upon its own investigation of all relevant facts, that it has had the assistance of counsel, that it was not induced to accept a Franchise, that this Franchise Ordinance represents the entire agreement between Charter and the City, and that Charter accepts all reasonable risks related to the interpretation of this Franchise Ordinance. The executed Franchise Ordinance shall be returned to the City together with proof of insurance as provided in Sections 11.3(4) (b) of this Franchise Ordinance. In the event Charter fails to accept this Franchise Ordinance as provided for herein, or fails to provide the required accompanying documents, the Franchise Ordinance shall be null and void.

12.9 Effective Date. This Franchise Ordinance shall be effective on thirty (30) days after its adoption and publication; PROVIDED, however, that if Charter does not accept this Franchise pursuant to Section 12.8 and comply with all conditions for such acceptance set forth herein within sixty (60) days after passage of this Franchise Ordinance, this Franchise Ordinance shall be null and void.

PASSED BY THE CITY COUNCIL, signed and approved this 20th day of February 2024.

Patricia Byers, Mayor

ATTEST:

Rosalinda Ibarra, City Clerk

Publication Date: February 24, 2024

Effective Date: March 25, 2024

Signature of Applicant:

Falcon Video Communications, L.P., I/k/a Charter Communications

Signature: _____

Name/Title: _____

Date: _____

EXHIBIT A.
CUSTOMER SERVICE STANDARDS

CODE OF FEDERAL REGULATIONS
TITLE 47 -- TELECOMMUNICATION
CHAPTER I -- FEDERAL COMMUNICATIONS COMMISSION
SUBCHAPTER C -- BROADCAST RADIO SERVICES
PART 76--CABLE TELEVISION SERVICE

§ 76.309 Customer Service Obligations

- (a) A cable franchise authority may enforce the customer service standards set forth in section (c) of this rule against cable operators. The franchise authority must provide affected cable operators ninety (90) days written notice of its intent to enforce the standards.
- (b) Nothing in this rule should be construed to prevent or prohibit:
 - (1) A franchising authority and a cable operator from agreeing to customer service requirements that exceed the standards set forth in section (c) of this rule;
 - (2) A franchising authority from enforcing, through the end of the franchise term, preexisting customer service requirements that exceed the standards set forth in section (c) of this rule and are contained in current franchise agreements;
 - (3) Any State or any franchising authority from enacting or enforcing any consumer protection law, to the extent not specifically preempted herein; or
 - (4) The establishment or enforcement of any State or municipal law or regulation concerning customer service that imposes customer service requirements that exceed, or address matters not addressed by, the standards set forth in section (c) of this section.
- (c) Effective July 1, 1993, a cable operator shall be subject to the following customer service standards:
 - (1) Cable System office hours and telephone availability.
 - (i) The cable operator will maintain a local, toll-free or collect call telephone access line which will be available to its subscribers twenty-four (24) hours a day, seven days a week.
 - (A) Trained company representatives will be available to respond to customer telephone inquiries during normal business hours.
 - (B) After normal business hours, the access line may be answered by a service or an automated response system, including an answering

machine. Inquiries received after normal business hours must be responded to by a trained company representative on the next business day.

(ii) Under normal operating conditions, telephone answer time by a customer representative, including wait time, shall not exceed thirty (30) seconds when the connection is made. If the call needs to be transferred, transfer time shall not exceed thirty (30) seconds. These standards shall be met no less than ninety percent (90%) of the time under normal operating conditions, measured on a quarterly basis.

(iii) The operator will not be required to acquire equipment or perform surveys to measure compliance with the telephone answering standards above unless an historical record of complaints indicates a clear failure to comply.

(iv) Under normal operating conditions, the customer will receive a busy signal less than three percent (3%) of the time.

(v) Customer service center and bill payment locations will be open at least during normal business hours and will be conveniently located.

(2) Installations, outages and service calls. Under normal operating conditions, each of the following four standards will be met no less than ninety-five percent (95%) of the time measured on a quarterly basis:

(i) Standard installations will be performed within seven (7) business days after an order has been placed. "Standard" installations are those that are located up to one hundred twenty-five (125) feet from the existing distribution system.

(ii) Excluding conditions beyond the control of the operator, the cable operator will begin working on "service interruptions" promptly and in no event later than twenty-four (24) hours after the interruption becomes known. The cable operator must begin actions to correct other service problems the next business day after notification of the service problem.

(iii) The "appointment window" alternatives for installations, service calls, and other installation activities will be either a specific time or, at maximum, a four (4) hour time block during normal business hours. (The operator may schedule service calls and other installation activities outside of normal business hours for the express convenience of the customer.)

(iv) An operator may not cancel an appointment with a customer after the close of business on the business day prior to the scheduled appointment.

(v) If a cable operator representative is running late for an appointment with a customer and will not be able to keep the appointment as scheduled, the customer

will be contacted. The appointment will be rescheduled, as necessary, at a time which is convenient for the customer.

(3) Communications between cable operators and cable subscribers.

(i) Refunds. Refund checks will be issued promptly, but no later than either -

(A) The customer's next billing cycle following resolution of the request or thirty (30) days, whichever is earlier; or

(B) The return of the equipment supplied by the cable operator if service is terminated.

(ii) Credits. Credits for service will be issued no later than the customer's next billing cycle following the determination that a credit is warranted.

(4) Definitions.

(i) Normal Business Hours. The term "normal business hours" means those hours during which most similar businesses in the community are open to serve customers. In all cases, "normal business hours" must include some evening hours at least one (1) night per week and/or some weekend hours.

(ii) Normal Operating Conditions. The term "normal operating conditions" means those service conditions which are within the control of the cable operator. Those conditions which are not within the control of the cable operator include, but are not limited to, natural disasters, civil disturbances, power outages, telephone network outages, and severe or unusual weather conditions. Those conditions which are ordinarily within the control of the cable operator include, but are not limited to, special promotions, pay-per-view events, rate increases, regular peak or seasonal demand periods, and maintenance or upgrade of the Cable System.

(iii) Service Interruption. The term "service interruption" means the loss of picture or sound on one or more cable Channels.

EXHIBIT B.
SAMPLE FRANCHISE FEE PAYMENT REPORT

EXHIBIT C
SAMPLE PEG CAPITAL REPORT



**BUSINESS OF THE CITY COUNCIL
YAKIMA, WASHINGTON
AGENDA STATEMENT**

Item No. 12.A.
For Meeting of: February 20, 2024

ITEM TITLE: Council General Information

SUBMITTED BY: Rosalinda Ibarra, City Clerk

SUMMARY EXPLANATION:

1. Preliminary Council Agenda

ITEM BUDGETED:

STRATEGIC PRIORITY:

APPROVED FOR SUBMITTAL BY THE CITY MANAGER

RECOMMENDATION:

ATTACHMENTS:

Description	Upload Date	Type
📎 2-27 draft agenda	2/15/2024	Backup Material
📎 3-5 draft agenda	2/16/2024	Backup Material



**AGENDA
YAKIMA CITY COUNCIL
STUDY SESSION
February 27, 2024**

City Hall -- Council Chambers - 129 N 2nd Street, Yakima, WA

5:00 p.m. Study Session --- This meeting will be conducted in person, live streamed at www.yakimawa.gov/council/live-stream/ and telecast live on Y-PAC, Spectrum Cable

Channel 194. You may also participate via Zoom:

<https://cityofyakima.zoom.us/j/97458314153> or call in by dialing 1-253-215-8782 | Webinar ID: 974 5831 4153 | Passcode: 410697 --- Individuals who wish to provide public comment remotely are encouraged to submit a Public Comment Request Form online at: www.yakimawa.gov/council/public-comment no later than 3:00 p.m. on the day of the meeting. If you wish to provide public comment in-person, please fill out a "Request for Appearance" form and hand it to the City Clerk before you address City Council.

1. Roll Call
2. Public comment (allow 15 minutes)
3. Update on Cascade Millsite Parkway
4. Presentation of the City Space Study
5. Update on 40th Ave & Chestnut Traffic Analysis
6. Adjournment

The next meeting is a City Council regular meeting on March 5, 2024, at 5:30 p.m. in the City Hall Council Chambers

Any invocation that may be offered before the official start of the Council meeting shall be the voluntary offering of a private citizen, to and for the benefit of the Council. The views or beliefs expressed by the invocation speaker have not been previously reviewed or approved by the Council, and the Council does not endorse the religious beliefs or views of this, or any other speaker.

A Council packet is available for review at the City Clerk's Office and on-line at www.yakimawa.gov. The City provides special accommodations, such as hearing devices, wheelchair space or language interpreters, for City meetings. Anyone needing special assistance please contact the City Clerk's office at (509) 575-6037 at least two business days prior to the meeting. All meetings are live streamed on the City of Yakima website at www.yakimawa.gov and telecast live on Y-PAC, Spectrum Cable Channel 194.



AGENDA YAKIMA CITY COUNCIL

March 5, 2024

City Hall -- Council Chambers - 129 N 2nd Street, Yakima, WA

5:30 p.m. Regular Meeting | 6:00 p.m. Public Hearings --- This meeting will be conducted in person, live streamed at www.yakimawa.gov/council/live-stream/ and telecast live on Y-

PAC, Spectrum Cable Channel 194. You may also participate via Zoom:

<https://cityofyakima.zoom.us/j/????????> or call in by dialing 1-253-215-8782 | Webinar

ID: ??????? | Passcode: ??????? | Individuals who wish to provide public comment

remotely are encouraged to submit a Public Comment Request Form online at:

www.yakimawa.gov/council/public-comment no later than 3:00 p.m. on the day of the meeting. If you wish to provide public comment in-person, please fill out a "Request for Appearance" form and hand it to the City Clerk before you address City Council.

- 1. Roll Call**
- 2. Pledge of Allegiance**
- 3. Interpreter Services**
- 4. Public Comment**

There will be 35 minutes allotted for public comment with two and a half (2 1/2) minutes per speaker in order to allow as much opportunity as possible for audience participation. Written communication and e-mail messages are strongly encouraged.

5. Open Discussion for the Good of the Order

A. Presentations / Recognitions / Introductions

- i. Recognition of retiring Community Development Director Joan Davenport
- ii. Washington Fruit Community Center (WFCC) Masterplan Presentation

6. Council Reports

7. Consent Agenda

Items listed are considered routine by the City Council and will be enacted by one motion without discussion. A Council member may request to remove an item from the Consent Agenda and, if approved, it will be placed on the regular agenda for discussion and consideration.

- A. Approval of minutes from the February 20, 2024 City Council regular meeting and February 27, 2024 study session
- B. Project Completion and Contract Acceptance for Flip Flow Terminal Security Exit Lane Project
- C. Project Completion and Contract Acceptance for the Capitol Theatre Curtain

- Replacement with Pacific Northwest Theatre Associates Project 2569
- D. Project Completion and Contract Acceptance with Gilbert Patterson Concrete Inc for the S. 27th Ave. & Mead Ave. Sidewalks Project 2618
 - E. Project Completion and Contract Acceptance with Cortez Fencing LLC for the Naches Avenue Parkway Fencing Project 2764
 - F. Set date of April 2, 2024 for a public hearing to be held by the City Council to consider a Rezone proposal in the vicinity of 1104 & 1112 S. 48th Ave
 - G. Resolution setting date of March 19, 2024 to amend the Six-year Transportation Improvement Program and amend the Capital Facilities Element of the Yakima Urban Area Comprehensive Plan for the period of 2024 - 2029
 - H. Resolution setting April 12, 2024, as the date for an open record public hearing before the City of Yakima Hearing Examiner to vacate a portion of N. 4th St. between Martin Luther King Jr. Blvd. and E. Lincoln Ave
 - I. Resolution authorizing a National Highway System (NHS) grant award for Nob Hill Blvd Grind & Overlay Project 2799
 - J. Resolution authorizing an agreement with the Yakima National Little League Association for Little League activities at Elks Park Athletic Complex
 - K. Resolution authorizing the Parks and Recreation Division Manager to execute Personal Services Agreements with Contractors that perform Specialized Parks and Recreation Services, Volleyball Officials, Musicians, Exercise Instructors, etc.
 - L. Resolution authorizing an Interagency Agreement with Washington State Patrol for Fire Mobilization
 - M. Resolution accepting the renewal request and authorizing an amendment to extend the Lease/Purchase Option Agreement with the Y HOTEL, LLC for City property located at 1808 North 1st Street.
 - N. Resolution authorizing a contract with Justice Housing Yakima for system development charges and utility infrastructure improvements
 - O. Ordinance adopting the 2021 editions of our State mandated codes; International Building Code, Residential Code, Energy Code, Existing Building Code, Fire Code, Mechanical Code, Fuel Gas Code, and Uniform Plumbing Code, amending Chapters xxx

8. Other Business

9. Adjournment

The next meeting is a City Council study session on March 12, 2024, at 5:00 p.m. in the City Hall Council Chambers

10. Council General Information

- A. Council General Information
- B. Distribution of the Complete Record for the closed hearing of Plat of Marylyn Place (PLP#001-23)
- C. Distribution of the Complete Record for the closed hearing of Plat of Champions Park Phase 1 (PLP#002-23)

Any invocation that may be offered before the official start of the Council meeting shall be the voluntary offering of a private citizen, to and for the benefit of the Council. The views or beliefs expressed by the invocation speaker have not been previously reviewed or approved by the Council, and the Council does not endorse the religious beliefs or views of this, or any other speaker.



**BUSINESS OF THE CITY COUNCIL
YAKIMA, WASHINGTON
AGENDA STATEMENT**

Item No. 12.B.
For Meeting of: February 20, 2024

ITEM TITLE: Code Administration Division Report - Monthly Building Permits
Issued - January 2024

SUBMITTED BY: Glenn Denman, Code Administration Manager

SUMMARY EXPLANATION:

Attached is the summary of building permits issued in January 2024.

ITEM BUDGETED: NA

STRATEGIC PRIORITY: Neighborhood and Community Building

APPROVED FOR SUBMITTAL BY THE CITY MANAGER

RECOMMENDATION:

ATTACHMENTS:

Description	Upload Date	Type
□ January 2024_Summary	2/8/2024	Cover Memo

Permit Detail - January 1-31, 2024							Permit Detail - January 1 - 31, 2023						
Permit Type	Current Month			Year to Date			Permit Type	Current Month			Year to Date		
	# Permits	Dwelling Units	Valuation Amount	# Permits	Dwelling Units	Valuation Amount		# Permits	Dwelling Units	Valuation Amount	# Permits	Dwelling Units	Valuation Amount
Single Family							Single Family	9	9	\$2,033,043.30	9	9	\$2,033,043.30
Duplex							Duplex						
Multi-Family							Multi-Family	2	8	\$957,685.28	2	8	\$957,685.28
Residential Alteration	30		\$314,412.64	30		\$314,412.64	Residential Alteration	49	0	\$855,834.97	49	0	\$855,834.97
Grading							Grading						
New Commercial	2		\$234,966.40	2		\$234,966.40	New Commercial	4	0	\$94,897.60	4	0	\$94,897.60
Commercial Alteration	12		\$4,330,708.00	12		\$4,330,708.00	Commercial Alteration	13	0	\$2,349,150.00	13	0	\$2,349,150.00
Garage-Residential	1		\$3,050.00	1		\$3,050.00	Garage-Residential						
Moves							Moves						
Demolitions	1			1			Demolitions	5			5		
Pools							Pools	1		\$100,000.00	1		\$100,000.00
Footing/Foundation							Footing/Foundation						
Mobile Home	1	1		1	1		Mobile Home						
Retaining Wall	1		\$6,000.00	1		\$6,000.00	Retaining Wall						
TOTALS	48	1	\$4,889,137.04	48	1	\$4,889,137.04	TOTALS	83	17	\$6,390,611.15	83	17	\$6,390,611.15



**BUSINESS OF THE CITY COUNCIL
YAKIMA, WASHINGTON
AGENDA STATEMENT**

Item No. 12.C.
For Meeting of: February 20, 2024

ITEM TITLE: 2023 Clean City Program 4th Quarter and Year Total Reports

SUBMITTED BY: Scott Schafer, Public Works Director

SUMMARY EXPLANATION:

The City of Yakima developed "Clean City" as a program in which to address the chronic blight plaguing the City of Yakima. Under the direction of Public Works, a coordinated inter-departmental effort to execute a successful program is required between Public Works, Codes, Legal, and Police.

The main objectives of the Clean City program is to specifically address:

- Visual blight (trash, graffiti, dangerous building, abandoned vehicles, etc.)
- Unscheduled collection of waste and litter from the City's public rights-of-way
- Expedite the clean-up of such illegal dumps
- Clean up unpermitted homeless encampments
- Support Yakima Police Department officers in unlawful camping enforcement
- Provide coordination with neighborhoods for annual clean-up events
- Create educational materials
- Engage with community partners and volunteers

Below is a summary of the accomplishments of the program for the 2023 4th quarter and year total.

	Q3	YTD
Graffiti Incidents	435	2,211
Shopping Carts Removed	212	746
Homeless Individuals Contacted	750	3,785
Homeless Encampments Cleaned	35	183
Illegal Dump Sites Cleaned	522	2,139
Tires Removed	262	1,274
Garbage Removed (Tons)	34.24	183.52
Inoperable Vehicles	3	3
Dangerous Buildings	0	14

Attached in greater detail for City Council review is the 2023 Clean City 4th Quarter and Year Total Reports.

ITEM BUDGETED:

Yes

STRATEGIC PRIORITY:

Public Safety

APPROVED FOR SUBMITTAL BY THE CITY MANAGER

RECOMMENDATION:

ATTACHMENTS:

Description		Upload Date	Type
<input type="checkbox"/>	2023 Clean City 4th Qtr & Year Total Reports	2/5/2024	Backup Material
<input type="checkbox"/>	3 Yr Comparison	2/15/2024	Backup Material

2023 Clean City

4th Quarter Report

(October - December)

Refuse	Activities	
	Graffiti Sites	40
	Illegal Dumps Cleaned	422
	Shopping Cart Sites Removed	126
	Pruned Vegetation Sites	0
	Homeless Sites Cleaned	11
	Community Cleanups	0
	Commodities Removed	
	Tires	262
	Electronics	19
	Pruning	0
	Appliances	30
	Mattresses	43
	Graffiti Incidents	40
	Shopping Carts Removed	154
	Couches	117
	Misc.	911
	Tonnage of Garbage	34.24

YPD		
	Trespass Letters Issued	29
	Homeless Contacts	750
	Shopping Carts Removed	10
	Railroad Encampments Dismantled	2
	Homeless Encampments Dismantled	10

Codes	Activities	
	Graffiti Incidents	246
	Inoperable Vehicles	3
	Dangerous Buildings	0
	Illegal Dumping in Alleys	48
	Shopping Carts Removed	10
	Vegetation Along Sidewalk	0
	Weedy Lots	0
	Yard Debris	0
	Homeless Encampments	0
	Recreational Vehicle as Dwelling	0

Streets & Traffic		
	Graffiti Incidents	41
	Weed Abatement	0
	Debris Removal	0
	Homeless Sites Cleaned	0

Parks & Rec		
	Graffiti Incidents	108
	Vandalism Incidents	5
	Homeless Encampments	12
	Illegal Dumps Cleaned	52
	Shopping Carts Removed	38

2023 Clean City

Year Total Report

(January - December)

Refuse	Activities	
	Graffiti Sites	119
	Illegal Dumps Cleaned	1,790
	Shopping Cart Sites Removed	416
	Pruned Vegetation Sites	12
	Homeless Sites Cleaned	16
	Community Cleanups	2
	Commodities Removed	
	Tires	1,274
	Electronics	50
	Pruning	16
	Appliances	94
	Mattresses	177
	Graffiti Incidents	59
	Shopping Carts Removed	495
	Couches	341
	Misc.	3,952
	Tonnage of Garbage	183.52

YPD		
	Trespass Letters Issued	183
	Homeless Contacts	3,785
	Shopping Carts Removed	65
	Railroad Encampments Dismantled	7
	Homeless Encampments Dismantled	60

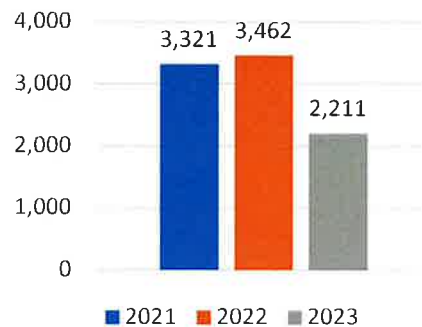
Codes	Activities	
	Graffiti Incidents	1,428
	Inoperable Vehicles	3
	Dangerous Buildings	14
	Illegal Dumping in Alleys	255
	Shopping Carts Removed	78
	Vegetation Along Sidewalk	0
	Weedy Lots	0
	Yard Debris	0
	Homeless Encampments	0
	Recreational Vehicle as Dwelling	0

Streets & Traffic		
	Graffiti Incidents	77
	Weed Abatement	0
	Debris Removal	0
	Homeless Sites Cleaned	0

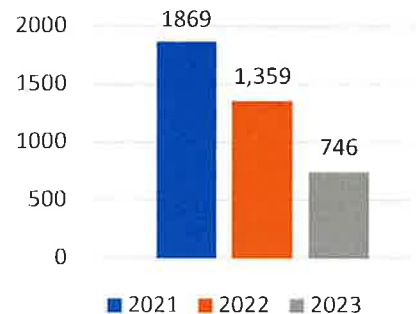
Parks & Rec		
	Graffiti Incidents	629
	Vandalism Incidents	65
	Homeless Encampments	97
	Illegal Dumps Cleaned	94
	Shopping Carts Removed	108

Clean City 3-Year Comparison

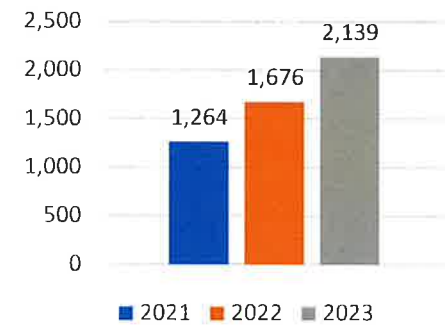
Graffiti



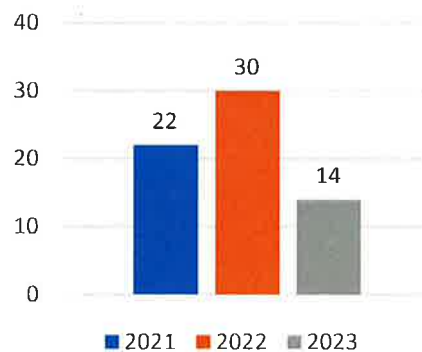
Shopping Carts



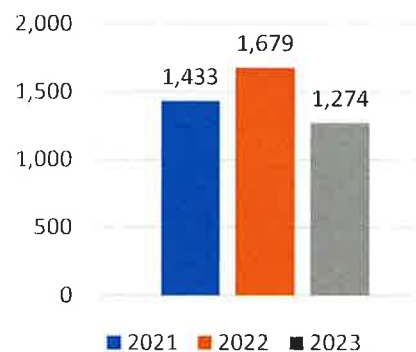
Illegal Dumps



Dangerous Buildings



Tires



Garbage (Tons)

