



# SELAH CITY COUNCIL

5:30pm October 12, 2021

5:00pm Study Session

*(Re: 2021 Water System Plan)*



*Selah City Council  
Regular Meeting  
Tuesday, Oct 12, 2021  
5:30pm  
Via Zoom*

Mayor:  
Mayor Pro Tem:  
Council Members:

Sherry Raymond  
Roger Bell  
Russell Carlson  
Jacquie Matson  
Kevin Wickenhagen  
Clifford Peterson  
Suzanne Vargas  
Michael Costello

**CITY OF SELAH**  
115 West Naches Avenue  
Selah, Washington 98942

City Administrator:  
City Attorney:  
Clerk/Treasurer:

Joe Henne  
Rob Case  
Dale Novobielski

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## AGENDA

- A. Call to Order –Mayor Raymond
- B. Roll Call
- C. Councilmember Absence – Motion to Excuse
- D. Pledge of Allegiance
- E. Invocation – Prayer led by Scott Ruark from Selah Covenant Church
- F. Agenda Changes **None**
- G. Public Appearances/Introductions/Presentations
  - 1. Katrina Henkle, Selah Downtown Association – Update
- H. Getting To Know Our Businesses **None**
- I. Communications

1. Oral **None**

The City of Selah is a non-charter code city and we are presently conducting a regular meeting between the Mayor and City Council. A maximum of thirty minutes will be allotted for public comments. Common-sense standards of decorum apply. Comments must be respectful; no profanity or insults are allowed. Comments must pertain to City business and official actions. Constructive criticism of City officials is allowed, but defamation, personal attacks and impertinent assertions are not allowed. Commenters are limited to one comment per meeting and a maximum of two minutes. City staff may disallow or modify any comment that is deemed inappropriate. These standards are subject to revision.

2. Written **None**

J. Proclamations/Announcements **None**

K. Consent Agenda

All items listed with an asterisk (\*) are considered routine by the City Council and will be enacted by one motion, without discussion. Should any Council Member request that any item of the Consent Agenda be considered separately, that item will be removed from the Consent Agenda and become a part of the regular Agenda.

Treesa Morales \* 1. Approval of Minutes: September 28, 2021 Council Meeting  
Dale N. \* 2. Approval of Claims & Payroll

L. Public Hearings **None**

M. General Business

1. New Business **None**

2. Old Business **None**

**N. Resolutions**

- Rocky Wallace 1. Resolution Declaring Specified Vehicles to be Surplus and Providing for their Disposition
- Rocky Wallace 2. Resolution Accepting the 2021 Crack Sealing Project as Complete, Authorizing Final Payment to Contractor, and Authorizing the Release of Financial Retainage to the Contractor
- Rocky Wallace 3. Resolution Authorizing the Mayor to Sign a Contract, on behalf of the City, for the Purchase of a 2008 International 7600 Truck from the Washington State Department of Enterprise Services (DES)
- Rocky Wallace 4. Resolution Authorizing the Mayor to Sign a Task Order No. 2021-10 Between the City of Selah and HLA Engineering and Land Surveying, Inc. to Provide Engineering Services for the Water Service Meter Improvement Project

Rocky Wallace

- 5. Resolution authorizing the Mayor to sign an Agreement between the City of Selah (owner) and HLA Engineering and Land Surveying, Inc. (Engineer) to provide Engineering Construction and Post-Construction Phase Services for the Wastewater Collection System Improvements Project.

**O. Ordinances**

Jeff Peters

- 1. Ordinance Adopting Chapter 7.01 SMC to Establish a "Complete Streets" Program for the Purpose of Providing Safe Access and Accommodations to All Users Including Bicyclists, Pedestrians, Motorists and Public Transportation Users

Dale Novobielski

- 2. Ordinance amending the 2021 Budget for the Replacement of an Animal Control Vehicle

P. Public Appearances

**None**

Q. Reports/Announcements

- 1. Departments  
Rocky Wallace

Study Session Item: 2021 Selah Water Plan

- 2. Council Members
- 3. City Administrator
- 4. City Attorney  
Rob Case

Informational Item: New Sign Code as adopted on 9-28-21

- 5. Boards

**None**

- 6. Mayor

R. Executive Session

**None**

S. Adjournment

*Next Regular Meeting October 26, 2021*

Each item on the Council Agenda is covered by an Agenda Item Sheet (AIS)

A yellow AIS indicates an action item.

A blue AIS indicates an information/non-action

City of Selah  
Council Minutes  
September 28, 2021

Regular Meeting  
Electronically Via Zoom

A. Call to Order Mayor Raymond called the meeting to order at 5:30 pm.

B. Roll Call

Members Present: Kevin Wickenhagen; Jacquie Matson; Suzanne Vargas; Clifford Peterson; Roger Bell; Michael Costello; Russell Carlson

Members Absent: None

Staff Present: Joe Henne, City Administrator; Rob Case, City Attorney; Dan Christman, Police Chief; James Lange, Fire Chief; Mickey Gillie, Deputy Fire Chief; Jeff Peters, Community Development Supervisor; Treesa Morales, Public Records Specialist.

C. Councilmember Absence – Motion to Excuse **None**

D. Pledge of Allegiance

Mayor Raymond led the Pledge of Allegiance

E. Invocation

Pastor Darin Brown from Harvest Community Church gave the Prayer

F. Agenda Changes

Mayor Raymond noted that the agenda stated that Council Member Bell and Council Member Costello would be absent – both Council Members are in attendance.

G. Public Appearances/Introductions/Presentations

1. Katrina Henkle, Selah Downtown Association – Update

Katrina Henkle, Selah Downtown Association (SDA) Executive Director, gave a report on spirit week and parade; a reminder for B&O hosted open house on Oct 1 with SDA from 2-4pm.

H. Getting To Know Our Businesses **None**

I. Communications

1. Oral

Five public comments were submitted, four to be read aloud and one to be presented at the meeting by the person who submitted the comment.

Public Records Specialist, Treesa Morales, read the four comments and introduced Mindy Clark for presentation of her public comment.

2. Written None

J. Proclamations/Announcements None

K. Consent Agenda

All items listed with an asterisk (\*) were considered as part of the Consent Agenda.

\* 1. Approval of Minutes: September 14, 2021 Council Meeting

\* 2. Approval of Claims and Payroll:

Jm

~~Payroll Checks Nos. 84437 – 84461 for a total of \$298,165.41~~  
Claim Checks Nos. 1777050 – 177102 for a total of \$125,323.25

**Council Member Carlson moved, and Council Member Wickenhagen seconded, approval of the Consent Agenda as read. By a show of hands, approval was unanimous.**

Public Records Specialist, Treesa Morales, read the Consent Agenda.

L. Public Hearings None

M. General Business

1. New Business None

2. Old Business None

N. Resolutions

**1. Resolution authorizing the Mayor to sign a contract labeled “PPC Solutions, Inc. Security Service Agreement,” for Court Security Services.**

Introduced by Mayor Raymond and presented by City Administrator Joe Henne. After Discussion,

**Council Member Wickenhagen moved, and Council Member Costello seconded, to Approve the Ordinance authorizing the Mayor to sign a contract labeled “PPC Solutions, Inc. Security Service Agreement,” for Court Security Services. Roll was called: Council**

**Member Wickenhagen – yes; Council Member Matson – yes; Council Member Vargas – yes; Council Member Peterson – yes; Council Member Bell – yes; Council Member Costello – yes; Council Member Carlson – yes. By voice vote, approval was unanimous.**

O. Ordinances

1. **Ordinance amending the 2021 budget for Fire Department Radio System Upgrades**

Introduced by Mayor Raymond and presented by Fire Chief James Lange.

**Council Member Bell moved, and Council Member Vargas seconded, to Approve the Ordinance amending the 2021 budget for Fire Department Radio System Upgrades. Roll was called: Council Member Wickenhagen – yes; Council Member Matson – not present to vote (video/audio feed was not working); Council Member Vargas – yes; Council Member Peterson – yes; Council Member Bell – yes; Council Member Costello – yes; Council Member Carlson – yes. By voice vote, approval was unanimous.**

2. **Ordinance amending the 2021 budget for payroll adjustments**

Introduced by Mayor Raymond, presented by Clerk Treasurer Dale Novobielski. After Discussion,

**Council Member Wickenhagen moved, and Council Member Bell seconded, to Approve the Ordinance amending the 2021 budget for payroll adjustments. Roll was called: Council Member Wickenhagen – yes; Council Member Matson – yes; Council Member Vargas – yes; Council Member Peterson – yes; Council Member Bell – yes; Council Member Costello – yes; Council Member Carlson – yes. By voice vote, approval was unanimous.**

3. **Ordinance amending the 2021 budget for a Wastewater Treatment Plant Facility Plan**

Introduced by Mayor Raymond, presented by Clerk Treasurer, Dale Novobielski. After Discussion,

**Council Member Peterson moved, and Council Member Bell seconded, to Approve the Ordinance amending the 2021 budget for a Wastewater Treatment Plant Facility Plan. Roll was called: Council Member Wickenhagen – yes; Council Member Matson – yes; Council Member Vargas – yes; Council Member Peterson – yes; Council Member Bell – yes; Council Member Costello – yes; Council Member Carlson – yes. By voice vote, approval was unanimous.**

4. **Ordinance amending the 2021 budget for Crusher Canyon Wastewater Collection System Improvements**

Introduced by Mayor Raymond, presented by Clerk Treasurer, Dale Novobielski. After Discussion,

**Council Member Carlson moved, and Council Member Peterson seconded, to Approve the Ordinance amending the 2021 budget for Crusher Canyon Wastewater Collection System Improvements. Roll was called: Council Member Wickenhagen – yes; Council Member Matson – yes; Council Member Vargas – yes; Council Member Peterson – yes; Council Member Bell – yes; Council Member Costello – yes; Council Member Carlson – yes. By voice vote, approval was unanimous.**

5. **Ordinance adopting the new sign code as Selah Municipal Code Chapter 10.38 (“signs”) with an effective date of December 1, 2021, and Fully Repealing and Replacing the Preexisting Sign Code that had been Codified as Chapter 10.38 (“sign regulations”) as of Such Date.**

Introduced by Mayor Raymond, and presented by City Attorney Rob Case. After discussion, the following sub motions were made:

**O-5 Sub-motion 1:** Presented by Council Member Carlson: Approval of grammatical changes presented by Mr. Case and any other grammatical errors found in the document.

**Council Member Carlson moved, and Council Member Costello seconded, to approve grammatical errors presented by Mr. Case and any other grammatical errors found in the document. Discussion was offered, no discussion resulted.**

**Roll was called: Council Member Wickenhagen – yes; Council Member Matson – yes; Council Member Vargas – yes; Council Member Peterson – yes; Council Member Bell – yes; Council Member Costello – yes; Council Member Carlson – yes. By voice vote, approval was unanimous.**

Discussion was held regarding management of signs on days the City Staff mows the grassy areas throughout the City.

Discussion was held regarding responsibility of signs if they are laying on the ground.

**O-5 Sub-motion 2:** Presented by Council Member Vargas: Motion to make carried signs fully exempt, and utilize Washington State RCWs to address any disorder that may arise from demonstrations.

City Attorney case clarified that Council Member Vargas’ motion would amend O-5 such that it would be consistent with O-5(g). Council Member Vargas’ agreed. **After discussion,**

**Council Member Vargas moved, and Council Member Matson seconded, to make carried signs fully exempt and utilize Washington State RCWs to address any disorder that may arise from demonstrations. Council Member Wickenhagen – no; Council Member Matson – yes; Council Member Vargas – yes; Council Member Peterson – yes; Council Member Bell – no; Council Member Costello – yes; Council Member Carlson – no. By voice vote, motion passes with 4-yes votes and 3-no votes.**



**O-5 Sub-motion 3:** Presented by Council Member Carlson: Motion to strike the welcome sign and gateway sign definition (in section kk in 10.38.020) from the sign code until further clarification for application can be applied. **After discussion,**

**Council Member Carlson moved, and Council Member Vargas seconded, to strike the welcome sign and gateway sign definition (in section kk in 10.38.020) from the sign code until further clarification for application can be applied. Roll was called: Council Member Wickenhagen – no; Council Member Matson – no; Council Member Vargas – yes; Council Member Peterson – no; Council Member Bell – no; Council Member Costello – no; Council Member Carlson – yes. By voice vote, motion failed with 2-yes votes and 5-no votes.**

**O-5 Sub-motion 4:** Council Member Peterson moved to amend section (kk – Welcome Sign definition) the changes as outlined in section O-5(b). **After discussion,**

**Council Member Peterson moved, and Council Member Matson seconded, to amend section kk, regarding the welcome sign definition, and adopt the changes as outlined in section O-5(b). Roll was called: Council Member Wickenhagen – yes; Council Member Matson – yes; Council Member Vargas – yes; Council Member Peterson – yes; Council Member Bell – yes; Council Member Costello – yes; Council Member Carlson – no. By voice vote, motion passes with 6-yes votes and 1-no vote.**

**O-5 Sub-motion 5:** Presented by Council Member Peterson: make changes to the code for the duration allowed for a sign to change messages from 8 seconds to a minimum of 3 seconds as outlined in subsection O-5(d) (10.38.170(f)). **After discussion,**

**Council Member Peterson moved, and Council Member Carlson seconded, to make changes to the code for the time allowed for a sign to change messages from 8 seconds to a minimum of 3 seconds as outlined in subsection O-5(d) (10.38.170(f)). Roll was called: Council Member Wickenhagen – yes; Council Member Matson – yes; Council Member Vargas – no; Council Member Peterson – yes; Council Member Bell – no; Council Member Costello – yes; Council Member Carlson – yes. By voice vote, motion passes with 5-yes votes and 2-no vote.**

Councilmember Carlson made a motion that there be a secondary line of review for any “administrative adjustments” as listed at the end of the code (pertaining to pg. 29 – sub section E labeled “written decision” (Part of 10.38.220). After discussion the motion was withdrawn.

**O-5 Sub-motion 6:** Councilmember Carlson made a motion to strike subsection B of 10.38.180 in its entirety, and keep only subsection C of 10.38.180, where a multi-tenant property owner has 600 feet for multiple signs. **After discussion,**

**Council Member Carlson moved, and Council Member Vargas seconded, to strike subsection B of 10.38.180 in its entirety, and keep only subsection C of 10.38.180, where a multi-tenant property owner has 600 feet for multiple signs. Roll was called: Council Member Wickenhagen – yes; Council Member Matson – yes; Council Member Vargas –**

yes; Council Member Peterson – yes; Council Member Bell – yes; Council Member Costello – yes; Council Member Carlson – yes. By voice vote, approval was unanimous.

**Original Agenda Item O-5** was readdressed and the following vote occurred:

**A vote was taken to approve the Ordinance adopting the new sign code as Selah Municipal Code Chapter 10.38 (“signs”) with an effective date of December 1, 2021, and Fully Repealing and Replacing the Preexisting Sign Code that had been Codified as Chapter 10.38 (“sign regulations”) as of Such Date, as modified via the sub-motions. Roll was called: Council Member Wickenhagen – yes; Council Member Matson – yes; Council Member Vargas – yes; Council Member Peterson – yes; Council Member Bell – yes; Council Member Costello – yes; Council Member Carlson – yes. By voice vote, approval was unanimous.**

City Attorney noted that the draft just approved has an affective date of December 1, 2021.

P. Public Appearances **None**

Q. Reports/Announcements

1. Departments

Police Chief Christman: Made report.

Fire Chief Lange: Made report.

Deputy Chief Gillie: Out on a call – unable to make a report.

Community Development Supervisor Peters: Made report.

City Administrator Henne: Made report.

2. Council Members

Council Member Bell: Reminder that SPRSA will be hosting a town hall meeting on October 14 at 6pm at the Selah Civic Center to answer questions about the levy.

Council Member Vargas: No report

Council Member Peterson: No report

Council Member Carlson: Reminder of the SDA B&O Meeting

Council Member Wickenhagen: Update from the Yakima Visitor Convention Bureau – convention center is behind schedule, but looking good.

Council Member Costello: No report

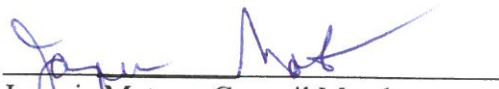
Council Member Matson: provided YVCOG update.

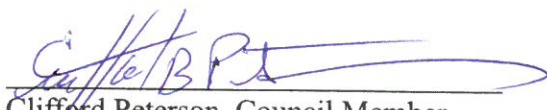
6. Mayor Raymond: reminded council members of the importance of keeping budget dates open and please come to the budget meetings.
- R. 30-minute Executive Session; Regarding Litigation (RCW 42.30.110(1)(a)(i)).
- S. Adjournment

**Council Member Wickenhagen moved, and Council Member Carlson seconded, that the meeting be adjourned. By a show of hands, approval was unanimous.**

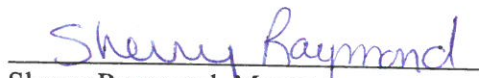
The meeting adjourned at 8:23pm.

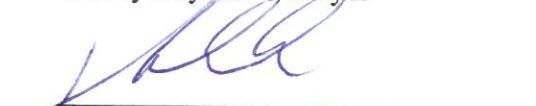
  
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Roger Bell, Council Member

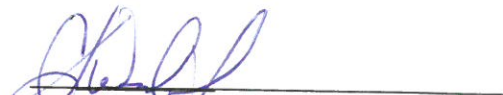
  
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Jacquie Matson, Council Member

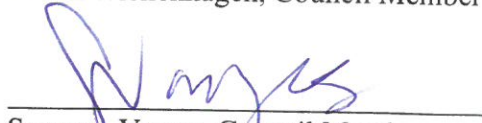
  
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Clifford Peterson, Council Member

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Michael Costello, Council Member

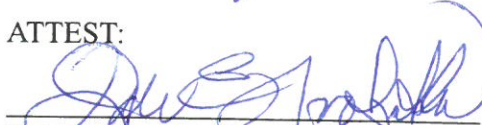
  
\_\_\_\_\_  
Sherry Raymond, Mayor

  
\_\_\_\_\_  
Russell Carlson, Council Member

  
\_\_\_\_\_  
Kevin Wickenhagen, Council Member

  
\_\_\_\_\_  
Suzanne Vargas, Council Member

ATTEST:

  
\_\_\_\_\_  
Dale E. Novobielski, Clerk/Treasurer



**CITY OF SELAH  
CITY COUNCIL  
AGENDA ITEM SUMMARY**



Council Meeting      Action Item

10/12/2021

~~R-1~~ N-1

**Title:** Resolution Declaring Specified Vehicles to be Surplus and Providing for their Disposition

**From:** Rocky Wallace, Public Works Director

**Action Requested:** Approval

**Staff Recommendation:** Approval

**Board/Commission Recommendation:** Not Applicable

**Fiscal Impact:** No cost (but likelihood of revenue generation)

**Funding Source:** Not Applicable

**Background / Findings & Facts:** The Public Works Department (PW) and Selah Police Department (PD) have concluded that the following specified vehicles are no longer needed, should be declared to be surplus and should be disposed of in a commercially reasonable manner pursuant to an approved Resolution:

From PW:

- 1999 Ford Explorer (vin# 1FMZU34E3XUB63811)
- 1986 F700 Dump Truck (vin# 1FDPF70H5GVA56648)
- 2003 Ford Super cab 4X4 (vin# 1FTNX21L43ED01402)
- 1999 Chevrolet ½ ton P/U (vin# 1GCEC14W1XZ204961)
- 1995 Chevrolet S10 P/U (vin# 1GCCS19Z4S8257083)
- 2000 Ford Expedition (vix# 1FMPU16L3YLB62558)
- 1989 Ford F350 DRW (vin# 2FDLF47M8KCB13312)
- 2004 Ford Expedition (vin# 1FMPU16L74LB07587)
- 1986 International Dump Truck (vin# 1HTZTGBR8GHA67529)
- 1979 Chevrolet Water Truck (vin# C17DE9V144451)



**CITY OF SELAH  
CITY COUNCIL  
AGENDA ITEM SUMMARY**



**From PD:**

- 2004 Ford Crown Vic (vin# 2FAHP71W34X141040)
- 2009 Ford Crown Vic (vin# 2FAHP71V69X143069)
- 2004 Ford Expedition (vin# 1FMPU16L54LB07586)
- 2008 Ford Expedition (vin# 1FMFU165X8LA76600)
- 1993 Ford F-350 (vin# 2FTJW36H5PCA92176)

**Recommended Action/Motion:** I move to approve the Resolution in the form presented

**Record of all prior actions taken by the City Council and/or a City Board, City Committee, Planning Commission, or the Hearing Examiner (where applicable)**

Date:	Action Taken:
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Click here to enter a date.	Click here to enter text.

**RESOLUTION NO. 2868**

**RESOLUTION DECLARING SPECIFIED VEHICLES TO BE SURPLUS  
AND PROVIDING FOR THEIR DISPOSITION**

WHEREAS, City staff has determined that the City no longer needs the following specific vehicles:

- 1999 Ford Explorer (vin# 1FMZU34EXUB63811)
- 1986 F700 Dump Truck (vin# 1FDPF7ODH5GVA56648)
- 2003 Ford Super cab 4X4 (vin# 1FTNX21L43ED01402)
- 1999 Chevrolet ½ ton P/U (vin# 1GCEC14W1XZ204961)
- 1995 Chevrolet S10 P/U (vin# 1GCCS19Z4S8257083)
- 2000 Ford Expedition (vin# 1FMPU16L3YLB62558)
- 1989 Ford F350 DRW (vin# 2FDLF47M8KCB13312)
- 2004 Ford Expedition (vin# 1FMPU16L74LB07587)
- 1986 International Dump Truck (vin# 1HTZTGBR8GHA67529)
- 1979 Chevrolet Water Truck (vin# C17DE9V144451)
- 2004 Ford Crown Vic (vin# 2FAHP71W34X141040)
- 2009 Ford Crown Vic (vin# 2FAHP71V69X143069)
- 2004 Ford Expedition (vin# 1FMPU16L54LB07586)
- 2008 Ford Expedition (vin# 1FMFU165X8LA76600)
- 1993 Ford F-350 (vin# 2FTJW36H5PCA92176);

and

WHEREAS, the City wishes to declare such vehicles to be surplus and to dispose of them in a commercially reasonable manner;

NOW THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF SELAH, WASHINGTON, as follows:

Section 1. The above-specified vehicles are declared to be surplus.

Section 2. City staff is authorized to dispose of the above-specified vehicles in a commercially reasonable manner directly and/or by contracting with one or more outside vendors selected by City staff. City staff may contractually engage one or more outside agencies or vendors without any necessity of seeking approval from the City Council as to the existence or terms of any such vendor contract(s). The vehicles may be sold individually or in lots, and City staff may make all decisions as to final sale prices without seeking further approval from the City Council.

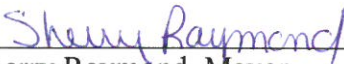
Section 3. All net revenues received on sale of the above-specified vehicles shall be credited to the appropriate fund category(ies) by the Clerk/Treasurer.

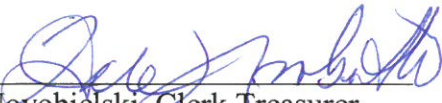
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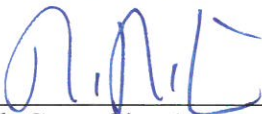
PASSED AND ADOPTED BY THE CITY COUNCIL OF THE CITY OF SELAH,  
WASHINGTON, this 12th day of October 2021.

ATTEST:

  
\_\_\_\_\_  
Sherry Raymond, Mayor

  
\_\_\_\_\_  
Dale Novobielski, Clerk Treasurer

APPROVED AS TO FORM:

  
\_\_\_\_\_  
Rob Case, City Attorney



**CITY OF SELAH  
CITY COUNCIL  
AGENDA ITEM SUMMARY**



Council Meeting      Action Item

10/12/2021

~~R-2~~ N-2

**Title:** Resolution Accepting the 2021 Crack Sealing Project as Complete, Authorizing Final Payment to the Contractor, and Authorizing the Release of the Financial Retainage to the Contractor

**From:** Rocky D. Wallace, Public Works Director

**Action Requested:** Approval

**Staff Recommendation:** To approve the attached Resolution in the form presented

**Board/Commission Recommendation:** Not Applicable

**Fiscal Impact:** \$22,257.55 as final payment to the contractor, and also release of the financial retainage to the contractor in the amount of \$1,171.45. All of this was previously budgeted.

**Funding Source:** 111

**Background / Findings & Facts:** The City of Selah contracted with BCV, Inc., to perform the 2021 Crack Sealing Project. The originally-contemplated scope of such project was approximately 9,900 linear feet of cracks on the roadway surfaces of Crusher Canyon Road and West Fremont Avenue. However, the City was able to substantially enlarge the scope of the project without expending more than had been originally budgeted. This was possible because BCV submitted a per-foot bid (and entered into a contract with the City at a rate) that was roughly 70% lesser than the City's budgeted amount for the originally-contemplated scope of work, and once on site BCV agreed to perform additional crack sealing at the same per-foot amount. Ultimately, the City obtained crack sealing on approximately 33,858 lineal feet of cracks for an overall, final expense that did not exceed the originally-





**CITY OF SELAH  
CITY COUNCIL  
AGENDA ITEM SUMMARY**



budgeted amount. Included with this AIS is a three-page submission from HLA Engineering and Land Surveying, Inc., which confirms that there are no existing or expected liens or claims against the financial retainage on this project, whether for any unpaid labor, any unpaid material expenses or any other items. Thus, I recommend that the City accept all work on the project, to authorize final payment to the contractor in the amount of \$22,257.55, and to also authorize release the financial retainage of \$1,171.45 to the contractor.

**Recommended Action/Motion:** I move to approve the Resolution in the form presented

**Record of all prior actions taken by the City Council and/or a City Board, City Committee, Planning Commission, or the Hearing Examiner (where applicable)**

Date:	Action Taken:
7/13/2021	Resolution #2858 Authorizing the mayor to sign an contract between the City of Selah and BVC Inc., of Wenatchee, Washington to provide Construction Services for the 2021 Crack Sealing Project
6/24/2021	Bid opening and Recommendation of Award
6/9/2021	Advertisement for Bids
<a href="#">Click here to enter a date.</a>	<a href="#">Click here to enter text.</a>
<a href="#">Click here to enter a date.</a>	<a href="#">Click here to enter text.</a>
<a href="#">Click here to enter a date.</a>	<a href="#">Click here to enter text.</a>

**RESOLUTION NO. 2869**

**RESOLUTION ACCEPTING THE 2021 CRACK SEALING PROJECT AS COMPLETE,  
AUTHORIZING FINAL PAYMENT TO CONTRACTOR, AND AUTHORIZING THE  
RELEASE OF FINANCIAL RETAINAGE TO THE CONTRACTOR**

WHEREAS, work on the 2021 Crack Sealing Project has concluded, the City has accepted all work on such project, and the City deems it appropriate to declare such project to be complete; and

WHEREAS, there are no existing or expected liens or claims against the financial retainage on such project, whether for any unpaid labor expenses, any unpaid material expenses or any other items; and

WHEREAS, the financial retainage on such project should be released by the City to the contractor that performed the work, specifically BCV, Inc.

NOW THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF SELAH, WASHINGTON, that the Mayor is authorized to accept the 2021 Crack Sealing Project as complete; that by signing this Resolution the Mayor does thereby accept, on behalf of the City, such project as complete; and that the Mayor is authorized to release the financial retainage on such project to BCV, Inc.

PASSED AND ADOPTED BY THE CITY COUNCIL OF THE CITY OF SELAH, WASHINGTON, this 12th day of October 2021.

ATTEST:

Sherry Raymond  
Sherry Raymond, Mayor

Dale Novobielski  
Dale Novobielski, Clerk Treasurer

APPROVED AS TO FORM:

Rob Case  
Rob Case, City Attorney



September 30, 2021

City of Selah  
115 West Naches Avenue  
Selah, WA 98942

Attn: Joe Henne  
2021 Crack Sealing  
HLA Project No.: 21006G  
Final Progress Estimate and Project Acceptance

Dear Mr. Henne:

Enclosed is Progress Estimate No. 1 designated as the Final for work performed by BCV, Inc., through August 31, 2021, in connection with their contract on the above referenced project. The amount due the Contractor of \$22,257.55 is net, as per the contract documents. We recommend this Final Progress Estimate be considered and accepted by the City of Selah Council.

This letter also serves as our recommendation for acceptance of this project by the City of Selah. We have reviewed the work performed by BCV, Inc. on this project and believe it has been completed satisfactorily. Please provide us a copy of the Council resolution authorizing project acceptance.

The Final Contract Voucher Certification from the contractor which states that all labor and materials furnished on this project have been paid for is attached.

The retainage on this project should be released to BCV, Inc., after acceptance of the project and when the City of Selah confirms that:

1. There are no liens or claims for labor and materials furnished on this project filed against the retainage.

Please contact this office if you require any additional information regarding this project.

Very truly yours,

A handwritten signature in black ink that reads "Terry D. Alapeteri".

Terry D. Alapeteri, PE

TDA/egs

Enclosures

Copy: Brett Manning, BCV, Inc  
Rocky Wallace, City of Selah

Selah City Council Meeting\_Oct 12, 2021  
Packet Pg. No. 19

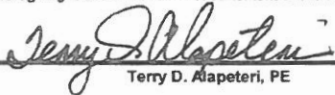
RECEIVED

SEP 13 2021

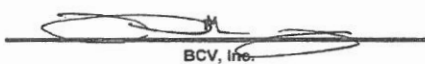
HLA, Inc.

CONSTRUCTION PROGRESS ESTIMATE											
CITY OF SELAH			HLA PROJECT NO.: 21006G				PROGRESS ESTIMATE NO. 1				
2021 CRACK SEALING							FROM: Jul. 12, 2021		TO: Jul. 31, 2021		
BID ITEM NO.	DESCRIPTION	UNIT	CONTRACT TOTAL (Contract + COs)		TOTAL WORK TO DATE		PREVIOUS PAID		AMOUNT DUE NOW (Total - Previous)		% CONTRACT COMPLETE
			QTY	COST	QTY	COST	QTY	COST	QTY	COST	
1	Mobilization	LS	1	\$ 500.00	1	\$ 500.00		\$ -	1	\$ 500.00	100%
2	Project Temporary Traffic Control	LS	1	\$ 2,000.00	3	\$ 6,000.00		\$ -	3	\$ 6,000.00	300%
3	Crack Sealing	LF	9,900	\$ 4,950.00	33,858	\$ 16,929.00		\$ -	33,858	\$ 16,929.00	342%
Bid Subtotal				\$ 7,450.00	\$ 23,429.00	\$ -	\$ 23,429.00	314%			
No Sales Tax				\$ -	\$ -	\$ -	\$ -				
TOTAL				\$ 7,450.00	\$ 23,429.00	\$ -	\$ 23,429.00				
PROJECT TOTAL (INCL. SALES TAX)				\$ 7,450.00	\$ 23,429.00	\$ -	\$ 23,429.00	314%			
RETAINAGE WITHHELD 5%					\$ -	\$ -	\$ (1,171.45)				
PLUS MATERIALS ON HAND					\$ -						
AMOUNT DUE PROGRESS ESTIMATE NO.: 1					\$ 23,429.00	\$ -	\$ 22,257.55				

I hereby certify that the foregoing is a true and correct statement of the work performed under this contract.

  
Terry D. Alapeteri, PE

I hereby accept the Final Progress Estimate and Final Contract Voucher Certification, in accordance with Section 1-09.9 of the WSDOT Standard Specifications.

  
BCV, Inc.

9/8/2021  
Date



Final Contract  
Voucher Certification  
City of Selah

PROJECT NAME: 2021 Crack Sealing

PROJECT NUMBER: 21006G

Date Work Physically Completed: August 25, 2021

Final Contract Amount: \$23,429.00

All work on the above referenced project has been completed in accordance with the contract documents and the final inspection has been completed, including all required project documentation.

I, the undersigned, certify and declare, under penalty of perjury under the laws of the State of Washington, that the foregoing is true and correct: I am authorized to sign for the claimant; that in connection with the work performed and, to the best of my knowledge, no loan, gratuity or gift in any form whatsoever has been extended to any employee of the City of Selah; nor have I rented or purchased any equipment or materials from any employee of the City of Selah; that the attached final estimate is a true and correct statement showing all the monies due the claimant from the City of Selah for work performed and material furnished under this Contract; that I have carefully examined said final estimate and understand the same and; that I, on behalf of the claimant, hereby release and forever discharge the City of Selah from any and all claims of whatsoever nature which I or the claimant may have, arising out of the performance of said Contract, which are not set forth in said final estimate.

The undersigned, BCV, inc., also hereby certifies that all subcontractors, suppliers, and employees have been paid in accordance with the Contract Documents and all applicable laws, except for Retainage, if any, remaining to be paid.

Contractor: BCV, Inc.

Address: P.O. Box 2898  
Wenatchee, WA 98807

Authorized Official: [Signature]  
Contractor Signature

Date: 9/8/21

Print Name: Brett Manning Title: President



**CITY OF SELAH  
CITY COUNCIL  
AGENDA ITEM SUMMARY**



Council Meeting      Action Item

10/12/2021

~~R-3~~ N-3

**Title:** Resolution Authorizing the Mayor to Sign a Contract, on behalf of the City, for the Purchase of a 2008 International 7600 Truck from the Washington State Department of Enterprise Services (DES).

**From:** Rocky D. Wallace, Public Works Director

**Action Requested:** Approval

**Staff Recommendation:** To approve the Resolution in the form presented

**Board/Commission Recommendation:** Not Applicable

**Fiscal Impact:** \$9,500.00 (plus tax of approximately \$779.00).

**Funding Source:** 171

**Background / Findings & Facts:** The City currently has three dump trucks, each of which is twenty-plus years old. Public Works would like to decommission one of those and to purchase a newer replacement. The Washington State Department of Enterprise Services (DES) has available for purchase a 2008 International 7600 dump truck that includes an attached plow and sander. Public Works requests the City Council to authorize the Mayor to sign a contract, on behalf of the City, for the purchase of that dump truck. The purchase price will be \$9,500.00 and taxes of approximately \$779.00 will also be owed.

**Recommended Action/Motion:** I move to approve the Resolution in the form presented



**CITY OF SELAH  
CITY COUNCIL  
AGENDA ITEM SUMMARY**



**Record of all prior actions taken by the City Council and/or a City Board, City Committee, Planning Commission, or the Hearing Examiner (where applicable)**

<b>Date:</b>	<b>Action Taken:</b>
<a href="#">Click here to enter a date.</a>	<a href="#">Click here to enter text.</a>
<a href="#">Click here to enter a date.</a>	<a href="#">Click here to enter text.</a>
<a href="#">Click here to enter a date.</a>	<a href="#">Click here to enter text.</a>
<a href="#">Click here to enter a date.</a>	<a href="#">Click here to enter text.</a>
<a href="#">Click here to enter a date.</a>	<a href="#">Click here to enter text.</a>
<a href="#">Click here to enter a date.</a>	<a href="#">Click here to enter text.</a>

**RESOLUTION NO. 2870**

**RESOLUTION AUTHORIZING THE MAYOR TO SIGN A CONTRACT, ON BEHALF OF THE CITY, FOR THE PURCHASE OF A 2008 INTERNATIONAL 7600 TRUCK FROM THE WASHINGTON STATE DEPARTMENT OF ENTERPRISE SERVICES (DES)**

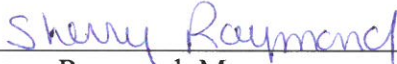
WHEREAS, the City desires to plans to decommission one of its existing dump trucks that is twenty-plus years old and to purchase a newer replacement; and

WHEREAS, the Washington State Department of Enterprise Services (DES) has available for purchase a 2008 International 7600 dump truck that includes an attached plow and sander, for a purchase price of \$9,500.00 and with approximately \$779.00 of applicable taxes; and

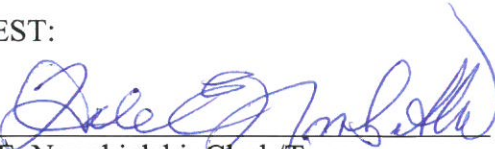
WHEREAS, the City believe that purchasing said dump truck at said price is reasonable and prudent.

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF SELAH, WASHINGTON that the Mayor is authorized to sign a contract, on behalf of the City, to purchase a 2008 International 7600 truck from DES for a purchase price of \$9,500.00 plus approximately \$779.00 of applicable taxes.

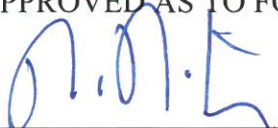
PASSED AND ADOPTED BY THE CITY COUNCIL OF THE CITY OF SELAH, WASHINGTON this 12th day of October, 2021.

  
\_\_\_\_\_  
Sherry Raymond, Mayor

ATTEST:

  
\_\_\_\_\_  
Dale E. Novobielski, Clerk/Treasurer

APPROVED AS TO FORM:

  
\_\_\_\_\_  
Rob Case, City Attorney





**CITY OF SELAH  
CITY COUNCIL  
AGENDA ITEM SUMMARY**



Council Meeting      Action Item

10/12/2021

~~R-4~~ N-4

**Title:** Resolution authorizing the Mayor to sign a Task Order No. 2021-10 between the City of Selah and HLA Engineering and Land Surveying, Inc. to provide Engineering Services for the Water Service Meter Improvements Project.

**From:** Rocky D. Wallace, Public Works Director

**Action Requested:** Approval

**Staff Recommendation:** Approval

**Board/Commission Recommendation:** Not Applicable

**Fiscal Impact:** 174,500 Public Works Board Loan

**Funding Source:** 411

**Background / Findings & Facts:** The Water Service Meter Improvements project is included in the adopted 2021 budget. This project was going to be funded by City funds. Public Works was successful in securing a Public Works Board loan for the project. The Water Service Meter Improvements project includes replacement of approximately 2,800 existing direct-read water meters with new radio read meters, and installation of an advanced metering infrastructure (AMI) system. The project also includes replacement of existing meter box lids as required for compatibility with the selected AMI meter system. Existing meter boxes will be replaced in locations where replacement lid sizes are not available and/or to replace damaged boxes, as funding allows. A propagation study and analysis will be completed to determine locations for AMI system collectors, repeaters, and/or antennas required for adequate coverage of the City's service area.



**CITY OF SELAH  
CITY COUNCIL  
AGENDA ITEM SUMMARY**



The City may also evaluate and consider the use of cellular AMI system development as an option to reduce O&M costs and/or improve coverage.

**Recommended Action/Motion:** I move to approve the Resolution in the form presented

**Record of all prior actions taken by the City Council and/or a City Board, City Committee, Planning Commission, or the Hearing Examiner (where applicable)**

<b>Date:</b>	<b>Action Taken:</b>
9/28/2021	PWB Loan Scope Change request Form Approval
9/28/2021	Scope Change and Loan Amount Request
5/28/2021	Resolution No. 2849 Authorizing the Public Works Staff to Apply to the Washington State Department of Commerce, Public Works Board for Funding for Replacement of Water Service Metes
<a href="#">Click here to enter a date.</a>	<a href="#">Click here to enter text.</a>
<a href="#">Click here to enter a date.</a>	<a href="#">Click here to enter text.</a>
<a href="#">Click here to enter a date.</a>	<a href="#">Click here to enter text.</a>

**RESOLUTION NO. 2871**


**RESOLUTION AUTHORIZING THE MAYOR TO SIGN TASK ORDER NO. 2021-10  
BETWEEN THE CITY OF SELAH AND HLA ENGINEERING AND LAND  
SURVEYING, INC. TO PROVIDE ENGINEERING SERVICES FOR THE WATER  
SERVICE METER IMPROVEMENTS PROJECT.**

WHEREAS, the City of Selah is in need of design engineering services for the Water Service Meter Improvements Project; and

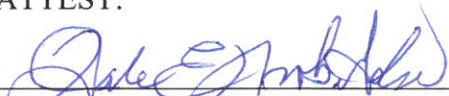
WHEREAS, the City of Selah currently uses HLA Engineering and Land Surveying, Inc. for professional civil engineering and consulting work; and

NOW THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF SELAH, WASHINGTON, that the Mayor is authorized to sign a general agreement with HLA for an estimated maximum fee of \$174,500.00 for the Water Service Meter Improvements project.

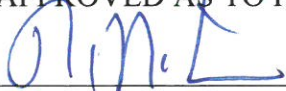
PASSED AND ADOPTED BY THE CITY COUNCIL OF THE CITY OF SELAH, WASHINGTON, this 12th day of October 2021.

  
\_\_\_\_\_  
Sherry Raymond, Mayor

ATTEST:

  
\_\_\_\_\_  
Dale E. Novobnielski, Clerk/Treasurer

APPROVED AS TO FORM:

  
\_\_\_\_\_  
Rob Case, City Attorney

**TASK ORDER NO. 2021-10**

REGARDING GENERAL AGREEMENT BETWEEN CITY OF SELAH

AND

HLA ENGINEERING AND LAND SURVEYING, INC. (HLA)

**PROJECT DESCRIPTION:**

**Water Service Meter Improvements**

HLA Project No. 21221E

The City of Selah (CITY) desires to replace approximately 2,800 existing direct-read water meters with new radio read meters and install an advanced metering infrastructure (AMI) system. The project also includes replacement of existing meter box lids as required for compatibility with the selected AMI meter system. Existing meter boxes will be replaced in locations where replacement lid sizes are not available and/or to replace damaged boxes, as funding allows. A propagation study and analysis will be completed to determine locations for AMI system collectors, repeaters, and/or antennas required for adequate coverage of the City's service area.

Engineering design, environmental documentation, cultural and historic resources review, permitting assistance, public involvement, preparation of bid documents, funding administration, and services during construction will begin immediately following receipt of signed Task Order. This project is funded through the Public Works Board (PWB) construction loan program. Construction is anticipated to begin in 2022 and be complete in 2024 for PWB loan closeout.

Following receipt of equipment provided by the lowest responsible bidder, it is intended for CITY forces to complete the installation of all new meters, boxes, and lids.

**SCOPE OF SERVICES:**

At the direction of the CITY, HLA will provide professional engineering services for the Water Service Meter Improvements project (PROJECT). HLA shall provide the following services:

**1.0 PROJECT and Funding Administration**

- 1.1 Assist CITY with preparation of pre-contract forms and documents required by the funding agency, including updated cost estimate, revised scope of work description, and projected distribution of funds.
- 1.2 Assist CITY with review of funding agency contract forms and documents.
- 1.3 Assist City with contract requirements of the funding agency, including progress reports.
- 1.4 Assist CITY with funding agency reimbursement process, preparation of payment vouchers, and supportive documentation.
- 1.5 Assist CITY with submittal of bid documents to funding agency for review and approval for bid advertisement.
- 1.6 Assist CITY with funding agency project closeout process.

## **2.0 Environmental Review**

- 2.1 Assist CITY with coordination of the Executive Order 21-02 process. Executive Order 21-02 includes consultation with the Department of Archaeological and Historical Preservation (DAHP) affected tribes. Should DAHP require a Cultural Resources Report (CRS), HLA will provide a proposal by a subconsultant to complete the CRS as Additional Services.

## **3.0 Design Engineering**

- 3.1 Assist CITY in reviewing existing meter inventory and records, including installation condition, meter, meter box, and lid types and sizes.
- 3.2 Attend up to three (3) meetings with the CITY and meter equipment vendors to review and discuss design features and services offered by each company.
- 3.3 Attend two (2) design meetings with the CITY to obtain input regarding proposed improvements.
- 3.4 Assist CITY with coordination of initial propagation study completed by meter equipment vendors. Review propagation study results and meet with CITY to discuss.
- 3.5 Prepare summary of meter equipment vendor options, features, accessories, and costs, including recommendations to the CITY of meter system equipment options and features to include in bid documents.
- 3.6 This PROJECT is expected to be an evaluated bid (commonly referred to as a request for proposals/RFP) with ranked and rated meter system equipment design features and options. HLA will meet with CITY staff to review and discuss bid evaluation criteria to be included in the bid documents.
- 3.7 Prepare preliminary specifications and bid documents for review and discussion with the CITY.
- 3.8 Incorporate CITY review comments and prepare final specifications/bid documents and construction cost estimate for publicly bid improvements.
- 3.9 Furnish one (1) electronic copy and six (6) paper copies of final specifications for bidding and construction contracts.
- 3.10 Prepare advertisement for bids and transmit to newspapers as selected by the CITY. Advertising fees to be paid by the CITY.
- 3.11 Provide contract documents to potential bidders, as requested, and maintain planholder list.
- 3.12 Prepare any required addenda to contract documents.
- 3.13 Answer questions during bidding from prospective bidders.
- 3.14 Attend PROJECT bid opening and check and tabulate bids.
- 3.15 Review and summarize bidder evaluation criteria to determine the best value meter system equipment proposal, based on established scoring criteria. Make recommendation to the CITY of contract award to the highest scoring responsible bidder.
- 3.16 Assist CITY with review of billing software updates and compatibility with selected meter equipment system.

#### **4.0 Construction Engineering**

- 4.1 Following award of Contract by the CITY, prepare Notice of Award to the Contractor.
- 4.2 Assist in reviewing bond and insurance and prepare contracts.
- 4.3 Coordinate and conduct preconstruction conference followed by issuance of Notice to Proceed.
- 4.4 Provide submittal review for PROJECT materials as provided by the Contractor per the PROJECT specifications.
- 4.5 Assist the City as requested to perform field observation of work, to troubleshoot and make field recommendations, and ensure compliance with the Contract Documents and City construction standards.
- 4.6 Recommend progress payments for the Contractor to the CITY.
- 4.7 Prepare and submit proposed contract change orders when applicable.
- 4.8 Conduct final inspection and prepare punchlist of items to be corrected and provide to the CITY and Contractor.

#### **5.0 Additional Services**

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

#### **6.0 Items to be Furnished and Responsibility of CITY**

- 6.1 Provide full information as to CITY requirements of the PROJECT.
- 6.2 Assist HLA by providing 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.
- 6.3 Examine all studies, reports, sketches, estimates, specifications, drawings, proposals, and other documents presented by HLA, and provide written decisions within a reasonable time as not to delay the work of HLA.
- 6.4 Obtain approval of all governmental authorities having jurisdiction over the PROJECT, and approvals and consents from other individuals or bodies as necessary for completion. Pay all review fees and costs associated with obtaining such approvals.
- 6.5 Pay for PROJECT bid advertisement costs.

#### **TIME OF PERFORMANCE:**

HLA will diligently pursue completion of the PROJECT with the following schedule anticipated:

#### **1.0 PROJECT and Funding Administration**

PROJECT and funding administration shall begin upon receipt of signed Task Order and extend through the completion and closeout of the PROJECT.

#### **2.0 Environmental Review**

Environmental review for the PROJECT shall begin upon receipt of signed Task Order and be completed within sixty (60) working days.

**3.0 Design Engineering**

Completion of specifications, opinion of cost, and bidding services shall be completed within ninety (90) working days following receipt of signed Task Order.

**4.0 Construction Engineering**

Engineering services during construction of the PROJECT shall begin upon construction contract award by the CITY to the lowest responsible bidder and shall extend through the completion of construction.

**5.0 Additional Services**

Time for completion of work directed by the CITY under Additional Services shall be negotiated and mutually agreed upon at the time service is requested by the CITY.

**FEE FOR SERVICE:**

**1.0 PROJECT and Funding Administration**

All work for PROJECT and Funding Administration shall be performed for the Lump Sum fee of \$28,400.00.

**2.0 Environmental Review**

All work for Environmental Review services shall be completed for the Lump Sum fee of \$5,600.00.

**3.0 Design Engineering**

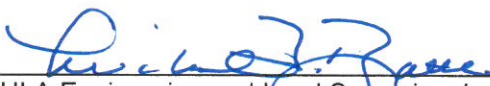
All work for Design Engineering services shall be completed for the Lump Sum fee of \$79,300.00.

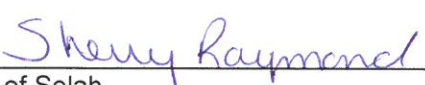
**4.0 Construction Engineering**

All work for Construction Engineering services shall be completed on an hourly basis, at normal hourly billing rates, for the estimated maximum fee of \$61,200.00.

**5.0 Additional Services**

Additional work requested by the CITY not included above shall be authorized by the CITY and agreed upon by HLA in writing prior to proceeding with services. HLA will perform additional services as directed/authorized by the CITY on a time-spent basis at the hourly billing rates included in our General Agreement, plus reimbursement for direct non-salary expenses.

Proposed:  10/6/2021  
HLA Engineering and Land Surveying, Inc. Date  
Michael T. Battle, PE, President

Approved:  10.13.21  
City of Selah Date  
Sherry Raymond, Mayor



**CITY OF SELAH  
CITY COUNCIL  
AGENDA ITEM SUMMARY**



Council Meeting	Action Item
10/12/2021	R-5 N-5

**Title:** Resolution authorizing the Mayor to sign an Agreement between the City of Selah (owner) and HLA Engineering and Land Surveying, Inc. (Engineer) to provide Engineering Construction and Post-Construction Phase Services for the Wastewater Collection System Improvements Project.

**From:** Rocky D. Wallace, Public Works Director

**Action Requested:** Approval

**Staff Recommendation:** Approval

**Board/Commission Recommendation:** Not Applicable

**Fiscal Impact:** \$265,600.00 USDA-RD Loan

**Funding Source:** Sewer Fund 415

**Background / Findings & Facts:** The City is constructing the Wastewater Collection System Improvements project. This agreement is for the engineering services during construction and post-constructions of the Wastewater Collection System Improvements project, including contract and funding agency administration, providing the services of a resident project representative (RPR), and preparation of record drawings.

**Recommended Motion:** I move to approve the Resolution in the form presented.

**Record of all prior actions taken by the City Council and/or a City Board, City Committee, Planning Commission, or the Hearing Examiner (where applicable)**

Date:

Action Taken:





**CITY OF SELAH  
CITY COUNCIL  
AGENDA ITEM SUMMARY**



1/24/2017

Resolution No. 2593 Authorizing the Mayor to sign Task Order 2017-01 between the City of Selah and HLA Engineering and Land Surveying for the General Sewer Plan update.

11/27/2018

Ordinance No.2060 Adopting an updated Sanitary General Sewer Plan as an ancillary document to the city of Selah's Comprehensive Plan; establishing an effective date; and providing for severability.

7/9/2019

Ordinance No. 2079 Amending Title 9.10 Relating to Sewer Connection Fees.

12/8/2020

Resolution No. 2827 Authorizing the Mayor to sign an application for Federal Assistance from the USDA-RD requesting funding for the Wastewater Collections System Improvements Project.

[Click here to enter a date.](#)

[Click here to enter a date.](#)

[Click here to enter text.](#)

**RESOLUTION NO. 2872**

**RESOLUTION AUTHORIZING THE MAYOR TO SIGN AN AGREEMENT BETWEEN THE CITY OF SELAH (OWNER) AND HLA ENGINEERING AND LAND SURVEYING, INC. (ENGINEER) TO PROVIDE ENGINEERING CONSTRUCTION AND POST-CONSTRUCTION PHASE SERVICES FOR THE WASTEWATER COLLECTION SYSTEM IMPROVEMENTS PROJECT.**

WHEREAS, The Public Works Department is requesting the City Council authorize the Mayor to sign an agreement between owner and engineer for professional service; and


WHEREAS, these services are for construction and post-constructions of the Wastewater Collection System Improvements project, including contract and funding agency administration, providing the services of a resident project representative (RPR), and preparation of record drawings, HLA Project No. 19027; and

WHEREAS, the City of Selah currently uses HLA Engineering and Land Surveying, Inc. for professional civil engineering and consulting work; and

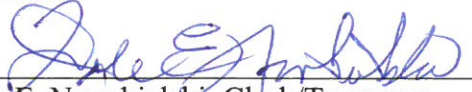
WHEREAS, the City of Selah wishes to engage HLA via agreement for the Engineering construction and post-construction Phase services for the Wastewater Collection System Improvements Project; and

NOW THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF SELAH, WASHINGTON, that the Mayor is authorized to sign an agreement between the City of Selah and HLA Engineering and Land Surveying, Inc. to provide Engineering construction and post-construction services for the Wastewater Collection System Improvements Project.

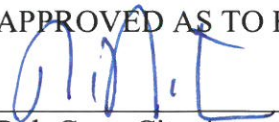
PASSED AND ADOPTED BY THE CITY COUNCIL OF THE CITY OF SELAH, WASHINGTON, this 12th day of October 2021.

  
\_\_\_\_\_  
Sherry Raymond, Mayor

ATTEST:

  
\_\_\_\_\_  
Dale E. Novobielski, Clerk/Treasurer

APPROVED AS TO FORM:

  
\_\_\_\_\_  
Rob Case, City Attorney

**ENGINEER AGREEMENT CERTIFICATION**

PROJECT NAME: Wastewater Collection System Improvements, HLA Project No. 19027

The Engineer and Owner hereby concur in the Funding Agency acceptable revisions to E-500 identified in RUS Bulletin 1780-26. In addition, Engineer certifies to the following:

All modifications to E-500 have been made in accordance the terms of the license agreement, which states in part that the Engineer "must plainly show all changes to the Standard EJCDC Text, using 'Track Changes' (redline/strikeout), highlighting, or other means of clearly indicating additions and deletions." Such other means may include attachments indicating changes (e.g. Supplementary Conditions modifying the General Conditions).

**SUMMARY OF ENGINEERING FEES**

Note that the fees indicated on this table are only a summary and if there is a conflict with any provision of Exhibit C, the provisions there overrule the values on this table. Fees shown in will not be exceeded without the concurrence of the Agency.

Basic Services	\$ <u>126,296.00</u>
Resident Project Observation	\$ <u>139,304.00</u>
Additional Services	\$ _____
TOTAL:	\$ <u>265,600.00</u>

Any adjustments to engineering fees or changes to maximum estimated values must be approved by the Agency and must include a table of what specific category or categories of fees are being changed, what fees were before and after the change, and the resulting total fee.

 10/6/2021  
\_\_\_\_\_  
Engineer Date

Michael T. Battle, PE

\_\_\_\_\_  
Name and Title

 10-13-21  
\_\_\_\_\_  
Owner Date

Sherry Raymond, Mayor

\_\_\_\_\_  
Name and Title

Agency Concurrence:

As lender or insurer of funds to defray the costs of this Contract, and without liability for any payments thereunder, the Agency hereby concurs in the form, content, and execution of this Agreement.

\_\_\_\_\_  
Agency Representative Date

\_\_\_\_\_  
Name and Title

This document has important legal consequences; consultation with an attorney is encouraged with respect to its use or modification. This document should be adapted to the particular circumstances of the contemplated Project and the controlling Laws and Regulations.

**AGREEMENT  
BETWEEN OWNER AND ENGINEER  
FOR PROFESSIONAL SERVICES**

Prepared by



Issued and Published Jointly by



This Agreement has been prepared for use with EJCDC® C-700, Standard General Conditions of the Construction Contract, 2013 Edition. Their provisions are interrelated, and a change in one may necessitate a change in the other. For guidance on the completion and use of this Agreement, see EJCDC® E-001, Commentary on the EJCDC Engineering Services Agreements, 2013 Edition.

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National Society of Professional Engineers  
1420 King Street, Alexandria, VA 22314-2794  
(703) 684-2882  
[www.nspe.org](http://www.nspe.org)

American Council of Engineering Companies  
1015 15th Street N.W., Washington, DC 20005  
(202) 347-7474  
[www.acec.org](http://www.acec.org)

American Society of Civil Engineers  
1801 Alexander Bell Drive, Reston, VA 20191-4400  
(800) 548-2723  
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**AGREEMENT  
BETWEEN OWNER AND ENGINEER  
FOR PROFESSIONAL SERVICES**

THIS IS AN AGREEMENT effective as of October 12, 2021 ("Effective Date") between  
City of Selah ("Owner") and  
HLA Engineering and Land Surveying, Inc. ("Engineer").

Owner's Project, of which Engineer's services under this Agreement are a part, is generally identified as follows:  
**Wastewater Collection System Improvements, HLA Project No. 19027** ("Project").

Other terms used in this Agreement are defined in Article 7.

Engineer's services under this Agreement are generally identified as follows:  
**Construction and post-construction phase services for the Wastewater Collection System Improvements project, including contract and funding agency administration, providing the services of a resident project representative (RPR), and preparation of record drawings.**

Owner and Engineer further agree as follows:

**ARTICLE 1 – SERVICES OF ENGINEER**

1.01 *Scope*

- A. Engineer shall provide, or cause to be provided, the services set forth herein and in Exhibit A.

**ARTICLE 2 – OWNER'S RESPONSIBILITIES**

2.01 *General*

- A. Owner shall have the responsibilities set forth herein and in Exhibit B.
- B. Owner shall pay Engineer as set forth in Article 4 and Exhibit C.
- C. Owner shall be responsible for all requirements and instructions that it furnishes to Engineer pursuant to this Agreement, and for the accuracy and completeness of all programs, reports, data, and other information furnished by Owner to Engineer pursuant to this Agreement. Engineer may use and rely upon such requirements, programs, instructions, reports, data, and information in performing or furnishing services under this Agreement, subject to any express limitations or reservations applicable to the furnished items.
- D. Owner shall give prompt written notice to Engineer whenever Owner observes or otherwise becomes aware of:
  - 1. any development that affects the scope or time of performance of Engineer's services;
  - 2. the presence at the Site of any Constituent of Concern; or

3. any relevant, material defect or nonconformance in: (a) Engineer's services, (b) the Work, (c) the performance of any Constructor, or (d) Owner's performance of its responsibilities under this Agreement.

### ARTICLE 3 – SCHEDULE FOR RENDERING SERVICES

#### 3.01 *Commencement*

- A. Engineer is authorized to begin rendering services as of the Effective Date.

#### 3.02 *Time for Completion*

- A. Engineer shall complete its obligations within a reasonable time. Specific periods of time for rendering services, or specific dates by which services are to be completed, are provided in Exhibit A, and are hereby agreed to be reasonable.
- B. If, through no fault of Engineer, such periods of time or dates are changed, or the orderly and continuous progress of Engineer's services is impaired, or Engineer's services are delayed or suspended, then the time for completion of Engineer's services, and the rates and amounts of Engineer's compensation, shall be adjusted equitably.
- C. If Owner authorizes changes in the scope, extent, or character of the Project or Engineer's services, then the time for completion of Engineer's services, and the rates and amounts of Engineer's compensation, shall be adjusted equitably.
- D. Owner shall make decisions and carry out its other responsibilities in a timely manner so as not to delay the Engineer's performance of its services.
- E. If Engineer fails, through its own fault, to complete the performance required in this Agreement within the time set forth, as duly adjusted, then Owner shall be entitled, as its sole remedy, to the recovery of direct damages, if any, resulting from such failure.

### ARTICLE 4 – INVOICES AND PAYMENTS

#### 4.01 *Invoices*

- A. *Preparation and Submittal of Invoices:* Engineer shall prepare invoices in accordance with its standard invoicing practices and the terms of Exhibit C. Engineer shall submit its invoices to Owner on a monthly basis. Invoices are due and payable within 30 days of receipt. **Invoices will include a breakdown of services provided.**

#### 4.02 *Payments*

- A. *Application to Interest and Principal:* Payment will be credited first to any interest owed to Engineer and then to principal.
- B. *Failure to Pay:* If Owner fails to make any payment due Engineer for services and expenses within 30 days after receipt of Engineer's invoice, then:
  1. amounts due Engineer will be increased at the rate of 1.0% per month (or the maximum rate of interest permitted by law, if less) from said thirtieth day; and



2. Engineer may, after giving seven days written notice to Owner, suspend services under this Agreement until Owner has paid in full all amounts due for services, expenses, and other related charges. Owner waives any and all claims against Engineer for any such suspension.
- C. *Disputed Invoices:* If Owner disputes an invoice, either as to amount or entitlement, then Owner shall promptly advise Engineer in writing of the specific basis for doing so, may withhold only that portion so disputed, and must pay the undisputed portion subject to the terms of Paragraph 4.01.
- D. *Sales or Use Taxes:* If after the Effective Date any governmental entity takes a legislative action that imposes additional sales or use taxes on Engineer's services or compensation under this Agreement, then Engineer may invoice such additional sales or use taxes for reimbursement by Owner. Owner shall reimburse Engineer for the cost of such invoiced additional sales or use taxes; such reimbursement shall be in addition to the compensation to which Engineer is entitled under the terms of Exhibit C.

## ARTICLE 5 – OPINIONS OF COST

### 5.01 *Opinions of Probable Construction Cost*

- A. Engineer's opinions (if any) of probable Construction Cost are to be made on the basis of Engineer's experience, qualifications, and general familiarity with the construction industry. However, because Engineer has no control over the cost of labor, materials, equipment, or services furnished by others, or over contractors' methods of determining prices, or over competitive bidding or market conditions, Engineer cannot and does not guarantee that proposals, bids, or actual Construction Cost will not vary from opinions of probable Construction Cost prepared by Engineer. If Owner requires greater assurance as to probable Construction Cost, then Owner agrees to obtain an independent cost estimate. **Opinions of Probable Cost and any revisions thereof should reflect compliance with American Iron and Steel requirements mandated by Section 746 of Title VII of the Consolidated Appropriations Act of 2017 (Division A – Agriculture, Rural Development, Food and Drug Administration, and Related Agencies Appropriations Act, 2017) and subsequent statutes mandating domestic preference.**

### 5.02 *Designing to Construction Cost Limit*

- A. If a Construction Cost limit is established between Owner and Engineer, such Construction Cost limit and a statement of Engineer's rights and responsibilities with respect thereto will be specifically set forth in Exhibit F to this Agreement.

### 5.03 *Opinions of Total Project Costs*

- A. The services, if any, of Engineer with respect to Total Project Costs shall be limited to assisting the Owner in tabulating the various categories that comprise Total Project Costs. Engineer assumes no responsibility for the accuracy of any opinions of Total Project Costs. **Opinions of Total Project Costs and any revisions thereof should reflect compliance with American Iron and Steel requirements mandated by Section 746 of Title VII of the Consolidated Appropriations Act of 2017 (Division A – Agriculture, Rural Development,**

## ARTICLE 6 – GENERAL CONSIDERATIONS

### 6.01 *Standards of Performance*

- A. *Standard of Care:* The standard of care for all professional engineering and related services performed or furnished by Engineer under this Agreement will be the care and skill ordinarily used by members of the subject profession practicing under similar circumstances at the same time and in the same locality. Engineer makes no warranties, express or implied, under this Agreement or otherwise, in connection with any services performed or furnished by Engineer.
- B. *Technical Accuracy:* Owner shall not be responsible for discovering deficiencies in the technical accuracy of Engineer's services. Engineer shall correct deficiencies in technical accuracy without additional compensation, unless such corrective action is directly attributable to deficiencies in Owner-furnished information.
- C. *Consultants:* Engineer may retain such Consultants as Engineer deems necessary to assist in the performance or furnishing of the services, subject to reasonable, timely, and substantive objections by Owner.
- D. *Reliance on Others:* Subject to the standard of care set forth in Paragraph 6.01.A, Engineer and its Consultants may use or rely upon design elements and information ordinarily or customarily furnished by others, including, but not limited to, specialty contractors, manufacturers, suppliers, and the publishers of technical standards.
- E. *Compliance with Laws and Regulations, and Policies and Procedures:*
  1. Engineer and Owner shall comply with applicable Laws and Regulations.
  2. Engineer shall comply with any and all policies, procedures, and instructions of Owner that are applicable to Engineer's performance of services under this Agreement and that Owner provides to Engineer in writing, subject to the standard of care set forth in Paragraph 6.01.A, and to the extent compliance is not inconsistent with professional practice requirements.
  3. This Agreement is based on Laws and Regulations and Owner-provided written policies and procedures as of the Effective Date. The following may be the basis for modifications to Owner's responsibilities or to Engineer's scope of services, times of performance, or compensation:
    - a. changes after the Effective Date to Laws and Regulations;
    - b. the receipt by Engineer after the Effective Date of Owner-provided written policies and procedures;
    - c. changes after the Effective Date to Owner-provided written policies or procedures.

- F. Engineer shall not be required to sign any document, no matter by whom requested, that would result in the Engineer having to certify, guarantee, or warrant the existence of conditions whose existence the Engineer cannot ascertain. Owner agrees not to make resolution of any dispute with the Engineer or payment of any amount due to the Engineer in any way contingent upon the Engineer signing any such document.
- G. The general conditions for any construction contract documents prepared hereunder are to be EJCDC® C-700 “Standard General Conditions of the Construction Contract” (2013 Edition), prepared by the Engineers Joint Contract Documents Committee, unless expressly indicated otherwise in Exhibit J or elsewhere in this Agreement.
- H. Engineer shall not at any time supervise, direct, control, or have authority over any Constructor’s work, nor shall Engineer have authority over or be responsible for the means, methods, techniques, sequences, or procedures of construction selected or used by any Constructor, or the safety precautions and programs incident thereto, for security or safety at the Site, nor for any failure of a Constructor to comply with Laws and Regulations applicable to that Constructor’s furnishing and performing of its work. Engineer shall not be responsible for the acts or omissions of any Constructor.
- I. Engineer neither guarantees the performance of any Constructor nor assumes responsibility for any Constructor’s, failure to furnish and perform the Work in accordance with the Construction Contract Documents.
- J. Engineer shall not be responsible for any decision made regarding the Construction Contract Documents, or any application, interpretation, clarification, or modification of the Construction Contract Documents, other than those made by Engineer or its Consultants.
- K. Engineer is not required to provide and does not have any responsibility for surety bonding or insurance-related advice, recommendations, counseling, or research, or enforcement of construction insurance or surety bonding requirements.
- L. Engineer’s services do not include providing legal advice or representation.
- M. Engineer’s services do not include (1) serving as a “municipal advisor” for purposes of the registration requirements of Section 975 of the Dodd-Frank Wall Street Reform and Consumer Protection Act (2010) or the municipal advisor registration rules issued by the Securities and Exchange Commission, or (2) advising Owner, or any municipal entity or other person or entity, regarding municipal financial products or the issuance of municipal securities, including advice with respect to the structure, timing, terms, or other similar matters concerning such products or issuances.
- N. While at the Site, Engineer, its Consultants, and their employees and representatives shall comply with the applicable requirements of Contractor's and Owner's safety programs of which Engineer has been informed in writing.

#### 6.02 *Design Without Construction Phase Services*

- A. Engineer shall be responsible only for those Construction Phase services expressly required of Engineer in Exhibit A, Paragraph A1.05. With the exception of such expressly required services, Engineer shall have no design, Shop Drawing review, or other obligations during

construction, and Owner assumes all responsibility for the application and interpretation of the Construction Contract Documents, review and response to Contractor claims, Construction Contract administration, processing of Change Orders and submittals, revisions to the Construction Contract Documents during construction, construction observation and review, review of Contractor's payment applications, and all other necessary Construction Phase administrative, engineering, and professional services. Owner waives all claims against the Engineer that may be connected in any way to Construction Phase administrative, engineering, or professional services except for those services that are expressly required of Engineer in Exhibit A.

#### 6.03 *Use of Documents*

- A. All Documents are instruments of service, and Engineer shall retain an ownership and property interest therein (including the copyright and the right of reuse at the discretion of the Engineer) whether or not the Project is completed.
- B. If Engineer is required to prepare or furnish Drawings or Specifications under this Agreement, Engineer shall deliver to Owner at least one original printed record version of such Drawings and Specifications, signed and sealed according to applicable Laws and Regulations.
- C. Owner may make and retain copies of Documents for information and reference in connection with the use of the Documents on the Project. Engineer grants Owner a limited license to use the Documents on the Project, extensions of the Project, and for related uses of the Owner, subject to receipt by Engineer of full payment due and owing for all services relating to preparation of the Documents, and subject to the following limitations: (1) Owner acknowledges that such Documents are not intended or represented to be suitable for use on the Project unless completed by Engineer, or for use or reuse by Owner or others on extensions of the Project, on any other project, or for any other use or purpose, without written verification or adaptation by Engineer; (2) any such use or reuse, or any modification of the Documents, without written verification, completion, or adaptation by Engineer, as appropriate for the specific purpose intended, will be at Owner's sole risk and without liability or legal exposure to Engineer or to its officers, directors, members, partners, agents, employees, and Consultants; (3) Owner shall indemnify and hold harmless Engineer and its officers, directors, members, partners, agents, employees, and Consultants from all claims, damages, losses, and expenses, including attorneys' fees, arising out of or resulting from any use, reuse, or modification of the Documents without written verification, completion, or adaptation by Engineer; and (4) such limited license to Owner shall not create any rights in third parties.
- D. If Engineer at Owner's request verifies the suitability of the Documents, completes them, or adapts them for extensions of the Project or for any other purpose, then Owner shall compensate Engineer at rates or in an amount to be agreed upon by Owner and Engineer.

#### 6.04 *Electronic Transmittals*

- A. Owner and Engineer may transmit, and shall accept, Project-related correspondence, Documents, text, data, drawings, information, and graphics, in electronic media or digital format, either directly, or through access to a secure Project website, in accordance with a mutually agreeable protocol.

- B. If this Agreement does not establish protocols for electronic or digital transmittals, then Owner and Engineer ~~shall~~ **may** jointly develop such protocols.
- C. When transmitting items in electronic media or digital format, the transmitting party makes no representations as to long term compatibility, usability, or readability of the items resulting from the recipient's use of software application packages, operating systems, or computer hardware differing from those used in the drafting or transmittal of the items, or from those established in applicable transmittal protocols.

6.05 *Insurance*

- A. Engineer shall procure and maintain insurance as set forth in Exhibit G. Engineer shall cause Owner to be listed as an additional insured on any applicable general liability insurance policy carried by Engineer.
- B. Owner shall procure and maintain insurance as set forth in Exhibit G. Owner shall cause Engineer and its Consultants to be listed as additional insureds on any general liability policies carried by Owner, which are applicable to the Project.
- C. Owner shall require Contractor to purchase and maintain policies of insurance covering workers' compensation, general liability, motor vehicle damage and injuries, and other insurance necessary to protect Owner's and Engineer's interests in the Project. Owner shall require Contractor to cause Engineer and its Consultants to be listed as additional insureds with respect to such liability insurance purchased and maintained by Contractor for the Project.
- D. Owner and Engineer shall each deliver to the other certificates of insurance evidencing the coverages indicated in Exhibit G. Such certificates shall be furnished prior to commencement of Engineer's services and at renewals thereafter during the life of the Agreement.
- E. All policies of property insurance relating to the Project, including but not limited to any builder's risk policy, shall allow for waiver of subrogation rights and contain provisions to the effect that in the event of payment of any loss or damage the insurers will have no rights of recovery against any insured thereunder or against Engineer or its Consultants. Owner and Engineer waive all rights against each other, Contractor, the Consultants, and the respective officers, directors, members, partners, employees, agents, consultants, and subcontractors of each and any of them, for all losses and damages caused by, arising out of, or resulting from any of the perils or causes of loss covered by any builder's risk policy and any other property insurance relating to the Project. Owner and Engineer shall take appropriate measures in other Project-related contracts to secure waivers of rights consistent with those set forth in this paragraph.
- F. All policies of insurance shall contain a provision or endorsement that the coverage afforded will not be canceled or reduced in limits by endorsement, and that renewal will not be refused, until at least 10 days prior written notice has been given to the primary insured. Upon receipt of such notice, the receiving party shall promptly forward a copy of the notice to the other party to this Agreement.

- G. At any time, Owner may request that Engineer or its Consultants, at Owner's sole expense, provide additional insurance coverage, increased limits, or revised deductibles that are more protective than those specified in Exhibit G. If so requested by Owner, and if commercially available, Engineer shall obtain and shall require its Consultants to obtain such additional insurance coverage, different limits, or revised deductibles for such periods of time as requested by Owner, and Exhibit G will be supplemented to incorporate these requirements.

6.06 *Suspension and Termination*

A. *Suspension:*

- 1. *By Owner:* Owner may suspend the Project for up to 90 days upon seven days written notice to Engineer.
- 2. *By Engineer:* Engineer may, after giving seven days written notice to Owner, suspend services under this Agreement if Owner has failed to pay Engineer for invoiced services and expenses, as set forth in Paragraph 4.02.B, or in response to the presence of Constituents of Concern at the Site, as set forth in Paragraph 6.10.D.

B. *Termination:* The obligation to provide further services under this Agreement may be terminated:

- 1. For cause,
  - a. by either party upon 30 days written notice in the event of substantial failure by the other party to perform in accordance with the terms hereof through no fault of the terminating party.
  - b. by Engineer:
    - 1) upon seven days written notice if Owner demands that Engineer furnish or perform services contrary to Engineer's responsibilities as a licensed professional; or
    - 2) upon seven days written notice if the Engineer's services for the Project are delayed or suspended for more than 90 days for reasons beyond Engineer's control, or as the result of the presence at the Site of undisclosed Constituents of Concern, as set forth in Paragraph 6.10.D.
    - 3) Engineer shall have no liability to Owner on account of such termination.
  - c. Notwithstanding the foregoing, this Agreement will not terminate under Paragraph 6.06.B.1.a if the party receiving such notice begins, within seven days of receipt of such notice, to correct its substantial failure to perform and proceeds diligently to cure such failure within no more than 30 days of receipt thereof; provided, however, that if and to the extent such substantial failure cannot be reasonably cured within such 30 day period, and if such party has diligently attempted to cure the same and thereafter continues diligently to cure the same,

then the cure period provided for herein shall extend up to, but in no case more than, 60 days after the date of receipt of the notice.

2. For convenience, by Owner effective upon Engineer's receipt of notice from Owner.
- C. *Effective Date of Termination:* The terminating party under Paragraph 6.06.B may set the effective date of termination at a time up to 30 days later than otherwise provided to allow Engineer to demobilize personnel and equipment from the Site to complete tasks whose value would otherwise be lost, to prepare notes as to the status of completed and uncompleted tasks, and to assemble Project materials in orderly files.
- D. *Payments Upon Termination:*
1. In the event of any termination under Paragraph 6.06, Engineer will be entitled to invoice Owner and to receive full payment for all services performed or furnished in accordance with this Agreement and all Reimbursable Expenses incurred through the effective date of termination. Upon making such payment, Owner shall have the limited right to the use of Documents, at Owner's sole risk, subject to the provisions of Paragraph 6.03.
  2. In the event of termination by Owner for convenience or by Engineer for cause, Engineer shall be entitled, in addition to invoicing for those items identified in Paragraph 6.06.D.1, to invoice Owner and receive payment of a reasonable amount for services and expenses directly attributable to termination, both before and after the effective date of termination, such as reassignment of personnel, costs of terminating contracts with Engineer's Consultants, and other related close-out costs, using methods and rates for Additional Services as set forth in Exhibit C.

#### 6.07 *Controlling Law*

- A. This Agreement is to be governed by the Laws and Regulations of the state in which the Project is located.

#### 6.08 *Successors, Assigns, and Beneficiaries*

- A. Owner and Engineer are hereby bound and the successors, executors, administrators, and legal representatives of Owner and Engineer (and to the extent permitted by Paragraph 6.08.B the assigns of Owner and Engineer) are hereby bound to the other party to this Agreement and to the successors, executors, administrators, and legal representatives (and said assigns) of such other party, in respect of all covenants, agreements, and obligations of this Agreement.
- B. Neither Owner nor Engineer may assign, sublet, or transfer any rights under or interest (including, but without limitation, money that is due or may become due) in this Agreement without the written consent of the other party, except to the extent that any assignment, subletting, or transfer is mandated by law. Unless specifically stated to the contrary in any written consent to an assignment, no assignment will release or discharge the assignor from any duty or responsibility under this Agreement.

- C. Unless expressly provided otherwise in this Agreement:
1. Nothing in this Agreement shall be construed to create, impose, or give rise to any duty owed by Owner or Engineer to any Constructor, other third-party individual or entity, or to any surety for or employee of any of them.
  2. All duties and responsibilities undertaken pursuant to this Agreement will be for the sole and exclusive benefit of Owner and Engineer and not for the benefit of any other party.
  3. Owner agrees that the substance of the provisions of this Paragraph 6.08.C shall appear in the Construction Contract Documents.

6.09 *Dispute Resolution*

- A. Owner and Engineer agree to negotiate all disputes between them in good faith for a period of 30 days from the date of notice prior to invoking the procedures of Exhibit H or other provisions of this Agreement or exercising their rights at law.
- B. If the parties fail to resolve a dispute through negotiation under Paragraph 6.09.A, then either or both may invoke the procedures of Exhibit H. If Exhibit H is not included, or if no dispute resolution method is specified in Exhibit H, then the parties may exercise their rights at law.

6.10 *Environmental Condition of Site*

- A. Owner represents to Engineer that as of the Effective Date to the best of Owner's knowledge no Constituents of Concern, other than those disclosed in writing to Engineer, exist at or adjacent to the Site.
- B. If Engineer encounters or learns of an undisclosed Constituent of Concern at the Site, then Engineer shall notify (1) Owner and (2) appropriate governmental officials if Engineer reasonably concludes that doing so is required by applicable Laws or Regulations.
- C. It is acknowledged by both parties that Engineer's scope of services does not include any services related to unknown or undisclosed Constituents of Concern. If Engineer or any other party encounters, uncovers, or reveals an undisclosed Constituent of Concern, then Owner shall promptly determine whether to retain a qualified expert to evaluate such condition or take any necessary corrective action.
- D. If investigative or remedial action, or other professional services, are necessary with respect to undisclosed Constituents of Concern, or if investigative or remedial action beyond that reasonably contemplated is needed to address a disclosed or known Constituent of Concern, then Engineer may, at its option and without liability for consequential or any other damages, suspend performance of services on the portion of the Project affected thereby until such portion of the Project is no longer affected.
- E. If the presence at the Site of undisclosed Constituents of Concern adversely affects the performance of Engineer's services under this Agreement, then the Engineer shall have the option of (1) accepting an equitable adjustment in its compensation or in the time of completion, or both; or (2) terminating this Agreement for cause on seven days' notice.



- F. Owner acknowledges that Engineer is performing professional services for Owner and that Engineer is not and shall not be required to become an "owner," "arranger," "operator," "generator," or "transporter" of hazardous substances, as defined in the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA), as amended, which are or may be encountered at or near the Site in connection with Engineer's activities under this Agreement.

#### 6.11 *Indemnification and Mutual Waiver*

- A. *Indemnification by Engineer:* To the fullest extent permitted by Laws and Regulations, Engineer shall indemnify and hold harmless Owner, and Owner's officers, directors, members, partners, agents, consultants, and employees, from losses, damages, and judgments (including reasonable consultants' and attorneys' fees and expenses) arising from third-party claims or actions relating to the Project, provided that any such claim, action, loss, damages, or judgment is attributable to bodily injury, sickness, disease, or death, or to injury to or destruction of tangible property (other than the Work itself), including the loss of use resulting therefrom, but only to the extent caused by any negligent act or omission of Engineer or Engineer's officers, directors, members, partners, agents, employees, or Consultants. **This indemnification provision is subject to and limited by the provisions, if any, agreed to by Owner and Engineer in Exhibit I, "Limitations of Liability."**
- B. *Indemnification by Owner:* Owner shall indemnify and hold harmless Engineer and its officers, directors, members, partners, agents, employees, and Consultants as required by Laws and Regulations **and to the extent (if any) required in Exhibit I, "Limitations of Liability."**
- C. *Environmental Indemnification:* To the fullest extent permitted by Laws and Regulations, Owner shall indemnify and hold harmless Engineer and its officers, directors, members, partners, agents, employees, and Consultants from all claims, costs, losses, damages, actions, and judgments (including reasonable consultants' and attorney's fees and expenses) caused by, arising out of, relating to, or resulting from a Constituent of Concern at, on, or under the Site, provided that (1) any such claim, cost, loss, damages, action, or judgment is attributable to bodily injury, sickness, disease, or death, or to injury to or destruction of tangible property (other than the Work itself), including the loss of use resulting therefrom, and (2) nothing in this paragraph shall obligate Owner to indemnify any individual or entity from and against the consequences of that individual's or entity's own negligence or willful misconduct.
- D. *No Defense Obligation:* The indemnification commitments in this Agreement do not include a defense obligation by the indemnitor unless such obligation is expressly stated.
- E. *Percentage Share of Negligence:* To the fullest extent permitted by Laws and Regulations, a party's total liability to the other party and anyone claiming by, through, or under the other party for any cost, loss, or damages caused in part by the negligence of the party and in part by the negligence of the other party or any other negligent entity or individual, shall not exceed the percentage share that the party's negligence bears to the total negligence of Owner, Engineer, and all other negligent entities and individuals.
- F. *Mutual Waiver:* To the fullest extent permitted by Laws and Regulations, Owner and Engineer waive against each other, and the other's employees, officers, directors, members,

agents, insurers, partners, and consultants, any and all claims for or entitlement to special, incidental, indirect, or consequential damages arising out of, resulting from, or in any way related to this Agreement or the Project, from any cause or causes.

#### 6.12 *Records Retention*

- A. Engineer shall maintain on file in legible form, for a period of five years following completion or termination of its services, all Documents, records (including cost records), and design calculations related to Engineer's services or pertinent to Engineer's performance under this Agreement. Upon Owner's request, Engineer shall provide a copy of any such item to Owner at cost.

#### 6.13 *Miscellaneous Provisions*

- A. *Notices:* Any notice required under this Agreement will be in writing, addressed to the appropriate party at its address on the signature page and given personally, by registered or certified mail postage prepaid, or by a commercial courier service. All notices shall be effective upon the date of receipt.
- B. *Survival:* All express representations, waivers, indemnifications, and limitations of liability included in this Agreement will survive its completion or termination for any reason.
- C. *Severability:* Any provision or part of the Agreement held to be void or unenforceable under any Laws or Regulations shall be deemed stricken, and all remaining provisions shall continue to be valid and binding upon Owner and Engineer, which agree that the Agreement shall be reformed to replace such stricken provision or part thereof with a valid and enforceable provision that comes as close as possible to expressing the intention of the stricken provision.
- D. *Waiver:* A party's non-enforcement of any provision shall not constitute a waiver of that provision, nor shall it affect the enforceability of that provision or of the remainder of this Agreement.
- E. *Accrual of Claims:* To the fullest extent permitted by Laws and Regulations, all causes of action arising under this Agreement shall be deemed to have accrued, and all statutory periods of limitation shall commence, no later than the date of Substantial Completion.

### **ARTICLE 7 – DEFINITIONS**

#### 7.01 *Defined Terms*

- A. Wherever used in this Agreement (including the Exhibits hereto) terms (including the singular and plural forms) printed with initial capital letters have the meanings indicated in the text above, in the exhibits, or in the following definitions:
  - 1. *Addenda*—Written or graphic instruments issued prior to the opening of bids which clarify, correct, or change the bidding requirements or the proposed Construction Contract Documents.

2. *Additional Services*—The services to be performed for or furnished to Owner by Engineer in accordance with Part 2 of Exhibit A of this Agreement.
3. *Agreement*—This written contract for professional services between Owner and Engineer, including all exhibits identified in Paragraph 8.01 and any duly executed amendments.
4. *Application for Payment*—The form acceptable to Engineer which is to be used by Contractor during the course of the Work in requesting progress or final payments and which is to be accompanied by such supporting documentation as is required by the Construction Contract.
5. *Basic Services*—The services to be performed for or furnished to Owner by Engineer in accordance with Part 1 of Exhibit A of this Agreement.
6. *Change Order*—A document which is signed by Contractor and Owner and authorizes an addition, deletion, or revision in the Work or an adjustment in the Construction Contract Price or the Construction Contract Times, or other revision to the Construction Contract, issued on or after the effective date of the Construction Contract.
7. *Change Proposal*—A written request by Contractor, duly submitted in compliance with the procedural requirements set forth in the Construction Contract, seeking an adjustment in Construction Contract Price or Construction Contract Times, or both; contesting an initial decision by Engineer concerning the requirements of the Construction Contract Documents or the acceptability of Work under the Construction Contract Documents; challenging a set-off against payments due; or seeking other relief with respect to the terms of the Construction Contract.
8. *Constituent of Concern*—Asbestos, petroleum, radioactive material, polychlorinated biphenyls (PCBs), hazardous waste, and any substance, product, waste, or other material of any nature whatsoever that is or becomes listed, regulated, or addressed pursuant to (a) the Comprehensive Environmental Response, Compensation and Liability Act, 42 U.S.C. §§9601 et seq. (“CERCLA”); (b) the Hazardous Materials Transportation Act, 49 U.S.C. §§5501 et seq.; (c) the Resource Conservation and Recovery Act, 42 U.S.C. §§6901 et seq. (“RCRA”); (d) the Toxic Substances Control Act, 15 U.S.C. §§2601 et seq.; (e) the Clean Water Act, 33 U.S.C. §§1251 et seq.; (f) the Clean Air Act, 42 U.S.C. §§7401 et seq.; or (g) any other federal, State, or local statute, law, rule, regulation, ordinance, resolution, code, order, or decree regulating, relating to, or imposing liability or standards of conduct concerning, any hazardous, toxic, or dangerous waste, substance, or material.
9. *Construction Contract*—The entire and integrated written contract between the Owner and Contractor concerning the Work.
10. *Construction Contract Documents*—Those items designated as “Contract Documents” in the Construction Contract, and which together comprise the Construction Contract.
11. *Construction Contract Price*—The money that Owner has agreed to pay Contractor for completion of the Work in accordance with the Construction Contract Documents.

12. *Construction Contract Times*—The number of days or the dates by which Contractor shall:  
(a) achieve milestones, if any, in the Construction Contract; (b) achieve Substantial Completion; and (c) complete the Work.
13. *Construction Cost*—The cost to Owner of the construction of those portions of the entire Project designed or specified by or for Engineer under this Agreement, including construction labor, services, materials, equipment, insurance, and bonding costs, and allowances for contingencies. Construction Cost does not include costs of services of Engineer or other design professionals and consultants; cost of land or rights-of-way, or compensation for damages to property; Owner's costs for legal, accounting, insurance counseling, or auditing services; interest or financing charges incurred in connection with the Project; or the cost of other services to be provided by others to Owner. Construction Cost is one of the items comprising Total Project Costs.
14. *Constructor*—Any person or entity (not including the Engineer, its employees, agents, representatives, and Consultants), performing or supporting construction activities relating to the Project, including but not limited to Contractors, Subcontractors, Suppliers, Owner's work forces, utility companies, other contractors, construction managers, testing firms, shippers, and truckers, and the employees, agents, and representatives of any or all of them.
15. *Consultants*—Individuals or entities having a contract with Engineer to furnish services with respect to this Project as Engineer's independent professional associates and consultants; subcontractors; or vendors.
16. *Contractor*—The entity or individual with which Owner enters into a Construction Contract.
17. *Documents*—Data, reports, Drawings, Specifications, Record Drawings, building information models, civil integrated management models, and other deliverables, whether in printed or electronic format, provided or furnished in appropriate phases by Engineer to Owner pursuant to this Agreement.
18. *Drawings*—That part of the Construction Contract Documents that graphically shows the scope, extent, and character of the Work to be performed by Contractor.
19. *Effective Date*—The date indicated in this Agreement on which it becomes effective, but if no such date is indicated, the date on which this Agreement is signed and delivered by the last of the parties to sign and deliver.
20. *Engineer*—The individual or entity named as such in this Agreement.
21. *Field Order*—A written order issued by Engineer which requires minor changes in the Work but does not change the Construction Contract Price or the Construction Contract Times.
22. *Laws and Regulations; Laws or Regulations*—Any and all applicable laws, statutes, rules, regulations, ordinances, codes, and orders of any and all governmental bodies, agencies, authorities, and courts having jurisdiction.

23. *Owner*—The individual or entity named as such in this Agreement and for which Engineer's services are to be performed. Unless indicated otherwise, this is the same individual or entity that will enter into any Construction Contracts concerning the Project.
24. *Project*—The total undertaking to be accomplished for Owner by engineers, contractors, and others, including planning, study, design, construction, testing, commissioning, and start-up, and of which the services to be performed or furnished by Engineer under this Agreement are a part.
25. *Record Drawings*—Drawings depicting the completed Project, or a specific portion of the completed Project, prepared by Engineer ~~as an Additional Service~~ and based on Contractor's record copy of all Drawings, Specifications, Addenda, Change Orders, Work Change Directives, Field Orders, and written interpretations and clarifications, as delivered to Engineer and annotated by Contractor to show changes made during construction.
26. *Reimbursable Expenses*—The expenses incurred directly by Engineer in connection with the performing or furnishing of Basic Services and Additional Services for the Project.
27. *Resident Project Representative*—The authorized representative of Engineer assigned to assist Engineer at the Site during the Construction Phase. As used herein, the term Resident Project Representative or "RPR" includes any assistants or field staff of Resident Project Representative. The duties and responsibilities of the Resident Project Representative, if any, are as set forth in Exhibit D.
28. *Samples*—Physical examples of materials, equipment, or workmanship that are representative of some portion of the Work and that establish the standards by which such portion of the Work will be judged.
29. *Shop Drawings*—All drawings, diagrams, illustrations, schedules, and other data or information that are specifically prepared or assembled by or for Contractor and submitted by Contractor to illustrate some portion of the Work. Shop Drawings, whether approved or not, are not Drawings and are not Construction Contract Documents.
30. *Site*—Lands or areas to be indicated in the Construction Contract Documents as being furnished by Owner upon which the Work is to be performed, including rights-of-way and easements, and such other lands furnished by Owner which are designated for the use of Contractor.
31. *Specifications*—The part of the Construction Contract Documents that consists of written requirements for materials, equipment, systems, standards, and workmanship as applied to the Work, and certain administrative requirements and procedural matters applicable to the Work.
32. *Subcontractor*—An individual or entity having a direct contract with Contractor or with any other Subcontractor for the performance of a part of the Work.
33. *Substantial Completion*—The time at which the Work (or a specified part thereof) has progressed to the point where, in the opinion of Engineer, the Work (or a specified part thereof) is sufficiently complete, in accordance with the Construction Contract

Documents, so that the Work (or a specified part thereof) can be utilized for the purposes for which it is intended. The terms “substantially complete” and “substantially completed” as applied to all or part of the Work refer to Substantial Completion thereof.

34. *Supplier*—A manufacturer, fabricator, supplier, distributor, materialman, or vendor having a direct contract with Contractor or with any Subcontractor to furnish materials or equipment to be incorporated in the Work by Contractor or a Subcontractor.
  35. *Total Project Costs*—The total cost of planning, studying, designing, constructing, testing, commissioning, and start-up of the Project, including Construction Cost and all other Project labor, services, materials, equipment, insurance, and bonding costs, allowances for contingencies, and the total costs of services of Engineer or other design professionals and consultants, together with such other Project-related costs that Owner furnishes for inclusion, including but not limited to cost of land, rights-of-way, compensation for damages to properties, Owner’s costs for legal, accounting, insurance counseling, and auditing services, interest and financing charges incurred in connection with the Project, and the cost of other services to be provided by others to Owner.
  36. *Work*—The entire construction or the various separately identifiable parts thereof required to be provided under the Construction Contract Documents. Work includes and is the result of performing or providing all labor, services, and documentation necessary to produce such construction; furnishing, installing, and incorporating all materials and equipment into such construction; and may include related services such as testing, start-up, and commissioning, all as required by the Construction Contract Documents.
  37. *Work Change Directive*—A written directive to Contractor issued on or after the effective date of the Construction Contract, signed by Owner and recommended by Engineer, ordering an addition, deletion, or revision in the Work.
  38. ***Agency—The Rural Utilities Service or any designated representative of Rural Utilities Service, including USDA, Rural Development.***
- B. *Day*:
1. The word “day” means a calendar day of 24 hours measured from midnight to the next midnight.

## ARTICLE 8 – EXHIBITS AND SPECIAL PROVISIONS

### 8.01 *Exhibits Included:*

- A. Exhibit A, Engineer’s Services.
- B. Exhibit B, Owner’s Responsibilities.
- C. Exhibit C, Payments to Engineer for Services and Reimbursable Expenses.
- D. Exhibit D, Duties, Responsibilities and Limitations of Authority of Resident Project Representative.

- E. Exhibit E, Notice of Acceptability of Work.
- F. Exhibit F, Construction Cost Limit. **NOT USED**
- G. Exhibit G, Insurance.
- H. Exhibit H, Dispute Resolution.
- I. Exhibit I, Limitations of Liability.
- J. Exhibit J, Special Provisions. **NOT USED**
- K. Exhibit K, Amendment to Owner-Engineer Agreement.

#### 8.02 *Total Agreement*

- A. This Agreement, (together with the exhibits included above) constitutes the entire agreement between Owner and Engineer and supersedes all prior written or oral understandings. This Agreement may only be amended, supplemented, modified, or canceled by a written instrument duly executed by both parties. Amendments should be based whenever possible on the format of Exhibit K to this Agreement.

#### 8.03 *Designated Representatives*

- A. With the execution of this Agreement, Engineer and Owner shall designate specific individuals to act as Engineer's and Owner's representatives with respect to the services to be performed or furnished by Engineer and responsibilities of Owner under this Agreement. Such an individual shall have authority to transmit instructions, receive information, and render decisions relative to this Agreement on behalf of the respective party whom the individual represents.

#### 8.04 *Engineer's Certifications*

- A. Engineer certifies that it has not engaged in corrupt, fraudulent, or coercive practices in competing for or in executing the Agreement. For the purposes of this Paragraph 8.04:
  - 1. "corrupt practice" means the offering, giving, receiving, or soliciting of any thing of value likely to influence the action of a public official in the selection process or in the Agreement execution;
  - 2. "fraudulent practice" means an intentional misrepresentation of facts made (a) to influence the selection process or the execution of the Agreement to the detriment of Owner, or (b) to deprive Owner of the benefits of free and open competition;
  - 3. "coercive practice" means harming or threatening to harm, directly or indirectly, persons or their property to influence their participation in the selection process or affect the execution of the Agreement.

#### 8.05 *Federal Requirements*

- A. **Agency Concurrence. Signature of a duly authorized representative of the Agency in the space provided on the signature page of EJCDC E-500 hereof does not constitute a**

commitment to provide financial assistance or payments hereunder but does signify that this Agreement conforms to Agency's applicable requirements. This Agreement shall not be effective unless the Funding Agency's designated representative concurs. No amendment to this Agreement shall be effective unless the Funding Agency's designated representative concurs.

- B. **Audit and Access to Records.** Owner, Agency, the Comptroller General of the United States, or any of their duly authorized representatives, shall have access to any books, documents, papers, and records of the Engineer which are pertinent to the Agreement, for the purpose of making audits, examinations, excerpts, and transcriptions. Engineer shall maintain all required records for three years after final payment is made and all other pending matters are closed.
- C. **Restrictions on Lobbying.** Engineer and each Consultant shall comply with "Restrictions on Lobbying" if they are recipients of engineering services contracts and subcontracts that exceed \$100,000 at any tier. If applicable, Engineer must complete a certification form on lobbying activities related to a specific Federal loan or grant that is a funding source for this Agreement. Each tier certifies to the tier above that it will not and has not used Federal appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of any agency, a member of Congress, or an employee of a member of Congress in connection with obtaining any Federal contract, grant, or any other applicable award. Each tier shall disclose any lobbying with non-Federal funds that takes place in connection with obtaining any Federal award. Certifications and disclosures are forwarded from tier to tier up to the Owner. Necessary certification and disclosure forms shall be provided by Owner.
- D. **Suspension and Debarment.** Engineer certifies, by signing this Agreement, that neither it nor its principals are presently debarred, suspended, proposed for debarment, declared ineligible or voluntarily excluded from participation in this transaction by any Federal department or agency. Engineer will not contract with any Consultant for this project if it or its principals is presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by any Federal department or agency. Necessary certification forms shall be provided by the Owner. The Engineer will complete and submit a form AD-1048, "Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion – lower tier transactions," to the Owner who will forward it to USDA, Rural Development processing office.



IN WITNESS WHEREOF, the parties hereto have executed this Agreement, the Effective Date of which is indicated on page 1.

Owner: **City of Selah**

Engineer: **HLA Engineering and Land Surveying, Inc.**

By: Sherry Raymond  
Print name: Sherry Raymond  
Title: Mayor  
Date Signed: 10-13-21

By: Michael T. Battle  
Print name: Michael T. Battle, PE  
Title: President  
Date Signed: 10/6/2021

Engineer License No.: 34872  
State of: Washington

Address for Owner's receipt of notices:  
115 W. Naches Avenue, Selah, WA 98942

Address for Engineer's receipt of notices:  
2803 River Road, Yakima, WA 98902

Designated Representative (Paragraph 8.03.A):  
**Joe Henne**  
Title: City Administrator  
Phone Number: 509-698-7333  
E-Mail Address: joe.henne@selahwa.us

Designated Representative (Paragraph 8.03.A):  
**Stephen S. Hazzard, PE**  
Title: Project Engineer  
Phone Number: 509-966-7000  
E-Mail Address: shazzard@hlacivil.com

This is **EXHIBIT A**, consisting of **17** pages, referred to in and part of the **Agreement between Owner and Engineer for Professional Services** dated **October 12, 2021**.

## **Engineer's Services**

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Article 1 of the Agreement is supplemented to include the following agreement of the parties.

Engineer shall provide Basic and Additional Services as set forth below.

### **PART 1 – BASIC SERVICES**

A1.01 *Study and Report Phase* – **NOT USED**

A1.02 *Preliminary Design Phase* – **NOT USED**

A1.03 *Final Design Phase*– **NOT USED**

A1.04 *Bidding or Negotiating Phase*– **NOT USED**

A1.05 *Construction Phase*

- A. Upon successful completion of the Bidding and Negotiating Phase, and upon written authorization from Owner, Engineer shall:
1. *General Administration of Construction Contract*: Consult with Owner and act as Owner's representative as provided in the Construction Contract. The extent and limitations of the duties, responsibilities, and authority of Engineer shall be as assigned in EJCDC® C-700, Standard General Conditions of the Construction Contract (2013 Edition), prepared by the Engineers Joint Contract Documents Committee, or other construction general conditions specified in this Agreement. If Owner, or Owner and Contractor, modify the duties, responsibilities, and authority of Engineer in the Construction Contract, or modify other terms of the Construction Contract having a direct bearing on Engineer, then Owner shall compensate Engineer for any related increases in the cost to provide Construction Phase services. Engineer shall not be required to furnish or perform services contrary to Engineer's responsibilities as a licensed professional. All of Owner's instructions to Contractor will be issued through Engineer, which shall have authority to act on behalf of Owner in dealings with Contractor to the extent provided in this Agreement and the Construction Contract except as otherwise provided in writing.
  2. *Resident Project Representative (RPR)*: Provide the services of an RPR at the Site to assist the Engineer and to provide more extensive observation of Contractor's work. Duties, responsibilities, and authority of the RPR are as set forth in Exhibit D. The furnishing of such RPR's services will not limit, extend, or modify Engineer's responsibilities or authority except as expressly set forth in Exhibit D.
  3. *Selection of Independent Testing Laboratory*: Assist Owner in the selection of an independent testing laboratory to perform the services identified in Exhibit B, Paragraph B2.01.

4. *Pre-Construction Conference*: Participate in **and chair** a pre-construction conference prior to commencement of Work at the Site.
5. *Electronic Transmittal Protocols*: If the Construction Contract Documents do not specify protocols for the transmittal of Project-related correspondence, documents, text, data, drawings, information, and graphics, in electronic media or digital format, either directly, or through access to a secure Project website, then together with Owner and Contractor jointly develop such protocols for transmittals between and among Owner, Contractor, and Engineer during the Construction Phase and Post-Construction Phase.
6. *Original Documents*: ~~If requested by Owner to do so,~~ **Maintain** and safeguard during the Construction Phase at least one original printed record version of the Construction Contract Documents, including Drawings and Specifications signed and sealed by Engineer and other design professionals in accordance with applicable Laws and Regulations. Throughout the Construction Phase, make such original printed record version of the Construction Contract Documents available to Contractor and Owner for review.
7. *Schedules*: Receive, review, and determine the acceptability of any and all schedules that Contractor is required to submit to Engineer, including the Progress Schedule, Schedule of Submittals, and Schedule of Values.
8. *Baselines and Benchmarks*: As appropriate, establish baselines and benchmarks for locating the Work which in Engineer's judgment are necessary to enable Contractor to proceed.
9. *Visits to Site and Observation of Construction*: In connection with observations of Contractor's Work while it is in progress:
  - a. Make visits to the Site at intervals appropriate to the various stages of construction, as Engineer deems necessary, to observe as an experienced and qualified design professional the progress of Contractor's executed Work. Such visits and observations by Engineer, and the Resident Project Representative, if any, are not intended to be exhaustive or to extend to every aspect of the Work or to involve detailed inspections of the Work beyond the responsibilities specifically assigned to Engineer in this Agreement and the Construction Contract Documents, but rather are to be limited to spot checking, selective sampling, and similar methods of general observation of the Work based on Engineer's exercise of professional judgment, as assisted by the Resident Project Representative, if any. Based on information obtained during such visits and observations, Engineer will determine in general if the Work is proceeding in accordance with the Construction Contract Documents, and Engineer shall keep Owner informed of the progress of the Work.
  - b. The purpose of Engineer's visits to the Site, and representation by the Resident Project Representative, if any, at the Site, will be to enable Engineer to better carry out the duties and responsibilities assigned to and undertaken by Engineer during the Construction Phase, and, in addition, by the exercise of Engineer's efforts as an experienced and qualified design professional, to provide for Owner a greater degree of confidence that the completed Work will conform in general to the Construction Contract Documents and that Contractor has implemented and maintained the

integrity of the design concept of the completed Project as a functioning whole as indicated in the Construction Contract Documents. Engineer shall not, during such visits or as a result of such observations of the Work, supervise, direct, or have control over the Work, nor shall Engineer have authority over or responsibility for the means, methods, techniques, sequences, or procedures of construction selected or used by any Constructor, for security or safety at the Site, for safety precautions and programs incident to any Constructor's work in progress, for the coordination of the Constructors' work or schedules, nor for any failure of any Constructor to comply with Laws and Regulations applicable to furnishing and performing of its work. Accordingly, Engineer neither guarantees the performance of any Constructor nor assumes responsibility for any Constructor's failure to furnish or perform the Work, or any portion of the Work, in accordance with the Construction Contract Documents.

**c. The visits described in Article A1.05.A.9.a shall be at least monthly and the Engineer shall document all visits to the project with copies furnished to the Owner and Agency.**

10. *Defective Work:* Reject Work if, on the basis of Engineer's observations, Engineer believes that such Work is defective under the terms and standards set forth in the Construction Contract Documents. Provide recommendations to Owner regarding whether Contractor should correct such Work or remove and replace such Work, or whether Owner should consider accepting such Work as provided in the Construction Contract Documents.
11. *Compatibility with Design Concept:* If Engineer has express knowledge that a specific part of the Work that is not defective under the terms and standards set forth in the Construction Contract Documents is nonetheless not compatible with the design concept of the completed Project as a functioning whole, then inform Owner of such incompatibility, and provide recommendations for addressing such Work.
12. *Clarifications and Interpretations:* Accept from Contractor and Owner submittal of all matters in question concerning the requirements of the Construction Contract Documents (sometimes referred to as requests for information or interpretation—RFIs), or relating to the acceptability of the Work under the Construction Contract Documents. With reasonable promptness, render a written clarification, interpretation, or decision on the issue submitted, or initiate an amendment or supplement to the Construction Contract Documents.
13. *Non-reviewable Matters:* If a submitted matter in question concerns the Engineer's performance of its duties and obligations, or terms and conditions of the Construction Contract Documents that do not involve (1) the performance or acceptability of the Work under the Construction Contract Documents, (2) the design (as set forth in the Drawings, Specifications, or otherwise), or (3) other engineering or technical matters, then Engineer will promptly give written notice to Owner and Contractor that Engineer will not provide a decision or interpretation.
14. *Field Orders:* Subject to any limitations in the Construction Contract Documents, Engineer may prepare and issue Field Orders requiring minor changes in the Work.

15. *Change Orders and Work Change Directives*: Recommend Change Orders and Work Change Directives to Owner, as appropriate, and prepare Change Orders and Work Change Directives as required.
16. *Differing Site Conditions*: Respond to any notice from Contractor of differing site conditions, including conditions relating to underground facilities such as utilities, and hazardous environmental conditions. Promptly conduct reviews and prepare findings, conclusions, and recommendations for Owner's use.
17. *Shop Drawings, Samples, and Other Submittals*: **Review and approve or take other appropriate action with respect to Shop Drawings, Samples, and other required Contractor submittals, including Applications for Payment, to ensure compliance with AIS. Any iron and steel products included in any submittal by the General Contractor, must include a Manufacturers' Certification letter to verify the products were produced in the United States. Copies of Manufacturers' Certifications must be kept in the Engineer's project file and on-site during construction. In the event the Engineer requires an item to be sole source, the Engineer must furnish the Manufacturers Certification to the Contractor for said item.** Review and approve or take other appropriate action with respect to Shop Drawings, Samples, and other required Contractor submittals, but only for conformance with the information given in the Construction Contract Documents and compatibility with the design concept of the completed Project as a functioning whole as indicated by the Construction Contract Documents. Such reviews and approvals or other action will not extend to means, methods, techniques, sequences, or procedures of construction or to safety precautions and programs incident thereto. Engineer shall meet any Contractor's submittal schedule that Engineer has accepted.
18. *Substitutes and "Or-equal"*: Evaluate and determine the acceptability of substitute or "or-equal" materials and equipment proposed by Contractor, but subject to the provisions of Paragraph A2.02.A.2 of this Exhibit A. **Review of substitutes and "or equals" shall be in accordance with the General Conditions of the Contract and applicable Agency regulations. Prior to approval of any substitute "or equal" review Manufacturers' Certifications provided by the Contractor to verify the product(s) meet AIS requirements. Manufacturers' Certifications must be kept in the Engineer's project file an on-site during construction to ensure compliance with AIS.**
19. *Inspections and Tests*:
  - a. Receive and review all certificates of inspections, tests, and approvals required by Laws and Regulations or the Construction Contract Documents. Engineer's review of such certificates will be for the purpose of determining that the results certified indicate compliance with the Construction Contract Documents and will not constitute an independent evaluation that the content or procedures of such inspections, tests, or approvals comply with the requirements of the Construction Contract Documents. Engineer shall be entitled to rely on the results of such inspections and tests.
  - b. As deemed reasonably necessary, request that Contractor uncover Work that is to be inspected, tested, or approved.

- c. Pursuant to the terms of the Construction Contract, require special inspections or testing of the Work, whether or not the Work is fabricated, installed, or completed.
  - d. **Receive and review all Manufacturers' Certifications for materials required to comply with AIS. Manufacturers' Certifications must be kept in the Engineer's project file and on-site during construction.**
20. *Change Proposals and Claims:* (a) Review and respond to Change Proposals. Review each duly submitted Change Proposal from Contractor and, within 30 days after receipt of the Contractor's supporting data, either deny the Change Proposal in whole, approve it in whole, or deny it in part and approve it in part. Such actions shall be in writing, with a copy provided to Owner and Contractor. If the Change Proposal does not involve the design (as set forth in the Drawings, Specifications, or otherwise), the acceptability of the Work, or other engineering or technical matters, then Engineer will notify the parties that the Engineer will not resolve the Change Proposal. (b) Provide information or data to Owner regarding engineering or technical matters pertaining to Claims. **Review Change Proposals to ensure compliance with AIS.**
21. *Applications for Payment:* Based on Engineer's observations as an experienced and qualified design professional and on review of Applications for Payment and accompanying supporting documentation:
- a. Determine the amounts that Engineer recommends Contractor be paid. Recommend reductions in payment (set-offs) based on the provisions for set-offs stated in the Construction Contract. Such recommendations of payment will be in writing and will constitute Engineer's representation to Owner, based on such observations and review, that, to the best of Engineer's knowledge, information and belief, Contractor's Work has progressed to the point indicated, the Work is generally in accordance with the Construction Contract Documents (subject to an evaluation of the Work as a functioning whole prior to or upon Substantial Completion, to the results of any subsequent tests called for in the Construction Contract Documents, and to any other qualifications stated in the recommendation), and the conditions precedent to Contractor's being entitled to such payment appear to have been fulfilled in so far as it is Engineer's responsibility to observe the Work. In the case of unit price Work, Engineer's recommendations of payment will include final determinations of quantities and classifications of the Work (subject to any subsequent adjustments allowed by the Construction Contract Documents).
  - b. By recommending payment, Engineer shall not thereby be deemed to have represented that observations made by Engineer to check the quality or quantity of Contractor's Work as it is performed and furnished have been exhaustive, extended to every aspect of Contractor's Work in progress, or involved detailed inspections of the Work beyond the responsibilities specifically assigned to Engineer in this Agreement. Neither Engineer's review of Contractor's Work for the purposes of recommending payments nor Engineer's recommendation of any payment including final payment will impose on Engineer responsibility to supervise, direct, or control the Work, or for the means, methods, techniques, sequences, or procedures of construction or safety precautions or programs incident thereto, or Contractor's compliance with Laws and Regulations applicable to Contractor's furnishing and

performing the Work. It will also not impose responsibility on Engineer to make any examination to ascertain how or for what purposes Contractor has used the money paid to Contractor by Owner; to determine that title to any portion of the Work, including materials or equipment, has passed to Owner free and clear of any liens, claims, security interests, or encumbrances; or that there may not be other matters at issue between Owner and Contractor that might affect the amount that should be paid.

22. *Contractor's Completion Documents:* Receive from Contractor, review, and transmit to Owner maintenance and operating instructions, schedules, guarantees, bonds, certificates or other evidence of insurance required by the Construction Contract Documents, certificates of inspection, tests and approvals, and Shop Drawings, Samples, and other data approved as provided under Paragraph A1.05.A.17. ~~Receive from Contractor, review, and transmit to Owner the annotated record documents which are to be assembled by Contractor in accordance with the Construction Contract Documents to obtain final payment. The extent of Engineer's review of record documents shall be to check that Contractor has submitted all pages.~~ **Receive from Contractor and review the annotated record documents which are to be assembled by Contractor in accordance with the construction Contract Documents to obtain final payment. The Engineer shall prepare Record Drawings and furnish such Record Drawings to Owner.**
23. *Substantial Completion:* Promptly after notice from Contractor that Contractor considers the entire Work ready for its intended use, in company with Owner and Contractor, visit the Site to review the Work and determine the status of completion. Follow the procedures in the Construction Contract regarding the preliminary certificate of Substantial Completion, punch list of items to be completed, Owner's objections, notice to Contractor, and issuance of a final certificate of Substantial Completion. Assist Owner regarding any remaining engineering or technical matters affecting Owner's use or occupancy of the Work following Substantial Completion.
24. *Other Tasks:* Perform or provide the following other Construction Phase tasks or deliverables:
  - a. **Furnish field survey crew and provide construction staking as specified in Construction Contract Documents.**
  - b. **Prepare monthly progress payment estimates to Owner based on review and evaluation of Contractor's application for payment. Perform measurement and computation of pay items necessary to verify quantities requested by Contractor in application for payment.**
  - c. **Administer construction progress meetings. Construction meetings are anticipated to be a maximum of one (1) per week throughout the construction duration.**
  - d. **Monitor Contractor's compliance with the contract documents for labor standards and review Statements of Intent to pay Prevailing Wages and Affidavits of Wages Paid.**

- e. **Participate in field startup, testing, and commissioning activities conducted by the Contractor for new equipment, controls, and building systems.**
  - f. **Upon Substantial Completion, the Engineer shall provide a copy of the Certificate of Substantial Completion to the Agency.**
  - g. **Prepare and submit Ecology Declaration of Construction Completion form.**
  - h. **Assist Owner with preparing and submitting Notice of Completion of Public Works Contract to Washington State Department of Revenue, Labor & Industries, and Employment Security Department.**
25. *Final Notice of Acceptability of the Work:* Conduct a final visit to the Project to determine if the Work is complete and acceptable so that Engineer may recommend, in writing, final payment to Contractor. Accompanying the recommendation for final payment, Engineer shall also provide a notice to Owner and Contractor in the form attached hereto as Exhibit E (“Notice of Acceptability of Work”) that the Work is acceptable (subject to the provisions of the Notice and Paragraph A1.05.A.21.b) to the best of Engineer’s knowledge, information, and belief, and based on the extent of the services provided by Engineer under this Agreement.
- a. **Obtain the Contractors’ Certification letter and copies of Manufacturers’ Certifications from the Contractor for all American Iron and Steel products used in the project. Upon Substantial Completion, provide copies of Contractors’ and Manufacturers’ Certifications to the Owner and a copy of Contractor’s Certification to the Agency.**
26. *Standards for Certain Construction-Phase Decisions:* Engineer will render decisions regarding the requirements of the Construction Contract Documents, and judge the acceptability of the Work, pursuant to the specific procedures set forth in the Construction Contract for initial interpretations, Change Proposals, and acceptance of the Work. In rendering such decisions and judgments, Engineer will not show partiality to Owner or Contractor, and will not be liable to Owner, Contractor, or others in connection with any proceedings, interpretations, decisions, or judgments conducted or rendered in good faith.
- B. *Duration of Construction Phase:* The Construction Phase will commence with the execution of the first Construction Contract for the Project or any part thereof and will terminate upon written recommendation by Engineer for final payment to Contractors. If the Project involves more than one prime contract as indicated in Paragraph A1.03.D, then Construction Phase services may be rendered at different times in respect to the separate contracts. Subject to the provisions of Article 3, Engineer shall be entitled to an equitable increase in compensation if Construction Phase services (including Resident Project Representative services, if any) are required after the original date for completion and readiness for final payment of Contractor as set forth in the Construction Contract.

A1.06 *Post-Construction Phase*

- A. Upon written authorization from Owner during the Post-Construction Phase, Engineer shall:



1. Together with Owner, visit the Project to observe any apparent defects in the Work, make recommendations as to replacement or correction of defective Work, if any, or the need to repair of any damage to the Site or adjacent areas, and assist Owner in consultations and discussions with Contractor concerning correction of any such defective Work and any needed repairs.
  2. Together with Owner, visit the Project within one month before the end of the Construction Contract's correction period to ascertain whether any portion of the Work or the repair of any damage to the Site or adjacent areas is defective and therefore subject to correction by Contractor.
  3.
    - a. **Prepare an Operation and Maintenance (O&M) Manual for new WWTP and equipment and processes. The O&M Manual will reference manufacturer's equipment manuals and include laboratory, recordkeeping, and safety procedures.**
    - b. **Complete O&M Manual for submission to Ecology in PDF and hard copy formats.**
- B. The Post-Construction Phase services may commence during the Construction Phase and, if not otherwise modified in this Exhibit A, will terminate twelve months after the commencement of the Construction Contract's correction period.

## **PART 2 – ADDITIONAL SERVICES**

### *A2.01 Additional Services Requiring Owner's Written Authorization*

- A. If authorized in writing by Owner, Engineer shall provide Additional Services of the types listed below. These services are not included as part of Basic Services and will be paid for by Owner as indicated in Exhibit C.
1. Preparation of applications and supporting documents (in addition to those furnished under Basic Services) for private or governmental grants, loans, or advances in connection with the Project; preparation or review of environmental assessments and impact statements **not including preparation of the Environmental Report defined under Basic Services**; review and evaluation of the effects on the design requirements for the Project of any such statements and documents prepared by others; and assistance in obtaining approvals of authorities having jurisdiction over the anticipated environmental impact of the Project.
  2. Services to make measured drawings of existing conditions or facilities, to conduct tests or investigations of existing conditions or facilities, or to verify the accuracy of drawings or other information furnished by Owner or others.
  3. Services resulting from significant changes in the scope, extent, or character of the portions of the Project designed or specified by Engineer, or the Project's design requirements, including, but not limited to, changes in size, complexity, Owner's schedule, character of construction, or method of financing; and revising previously accepted studies, reports, Drawings, Specifications, or Construction Contract Documents when such

revisions are required by changes in Laws and Regulations enacted subsequent to the Effective Date or are due to any other causes beyond Engineer's control.

4. Services resulting from Owner's request to evaluate additional Study and Report Phase alternative solutions beyond those agreed to in Paragraph A1.01.A.1 and 2.
5. Services required as a result of Owner's providing incomplete or incorrect Project information to Engineer.
6. Providing renderings or models for Owner's use, including services in support of building information modeling or civil integrated management.
7. Undertaking investigations and studies including, but not limited to:
  - a. detailed consideration of operations, maintenance, and overhead expenses;
  - b. the preparation of feasibility studies (such as those that include projections of output capacity, utility project rates, project market demand, or project revenues) and cash flow analyses, provided that such services are based on the engineering and technical aspects of the Project, and do not include rendering advice regarding municipal financial products or the issuance of municipal securities;
  - c. preparation of appraisals;
  - d. evaluating processes available for licensing, and assisting Owner in obtaining process licensing;
  - e. detailed quantity surveys of materials, equipment, and labor; and
  - f. audits or inventories required in connection with construction performed or furnished by Owner.
8. Furnishing services of Consultants for other than Basic Services.
9. Providing data or services of the types described in Exhibit B, when Owner retains Engineer to provide such data or services instead of Owner furnishing the same.
10. Providing the following services:
  - a. Services attributable to more prime construction contracts than specified in Paragraph A1.03.D.
  - b. Services to arrange for performance of construction services for Owner by contractors other than the principal prime Contractor and administering Owner's contract for such services.
11. Services during out-of-town travel required of Engineer, other than for visits to the Site or Owner's office as required in Basic Services (Part 1 of Exhibit A).

12. Preparing for, coordinating with, participating in and responding to structured independent review processes, including, but not limited to, construction management, cost estimating, project peer review, value engineering, and constructability review requested by Owner; and performing or furnishing services required to revise studies, reports, Drawings, Specifications, or other documents as a result of such review processes.
13. Preparing additional bidding-related documents (or requests for proposals or other construction procurement documents) or Construction Contract Documents for alternate bids or cost estimates requested by Owner for the Work or a portion thereof.
14. Assistance in connection with bid protests, rebidding, or renegotiating contracts for construction, materials, equipment, or services, except when such assistance is required to complete services required by Paragraph 5.02.A and Exhibit F.
15. Preparing conformed Construction Contract Documents that incorporate and integrate the content of all Addenda and any amendments negotiated by Owner and Contractor.
16. Providing Construction Phase services beyond the original date for completion and readiness for final payment of Contractor, but only if such services increase the total quantity of services to be performed in the Construction Phase, rather than merely shifting performance of such services to a later date.
- ~~17. Preparing Record Drawings, and furnishing such Record Drawings to Owner.~~
18. Supplementing Record Drawings with information regarding the completed Project, Site, and immediately adjacent areas obtained from field observations, Owner, utility companies, and other reliable sources.
19. Conducting surveys, investigations, and field measurements to verify the accuracy of Record Drawing content obtained from Contractor, Owner, utility companies, and other sources; revise and supplement Record Drawings as needed.
20. Preparation of operation, maintenance, and staffing manuals.
21. Protracted or extensive assistance in refining and adjusting of Project equipment and systems (such as initial startup, testing, and balancing).
22. Assistance to Owner in training Owner's staff to operate and maintain Project equipment and systems.
23. Assistance to Owner in developing systems and procedures for (a) control of the operation and maintenance of Project equipment and systems, and (b) related recordkeeping.
24. Preparing to serve or serving as a consultant or witness for Owner in any litigation, arbitration, lien or bond claim, or other legal or administrative proceeding involving the Project.
25. Overtime work requiring higher than regular rates.

26. Providing construction surveys and staking to enable Contractor to perform its work other than as required under Paragraph A1.05.A.8; any type of property surveys or related engineering services needed for the transfer of interests in real property; and providing other special field surveys.
27. Providing more extensive services required to enable Engineer to issue notices or certifications requested by Owner.
28. Extensive services required during any correction period, or with respect to monitoring Contractor's compliance with warranties and guarantees called for in the Construction Contract (except as agreed to under Basic Services).
29. Other additional services performed or furnished by Engineer not otherwise provided for in this Agreement.

A2.02 *Additional Services Not Requiring Owner's Written Authorization*

- A. Engineer shall advise Owner that Engineer is commencing to perform or furnish the Additional Services of the types listed below. For such Additional Services, Engineer need not request or obtain specific advance written authorization from Owner. Engineer shall cease performing or furnishing such Additional Services upon receipt of written notice to cease from Owner.
  1. Services in connection with Work Change Directives and Change Orders to reflect changes requested by Owner.
  2. Services in making revisions to Drawings and Specifications occasioned by the acceptance of substitute materials or equipment other than "or equal" items; ~~services after the award of the Construction Contract in evaluating and determining the acceptability of a proposed "or equal" or substitution which is found to be inappropriate for the Project;~~ evaluation and determination of an excessive number of proposed "or equals" or substitutions, whether proposed before or after award of the Construction Contract.
  3. Services resulting from significant delays, changes, or price increases occurring as a direct or indirect result of materials, equipment, or energy shortages.
  4. Additional or extended services arising from (a) the presence at the Site of any Constituent of Concern or items of historical or cultural significance, (b) emergencies or acts of God endangering the Work, (c) damage to the Work by fire or other causes during construction, (d) a significant amount of defective, neglected, or delayed Work, (e) acceleration of the progress schedule involving services beyond normal working hours, or (f) default by Contractor.
  5. Services (other than Basic Services during the Post-Construction Phase) in connection with any partial utilization of the Work by Owner prior to Substantial Completion.
  6. Evaluating unreasonable or frivolous requests for interpretation or information (RFIs), Change Proposals, or other demands from Contractor or others in connection with the Work, or an excessive number of RFIs, Change Proposals, or demands.

7. Reviewing a Shop Drawing or other Contractor submittal more than three times, as a result of repeated inadequate submissions by Contractor.
8. While at the Site, compliance by Engineer and its staff with those terms of Owner's or Contractor's safety program provided to Engineer subsequent to the Effective Date that exceed those normally required of engineering personnel by federal, State, or local safety authorities for similar construction sites.

This is **EXHIBIT B**, consisting of 4 pages, referred to in and part of the **Agreement between Owner and Engineer for Professional Services** dated **October 12, 2021**.

## **Owner's Responsibilities**

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Article 2 of the Agreement is supplemented to include the following agreement of the parties.

B2.01 In addition to other responsibilities of Owner as set forth in this Agreement, Owner shall at its expense:

- A. Provide Engineer with all criteria and full information as to Owner's requirements for the Project, including design objectives and constraints, space, capacity and performance requirements, flexibility, and expandability, and any budgetary limitations.
- B. Give instructions to Engineer regarding Owner's procurement of construction services (including instructions regarding advertisements for bids, instructions to bidders, and requests for proposals, as applicable), Owner's construction contract practices and requirements, insurance and bonding requirements, electronic transmittals during construction, and other information necessary for the finalization of Owner's bidding-related documents (or requests for proposals or other construction procurement documents), and Construction Contract Documents. Furnish copies (or give specific directions requesting Engineer to use copies already in Engineer's possession) of all design and construction standards, Owner's standard forms, general conditions (if other than EJCDC® C-700, Standard General Conditions of the Construction Contract, 2013 Edition), supplementary conditions, text, and related documents and content for Engineer to include in the draft bidding-related documents (or requests for proposals or other construction procurement documents), and draft Construction Contract Documents, when applicable. Owner shall have responsibility for the final content of (1) such bidding-related documents (or requests for proposals or other construction procurement documents), and (2) those portions of any Construction Contract other than the design (as set forth in the Drawings, Specifications, or otherwise), and other engineering or technical matters; and Owner shall seek the advice of Owner's legal counsel, risk managers, and insurance advisors with respect to the drafting and content of such documents.
- C. Furnish to Engineer any other available information pertinent to the Project including reports and data relative to previous designs, construction, or investigation at or adjacent to the Site.
- D. Following Engineer's assessment of initially available Project information and data and upon Engineer's request, obtain, furnish, or otherwise make available (if necessary, through title searches, or retention of specialists or consultants) such additional Project-related information and data as is reasonably required to enable Engineer to complete its Basic and Additional Services. Such additional information or data would generally include the following:
  1. Property descriptions.
  2. Zoning, deed, and other land use restrictions.
  3. Utility and topographic mapping and surveys.

4. Property, boundary, easement, right-of-way, and other special surveys or data, including establishing relevant reference points.
  5. Explorations and tests of subsurface conditions at or adjacent to the Site; geotechnical reports and investigations; drawings of physical conditions relating to existing surface or subsurface structures at the Site; hydrographic surveys, laboratory tests and inspections of samples, materials, and equipment; with appropriate professional interpretation of such information or data.
  6. Environmental assessments, audits, investigations, and impact statements, and other relevant environmental, historical, or cultural studies relevant to the Project, the Site, and adjacent areas.
  7. Data or consultations as required for the Project but not otherwise identified in this Agreement.
- E. Arrange for safe access to and make all provisions for Engineer to enter upon public and private property as required for Engineer to perform services under the Agreement.
- F. Recognizing and acknowledging that Engineer's services and expertise do not include the following services, provide, as required for the Project:
1. Accounting, bond and financial advisory (including, if applicable, "municipal advisor" services as described in Section 975 of the Dodd-Frank Wall Street Reform and Consumer Protection Act (2010) and the municipal advisor registration rules issued by the Securities and Exchange Commission), independent cost estimating, and insurance counseling services.
  2. Legal services with regard to issues pertaining to the Project as Owner requires, Contractor raises, or Engineer reasonably requests.
  3. Such auditing services as Owner requires to ascertain how or for what purpose Contractor has used the money paid.
- G. Provide the services of an independent testing laboratory to perform all inspections, tests, and approvals of samples, materials, and equipment required by the Construction Contract Documents (other than those required to be furnished or arranged by Contractor), or to evaluate the performance of materials, equipment, and facilities of Owner, prior to their incorporation into the Work with appropriate professional interpretation thereof. Provide Engineer with the findings and reports generated by testing laboratories, including findings and reports obtained from or through Contractor.
- H. Provide reviews, approvals, and permits from all governmental authorities having jurisdiction to approve all phases of the Project designed or specified by Engineer and such reviews, approvals, and consents from others as may be necessary for completion of each phase of the Project.

- I. Advise Engineer of the identity and scope of services of any independent consultants employed by Owner to perform or furnish services in regard to the Project, including, but not limited to, cost estimating, project peer review, value engineering, and constructability review.
- J. If Owner designates a construction manager or an individual or entity other than, or in addition to, Engineer to represent Owner at the Site, define and set forth as an attachment to this Exhibit B the duties, responsibilities, and limitations of authority of such other party and the relation thereof to the duties, responsibilities, and authority of Engineer.
- K. If more than one prime contract is to be awarded for the Work designed or specified by Engineer, then designate a person or entity to have authority and responsibility for coordinating the activities among the various prime Contractors, and define and set forth the duties, responsibilities, and limitations of authority of such individual or entity and the relation thereof to the duties, responsibilities, and authority of Engineer as an attachment to this Exhibit B that is to be mutually agreed upon and made a part of this Agreement before such services begin.
- L. Inform Engineer in writing of any specific requirements of safety or security programs that are applicable to Engineer, as a visitor to the Site.
- M. Examine all alternative solutions, studies, reports, sketches, Drawings, Specifications, proposals, and other documents presented by Engineer (including obtaining advice of an attorney, risk manager, insurance counselor, financial/municipal advisor, and other advisors or consultants as Owner deems appropriate with respect to such examination) and render in writing timely decisions pertaining thereto.
- N. Inform Engineer regarding any need for assistance in evaluating the possible use of Project Strategies, Technologies, and Techniques, as defined in Exhibit A.
- O. Advise Engineer as to whether Engineer's assistance is requested in identifying opportunities for enhancing the sustainability of the Project.
- P. Place and pay for advertisement for Bids in appropriate publications.
- Q. Furnish to Engineer data as to Owner's anticipated costs for services to be provided by others (including, but not limited to, accounting, bond and financial, independent cost estimating, insurance counseling, and legal advice) for Owner so that Engineer may assist Owner in collating the various cost categories which comprise Total Project Costs.
- R. Attend and participate in the pre-bid conference, bid opening, pre-construction conferences, construction progress and other job-related meetings, and Site visits to determine Substantial Completion and readiness of the completed Work for final payment.
- S. Authorize Engineer to provide Additional Services as set forth in Part 2 of Exhibit A of the Agreement, as required.
- T. Perform or provide the following: – **NOT USED**

**B2.02 Owners are ultimately responsible for compliance with Section 746 of Title VII of the Consolidated Appropriations Act of 2017 (Division A – Agriculture, Rural Development, Food and Drug**



Administration, and Related Agencies Appropriations Act, 2017) and subsequent statutes mandating domestic preference and will be responsible for the following:

- A. Sign loan resolutions, grant agreements and letters of intent to meet conditions which include American Iron and Steel language, accepting American Iron and Steel requirements in those documents and in the letter of conditions.
- B. Sign change orders (i.e., C-941 of EJCDC) and partial payment estimates (i.e., C-620 of EJCDC) and thereby acknowledge responsibility for compliance with American Iron and Steel requirements.
- C. Obtain the certification letters from the Engineer upon Substantial Completion of the project and maintain this documentation for the life of the loan.
- D. Where the Owner directly procures American Iron and Steel products,
  - 1. Include American Iron and Steel clauses in the procurement contracts;
  - 2. Obtain Manufacturers' Certifications; and
  - 3. Provide copies to Engineers and Contractors.

This is **EXHIBIT C**, consisting of **6** pages, referred to in and part of the **Agreement between Owner and Engineer for Professional Services** dated **October 12, 2021**.

**Payments to Engineer for Services and Reimbursable Expenses**  
**COMPENSATION PACKET BC-1: Basic Services – Lump Sum**

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Article 2 of the Agreement is supplemented to include the following agreement of the parties:

**ARTICLE 2 – OWNER’S RESPONSIBILITIES**

**C2.01 Compensation for Basic Services (other than Resident Project Representative) – Lump Sum Method of Payment**

- A. Owner shall pay Engineer for Basic Services set forth in Exhibit A, except for services of Engineer’s Resident Project Representative, if any, as follows:
1. A Lump Sum amount of **\$126,296.00** based on the following estimated distribution of compensation:
    - a. Construction Administration Phase **\$116,296**
    - b. Post-Construction Phase **\$10,000.00**
  2. Engineer may alter the distribution of compensation between individual phases noted herein to be consistent with services actually rendered, but shall not exceed the total Lump Sum amount unless approved in writing by the Owner **and Agency**.
  3. The Lump Sum includes compensation for Engineer’s services and services of Engineer’s Consultants, if any. Appropriate amounts have been incorporated in the Lump Sum to account for labor costs, overhead, profit, expenses (other than any expressly allowed Reimbursable Expenses), and Consultant charges.
  4. In addition to the Lump Sum, Engineer is also entitled to reimbursement from Owner for the following Reimbursable Expenses (see Appendix 1 for rates or charges): **NONE**.
  5. The portion of the Lump Sum amount billed for Engineer’s services will be based upon Engineer’s estimate of the percentage of the total services actually completed during the billing period. If any Reimbursable Expenses are expressly allowed, Engineer may also bill for any such Reimbursable Expenses incurred during the billing period.
- B. *Period of Service:* The compensation amount stipulated in Compensation Packet BC-1 is conditioned on a period of service not exceeding **twenty-four (24)** months. If such period of service is extended, the compensation amount for Engineer's services shall be appropriately adjusted **with concurrence of the Owner and Agency**.

**COMPENSATION PACKET RPR-2:  
Resident Project Representative – Standard Hourly Rates**

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Article 2 of the Agreement is supplemented to include the following agreement of the parties:

**C2.02 Compensation for Resident Project Representative Basic Services – Standard Hourly Rates Method of Payment**

A. Owner shall pay Engineer for Resident Project Representative Basic Services as follows:

1. **Resident Project Representative Services:** For services of Engineer's Resident Project Representative under Paragraph A1.05.A of Exhibit A, an amount equal to the cumulative hours charged to the Project by each class of Engineer's personnel times Standard Hourly Rates for each applicable billing class for all Resident Project Representative services performed on the Project, plus related Reimbursable Expenses and Engineer's Consultant's charges, if any. The total compensation under this paragraph is estimated to be **\$139,304.00** based upon full-time RPR services on an **ten-hour** workday, Monday through Friday, over a **one hundred ten (110) working day** construction schedule.

B. Compensation for Reimbursable Expenses:

1. For those Reimbursable Expenses that are not accounted for in the compensation for Basic Services under Paragraph C2.01, and are directly related to the provision of Resident Project Representative or Post-Construction Basic Services, Owner shall pay Engineer at the rates set forth in Appendix 1 to this Exhibit C.
2. Reimbursable Expenses include the expenses identified in Appendix 1 and the following: transportation (including mileage), lodging, and subsistence incidental thereto; providing and maintaining field office facilities including furnishings and utilities; subsistence and transportation of Resident Project Representative and assistants; toll telephone calls, mobile phone charges, and courier charges; reproduction of reports, Drawings, Specifications, bidding-related or other procurement documents, Construction Contract Documents, and similar Project-related items. In addition, if authorized in advance by Owner, Reimbursable Expenses will also include expenses incurred for the use of highly specialized equipment.
3. The amounts payable to Engineer for Reimbursable Expenses, if any, will be those internal expenses related to the Resident Project Representative Basic Services that are actually incurred or allocated by Engineer, plus all invoiced external Reimbursable Expenses allocable to such services, the latter multiplied by a factor of **1.0**.
4. The Reimbursable Expenses Schedule will be adjusted annually (as of **January 1st**) to reflect equitable changes in the compensation payable to Engineer. **Changes will not be effective unless and until concurred in by the Owner and Agency.**

C. Other Provisions Concerning Payment Under this Paragraph C2.04:

1. Whenever Engineer is entitled to compensation for the charges of Engineer's Consultants, those charges shall be the amounts billed by Engineer's Consultants to Engineer times a factor of **1.1**.
2. *Factors:* The external Reimbursable Expenses and Engineer's Consultant's factors include Engineer's overhead and profit associated with Engineer's responsibility for the administration of such services and costs.
3. *Estimated Compensation Amounts:*
  - a. Engineer's estimate of the amounts that will become payable for specified services are only estimates for planning purposes, are not binding on the parties, and are not the minimum or maximum amounts payable to Engineer under the Agreement.
  - b. When estimated compensation amounts have been stated herein and it subsequently becomes apparent to Engineer that the total compensation amount thus estimated will be exceeded, Engineer shall give Owner **and Agency** written notice thereof, allowing Owner to consider its options, including suspension or termination of Engineer's services for Owner's convenience. Upon notice Owner and Engineer promptly shall review the matter of services remaining to be performed and compensation for such services. Owner shall either exercise its right to suspend or terminate Engineer's services for Owner's convenience, agree to such compensation exceeding said estimated amount, or agree to a reduction in the remaining services to be rendered by Engineer, so that total compensation for such services will not exceed said estimated amount when such services are completed. If Owner decides not to suspend Engineer's services during negotiations and Engineer exceeds the estimated amount before Owner and Engineer have agreed to an increase in the compensation due Engineer or a reduction in the remaining services, then Engineer shall be paid for all services rendered hereunder.
4. To the extent necessary to verify Engineer's charges and upon Owner's timely request, Engineer shall make copies of such records available to Owner ~~at cost~~ **at no cost**.

**COMPENSATION PACKET AS-1:  
Additional Services – Standard Hourly Rates**

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Article 2 of the Agreement is supplemented to include the following agreement of the parties:

*C2.03 Compensation for Additional Services – Standard Hourly Rates Method of Payment*

- A. Owner shall pay Engineer for Additional Services, if any, as follows:
1. *General:* For services of Engineer's personnel engaged directly on the Project pursuant to Paragraph A2.01 or A2.02 of Exhibit A, except for services as a consultant or witness under Paragraph A2.01.A.20, (which if needed shall be separately negotiated based on the nature of the required consultation or testimony) an amount equal to the cumulative hours charged to the Project by each class of Engineer's personnel times Standard Hourly Rates for each applicable billing class for all Additional Services performed on the Project, plus related Reimbursable Expenses and Engineer's Consultant's charges, if any.
- B. *Compensation For Reimbursable Expenses:*
1. For those Reimbursable Expenses that are not accounted for in the compensation for Basic Services under Paragraph C2.01 and are directly related to the provision of Additional Services, Owner shall pay Engineer at the rates set forth in Appendix 1 to this Exhibit C.
  2. Reimbursable Expenses include the expenses identified in Appendix 1 and the following categories: transportation (including mileage), lodging, and subsistence incidental thereto; providing and maintaining field office facilities including furnishings and utilities; toll telephone calls, mobile phone charges, and courier charges; reproduction of reports, Drawings, Specifications, bidding-related or other procurement documents, Construction Contract Documents, and similar Project-related items; and Consultants' charges. In addition, if authorized in advance by Owner, Reimbursable Expenses will also include expenses incurred for the use of highly specialized equipment.
  3. The amounts payable to Engineer for Reimbursable Expenses, if any, will be the Additional Services-related internal expenses actually incurred or allocated by Engineer, plus all invoiced external Reimbursable Expenses allocable to such Additional Services, the latter multiplied by a factor of **1.0**.
  4. The Reimbursable Expenses Schedule will be adjusted annually (as of **January 1st**) to reflect equitable changes in the compensation payable to Engineer. **Changes will not be effective unless and until concurred in by the Owner and Agency.**
- C. *Other Provisions Concerning Payment for Additional Services:*
1. Whenever Engineer is entitled to compensation for the charges of Engineer's Consultants, those charges shall be the amounts billed by Engineer's Consultants to Engineer times a factor of **1.1**.

2. *Factors:* The external Reimbursable Expenses and Engineer's Consultant's Factors include Engineer's overhead and profit associated with Engineer's responsibility for the administration of such services and costs.
3. To the extent necessary to verify Engineer's charges and upon Owner's timely request, Engineer shall make copies of such records available to Owner ~~at cost~~ **at no cost**.

This is **Appendix 1 to EXHIBIT C**, consisting of **1** page, referred to in and part of the **Agreement between Owner and Engineer for Professional Services** dated **October 12, 2021**.

### **Reimbursable Expenses Schedule**

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Reimbursable Expenses are subject to review and adjustment per Exhibit C. Rates and charges for Reimbursable Expenses as of the date of the Agreement are:

8-1/2"x11" B/W Copies (single side)	\$0.10/page
8-1/2"x11" B/W Copies (double sided)	\$0.15/page
8-1/2"x11" Color Copies (single side)	\$0.50/page
11"x17" B/W Copies (single side)	\$0.15/page
11"x17" Color Copies (single side)	\$0.75/page
Plan Sheet Copies (24" x 36" max)	\$3.00/page
Shipping	at cost
Mileage (auto)	Federal rate/mile
Air Transportation	at cost
Laboratory Testing	at cost
Meals and Lodging	at cost

This is **Appendix 2 to EXHIBIT C**, consisting of 1 page, referred to in and part of the **Agreement between Owner and Engineer for Professional Services** dated **October 12, 2021**.

## **Standard Hourly Rates Schedule**

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A. *Standard Hourly Rates:*

1. Standard Hourly Rates are set forth in this Appendix 2 to this Exhibit C and include salaries and wages paid to personnel in each billing class plus the cost of customary and statutory benefits, general and administrative overhead, non-project operating costs, and operating margin or profit.
2. The Standard Hourly Rates apply only as specified in Article C2.

B. *Schedule:*

Hourly rates for services performed on or after the date of the Agreement are:

	<u>2021</u>	<u>2022</u>
Senior Principal Engineer	\$222.00/hour	\$229.00/hour
Licensed Principal Land Surveyor	\$210.00/hour	\$213.00/hour
Licensed Principal Engineer	\$200.00/hour	\$208.00/hour
Licensed Professional Engineer	\$180.00/hour	\$188.00/hour
Other Licensed Professional	\$180.00/hour	\$185.00/hour
Project Engineer II	\$165.00/hour	\$172.00/hour
Licensed Professional Land Surveyor	\$164.00/hour	\$167.00/hour
Project Engineer I	\$150.00/hour	\$155.00/hour
Contract Administrator III	\$136.00/hour	\$142.00/hour
Senior Planner	\$136.00/hour	\$138.00/hour
CAD Technician	\$130.00/hour	\$133.00/hour
Engineering Technician III	\$122.00/hour	\$126.00/hour
Resident Engineer	\$122.00/hour	\$126.00/hour
Surveyor	\$122.00/hour	\$124.00/hour
Surveyor on Two Man Crew	\$115.00/hour	\$117.00/hour
Contract Administrator II	\$112.00/hour	\$116.00/hour
Engineering Technician II	\$105.00/hour	\$108.00/hour
Surveyor on Three Man Crew	\$102.00/hour	\$104.00/hour
Contract Administrator I	\$87.00/hour	\$90.00/hour
Engineering Technician I	\$87.00/hour	\$90.00/hour
Administrative/Clerical	\$87.00/hour	\$90.00/hour



This is **EXHIBIT D**, consisting of 5 pages, referred to in and part of the **Agreement between Owner and Engineer for Professional Services** dated **October 12, 2021**.

## **Duties, Responsibilities, and Limitations of Authority of Resident Project Representative**

Article 1 of the Agreement is supplemented to include the following agreement of the parties:

### **ARTICLE 1 - SERVICES OF ENGINEER**

#### *D1.01 Resident Project Representative*

- A. Engineer shall furnish a Resident Project Representative (“RPR”) to assist Engineer in observing progress and quality of the Work. The RPR may provide full time representation or may provide representation to a lesser degree. RPR is Engineer’s representative at the Site, will act as directed by and under the supervision of Engineer, and will confer with Engineer regarding RPR’s actions. **Full time Resident Project Representation is required unless requested in writing by the Owner and waived in writing by the Agency.**
- B. Through RPR’s observations of the Work, including field checks of materials and installed equipment, Engineer shall endeavor to provide further protection for Owner against defects and deficiencies in the Work. However, Engineer shall not, as a result of such RPR observations of the Work, supervise, direct, or have control over the Work, nor shall Engineer (including the RPR) have authority over or responsibility for the means, methods, techniques, sequences, or procedures of construction selected or used by any Constructor, for security or safety at the Site, for safety precautions and programs incident to the Work or any Constructor’s work in progress, for the coordination of the Constructors’ work or schedules, or for any failure of any Constructor to comply with Laws and Regulations applicable to the performing and furnishing of its work. The Engineer (including RPR) neither guarantees the performances of any Constructor nor assumes responsibility for any Constructor’s failure to furnish and perform the Work, or any portion of the Work, in accordance with the Construction Contract Documents. In addition, the specific terms set forth in Exhibit A, Paragraph A1.05, of this Agreement are applicable.
- C. The duties and responsibilities of the RPR are as follows:
  - 1. *General:* RPR’s dealings in matters pertaining to the Work in general shall be with Engineer and Contractor. RPR’s dealings with Subcontractors shall only be through or with the full knowledge and approval of Contractor. RPR shall generally communicate with Owner only with the knowledge of and under the direction of Engineer.
  - 2. *Schedules:* Review the progress schedule, schedule of Shop Drawing and Sample submittals, schedule of values, and other schedules prepared by Contractor and consult with Engineer concerning acceptability of such schedules.
  - 3. *Conferences and Meetings:* Attend meetings with Contractor, such as preconstruction conferences, progress meetings, job conferences, and other Project-related meetings (but

not including Contractor's safety meetings), and as appropriate prepare and circulate copies of minutes thereof.

4. *Safety Compliance:* Comply with Site safety programs, as they apply to RPR, and if required to do so by such safety programs, receive safety training specifically related to RPR's own personal safety while at the Site.
5. *Liaison:*
  - a. Serve as Engineer's liaison with Contractor. Working principally through Contractor's authorized representative or designee, assist in providing information regarding the provisions and intent of the Construction Contract Documents.
  - b. Assist Engineer in serving as Owner's liaison with Contractor when Contractor's operations affect Owner's On-Site operations.
  - c. Assist in obtaining from Owner additional details or information, when required for proper execution of the Work.
6. *Clarifications and Interpretations:* Receive from Contractor submittal of any matters in question concerning the requirements of the Construction Contract Documents (sometimes referred to as requests for information or interpretation—RFIs), or relating to the acceptability of the Work under the Construction Contract Documents. Report to Engineer regarding such RFIs. Report to Engineer when clarifications and interpretations of the Construction Contract Documents are needed, whether as the result of a Contractor RFI or otherwise. Transmit Engineer's clarifications, interpretations, and decisions to Contractor. ,
7. *Shop Drawings and Samples:*
  - a. Record date of receipt of Samples and Contractor-approved Shop Drawings.
  - b. Receive Samples that are furnished at the Site by Contractor and notify Engineer of availability of Samples for examination.
  - c. Advise Engineer and Contractor of the commencement of any portion of the Work requiring a Shop Drawing or Sample submittal, if RPR believes that the submittal has not been received from Contractor or has not been approved by Contractor or Engineer.
8. *Proposed Modifications:* Consider and evaluate Contractor's suggestions for modifications to the Drawings or Specifications, and report such suggestions, together with RPR's recommendations, if any, to Engineer. Transmit Engineer's response (if any) to such suggestions to Contractor.
9. *Review of Work; Defective Work:*
  - a. Report to Engineer whenever RPR believes that any part of the Work is defective under the terms and standards set forth in the Construction Contract Documents and

provide recommendations as to whether such Work should be corrected, removed, and replaced, or accepted as provided in the Construction Contract Documents.

- b. Inform Engineer of any Work that RPR believes is not defective under the terms and standards set forth in the Construction Contract Documents, but is nonetheless not compatible with the design concept of the completed Project as a functioning whole, and provide recommendations to Engineer for addressing such Work; and
- c. Advise Engineer of that part of the Work that RPR believes should be uncovered for observation, or requires special testing, inspection, or approval.

10. *Inspections, Tests, and System Start-ups:*

- a. Consult with Engineer in advance of scheduled inspections, tests, and systems start-ups.
- b. Verify that tests, equipment, and systems start-ups and operating and maintenance training are conducted in the presence of appropriate Owner's personnel, and that Contractor maintains adequate records thereof.
- c. Observe, record, and report to Engineer appropriate details relative to the test procedures and systems start-ups.
- d. Observe whether Contractor has arranged for inspections required by Laws and Regulations, including but not limited to those to be performed by public or other agencies having jurisdiction over the Work.
- e. Accompany visiting inspectors representing public or other agencies having jurisdiction over the Work, record the results of these inspections, and report to Engineer.

11. *Records:*

- a. Maintain at the Site orderly files for correspondence, reports of job conferences, copies of Construction Contract Documents including all Change Orders, Field Orders, Work Change Directives, Addenda, additional Drawings issued subsequent to the execution of the Construction Contract, RFIs, Engineer's clarifications and interpretations of the Construction Contract Documents, progress reports, approved Shop Drawing and Sample submittals, and other Project-related documents.
- b. Prepare a daily report or keep a diary or logbook, recording Contractor's hours on the Site, Subcontractors present at the Site, weather conditions, data relative to questions of Change Orders, Field Orders, Work Change Directives, or changed conditions, Site visitors, deliveries of equipment or materials, daily activities, decisions, observations in general, and specific observations in more detail as in the case of observing test procedures; and send copies to Engineer.
- c. Upon request from Owner to Engineer, photograph or video Work in progress or Site conditions.

- d. Record and maintain accurate, up-to-date lists of the names, addresses, fax numbers, e-mail addresses, websites, and telephone numbers (including mobile numbers) of all Contractors, Subcontractors, and major Suppliers of materials and equipment.
- e. Maintain records for use in preparing Project documentation.
- f. Upon completion of the Work, furnish original set of all RPR Project documentation to Engineer.
- g. Maintain all Manufacturers' Certifications in the project file and on-site during construction to ensure compliance with AIS, as applicable.**

12. *Reports:*

- a. Furnish to Engineer periodic reports as required of progress of the Work and of Contractor's compliance with the progress schedule and schedule of Shop Drawing and Sample submittals.
- ~~b. Draft and recommend to Engineer proposed Change Orders, Work Change Directives, and Field Orders. Obtain backup material from Contractor.~~
- c. Furnish to Engineer and Owner copies of all inspection, test, and system start-up reports.
- d. Immediately inform Engineer of the occurrence of any Site accidents, emergencies, acts of God endangering the Work, possible force majeure or delay events, damage to property by fire or other causes, or the discovery of any potential differing site condition or Constituent of Concern.

13. *Payment Requests:* Review applications for payment with Contractor for compliance with the established procedure for their submission and forward with recommendations to Engineer, noting particularly the relationship of the payment requested to the schedule of values, Work completed, and materials and equipment delivered at the Site but not incorporated in the Work.

14. *Certificates, Operation and Maintenance Manuals:* During the course of the Work, verify that materials and equipment certificates, operation and maintenance manuals and other data required by the Contract Documents to be assembled and furnished by Contractor are applicable to the items actually installed and in accordance with the Contract Documents, and have these documents delivered to Engineer for review and forwarding to Owner prior to payment for that part of the Work.

15. *Completion:*

- a. Participate in Engineer's visits to the Site regarding Substantial Completion, assist in the determination of Substantial Completion, and prior to the issuance of a Certificate of Substantial Completion submit a punch list of observed items requiring completion or correction.

- b. Participate in Engineer's visit to the Site in the company of Owner and Contractor, to determine completion of the Work, and prepare a final punch list of items to be completed or corrected by Contractor.
  - c. Observe whether all items on the final punch list have been completed or corrected and make recommendations to Engineer concerning acceptance and issuance of the Notice of Acceptability of the Work (Exhibit E).
- D. Resident Project Representative shall not:
- 1. Authorize any deviation from the Construction Contract Documents or substitution of materials or equipment (including "or-equal" items).
  - 2. Exceed limitations of Engineer's authority as set forth in this Agreement.
  - 3. Undertake any of the responsibilities of Contractor, Subcontractors, or Suppliers, or any Constructor.
  - 4. Advise on, issue directions relative to, or assume control over any aspect of the means, methods, techniques, sequences or procedures of the Work, by Contractor or any other Constructor.
  - 5. Advise on, issue directions regarding, or assume control over security or safety practices, precautions, and programs in connection with the activities or operations of Owner or Contractor.
  - 6. Participate in specialized field or laboratory tests or inspections conducted off-site by others except as specifically authorized by Engineer.
  - 7. Accept Shop Drawing or Sample submittals from anyone other than Contractor.

This is **EXHIBIT E**, consisting of **2** pages, referred to in and part of the **Agreement between Owner and Engineer for Professional Services** dated **October 12, 2021**.

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**NOTICE OF ACCEPTABILITY OF WORK**

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**PROJECT:**

**OWNER:**

**CONTRACTOR:**

**OWNER'S CONSTRUCTION CONTRACT IDENTIFICATION:**

**EFFECTIVE DATE OF THE CONSTRUCTION CONTRACT:**

**ENGINEER:**

**NOTICE DATE:**

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**To:**

**Owner**

**And To:**

**Contractor**

**From:**

**Engineer**

The Engineer hereby gives notice to the above Owner and Contractor that Engineer has recommended final payment of Contractor, and that the Work furnished and performed by Contractor under the above Construction Contract is acceptable, expressly subject to the provisions of the related Contract Documents, the Agreement between Owner and Engineer for Professional Services dated \_\_\_\_\_, and the following terms and conditions of this Notice:

### CONDITIONS OF NOTICE OF ACCEPTABILITY OF WORK

The Notice of Acceptability of Work ("Notice") is expressly made subject to the following terms and conditions to which all those who receive said Notice and rely thereon agree:

1. This Notice is given with the skill and care ordinarily used by members of the engineering profession practicing under similar conditions at the same time and in the same locality.
2. This Notice reflects and is an expression of the Engineer's professional opinion.
3. This Notice is given as to the best of Engineer's knowledge, information, and belief as of the Notice Date.
4. This Notice is based entirely on and expressly limited by the scope of services Engineer has been employed by Owner to perform or furnish during construction of the Project (including observation of the Contractor's work) under Engineer's Agreement with Owner, and applies only to facts that are within Engineer's knowledge or could reasonably have been ascertained by Engineer as a result of carrying out the responsibilities specifically assigned to Engineer under such Agreement.
5. This Notice is not a guarantee or warranty of Contractor's performance under the Construction Contract, an acceptance of Work that is not in accordance with the related Contract Documents, including but not limited to defective Work discovered after final inspection, nor an assumption of responsibility for any failure of Contractor to furnish and perform the Work thereunder in accordance with the Construction Contract Documents, or to otherwise comply with the Construction Contract Documents or the terms of any special guarantees specified therein.
6. This Notice does not relieve Contractor of any surviving obligations under the Construction Contract, and is subject to Owner's reservations of rights with respect to completion and final payment.

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

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

Dated: \_\_\_\_\_

This is **EXHIBIT G**, consisting of 2 pages, referred to in and part of the **Agreement between Owner and Engineer for Professional Services** dated **October 12, 2021**.

## Insurance

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Paragraph 6.05 of the Agreement is supplemented to include the following agreement of the parties:

### G6.05 Insurance

A. The limits of liability for the insurance required by Paragraph 6.05.A and 6.05.B of the Agreement are as follows:

1. By Engineer:

- a. Workers' Compensation: Statutory
- b. Employer's Liability --
  - 1) Bodily injury, each accident: **\$1,000,000**
  - 2) Bodily injury by disease, each employee: **\$1,000,000**
  - 3) Bodily injury/disease, aggregate: **\$2,000,000**
- c. General Liability --
  - 1) Each Occurrence (Bodily Injury and Property Damage): **\$1,000,000**
  - 2) General Aggregate: **\$2,000,000**
- d. Excess or Umbrella Liability --
  - 1) Per Occurrence: **\$5,000,000**
  - 2) General Aggregate: **\$5,000,000**
- e. Automobile Liability --Combined Single Limit (Bodily Injury and Property Damage):  
**\$1,000,000**
- f. Professional Liability --
  - 1) Each Claim Made **\$2,000,000**
  - 2) Annual Aggregate **\$3,000,000**

2. By Owner: **NOT USED**

B. *Additional Insureds:*

- ~~1. The following individuals or entities are to be listed on Owner's general liability policies of insurance as additional insureds:~~



2. ~~During the term of this Agreement the Engineer shall notify Owner of any other Consultant to be listed as an additional insured on Owner's general liability policies of insurance.~~
3. The Owner shall be listed on Engineer's general liability policy as provided in Paragraph 6.05.A.

This is **EXHIBIT H**, consisting of 2 pages, referred to in and part of the **Agreement between Owner and Engineer for Professional Services** dated **October 12, 2021**.

## **Dispute Resolution**

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Paragraph 6.09 of the Agreement is supplemented to include the following agreement of the parties:

### H6.09 *Dispute Resolution*

- A. *Arbitration*: All Disputes between Owner and Engineer shall be settled by arbitration in accordance with the **American Arbitration Association** rules effective at the Effective Date, subject to the conditions stated below. This agreement to arbitrate and any other agreement or consent to arbitrate entered into in accordance with this Paragraph H6.09.A will be specifically enforceable under prevailing law of any court having jurisdiction.
1. Notice of the demand for arbitration must be filed in writing with the other party to the Agreement and with the **American Arbitration Association**. The demand must be made within a reasonable time after the Dispute has arisen. In no event may the demand for arbitration be made after the date when institution of legal or equitable proceedings based on such Dispute would be barred by the applicable statute of limitations.
  - ~~2. All demands for arbitration and all answering statements thereto which include any monetary claims must contain a statement that the total sum or value in controversy as alleged by the party making such demand or answering statement is not more than \$[ ] (exclusive of interest and costs). The arbitrators will not have jurisdiction, power, or authority to consider, or make findings (except in denial of their own jurisdiction) concerning any Dispute if the amount in controversy in such Dispute is more than \$[ ] (exclusive of interest and costs), or to render a monetary award in response thereto against any party which totals more than \$[ ] (exclusive of interest and costs). Disputes that are not subject to arbitration under this paragraph may be resolved in any court of competent jurisdiction.~~
  3. The rules of any arbitration shall be supplemented to include the following: The award rendered by the arbitrators shall be in writing, and shall include (a) a precise breakdown of the award, and (b) a written explanation of the award specifically citing the Agreement provisions deemed applicable and relied on in making the award.
  4. The award rendered by the arbitrators will be consistent with the Agreement of the parties and final, and judgment may be entered upon it in any court having jurisdiction thereof, and will not be subject to appeal or modification.

5. If a Dispute in question between Owner and Engineer involves the work of a Contractor, Subcontractor, or consultants to the Owner or Engineer (each a "Joinable Party"), and such Joinable Party has agreed contractually or otherwise to participate in a consolidated arbitration concerning this Project, then either Owner or Engineer may join such Joinable Party as a party to the arbitration between Owner and Engineer hereunder. Nothing in this Paragraph H6.09.A.5 nor in the provision of such contract consenting to joinder shall create any claim, right, or cause of action in favor of the Joinable Party and against Owner or Engineer that does not otherwise exist.

This is **EXHIBIT I**, consisting of **1** page, referred to in and part of the **Agreement between Owner and Engineer for Professional Services** dated **October 12, 2021**.

## **Limitations of Liability**

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Paragraph 6.11 of the Agreement is supplemented to include the following agreement of the parties:

A. *Limitation of Engineer's Liability*

1. *Engineer's Liability Limited to Amount of Insurance Proceeds:* Engineer shall procure and maintain insurance as required by and set forth in Exhibit G to this Agreement. Notwithstanding any other provision of this Agreement, and to the fullest extent permitted by Laws and Regulations, the total liability, in the aggregate, of Engineer and Engineer's officers, directors, members, partners, agents, employees, and Consultants to Owner and anyone claiming by, through, or under Owner for any and all claims, losses, costs, or damages whatsoever arising out of, resulting from, or in any way related to the Project or the Agreement from any cause or causes, including but not limited to the negligence, professional errors or omissions, strict liability, breach of contract, indemnity obligations, or warranty express or implied, of Engineer or Engineer's officers, directors, members, partners, agents, employees, or Consultants (hereafter "Owner's Claims"), shall not exceed the total insurance proceeds paid on behalf of or to Engineer by Engineer's insurers in settlement or satisfaction of Owner's Claims under the terms and conditions of Engineer's insurance policies applicable thereto (excluding fees, costs and expenses of investigation, claims adjustment, defense, and appeal), up to the amount of insurance required under this Agreement. ~~If no such insurance coverage is provided with respect to Owner's Claims, then the total liability, in the aggregate, of Engineer and Engineer's officers, directors, members, partners, agents, employees, and Consultants to Owner and anyone claiming by, through, or under Owner for any and all such uninsured Owner's Claims shall not exceed \$[ ].~~

- B. *Indemnification by Owner:* To the fullest extent permitted by Laws and Regulations, Owner shall indemnify and hold harmless Engineer and its officers, directors, members, partners, agents, employees, and Consultants from and against any and all claims, costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals, and all court, arbitration, or other dispute resolution costs) arising out of or relating to the Project, provided that any such claim, cost, loss, or damage is attributable to bodily injury, sickness, disease, or death or to injury to or destruction of tangible property (other than the Work itself), including the loss of use resulting therefrom, but only to the extent caused by any negligent act or omission of Owner or Owner's officers, directors, members, partners, agents, employees, consultants, or others retained by or under contract to the Owner with respect to this Agreement or to the Project.

This is **EXHIBIT K**, consisting of **2** pages, referred to in and part of the **Agreement between Owner and Engineer for Professional Services** dated **October 12, 2021**.

**AMENDMENT TO OWNER-ENGINEER AGREEMENT**

**Amendment No. \_\_\_\_\_**

The Effective Date of this Amendment is: \_\_\_\_\_.

Background Data

Effective Date of Owner-Engineer Agreement:

Owner:

Engineer:

Project:

Nature of Amendment: [Check those that are applicable and delete those that are inapplicable.]

- \_\_\_ Additional Services to be performed by Engineer
- \_\_\_ Modifications to services of Engineer
- \_\_\_ Modifications to responsibilities of Owner
- \_\_\_ Modifications of payment to Engineer
- \_\_\_ Modifications to time(s) for rendering services
- \_\_\_ Modifications to other terms and conditions of the Agreement

Description of Modifications:

***Here describe the modifications, in as much specificity and detail as needed. Use an attachment if necessary.***

Agreement Summary:

Original agreement amount:	\$ _____
Net change for prior amendments:	\$ _____
This amendment amount:	\$ _____
Adjusted Agreement amount:	\$ _____

Change in time for services (days or date, as applicable): \_\_\_\_\_

The foregoing Agreement Summary is for reference only and does not alter the terms of the Agreement, including those set forth in Exhibit C.

Owner and Engineer hereby agree to modify the above-referenced Agreement as set forth in this Amendment. All provisions of the Agreement not modified by this or previous Amendments remain in effect.

OWNER:

ENGINEER:

\_\_\_\_\_

\_\_\_\_\_

By: \_\_\_\_\_  
Print  
name: \_\_\_\_\_

By: \_\_\_\_\_  
Print  
name: \_\_\_\_\_

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

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

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

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

AGENCY:

\_\_\_\_\_

By: \_\_\_\_\_  
Print  
name: \_\_\_\_\_

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

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



**CITY OF SELAH  
CITY COUNCIL  
AGENDA ITEM SUMMARY**



Council Meeting      Action Item  
10/12/2021              O-1

**Title:** Ordinance of the City of Selah, Washington Adopting Chapter 70.01 SMC to Establish a "Complete Streets" Program for the Purpose of Providing Safe Access and Accommodations to All Users Including Bicyclists, Pedestrians, Motorists and Public Transportation Users.

**From:** Jeff Peters: Community Development Supervisor

**Action Requested:** Approval

**Staff Recommendation:** Adopt the accompanying Ordinance.

**Board/Commission Recommendation:** Not Applicable

**Fiscal Impact:** N/A

**Funding Source:** Washington State Transportation Improvement Board (TIB) Grants

**Background / Findings & Facts:** In 2011, the Washington State Legislature passed the Complete Streets Bill (ESHB 1071), creating a Complete Streets grant program. This program was passed to encourage street designs that create a transportation network with infrastructure and design that allows safe and convenient travel for all users, including pedestrians, bicyclists, motor vehicle drivers, transit users, emergency services providers, freight, and people of all ages and abilities, including children, youth, families, older adults, and individuals with disabilities. Since the establishment of this program, there have been numerous changes in both federal and state law (such as ADA accessibility) that now require cities design streets with these features included, and require that noncompliant streets and features be reconstructed to meet these new standards. Passage of this



**CITY OF SELAH  
CITY COUNCIL  
AGENDA ITEM SUMMARY**



Ordinance will allow the City of Selah to apply for Complete Street grant applications, providing additional funding sources for its street's construction and maintenance projects.

**Recommended Motion:** I move to approve the Ordinance in the form presented.

**Record of all prior actions taken by the City Council and/or a City Board, City Committee, Planning Commission, or the Hearing Examiner (where applicable)**

**Date:**

**Action Taken:**

Click here to enter a date.

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**ORDINANCE NO. 2135**

**AN ORDINANCE OF THE CITY OF SELAH, WASHINGTON ADOPTING CHAPTER 7.01 SMC TO ESTABLISH A "COMPLETE STREETS" PROGRAM FOR THE PURPOSE OF PROVIDING SAFE ACCESS AND ACCOMMODATIONS TO ALL USERS INCLUDING BICYCLISTS, PEDESTRIANS, MOTORISTS AND PUBLIC TRANSPORTATION USERS**

WHEREAS, the term "Complete Streets" describes a comprehensive, integrated transportation network with infrastructure and design that allows safe and convenient travel for all users, including pedestrians, bicyclists, motor vehicle drivers, transit users, emergency services providers, freight, and people of all ages and abilities, including children, youth, families, older adults, and individuals with disabilities, and

WHEREAS, the one-third of Americans that do not drive, disproportionately represented by older adults, low-income people, people with disabilities, and children would benefit from the equitable distribution of safe, alternative means of travel that will result from Complete Streets policies; and

WHEREAS, research demonstrates that adults and children who walk or bicycle have higher daily levels of physical activity, better cardiovascular fitness and overall health; and

WHEREAS, the occurrence and severity of pedestrian and bicyclist injuries could be decreased by implementing Complete Streets policies; and

WHEREAS, Selah's Comprehensive Plan — Transportation Element Goal 3.1 states "Develop an efficient transportation system that supports the Community vision"; and

WHEREAS, Selah's Comprehensive Plan — Transportation Element Objective 3.1.1 states "Provide a safe and efficient transportation network within the City Urban Growth Area"; and

WHEREAS, Selah's Comprehensive Plan — Transportation Element Objective 3.1.1, Policy 10 states "Ensure mobility for all residents including the elderly and persons with disabilities, by providing accessible transportation services:

1. Identify existing transportation facilities and locations that are not accessible or unusable by persons with disabilities or special needs and improve the facilities;
2. Apply street and sidewalk design standards and develop a system that responds to the needs of persons who are elderly, disabled or have other special needs, and 3...", and

WHEREAS, Selah's Comprehensive Plan — Transportation Element Objective 2.1.3 states "Improve pedestrian safety and circulation within the City of Selah Urban Growth Area"; and

WHEREAS, Selah's Comprehensive Plan — Transportation Element Objective 2.1.3 Policy 2 states "Safe and efficient movement of bicycle and pedestrian traffic throughout Selah, especially in school and recreational areas, in business district and points of congestion should be provided"; and

WHEREAS, Selah's Comprehensive Plan — Transportation Element Objective 2.1.3 Policy 4 states "As part of the pedestrian network, provide crosswalks at key locations such as Downtown, intersection of City arterial, local street network near schools, and other locations with significant pedestrian volumes"; and

WHEREAS, in 2011, the Washington State Legislature passed the Complete Streets Bill (ESHB 1071), creating a Complete Streets grant program to encourage street designs that safely meet the needs of all users and also protect and preserve a community's environment and character; and

WHEREAS, adopting a Complete Streets Ordinance will qualify Selah to apply for the State Complete Streets grant program,

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF SELAH, WASHINGTON DO HEREBY ORDAIN AS FOLLOWS:

Section 1. Title 7.01 of the Selah Municipal Code is hereby amended to add Chapter 7.01 Complete Streets Policy, which reads as follows:

Chapter 7.01  
COMPLETE STREETS POLICY

7.01.010 Purpose.

City of Selah shall, to the maximum extent practicable, scope, plan, design, construct, operate and maintain transportation facilities for the safe accommodation of pedestrians, bicyclists, transit users, motorists, emergency responders, freight, and users of all ages and abilities in all new construction or reconstruction projects of public streets. Through ongoing operations and maintenance, the City of Selah shall identify cost-effective opportunities to include Complete Streets practices.

7.01.020 Definitions.

A. "Complete Street" means a road that is designed to be as safe and accessible as possible for drivers, bicyclists, transit vehicles and riders, freight, emergency service providers, and pedestrians of all ages and abilities. The Complete Streets policy focuses not just on changing individual roads, but on changing the decision-making process so that all users are routinely considered during the planning, designing, building, and operation of all roadways.

B. "Complete Streets Infrastructure" means design features that contribute to a safe, convenient, or comfortable travel experience for users, including but not limited to features such as: sidewalks; shared use paths; bicycle lanes; automobile lanes; paved shoulders; street trees and landscaping; planting strips; curbs; accessible curb ramps; bulb-outs; crosswalks; refuge islands; pedestrian and traffic signals, including countdown and accessible signals; signage; street furniture; bicycle parking facilities; traffic calming devices such as rotary circles, traffic bumps, and surface

treatments such as paving blocks, textured asphalt, and concrete; narrow vehicle lanes; and raised medians.

C. "Street" means any public right of way, including arterials, connectors, alleys, ways, lanes, and roadways by any other designation, as well as bridges, tunnels, and any other portions of the transportation network, that is open for use by the general traveling public.

D. "Street Project" means the construction, reconstruction, retrofit, maintenance, alteration, or repair of any street, and includes the planning, design, approval, and implementation processes.

E. "Users" means individuals that use streets, including pedestrians, bicyclists, motor vehicle drivers, and public transportation riders and drivers.

#### 7.01.030 Complete Streets Infrastructure.

As feasible, Selah shall incorporate Complete Streets Infrastructure into existing public streets to create a comprehensive, integrated, connected transportation network that balances access, mobility, health, economy, and safety needs of pedestrians, bicyclists, transit users, motorists, emergency responders, freight and users of all ages and abilities.

#### 7.01.040 Implementation of Complete Streets Principles.

Selah will incorporate complete streets principals into the City's Comprehensive Plan, public works standards, parks and recreation comprehensive plan, traffic circulation plan, and other plans, manuals, rules, regulations, and programs as feasible and appropriate.

#### 7.01.050 Freight/Truck Routes Consideration.

Because freight is important to the basic economy of the City and has unique right-of-way needs to support that role, freight will be the major priority on streets classified as truck routes. Complete Street improvements that are consistent with freight mobility but also support other modes and user needs shall be considered for truck routes.

#### 7.01.60 Exceptions.

Facilities for pedestrians, bicyclists, transit users and/or people of all abilities are not required to be provided in new construction or reconstruction Street Projects when:

- A. A documented absence of current or future need exists, as identified in City plans and future travel demand models; or
- B. Non-motorized uses are prohibited by law; or
- C. Routine maintenance and repair of the transportation network is performed that does not change the roadway geometry or operations; or
- D. The cost exceeds more than 20% of the total project cost for new construction; or
- E. The Public Works Director issues a documented exception concluding that application of complete streets principles is unnecessary or inappropriate because it would be contrary to public safety; or
- F. Where there are significant adverse environmental impacts to streams, wetlands, steep slopes, or other critical areas; or

G. Where the establishment would be contrary to the Transportation Element of the Comprehensive Plan; or

H. Where their inclusion in a small, isolated project would create a very short section of improvements with problematic transitions on either end or that are in an isolated area unlikely to be followed by similar improvements at either end, resulting in little progress on implementing Complete Streets networks.

7.01.070 Best Practice Criteria.

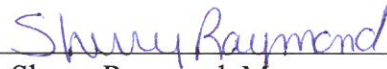
Mayor in consultation with City Administrator and Public Works Director shall develop policies, design criteria, standards and guidelines based upon recognized best practices in street design, construction and operations including but not limited to the latest editions of American Association of State Transportation Officials (AASHTO), Institute of Transportation Engineers (ITE) and National Association of City Transportation Officials (NACTO) guidelines and standards, while reflecting the context and character of the surrounding built and natural environment and enhancing the appearance of such.

Section 2. Statutory construction and severability:

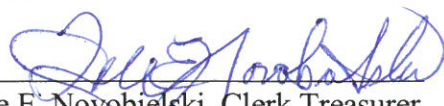
- a) This Ordinance shall be construed so as not to conflict with applicable federal or state laws, rules, or regulations. Nothing in this Ordinance authorizes any City agency to impose any duties or obligations in conflict with limitations on municipal authority established by federal or state law at the time such agency action is taken.
- b) In the event that a court or agency or competent jurisdiction holds that a federal or state law, rule, or regulation invalidates any clause, sentence or paragraph of this Ordinance or the application thereof to any person or circumstances, it is the intent of the Ordinance that the court or agency sever such clause, sentence, paragraph, or sentence so that the remainder of this Ordinance remains in effect.

Section 3. Effective date: This Ordinance shall take effect thirty (30) days from the date of publication.

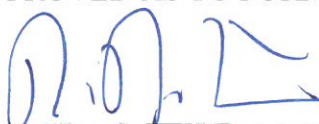
ORDAINED this 12th day of October, 2021.

  
\_\_\_\_\_  
Sherry Raymond, Mayor

ATTEST:

  
\_\_\_\_\_  
Dale E. Novobielski, Clerk Treasurer

APPROVED AS TO FORM:

  
\_\_\_\_\_  
Rob Case, City Attorney

## Chapter 7.01

### COMPLETE STREETS POLICY

Sections:

- 7.1.010 Purpose.**
- 7.01.020 Definitions.**
- 7.01.030 Complete streets infrastructure.**
- 7.01.040 Implementation of complete streets principles.**
- 7.01.050 Freight/truck routes consideration.**
- 7.01.060 Exceptions.**
- 7.01.070 Best practice criteria.**

#### **7.01.010 Purpose.**

City of Selah shall, to the maximum extent practicable, scope, plan, design, construct, operate and maintain transportation facilities for the safe accommodation of pedestrians, bicyclists, transit users, motorists, emergency responders, freight, and users of all ages and abilities in all new construction or reconstruction projects of public streets. Through ongoing operations and maintenance, the city of Selah shall identify cost-effective opportunities to include complete streets practices.

#### **7.01.020 Definitions.**

A. "Complete street" means a road that is designed to be as safe and accessible as possible for drivers, bicyclists, transit vehicles and riders, freight, emergency service providers, and pedestrians of all ages and abilities. The complete streets policy focuses not just on changing individual roads, but on changing the decision-making process so that all users are routinely considered during the planning, designing, building, and operation of all roadways.

B. "Complete streets infrastructure" means design features that contribute to a safe, convenient, or comfortable travel experience for users, including but not limited to features such as: sidewalks; shared use paths; bicycle lanes; automobile lanes; paved shoulders; street trees and landscaping; planting strips; curbs; accessible curb ramps; bulb-outs; crosswalks; refuge islands; pedestrian and traffic signals, including countdown and accessible signals; signage; street furniture; bicycle parking facilities; traffic calming devices such as rotary circles, traffic bumps, and surface treatments such as paving blocks, textured asphalt, and concrete; narrow vehicle lanes; and raised medians.

C. "Street" means any public right-of-way, including arterials, connectors, alleys, ways, lanes, and roadways by any other designation, as well as bridges, tunnels, and any other portions of the transportation network, that is open for use by the general traveling public.

D. "Street project" means the construction, reconstruction, retrofit, maintenance, alteration, or repair of any street, and includes the planning, design, approval, and implementation processes.

E. "Users" means individuals that use streets, including pedestrians, bicyclists, motor vehicle drivers, and public transportation riders and drivers.

**7.01.030 Complete streets infrastructure.**

As feasible, Selah shall incorporate complete streets infrastructure into existing public streets to create a comprehensive, integrated, connected transportation network that balances access, mobility, health, economy, and safety needs of pedestrians, bicyclists, transit users, motorists, emergency responders, freight and users of all ages and abilities.

**7.01.040 Implementation of complete streets principles.**

Selah will incorporate complete streets principles into the City's Comprehensive Plan, public works standards, parks and recreation comprehensive plan, traffic circulation plan, and other plans, manuals, rules, regulations, and programs as feasible and appropriate.

**7.01.050 Freight/truck routes consideration.**

Because freight is important to the basic economy of the city and has unique right-of-way needs to support that role, freight will be the major priority on streets classified as truck routes. Complete street improvements that are consistent with freight mobility but also support other modes and user needs shall be considered for truck routes.

**7.01.060 Exceptions.**

Facilities for pedestrians, bicyclists, transit users and/or people of all abilities are not required to be provided in new construction or reconstruction street projects when:

- A. A documented absence of current or future need exists, as identified in city plans and future travel demand models; or
- B. Nonmotorized uses are prohibited by law; or

- C. Routine maintenance and repair of the transportation network is performed that does not change the roadway geometry or operations; or
- D. The cost exceeds more than 20 percent of the total project cost for new construction; or
- E. The Public Works Director issues a documented exception concluding that application of complete streets principles is unnecessary or inappropriate because it would be contrary to public safety; or
- F. Where there are significant adverse environmental impacts to streams, wetlands, steep slopes, or other critical areas; or
- G. Where the establishment would be contrary to the transportation element of the comprehensive plan; or
- H. Where their inclusion in a small, isolated project would create a very short section of improvements with problematic transitions on either end or that are in an isolated area unlikely to be followed by similar improvements at either end, resulting in little progress on implementing complete streets networks.

**7.01.070 Best practice criteria.**

Mayor in consultation with City Administrator and Public Works Director shall develop policies, design criteria, standards and guidelines based upon recognized best practices in street design, construction and operations, including but not limited to the latest editions of American Association of State Transportation Officials (AASHTO), Institute of Transportation Engineers (ITE) and National Association of City Transportation Officials (NACTO) guidelines and standards, while reflecting the context and character of the surrounding built and natural environment and enhancing the appearance of such.



**CITY OF SELAH  
CITY COUNCIL  
AGENDA ITEM SUMMARY**



Council Meeting      Action Item

10/12/2021              O-2

**Title:** ORDINANCE AMENDING THE 2021 BUDGET FOR THE REPLACEMENT OF AN ANIMAL CONTROL VEHICLE

**From:** Dale Novobielski, Clerk/Treasurer

**Action Requested:** Approval

**Staff Recommendation:**

Approve Ordinance.

**Board/Commission Recommendation:** Not Applicable

**Fiscal Impact:** \$ 54,414

**Funding Source:** Fund 001 General

**Background / Findings & Facts:** To amend the 2021 budget for the replacement of the City's Animal Control vehicle. Several months ago the Police Chief was authorized by the previous City Administrator to replace the city's Animal Control Vehicle based upon repair needs for the existing vehicle. The Police Chief purchased a Ford F-150 pickup thru Washington State contract pricing for approximately \$ 42,622 and needs to complete the vehicle with \$ 11,792 of additional equipment.

**Recommended Motion:** I move to approve an Ordinance amending the 2021 budget for the replacement of the City's Animal Control vehicle.

**Record of all prior actions taken by the City Council and/or a City Board, City Committee, Planning Commission, or the Hearing Examiner (where applicable)**





**CITY OF SELAH  
CITY COUNCIL  
AGENDA ITEM SUMMARY**



**Date:**

**Action Taken:**

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**ORDINANCE NO. 2136**

**AN ORDINANCE AMENDING THE 2021 BUDGET FOR THE REPLACEMENT OF AN ANIMAL CONTROL VEHICLE**

WHEREAS, the City desires to adjust the 2021 Budget for the replacement of an Animal Control vehicle;

NOW THEREFORE, THE CITY COUNCIL OF THE CITY OF SELAH, WASHINGTON, does ordain as follows: that the Clerk-Treasurer be authorized to amend the 2021 Budget as follows:

**001 General**


**Law Enforcement**

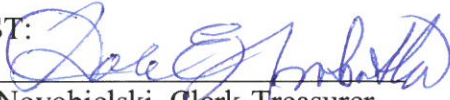
001.000.094.594.54.64.00	Animal Control Vehicle Replacement	\$ 54,414
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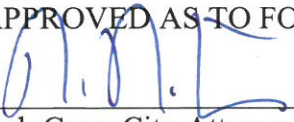
**Non-Departmental**

001.000.999.508.80.00.00	New Ending Unreserved Cash & Investments	1,174,746
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PASSED AND ORDAINED BY THE CITY COUNCIL OF THE CITY OF SELAH, WASHINGTON this 12<sup>th</sup> day of October 2021.

  
\_\_\_\_\_  
Sherry Raymond, Mayor

ATTEST:   
\_\_\_\_\_  
Dale E. Novobielski, Clerk-Treasurer

APPROVED AS TO FORM:   
\_\_\_\_\_  
Rob Case, City Attorney



**CITY OF SELAH  
CITY COUNCIL  
STUDY SESSION ITEM**



Study Session

Informational Item

10/12/2021

Q-1

By: Rocky Wallace, Public Works Director

Re: City's updated Water Systems Plan (WSP)

As reflected by its title, this is an "Study Session Item" only. It is not an Action Item or Consent Agenda Item, nor an Informational Item.

The City owns, operates and maintains a municipal potable water supply-storage-and-distribution system to serve its citizens. The City's water system is classified as a Group A public community system. Public community water systems are regulated by the Washington State Department of Health (WDOH). The regulations (specifically WAC 246-290-100) require the City to have a Water System Plan (WSP), to periodically update its WSP and to obtain WDOH's approval at or before the expiration date of the immediately-preceding WSP. The City's updated WSP has been prepared and WDOH has approved it. There will be an open public hearing, during the regular City Council meeting, on October 26, 2021, regarding such updated WSP. Formal adoption and implementation of the updated WSP is scheduled to occur thereafter.

**Record of all prior actions taken by the City Council and/or a City Board, City Committee, Planning Commission, or the Hearing Examiner (where applicable)**

Date:

Action Taken:

3/26/2019

Resolution No. 2728 Authorizing the Mayor to sign Task Order 2019-05 Between the City of Selah and HLA Engineering and Land Surveying Inc. to update The Water System Plan for the City of Selah



**CITY OF SELAH**  
***CITY COUNCIL***  
***STUDY SESSION ITEM***



6/23/2021

DOH Approval Letter of City's updated WSP



**CITY OF SELAH  
CITY COUNCIL  
INFORMATIONAL ITEM**



Council Meeting      Informational Item  
10/12/2021              Q-4

By: City Attorney Rob Case

As reflected by its title, this is an “Informational Item” only. It is not an Action Item nor a Consent Agenda Item.

On September 28, 2021, the City Council voted to approve and adopt a new sign code as Selah Municipal Code Chapter 10.38 (“Signs”). The corresponding Ordinance is “Ordinance No. 2134.”

Prior to the final vote that approved and adopted a new sign code, there were multiple sub-motions advanced and several of those were validly approved and adopted. As a result, text of the then-under-consideration proposed new sign code was modified prior to the final vote. After the final vote, I incorporated each textual change that was effectuated by each preceding sub-motion.

Appended hereto is a full copy of the final as-adopted version of the new sign code. I am supplying the City Council with such copy so that each member of the City Council can confirm – prior to City staff formally publishing the new sign code – that all textual changes effectuated by each successful sub-motion have been properly incorporated.

If any member of the City Council believes that the appended as-adopted version of the new sign code is incorrect in any way, I ask that you specify each aspect that you believe is incorrect so that any discrepancies can be resolved prior to City staff formally publishing the new sign code. The new sign code will be formally published prior to its effective date of December 1, 2021.

## Chapter 10.38

### SIGNS

#### Sections:

10.38.010	Intent and interpretation.
10.38.020	Chapter-specific definitions.
10.38.030	Development Permit required.
10.38.035	Land Use Applications.
10.38.040	Exempt signs and non-regulation of chalk on sidewalks.
10.38.050	Prohibited signs.
10.38.060	Sign standards.
10.38.070	General provisions.
10.38.080	Signs projecting over, or placed upon, public rights-of-way.
10.38.090	Sign illumination.
10.38.100	Roof signs.
10.38.110	Wall signs.
10.38.120	Fascia signs.
10.38.130	Temporary signs.
10.38.140	Directional signs.
10.38.150	Off-premises signs and billboards.
10.38.160	Digital signs.
10.38.170	Multiple building complexes and multiple tenant buildings.
10.38.180	Freeway signs.
10.38.190	Portable signs.
10.38.200	Legal nonconforming signs, maintenance of signs, removal of signs and enforcement of this chapter.
10.38.210	Administrative Adjustment of sign standards allowed.
10.38.220	Variances.
10.38.230	Violations.
10.38.240	Appeals.
10.38.250	Fees/charges.
10.38.260	Effective date.

#### **10.38.010 Intent and interpretation.**

(a) This chapter is intended to protect, promote and enhance the overall aesthetic of the City and also the health, safety, welfare and economic interests of residents, businesses, property owners, workers, consumers, tourists and visitors – each of which constitutes a substantial governmental interest – through a comprehensive system of reasonable, effective, consistent, content-neutral and nondiscriminatory standards, restrictions, and requirements. The overall aesthetic of the City suffers when unsightliness or visual clutter is caused by the existence, location or physical characteristics of a sign or sign structure. The health, safety, welfare and economic interests of residents, businesses, property owners, workers, consumers, tourists and visitors suffer when a sign or sign structure distracts vehicular traffic, is illegible or otherwise confusing, obstructs lines of sight for vehicular traffic, obstructs pedestrian traffic, obstructs lines of sight for pedestrian traffic or creates unsightliness or visual clutter. Commerce, property values and quality of life in the City are each impacted, sometimes positively and

sometimes negatively, by signs and sign structures. For all of these reasons, establishing and enforcing a comprehensive system in the City for signs and sign structures is reasonable and necessary, and will benefit the City and all individuals and entities by:

- (1) Protecting and enhancing aesthetics in the City;
- (2) Enhancing vehicular traffic safety in the City;
- (3) Enhancing pedestrian traffic safety in the City;
- (4) Reducing the risks of bodily injury and property damage;
- (5) Protecting and enhancing property values in the City;
- (6) Promulgating understandable and fair standards, restrictions and requirements; and
- (7) Recognizing, upholding and not unreasonably infringing the speech rights of individuals and entities.

(b) This chapter is not intended, and shall not be interpreted or enforced, so as to regulate or restrict any sign or sign structure based on the viewpoint or message expressed by, on or within the sign or sign structure. Similarly, this chapter is not intended, and shall not be interpreted or enforced, so as to favor or disfavor commercial speech, noncommercial speech, political speech or nonpolitical speech in comparison to any other type or types of speech. Rather, this chapter is intended, and shall be interpreted and enforced, so as to be viewpoint-neutral, message-neutral and neutral as to commercial speech, noncommercial speech, political speech and nonpolitical speech.

#### **10.38.020 Chapter-specific definitions.**

The definitions specified in “Appendix A” to title 10 of the Selah Municipal Code apply generally to this chapter, as stated in the “Purpose” thereof. More specifically, the following abbreviations, terms, phrases, words and derivatives shall be construed for purposes of this chapter as specified in this section and the specific definitions specified herein shall override any potentially-conflicting or potentially-inconsistent general definitions specified in said Appendix A.

(a) “Abandoned sign” means any sign or sign structure that is (1) located on property that has been vacant, unoccupied or not lawfully used for a consecutive period of ninety days or longer; or (2) has not been lawfully used for a consecutive period of ninety days or longer; or (3) is not an allowed off-premises sign or sign structure and that pertains to any occupant, business, event, activity or use different from the occupant, business, event, activity or use now existing on

the property (irrespective of whether a consecutive period of ninety days or longer has elapsed); or (4) is substantially broken, inoperable, defective, defaced, faded, peeled, rusted, illegible, incomplete or otherwise deteriorated and is not fully repaired and restored within thirty days after the City provides notice of the condition to the owner of the property where such sign or sign structure is located.

(b) “Administrative Official” means the Mayor or a designee specified by the Mayor who is a current City employee.

(c) “Banner” means any sign or sign structure that is not a “Flag”, that is constructed of cloth, fabric, nylon or any other similar material, and that is mounted at one or more edges or locations to a staff, pole, upright, brace, building or other supporting structure or device.

(d) “Billboard” means any large-scale outdoor sign or sign structure that is customarily, but not necessarily, leased for a period of time to one or more customers who wish to display large-scale outdoor advertising content that is often but always unrelated to the occupant, business, event, activity and use existing on the property where such sign or sign structure is located or existing in the immediate area.

(e) “Canopy sign” means any sign or sign structure made of any material and irrespective of its structural components that is attached to, affixed to, connected to or otherwise a part of any awning, canopy or other overhang, cover or covering on, above, over or around a door, entrance, window, opening, outdoor congregation area, outdoor service area or fire escape.

(f) “Carried sign” means any sign or sign structure that is hand-held or carried by a person so long as it is hand-held or carried by a person.

(g) “Changing message sign” means any sign or sign structure that does or was originally designed to display different, updated or cycling content on an automatic or semi-automatic basis as a result of electronic or manual control. Examples include, but are not limited to, date displays or time displays or temperature displays shown on a lamp bank of an electronic sign, and reader board displays shown either on a lamp bank of an electronic sign or in fixed letters on a manual reader board sign.

(h) “Digital sign” means any sign or sign structure that does or was originally designed to display changeable text, graphics, symbols and content by usage of light emitting diodes (LEDs) or other technological means contrasted with a nonilluminated or blank background. Digital signs and sign structures are also known as “Electronic message centers” or “EMCs”.

(i) “Directional sign” means any sign or sign structure erected for the intended or apparent purpose of facilitating or controlling the efficient and safe movement of vehicles or pedestrians. See also “Off-premises directional sign” and “On-premises directional sign”.



(j) “Electrical sign” means any sign or sign structure that uses or was originally designed to use electricity, electrical wiring, electrical connections or electrical fixtures or devices.

(k) “Fascia board” means (1) a board or structural component affixed to the outside vertical face of a cornice; or (2) a board or structural component connecting the top of the siding with the bottom of a soffit; or (3) a board or structural component nailed or otherwise affixed across the ends of the rafters at the eaves; or (4) the edge beam of a bridge; or (5) the flat member or band at the surface of a building.

(l) “Fascia sign” means any sign or sign structure that is attached to, affixed to, connected to or otherwise a part of any fascia board of any roof structure and that does not extend, project or otherwise protrude more than twelve inches outward from the nearest edge of the parapet or fascia (including the parapet to which the fascia is attached) of the structure or building, that does not extend outward beyond the horizontal width of the building (including the building’s parapet and fascia), and that for its entire length exists and runs in a parallel direction to the nearest wall or face of the structure or building.

(m) “Flag” means any piece of cloth, fabric, nylon or other similar type of material that is attached to, affixed to, connected to or otherwise a part of a staff, pole, upright, brace, building or other supporting structure or device, and that customarily but not necessarily includes distinctive words, letters, colors, patterns, designs, images, figures, symbols or logos.

(n) “Flashing sign” means any sign or sign structure that is not a “Changing message sign” and that does or was originally designed to (1) change or alter displayed lumens or light intensity in sudden transitory bursts; or (2) switch on and off in a constant pattern in which more than one-third of the nonconstant light source is off at any one time; or (3) do one or more similar functions.

(o) “Freestanding sign” means any sign or sign structure that is not a “Banner” or “Flag” and that is supported by one or more staffs, poles, uprights, braces or other structures (but not including buildings) that are located in, on or upon the ground.

(p) “Freeway sign” means any sign or sign structure that has an intended or apparent purpose of being noticed by and gaining the attention of freeway vehicular traffic drivers and passengers.

(q) “Marquee” and “Display case sign” each mean any sign or sign structure that is customarily, but not necessarily, associated with a movie theater, performing arts venue, theatrical playhouse or any other similar type of location or structure. The sign shall be attached to a structure or building either in a flat and parallel orientation to the structure or building or in such other orientation as approved by the “Administrative Official”. The sign shall include an area or functionality that allows for changeable text, graphics, symbols and content without alteration of the physical structure and components of the sign. A Marquee or Display case sign

shall be considered to be a “Wall sign” and thus shall be subject to SMC 10.38.110, and shall not be considered a “Temporary sign” that is subject to SMC 10.38.130.

(r) “Multiple-building complex” means any group of structures or buildings located on a single property from which two or more retail, office or commercial uses share a portion of the structures or buildings, the property, ingress and egress accesses, parking facilities or a coordinated site plan. For purposes of this chapter, each Multiple-building complex shall be considered a single use.

(s) “Nonconforming sign” means any sign or sign structure that previously conformed or substantially conformed to all then-applicable standards, restrictions and requirements including but not limited to all permitting requirements, but which no longer conforms or substantially conforms to the now-applicable standards, restrictions and requirements.

(t) “Off-premises sign” means any sign or sign structure that has an intended or apparent purpose of displaying advertising content for an occupant, business, event, activity, use, service, good, product, merchandise, point of sale, person or entity on, at or from a location other than on the property where the sign or sign structure is located.

(u) “Off-premises directional sign” means any sign or sign structure that has an intended or apparent purpose of displaying directions to a particular location, structure, building or business that is not located on the property where the sign or sign structure is located.

(v) “On-premises” sign means any sign or sign structure that is incidental to a lawful use existing on the property where such sign or sign structure is located, and that has an intended or apparent purpose of displaying advertising content for an occupant, business, event, activity, use, service, good, product, merchandise, point of sale, person or entity on, at or from the property where the sign or sign structure is located.

(w) “Permanent sign” means any sign or sign structure made of any durable, weather-proof or weather-resistant material that has an intended or apparent permanence of use and that does not meet the definition of “Temporary sign” or fall under any other provision of this chapter.

(x) “Portable sign” means any sign or sign structure made of wood, metal, plastic or any other durable material and that is not erected, constructed, placed, attached, affixed or otherwise connected to the ground or any permanent structure or building in any permanent way such as via concrete, nails or screws (and, thus, does not include and is distinct from a “Carried Sign”). Examples include, but are not limited to, sandwich board signs, “Trailer signs” and portable reader-board signs that are placed on private property.

(y) “Projecting sign” means any sign or sign structure that is not a “Canopy sign”, “Fascia sign” or “Wall sign”, that is attached, affixed or connected to a structure or building, and

that extends, protrudes or otherwise projects outward from the nearest edge of the structure or building.

(z) “Roof sign” means any sign or sign structure that is erected or constructed so as to be part of the roof structure or design of any structure or building, that is wholly or partially supported by any structure or building, and that in whole or in part is situated above the roofline to which it is attached.

(aa) “Sign” means words, letters, colors, patterns, designs, images, figures, symbols or logos, either with or without illumination, on any medium including but not limited to such medium’s structural components or attachments, that has an intended or apparent purpose of being noticed by and gaining the attention of persons and that displays content for the commercial use an occupant, business, event, activity, service, good, product, merchandise, point of sale, person or entity. Examples of such attachments include, but are not limited to, balloons, streamers, pennants, flags, inflatables and other devices or items.

(bb) “Sign area” means that area contained within a single continuous perimeter enclosing the entire sign or “Sign cabinet”, but does not include any support or framing structure that does not convey a message.

(cc) “Sign cabinet” means the module or background containing the message of the sign, but does not include any sign support, architectural framing or other decorative feature that contains no message.

(dd) “Sign height” means the vertical distance measured from the highest portion of the sign to further of the grade immediately below the sign or the upper surface of the nearest street curb.

(ee) “Sign setback” means the horizontal distance measured from the nearest property line or parcel line to the nearest edge of the sign.

(ff) “Street frontage” means the horizontal distance measured along any property line or parcel line that borders or is adjacent to any public street. For a corner lot, each street-side property line or parcel line shall be a separate Street frontage. The Street frontage for a single use or development on two or more parcels shall be the sum of all frontages.

(gg) “Temporary sign” means any sign or sign structure that has an intended or apparent non-permanence of use, that is made of any nondurable material such as cloth, paper, corrugated board, cardboard, canvas, flexible plastic, thin metal stakes, foam core board, water-soluble paint or any type of chalk (on the sign or sign structure), and that is not erected, constructed, placed, attached, affixed or otherwise connected to the ground or any permanent structure or building in any permanent way such as via concrete, nails or screws. Examples include, but are not limited to, posters, placards, stakes, banners, pennants, valances and displays made of cloth, paper, canvas, cardboard or any other light nondurable material. Any sign or sign structure that is in whole or part made of durable materials shall be a “Permanent sign”. By

contrast, writings and drawings created exclusively by applying water-soluble chalk directly upon a sidewalk or pedestrian walking path (without any physical connection to a sign or sign structure) do not constitute a “Temporary sign” and are not in any way governed by this chapter. See SMC 10.38.040(b).

(hh) “Trailer sign” means any sign or sign structure that is attached to, affixed to, connected to or otherwise located in, on or about any trailer, or that has its own wheels or transport mechanisms that move or were originally designed to move the sign or sign structure between locations. However, this definition does not include any sign or sign structure that is attached to, affixed to, connected to or otherwise located in, on or about any vehicle that is not a trailer such as passenger cars, trucks or recreational vehicles, and those signs and sign structures are subject to SMC 10.38.140(i).

(ii) “Wall sign” means any “On-premises sign” that is attached to, affixed to, connected to or otherwise a part of a wall of any structure or building, or that is painted directly on a wall of any structure or building, or that is erected against and parallel to a wall of any structure or building, or so as to extend, project or otherwise protrude outward from a wall of any structure or building.

(jj) “Wayfinding sign” means any “Off-premises sign” that has an intended or apparent purpose of facilitating or controlling the efficient and safe movement of vehicles or pedestrians to local tourist or visitor destinations designated and recognized by the City.

(kk) “Welcome sign” and “Gateway sign” means any sign or sign structure at or near any entry or exit point to the City that introduces, welcomes, advises or thanks tourists or visitors entering or leaving the City or region. A Welcome Sign or Gateway Sign may incorporate or provide space for advertisements that are incidental to the primary purpose of the sign and sign structure, or that serve to help fund the sign or sign structure, or that stimulate the economy within the City, or that promote tourism and visitation. Any person or entity desiring to install a Welcome Sign or Gateway Sign must comply with all provisions of this chapter.

(ll) “Window sign” means any sign or sign structure that has an intended or apparent purpose of communicating information about an occupant, business, event, activity, use, service, good, product, merchandise, point of sale, person or entity, that is placed on, upon or inside a window, window pane, glass surface or other transparent surface, and that is visible from the exterior of such window, window pane, glass surface or other transparent surface.

### **10.38.030 Development Permit required.**

(a) Application and Review Standards. No sign or sign structure governed by this chapter shall be erected, structurally altered or relocated unless a “Development Permit” has been issued in advance. The City shall make available one or more forms to be used by applicants seeking a Development Permit. Each submitted application for a Development Permit

shall be reviewed by City staff for conformance to the standards, restrictions and requirements of this chapter and all other applicable chapters of the Selah Municipal Code. The viewpoint or message expressed or to be expressed by, on or within the sign or sign structure shall not a subject for review by City staff (because, as stated in SMC 10.38.010(b) and elsewhere, this chapter is intended, and shall be interpreted and enforced, so as to be viewpoint-neutral and message-neutral). The content expressed or to be expressed by, on or within the sign or sign structure (in contrast to viewpoint or message) shall be a subject for review by City staff only to the extent, if any, that such content is or would be violative of this chapter due to a reason other than viewpoint or message (for example, if the content purports to be or confusingly imitates or resembles an official traffic sign, in violation of SMC 10.38.050(b)).

(b) **New Signs.** Any on-premise sign or sign structure meeting the standards, restrictions and requirements of this chapter is considered a Class (1) use and thus shall require a Class (1) review and approval. By contrast, any on-premises sign or sign structure not meeting the standards, restrictions and requirements of this chapter shall be subject to SMC 10.38.220 and is not otherwise allowed. Any off-premises sign or sign structure or billboard is not allowed as stated in SMC 10.38.160.

(c) **Changes to Existing Signs.** Structural change to or replacement of any existing sign or sign structure shall require a Class (1) review and approval. However, changes to the text, copy or face of a sign or sign structure that do not significantly alter the material or appearance of the preexisting sign or sign structure do not require a Class (1) review and approval.

(d) **Written Decision.** The Administrative Official shall, within a reasonable time, send a written decision to the applicant or applicants. A Development Permit shall be issued if all applicable standards, restrictions and requirements are or will be met. A Development Permit shall not be issued if one or more applicable standards, restrictions or requirements are not or will not be met and if a Variance (pursuant to SMC 10.38.230) has not or will not be granted as to such non-met standards, restrictions or requirements. Whenever the Administrative Official does not issue a Development Permit in response to a submitted application, the written decision shall specify each standard, restriction and requirement that has not been met and explain the reason or reasons for the non-issuance in sufficient detail to enable a potential appeal under SMC 10.38.240 or other applicable law (and, also and alternatively, to enable the applicant or applicants to submit a new or revised application at a later date that addresses whichever standards, restrictions or requirements were not met via the preceding application).

(e) **Appeal.** Any applicant who was not issued a Development Permit may appeal the Administrative Official's written decision under SMC 10.38.240.

#### **10.38.035 Land Use Applications.**

The provisions of SMC 21.07.035 ("Signage requirements for certain land use applications") must be met when applicable.

**10.38.040 Exempt signs and non-regulation of chalk on sidewalks.**

(a) The following signs and sign structures are exempt from the permitting requirements (but not exempt from the other standards, restrictions and requirements) of this chapter:

- (1) Any carried sign or sign structure so long as it is hand-held by a person.
- (2) Any on-premises sign that is not viewable from the nearest public right-of-way. Examples include, but are not limited to, menu boards and interior signs.
- (3) Any on-premises directional sign that meets the other standards, restrictions and requirements of this chapter, including but not limited to all size restrictions.
- (4) Any barber poles or gravestone or separate-use structure such as a Goodwill container or election ballot drop box.
- (5) Any address numbers or building identification information that is required or allowed by law.
- (6) Any temporary sign or sign structure exclusively located on private land when the owner or owners of the sign and sign structure have obtained express permission from the person, persons, entity or entities owning or controlling a majority interest (*i.e.*, more than fifty percent on a one-hundred percent scale) of the property where the sign and sign structure is located. The owner or owners of the sign and sign structure must continually comply with and fulfill any conditions or restrictions that such majority-interest landowner(s) may impose, and also must immediately and fully remove the sign or sign structure if the majority-interest landowner(s) subsequently revoke any previous grant of permission. The majority-interest landowner(s) are not required to grant permission for any sign or sign structure, and, instead, shall have continual subjective discretion as to whether to grant permission, revoke permission or impose conditions and restrictions as to any grant of permission. The majority-interest landowner(s) may not grant or purport to grant permission that in any degree or way conflicts with the provisions this chapter.
- (7) Any signs installed by or for any government or public agency, including but not limited to the City, Yakima County and the state, that pertain in whole or part to vehicular traffic, pedestrian traffic, health, safety or general welfare. Examples include, but are not limited to, the following:

- (A) Emergency signs and warning signs.
  - (B) Traffic and wayfinding signs.
  - (C) Signs required by law to exist.
  - (D) Signs showing the location of public facilities.
- (8) Any flag that is:
- (A) Located on a flagpole in any residential zoning district.
  - (B) Shares the flagpole with no more than one other flag or item irrespective of the zoning district.
  - (C) Located on a flagpole that does not exceed the allowable maximum structure height of the zoning district. See SMC Chapter 10.38, Table 38-2.
  - (D) Located on a flagpole that meets all applicable minimum setback standards for accessory structures. See SMC Chapter 10.38, Table 38-4.
- (9) Memorial signs or tablets, names of buildings, dates of erection and similar items and information, which are incorporated into the building materials and façade.
- (10) Signs in, on or about a vehicle unless the vehicle is parked or stationed for the intended or apparent purpose of being noticed by and gaining the attention of persons who might be interested in an occupant, business, event, activity, use, service, good, product, merchandise, point of sale, person or entity on the property where the vehicle is parked or stationed or nearby to such property.
- (11) Signs taped or otherwise affixed to, on or upon the inside of a window, window pane, glass surface or other transparent surface in such a manner as to be later easily removed unless any individual sign area exceeds the total allowed under this chapter for a “Window sign” or “Temporary sign”.
- (12) Portable signs and freestanding signs that meet the requirements of SMC 10.38.110, as well as any other applicable provision of this chapter.
- (13) Seasonal and holiday decorations, including any illumination, located on residential property for a period of time not exceeding sixty days.
- (b) A writing or drawing created exclusively by applying water-soluble chalk directly upon a public sidewalk or pedestrian walking path (without any physical connection to a sign or

sign structure) does not constitute a “sign” or “sign structure” and is not in any way governed by this chapter.

**10.38.050 Prohibited signs.**

The following signs and sign structures are prohibited:

(a) Any sign or sign structure located in, on or about a vehicle or trailer that is parked or stationed on public property or private property, that is visible from any public right-of-way, and that has an intended or apparent purpose of circumventing or trying to circumvent the provisions of this chapter. However, this provision shall not prohibit signs painted on or magnetically attached to any vehicle or trailer while such vehicle or trailer is in normal operation.

(b) Any sign or sign structure purporting to be or confusingly imitating or resembling any official traffic sign or signal due to its color, design, location, illumination or otherwise, or that obstructs the visibility of any official traffic sign or signal in any degree or way including but not limited to via glare or illumination.

(c) Any sign or sign structure attached to any utility, streetlight or traffic-control signal pole or facility, or attached to any fence, structure, building, facility, vehicle or equipment owned by any government or public agency, or placed on any tree or live vegetation (other than grass) owned by any government or public agency.

(d) Any projecting sign that swings, rotates or otherwise physically moves.

(e) Any sign or sign structure that is dilapidated or hazardous in condition. Examples include, but are not limited to, signs and sign structures that contain peeling paint, major cracks or holes, or loose or dangling materials.

(f) Any abandoned sign or sign structure.

(g) Any sign or sign structure on a door, entrance, window, opening, outdoor congregation area, outdoor service area or fire escape that in whole or part restricts free and unimpeded ingress or egress.

(h) Any other sign or sign structure not meeting the provisions of this chapter.

**10.38.060 Sign standards.**

The provisions of this chapter and the requirements in Table 38-1 (“Type of Signs Allowed”); Table 38-2 (“Number of Signs Allowed”); Table 38-3 (“Maximum Sign Area”) and Table 38-4



(“Maximum Sign Height”) are established for all signs and sign structures in the respective zoning districts as indicated. All signs and sign structures are subject to the review procedures of this title and the standards of this chapter. Signs and sign structures related to a Class (1), Class (2) or Class (3) principal use shall be subject to the same procedural, review and approval requirements as the principal use is subject to.

**Table 38-1. Type and Number of Signs Allowed**

SIGN TYPE		ZONING DISTRICTS							
		LDSF	R-1	R-2	R-3	B-1	B-2	M-1	
ALLOWED SIGNS									
On-Premises Signs	Nameplate	Permitted as an Accessory Use to an Approved or Existing Use							
	Subdivision Identification/Project Identification								
	Roof	Not Allowed			Class (1) Use				
	Permanent Freestanding	Subdivision/Proj. I.D. Only			On-premises signs meeting the standards of this chapter are considered Class (1) uses requiring Class (1) review. On-premises signs not meeting the standards of this chapter shall follow the procedures of SMC 10.38.170, and are otherwise not permitted.				
	Projecting	Not Allowed			Class (3) Use See SMC 10.38.150				
	Freeway								
Off-Premises Signs Including Billboards		Not Allowed			Not Allowed			Not Allowed	
NUMBER OF SIGNS ALLOWED									
On-Premises Signs	Nameplate	1 per Dwelling or Business							
	Subdivision Identification/Use Identification	1 per Street Frontage			1 per Street Frontage				
	Permanent Freestanding	Not Allowed			See SMC 10.38.100				
	Projecting								
	Wall Signs	Not Allowed			See SMC 10.38.090				
	Roof Signs				Freeway: See SMC 10.38.150				
	Freeway				Directional: See SMC 10.38.120(B)				
Off-Premises Signs Including Billboards		Not Allowed			Not Allowed (Also See SMC 10.38.130)				
TYPE AND NUMBER OF SIGNS ALLOWED THAT ARE BASED ON OTHER CRITERIA									
Temporary Signs	See SMC 10.38.110								
Carried Signs	See SMC 10.38.115								

SIGN TYPE	ZONING DISTRICTS						
	LDSF	R-1	R-2	R-3	B-1	B-2	M-1
Digital Signs	See SMC 10.38.135						
Portable Signs	See SMC 10.38.200						

NOTES:

1. SMC 10.38.140 has freestanding sign provisions for multiple-building complexes and multiple-tenant buildings. Sign provisions for temporary freestanding signs are addressed in SMC 10.38.110. Permanent freestanding signs are limited to subdivision signs in residential areas.
2. Nameplates and subdivision identification signs permitted in the residential districts may be placed on a wall—See Table 38-2.

**Table 38-2. Maximum Sign Area**

ZONING DISTRICT		Freestanding and Projecting Signs			
		Sign is set back 15 ft. or less from required right-of-way	Sign is set back 15 ft. or more from required right-of-way	WALL SIGNS	FREEWAY SIGNS
<b>Residential Districts</b>					
<b>LDSF, R-1, R-2, and R-3</b>		Nameplates up to 2 sq. ft. and subdivision/project identification up to 32 sq. ft.			NOT PERMITTED
<b>Commercial &amp; Industrial Districts</b>					
<b>B-1</b>	Frontage is less than 300 ft. long	1 sq. ft. of sign area per lineal ft. of frontage up to 100 sq. ft.	1-1/2 sq. ft. of sign area per lineal ft. of frontage up to 150 sq. ft.	SIZE OF WALL TO WHICH ATTACHED	WHERE PERMITTED: UP TO 300 SQUARE FEET
	Frontage is more than 300 ft. long	1 sq. ft. of sign area per lineal ft. of frontage up to 150 sq. ft.	1-1/2 sq. ft. of sign area per lineal ft. of frontage up to 200 sq. ft.		
<b>B-2</b>	Frontage is less than 300 ft. long	1 sq. ft. of sign area per lineal ft. of frontage up to 150 sq. ft.	1-1/2 sq. ft. of sign area per lineal ft. of frontage up to 200 sq. ft.		
	Frontage is more than 300 ft. long	1 sq. ft. of sign area per lineal ft. of frontage up to 200 sq. ft.	1-1/2 sq. ft. of sign area per lineal ft. of frontage up to 250 sq. ft.		
<b>M-1</b>		1 sq. ft. of sign area per lineal ft. of frontage up to 100 sq. ft.	1-1/2 sq. ft. of sign area per lineal ft. of frontage up to 150 sq. ft.		
MAXIMUM AREA PER SIGN = 2 TIMES THE MAXIMUM AREA PER SIGN FACE					
MAXIMUM SIGN AREA OF OTHER SIGN TYPES THAT ARE BASED ON OTHER CRITERIA					
Temporary Signs		See SMC 10.38.110			
Carried Signs		See SMC 10.38.115			
Digital Signs		See SMC 10.38.135			
Portable Signs		See SMC 10.38.200			

**Table 38-3. Sign Height and Setbacks**

SIGN STANDARDS		ZONING DISTRICTS					
		LDSF	R-1	R-2	R-3	B-1	B-2
<b>MAXIMUM SIGN HEIGHT</b>							
Permanent Freestanding	Sign is set back 15 feet or less from required right-of-way	5 ft.			30 ft.	30 ft.	30 ft.
	Sign is set back more than 15 feet from required right-of-way	10 ft.			30 ft.	30 ft.	30 ft.
Projecting		Not Allowed			See SMC 10.38.080		
1.	Wall				1. Top of wall to which attached (SMC 10.38.100)		
2.	Fascia				2. Horizontal and vertical limits of fascia board to which attached (SMC 10.38.105)		
Freeway					Where permitted: 70 ft.		
<b>SETBACKS</b>							
Minimum front yard setbacks		Edge of right-of-way					
Minimum side yard setbacks		Required setback standards for each zoning district (Table 8-3 & 8-4)					
<b>SIGN HEIGHT AND SETBACKS FOR SIGNS TYPES THAT ARE BASED ON OTHER CRITERIA</b>							
Temporary Signs	See SMC 10.38.110						
Carried Signs	See SMC 10.38.115						
Digital Signs	See SMC 10.38.135						
Portable Signs	See SMC 10.38.200						

Notes:

- 1 SMC 10.38.140 has special freestanding sign provisions for multiple-building complexes and multiple-tenant buildings.
- 2 Nameplates and subdivision identification signs permitted in the residential districts may be placed on a wall. (See Table 38-1.)

**10.38.070 General provisions.**

All signs and sign structures, including but not limited to exempt signs and temporary signs, shall comply with the following provisions:

- (a) Construction shall satisfy the requirements of the building code.

(b) Permanent signs and sign structures must be manufactured of durable materials that withstand the effects of water and wind. Paper-faced signs, including but not limited to vinyl-coated paper and adhesive on paper, are not allowed. Canvas or vinyl signs must be durable. Signs or sign structures made of canvas, fabric, vinyl or any similar pliable material that are attached, affixed or otherwise connected to a permanent sign or sign structure must be mounted behind a perimeter frame or trim cap so that the edges of the sign face are not exposed, except that flags that are made of one hundred percent spun polyester are exempt from such requirement.

(c) Except for exempt signs (including, but not limited to, carried signs), temporary signs and portable signs, all signs and sign structures shall be attached, affixed or connected to a structure, building or the ground.

(d) All signs and sign structures shall comply with the setback requirements of Table 38-2 and Table 38-3, except that if a side yard or rear yard is a street frontage then the front setback requirement shall be applicable.

(e) In addition to the sign illumination requirements of SMC 10.38.090, lighting directed on, upon or at any sign or sign structure, or that is internal to any sign or sign structure, shall be shaded, screened or directed so that the light's intensity or brightness does not adversely affect or impact any neighboring use, nearby use, neighboring property, nearby property, vehicular traffic or pedestrian traffic.

(f) All signs and sign structures, including but not limited to all framing, supports, braces and guy lines, shall be maintained in a safe and secure manner.

(g) All decorative features and all sign structures, including but not limited to all framing, supports, braces and guy lines, that do not contain text or advertising content shall not exceed, in comparison to the overall sign cabinet, a surface ratio of 1:1.

(h) No sign or sign structure that fully or partially rises higher than twenty-four inches above the centerline grades of intersecting streets and/or railroads shall be placed in the clear view triangle of any roadway, driveway or curb cut as established in SMC 10.08.030.

(i) The construction of temporary signs and sign structures is limited to the materials described in the definition of "Temporary sign" and materials substantially similar thereto. In addition, all temporary signs and sign structures must conform to the standards, requirements and restrictions of this chapter, including but not limited to SMC 10.38.110.

(j) No sign or sign structure shall be placed in, on or above, or in any way affixed, attached or connected to, any City-owned or City-operated property, structure, building or facility including but not limited to utility poles, utility boxes, fences, street signs, traffic signs, sidewalks, pedestrian walking paths, trees and live vegetation (but not including grass, vegetation bed locations without live vegetation or bare ground locations in, on or upon a City-owned right-of-way, which are separately regulated by SMC 10.38.080(b)). Any sign or sign

structure that violates this provision may be removed and permanently disposed of by the City without any compensation or relief to the owner or owners of the sign or sign structure.

**10.38.080 Signs projecting over, or placed upon, public rights-of-way.**

(a) Signs and sign structures, including but not limited to freestanding signs and sign structures, that project over any public right-of-way without being physically connected to the right-of-way (*i.e.*, those that hang or extend over a right-of-way, rather than those that are installed on the ground in the right-of-way) shall comply with the general provisions of this chapter and also the following specific provisions:

(1) Prior to erecting the sign or sign structure, the owner or owners of the sign and sign structure must obtain a “Right-of-Way Use Permit” in advance. The City shall make available one or more forms to be used by applicants seeking a Right-of-Way Use Permit. The owner or owners of the sign and sign structure must continually comply with and fulfill the terms and conditions of an issued Right-of-Way Use Permit at all times, and also must immediately and fully remove the sign or sign structure if the Right-of-Way Use Permit expires, lapses or is otherwise terminated.

(2) The highest edge of the sign or sign structure shall not exceed the highest edge of the structure or building to which it is attached, if any, by more than one-third.

(3) The sign and sign structure shall not project within two feet of the curb line and shall also conform to the following maximum projection standards:

<b>Clearance Above Grade</b>	<b>Maximum Projection</b>
Less than 8 feet	Not allowed
8 feet to 9 feet	1 foot
9 feet to 10 feet	2 feet
Over 10 feet	2/3 the distance from building to curb line or a maximum of 10 feet

(4) Only one projecting sign and one associated projecting sign structure shall be allowed per tenant space or building frontage.

(5) No sign or sign structure shall obstruct or impair access to a public sidewalk, pedestrian walking path, public or private street or driveway, traffic control

signal, bus stop, fire hydrant, bench or any type of street furniture, or otherwise create a hazard.

(b) Signs and sign structures, including but not limited to freestanding signs and sign structures, that are installed in, on or upon a public right-of-way (*i.e.*, those that are installed on the ground in the right-of-way, rather than those that hang or extend over a right-of-way without being physically connected to the right-of-way) shall comply with the general provisions of this chapter and also the following specific provisions:

(1) For public rights-of-way along Jim Clements Way, North Wenas Avenue, North First Street and South First Street, signs and sign structures may be installed in, on or upon a public right-of-way without any necessity of seeking or obtaining permission from the City. The City does not have any option to potentially disallow all or certain signs or signs structures (that otherwise comply with this chapter) from being installed in, on or upon such specific location(s). This chapter does not give any property owner(s) any option to potentially disallow all or certain signs or sign structures (that otherwise comply with this chapter) from being installed in, on or upon such specific location(s).

(A) In order to enable routine maintenance efforts by the City, the owner or owners of signs and sign structures shall remove their signs and sign structures, and also shall not install or reinstall signs or signs structures, according to the following schedules:

(i) For public rights-of-way along Jim Clements Way and North Wenas Avenue, all signs and sign structures must be removed by 6:00 a.m. each Wednesday and must not be installed or reinstalled between 6:00 a.m. and 2:00 p.m. each Wednesday.

(ii) For public rights-of-way along North First Street and South First Street, all signs and sign structures must be removed by 6:00 a.m. each Thursday and must not be installed or reinstalled between 6:00 a.m. and 2:00 p.m. each Thursday.

(B) City agents and employees may remove any sign or sign structure that exists in, on or upon a public right-of-way in violation of the schedules established by SMC 10.38.080(b)(1)(A)(i) or (ii). City agents and employees shall endeavor, to the extent possible, to not damage or destroy any sign or sign structure while removing it. City agents and employees shall have no obligation or duty to reinstall any sign or sign structure that is or has been removed pursuant to this subsection. Each sign and sign structure that is or has been removed pursuant to this subsection shall be held at the Public Works Department for the duration specified in SMC 10.38.080(b)(8) pending potential retrieval by someone claiming ownership.

(2) For public rights-of-way along or at any other location(s) other than those specified in SMC 10.38.080(b)(1), signs and sign structures may not be installed in, on or upon a public right-of-way.

(3) No sign or sign structure shall be placed in, on or upon any vehicular traffic travel lane, roadway, road shoulder, road median, road roundabout or other right-of-way location or area that is not legally and safely accessible by a sidewalk or pedestrian walking path.

(4) No sign or sign structure shall be placed in, on or upon any sidewalk or pedestrian walking path. Instead, signs and sign structures shall be installed in, on or upon the grass, vegetation bed locations without live vegetation or bare ground when they are installed in, on or upon a public right-of-way.

(5) No sign or sign structure shall obstruct or impair access to a public sidewalk, pedestrian walking path, public or private street or driveway, traffic control signal, bus stop, fire hydrant, bench or any type of street furniture, or otherwise create a hazard.

(6) No sign or sign structure shall materially obstruct or impair access to any property, building, structure, facility or parked vehicle.

(7) City agents and employees may, to the extent necessary, temporarily remove signs and sign structures for any duration on any date or dates in order to clean or otherwise maintain a public right-of-way or any other property or location. City agents and employees shall endeavor, to the extent possible, to not damage or destroy any sign or sign structure while removing it. City agents and employees shall, to the extent possible, reinstall the signs and sign structures that are or were removed pursuant to this subsection at the same location or a substantially similar nearby location after the work is complete. If any sign or sign structure that is or was removed pursuant to this subsection cannot be so reinstalled for any reason, it shall be held at the Public Works Department for the duration specified in SMC 10.38.080(b)(8) pending potential retrieval by someone claiming ownership.

(8) The deadline to physically retrieve any sign or sign structure that the City removed from any public right-of-way for any reason is 5:00 p.m. on the second Friday after the date that the sign or sign structure was removed by the City. The City shall have no obligation to notify or seek out a putative owner, nor any obligation to confirm that a professed owner is in fact a true owner, of any sign or sign structure. The City will relinquish a sign or sign structure to the first person who appears at the Public Works Department and credibly professes ownership. No person or entity shall be entitled to any compensation or relief if a City agent or employee unavoidably damages or destroys a sign or sign structure while removing it, nor if the City disposes of a non-retrieved sign or sign structure after the applicable retrieval deadline has expired, nor if the City

relinquishes a sign or sign structure to a person or entity who falsely professed ownership.

**10.38.090 Sign illumination.**

(a) In General. No non-exempt temporary sign, portable sign or sign structure may be illuminated. No sign or sign structure located in a residential zoning district may be illuminated, except that on parcels measuring two acres or larger in surface area signs may be halo illuminated or illuminated as necessary for allowable digital signs. Permanent signs allowed by this chapter may be non-illuminated, illuminated by internal light fixtures, halo illuminated or externally illuminated unless otherwise specified in this chapter. (See SMC 10.38.040(1) as to the exemption for seasonal and holiday decorations located on residential property.)

(b) Externally Illuminated Signs.

(1) Except as otherwise provided in this subsection, externally illuminated signs shall be illuminated only with steady, stationary, fully shielded light sources directed solely onto the sign (but not onto the sign structure, to the extent possible) without causing glare. Light shielding shall ensure that the lamp or light source is not visible beyond the premises and shall further ensure that the light is contained within the sign face.

(2) A light fixture mounted above the sign face may be installed with its bottom opening tilted towards the sign face, provided that (A) The bottom opening of the light fixture is flat and (B) the uppermost portion of the fixture's opening is located no higher than the top of the sign face. Light fixtures aimed and installed in this fashion shall be considered fully shielded.

(c) Internally Illuminated Signs.

(1) Internally illuminated signs shall be constructed with an opaque background and translucent text and symbols. If the sign owner or owners desire to have the entire sign face visible at night, an external light source may be used to illuminate the sign unless otherwise provided in this chapter.

(2) The difference between the off-message and solid-message measurements using the EMC measurement criteria shall not exceed 0.3 foot-candles at night, utilizing the recommended ISA methodology to determine compliance.

(3) All allowable EMCs shall be equipped with a sensor or other device that automatically determines the ambient illumination and be programmed to automatically dim according to ambient light conditions, or that can be adjusted to comply with the 0.3 foot-candle measurements.



(d) Off-Premises Signs and Billboards. This section 10.38.090 does not apply to off-premises signs or billboards.

**10.38.100 Roof signs.**

All roof signs and sign structures shall comply with the following provisions:

(a) Roof signs and sign structures shall be constructed in, on or upon the roof of a structure or building, shall be integrated into the roof system, and shall appear from all sides as a wall sign affixed to an existing part of the structure or building without any visible support structure.

(b) Roof signs and sign structures shall not exceed the allowable maximum height of the structure or building to which they are attached according to the provisions of the applicable zoning district.

**10.38.110 Wall signs.**

All wall signs and sign structures shall conform to the following provisions:

(a) Wall signs may be painted on or upon a wall, attached flat to a wall, or pinned to a wall, but shall not extend, project or otherwise protrude more than twelve inches outward from the wall.

(b) The number of wall signs is not regulated. However, the total sign area of any wall sign, including but not limited to projecting wall sign, shall not exceed ten percent of the total square footage of the wall to which attached.

(c) No wall sign or sign structure shall extend above the height of the wall to which it is attached.

(d) Marquee and display case signs shall have:

(1) An area or functionality that allows for changeable text, graphics, symbols and content without alteration of the physical structure and components of the sign.

(2) A sign face made of a translucent durable material.

(3) A sign cabinet or display case that is lockable and that protects the sign from weather.

**10.38.120 Fascia signs.**

All fascia signs and sign structures shall conform to the following provisions:

(a) Fascia signs may be painted on or upon the fascia board, attached flat to the fascia board, or pinned to the fascia board, but shall not extend, project or otherwise protrude more than twelve inches outward from the fascia board.

(b) The number of fascia signs is not regulated. However, the total sign area of any fascia sign, including but not limited to projecting fascia sign, shall not exceed the area of the fascia board to which it is attached.

(c) No fascia sign or sign structures shall extend beyond the horizontal and vertical limits of the fascia board to which it is attached.

**10.38.130 Temporary signs.**

No review is required for temporary signs or sign structures. All temporary signs and sign structures shall conform to the following provisions:

(a) No temporary sign or sign structure shall be placed in any roadway, required parking space or driveway, nor shall any sign or sign structure that fully or partially rises higher than twenty-four inches above the centerline grades of intersecting streets and/or railroads be placed in the clear view triangle of any roadway, driveway or curb cut as established in SMC 10.08.030.

(b) No temporary sign or sign structure may be placed in, on or above any City-owned or City-operated property, structure, building or facility including but not limited to utility poles, utility boxes, fences, street signs, traffic signs, sidewalks, trees and live vegetation (but not including grass, vegetation bed locations without live vegetation and bare ground located in, on or upon a City-owned right-of-way, which are separately addressed by SMC 10.38.080(b)), unless the owner or owners obtain in advance a "Special Event Permit", "Temporary Use Permit" or other permission from the City.

(c) Temporary signs and sign structures may be placed on property that is residentially zoned in accordance with the requirements of this chapter and the following:

(1) Only one temporary window sign is allowed per residential unit and it shall not to exceed four square feet in total sign area.

(2) Freestanding signs, including post-mounted, stake-mounted and portable signs, are allowed as follows:

(A) In single-family residential zoning districts, temporary freestanding signs that are post-mounted on the ground shall not exceed four square feet in total sign area and five linear feet in height, and temporary freestanding signs that are stake-mounted in the ground or portable shall not exceed three feet in linear height.

(B) In multifamily residential zoning districts, temporary freestanding signs that are post-mounted in the ground shall not exceed six square feet in total sign area and five feet in linear height above ground level, and temporary freestanding signs that are stake-mounted in the ground or portable shall not exceed three feet in linear height above ground level.

(d) Temporary signs and sign structures may be placed on property that is non-residentially zoned in accordance with the requirements of this chapter and the following:

(1) The total sign area of any window sign shall not exceed fifty percent of the window area.

(2) Freestanding signs, including those that are post-mounted in the ground, shall not exceed four square feet of total sign area and five feet in linear height above ground level, and temporary signs that are stake-mounted in the ground or portable shall not exceed three feet in linear height above ground level.

(e) Surface-mounted signs are limited shall not exceed thirty square feet of total sign area and must be flatly affixed to walls or to on-site fences that face the abutting street or face inward to the subject site.

(f) Temporary signs on a property of more than two surface acres, either residentially zoned or non-residentially zoned, may be of any type and cumulatively shall not exceed sixty-four square feet of total sign area and individually shall not exceed eight feet of lineal height above ground level. No other or additional temporary signs shall be displayed on such property.

(g) In all circumstances, temporary signs and sign structures shall be promptly removed after the event that they are related to has occurred or ended.

**10.38.140 Directional signs.**

(a) On-premises directional signs and sign structures that are viewable from the nearest public right-of-way are allowable as provided in Table 38-1. On premises directional signs may contain both directions and the name and logo of an occupant, business, event, activity or use, provided that such name and logo shall not exceed fifty percent of the total sign area. On premises directional signs and sign structures shall comply with all provisions of this chapter and individually shall not exceed ten square feet in total sign area.

(b) Off-premises directional signs and sign structures are allowable as provided in SMC 10.38.150, but must comply with the following provisions:

(1) Each use located in a zoning district where off-premises directional signs are allowed shall have no more than one associated off-premises directional sign.

(2) Each off-premises directional sign shall only contain directions and shall not exceed thirty-two square feet of total sign area and twenty-five lineal feet in lineal height above ground level.

(3) Each off-premises directional sign shall be permanently installed in, on or above private property.

(4) No more than one off-premises directional sign may be installed in, on or above any lot or parcel.

**10.38.150 Off-premises signs and billboards.**

(a) New off-premises signs and sign structures are prohibited. Off-premises signs and sign structures existing before July 10, 1979, shall be considered grandfathered and are regulated by SMC 10.38.200.

(b) New billboards are prohibited. Billboards existing before July 10, 1979, shall be considered grandfathered and are regulated by SMC 10.38.210.

(c) Welcome signs and gateway signs shall not be considered off-premises signs or billboards, and thus are exempt from the standards, restrictions and requirements of this section.

**10.38.160 Digital signs.**

(a) The digital display area of any digital sign shall not exceed the lesser of fifty percent of the total sign area that is allowable as provided in Table 38-2 or fifty square feet.

(b) No more than one digital sign may be installed per each one hundred feet of street frontage.

(c) Digital signs are not allowed in residentially zoned districts.

(d) For EMCs, the difference between the off-message and solid-message measurements using the EMC measurement criteria shall not exceed 0.3 foot-candles at night. Each EMC shall be equipped with a sensor or other technological device that automatically

determines the ambient illumination and automatically dims the sign according to such ambient illumination, or that can be adjusted so as to comply with the 0.3 foot-candle measurement.

(e) Digital signs shall not include or utilize any motion other than the changing of the displayed content.

(f) The minimum duration between alternating display content shall be three seconds.

#### **10.38.170 Multiple-building complexes and multiple-tenant buildings.**

The following provisions shall apply to multiple-building complexes and multiple-tenant buildings located in the B-1 and B-2 zoning districts:

(a) The owner or operator of each multiple-building complex shall be allowed at least one freestanding sign and sign structure for, and located on, each of such complex's street frontages in accordance with Table 38-2.

(b) Whenever a street frontage is longer than six hundred lineal feet, the owner or operator of each multiple-building complex shall be allowed three total freestanding signs and sign structures for and located on that particular street frontage or shall be allowed a single, larger freestanding sign and sign structure for and located on that particular street frontage in accordance with Table 38-2.

(c) Each tenant within a multiple-building complex or multiple-tenant building shall be allowed one freestanding sign and sign structure in accordance with the provisions of this chapter.

(d) No freestanding sign or sign structure shall be placed closer than two hundred feet to any other freestanding sign or sign structure.

(e) Each freestanding sign shall be used to advertise for the occupant, business, event, activity or use that exists or occurs at the property.

#### **10.38.180 Freeway signs.**

(a) The purpose of this section is to allow commercial establishments located near the Interstate 82 freeway to potentially utilize a larger on-premises sign than would otherwise be allowed under this chapter.

(b) Freeway signs and sign structures shall be used to advertise for the occupant, business, event, activity or use that exists or occurs at the property, and shall be a Class (3) Use that requires a Class (3) Review.

(c) A freeway sign may be used in addition to or as a substitute for an allowable freestanding sign when there is more than one street frontage at the property and when the occupant, business, event, activity or use either (1) exists or occurs along a particular street frontage, or (2) exists or occurs within one thousand feet of a freeway interchange, or (3) exists or occurs within two hundred feet of a freeway right-of-way.

(d) Only one freeway sign and sign structure are allowed on any property.

(e) The allowable maximum height for freeway signs is established in Table 38-3.

**10.38.190 Portable signs.**

Portable signs, including but not limited to sandwich boards, trailered signs and pole-mounted signs, shall comply with the following provisions:

(a) Portable signs and sign structures are only allowed in nonresidential zoning districts.

(b) Portable signs and sign structures must be constructed of durable materials, must be designed to withstand water and wind and if pole-mounted must include a heavy weighted base, otherwise they will constitute temporary signs and will be subject to SMC 10.38.130.

(c) Portable signs and sign structures shall not be illuminated.

(d) Portable signs shall not exceed four lineal feet in height and three lineal feet in width. The height measurement shall be measured from ground level to the highest edge or feature of the sign including but not limited to any support structure such as a trailer. The width measurement shall be measured include the full width of the sign and its features including but not limited to any support structure such as a vehicle.

(e) Only two portable signs and sign structures are allowed for each respective occupant, business, event, activity or use that exists or occurs at the property.

(f) The cumulative total sign area of all portable signs on any property shall not exceed twenty-four square feet.

(g) No portable sign or sign structure shall be placed closer than ten lineal feet to the primary structure or building wherein the occupant, business, event, activity or use associated with the sign or sign structure exists or occurs.

(h) No portable sign or sign structure shall be place further than ten lineal feet from the driveway or access to the property.

(i) No portable sign or sign structure shall be located in, on or above any City-owned or City-operated property, structure, building or facility including but not limited to utility poles, utility boxes, fences, street signs, traffic signs, sidewalks, rights-of-way, trees, grass, live vegetation and vegetation beds.

(j) Each portable sign shall be used to advertise for the occupant, business, event, activity or use that exists or occurs at the property.

(k) No portable sign or sign structure shall obstruct vehicular traffic or pedestrian traffic, nor fully or partially rise higher than twenty-four inches above the centerline grades of intersecting streets and/or railroads in the clear view triangle of any roadway, driveway or curb cut as established in SMC 10.08.030.

(l) Portable signs shall be displayed solely during business operating hours only.

**10.38.200 Legal nonconforming signs, maintenance of signs, removal of signs and enforcement of this chapter.**

(a) Signs and sign structures that lawfully existed under all codes and ordinances in effect at the time that this title is enacted or amended may continue to be maintained and operated as a legal nonconforming sign or sign structure so long as it remains otherwise lawful and further provided that:

(1) No sign or sign structure shall be changed in any manner that increases its noncompliance with the provisions of this chapter.

(2) Any sign or sign structure that is structurally altered or physically moved shall void its legal nonconforming status and the sign or sign structure will be required to conform to the provisions of this chapter. However, this section shall not apply to mere changes of the sign's content, normal structural repair or periodic maintenance.

(3) Freestanding signs and sign structures located in the clear view triangle may be modified and allowed to remain provided that in the opinion of the Administrative Official the modifications will not constitute a vision hazard.

(4) The sign and sign structure are not a hazardous or abandoned sign or sign structure.

(5) The sign and sign structure are not a portable sign or sign structure.

(b) It is unlawful for any owner, lessor, lessee, manager or other person or entity having lawful possession or control over a property, building or structure to fail to maintain any

sign or sign structure that exists in, on or about the property, building or structure in accordance with the provisions of this chapter and the zoning provisions of this code. Failure to maintain a sign or sign structure constitutes a violation of this chapter and shall be subject to enforcement under SMC Chapter 21.13.

(c) Any vacant or unused sign or sign structure, including but not limited to support structures, poles and remnants of old signs or sign structures that are not currently in use and not proposed for immediate reuse, shall be removed. In addition to any other remedies, the Administrative Official shall have the authority to require the owner, lessor, lessee, manager or other person or entity having lawful possession or control over a property to at such person or entity's own expense repair, conduct maintenance on or complete removal of any sign or sign structure that has become dilapidated or that represents a hazard.

(d) Violations of this section shall be enforced according to SMC Chapter 21.13.

**10.38.210 Administrative Adjustment of sign standards allowed.**

(a) Administrative Adjustment of sign standards were previously prohibited by SMC 10.30.020(a) and 10.30.020(d)(3). However, immediately prior to the instant revised sign code being adopted, the City separately amended SMC 10.30.020(a) and 10.30.020(d)(3) so as to remove such prohibition. Thus, Administrative Adjustment of the standards, restrictions and requirements applicable to signs and sign structures is now allowed.

(b) A comprehensive design plan shall be required whenever Administrative Adjustment is sought as to one or more standards, restrictions or requirements of this chapter or whenever such is otherwise required as part of a detailed sign plan.

(c) A comprehensive design plan shall include a narrative description and a site plan, consistent with the following provisions:

(1) The narrative description shall explain why the otherwise-applicable standards, restrictions and requirements are not adequate and require adjustment.

(2) The narrative description shall explain how the sign or sign structure relate to other signs and sign structures, the character of the zoning district, neighboring land uses, and the immediate surroundings including but not limited to existing and proposed structures, buildings and uses.

(3) For multiple-building complexes and multiple-tenant buildings, the narrative description shall explain how the total available sign area will be allocated between or among each occupant, business, event, activity or use that exists or occurs at the property.



(4) The site plan shall itemize the physical characteristics of the sign and sign structure, including their respective sizes, heights, shapes, colors, locations and relation to landscaping.

(d) No requestor shall have any entitlement to an Administrative Adjustment. The City shall make available one or more forms to be used by requestors seeking an Administrative Adjustment. Each submitted request for an Administrative Adjustment shall be reviewed by the Administrative Official in accordance with the procedures, review criteria and authority of SMC 10.30.020.

(e) **Written Decision.** The Administrative Official shall process the requestor's request for an Administrative Adjustment in accordance with SMC 10.30.020, SMC Chapter 21.05 and WAC 365-196-850, and shall issue a written decision to the requestor or requestors. The Administrative Adjustment shall be granted only if the Administrative Official determines that granting the request will not be materially disruptive, adverse or conflicting with or to neighboring land uses, the zoning district as a whole or the overall intent and purpose of this chapter. The Administrative Adjustment shall be not granted if the Administrative Official determines that granting the request will be materially disruptive, adverse or conflicting with or to neighboring land uses, the zoning district as a whole or the overall intent and purpose of this chapter. The Administrative Official may also conditionally approve the request subject to specific conditions, in order to uphold and accomplish the overall intent and purpose of this chapter and SMC 10.30.020. Whenever the Administrative Official does not grant an Administrative Adjustment in response to a submitted request, the written decision shall explain the reason or reasons for the non-grant in sufficient detail to enable a potential appeal under SMC 10.38.240 or other applicable law.

(f) **Appeal.** Any requestor who was not granted Administrative Adjustment may appeal the Administrative Official's written decision under SMC 10.38.240.

#### **10.38.220 Variances.**

Except as allowed by SMC 10.38.210 ("Administrative Adjustment"), the only method for a party to potentially obtain any reduction of the standards, restrictions and requirements of this chapter is for the party to seek and obtain a Variance from the City's Planning Commission pursuant to SMC Chapter 10.30.030. No party shall have any entitlement to a Variance. The City shall make available one or more forms to be used by requestors seeking a Variance. Each submitted request for a Variance shall be reviewed by the City's Planning Commission in accordance with the procedures, review criteria and authority of SMC 10.30.030.

#### **10.38.230 Violations.**

Failure to comply with the provisions of this chapter is a violation and is punishable under SMC 10.44.020 and Chapter 21.13.

**10.38.240 Appeals.**

Appeals of decisions made by the City under this chapter shall occur in accordance with SMC Chapter 21.11.

**10.38.250 Fees/charges.**

The fees and charges for sign permitting, plan checks, inspections and other items or actions that are established to defray the City's administrative processing costs shall be paid in accordance with the adopted fee schedule recited in SMC Chapter 20.04.

**10.38.260 Effective date.**

This chapter shall and does become binding and effective, and the City's previous Chapter 10.38 ("Sign Regulations") shall be and is repealed and abrogated, as of 12:01 a.m., Wednesday, December 1, 2021.

COUNCIL ROLL CALL LIST - Date: 10/12/2021 MEETING

ATTENDANCE

Kevin Wickenhagen  
 Jacquie Matson  
~~Suzanne Vargas~~  
 Clifford Peterson  
 Roger Bell  
 Michael Costello  
 Russell Carlson

AIS N-1

Kevin Wickenhagen  
 Jacquie Matson  
~~Suzanne Vargas~~  
 Clifford Peterson  
 Roger Bell  
 Michael Costello  
 Russell Carlson

AIS N-2

Kevin Wickenhagen  
 Jacquie Matson  
~~Suzanne Vargas~~  
 Clifford Peterson  
 Roger Bell  
 Michael Costello  
 Russell Carlson

(M)  
 CONSENT

AIS N-3

Kevin Wickenhagen  
 Jacquie Matson  
~~Suzanne Vargas~~  
 Clifford Peterson  
 Roger Bell  
 Michael Costello  
 Russell Carlson

AIS N-4

Kevin Wickenhagen  
 Jacquie Matson  
~~Suzanne Vargas~~  
 Clifford Peterson  
 Roger Bell  
 Michael Costello  
 Russell Carlson

AIS N-5

Kevin Wickenhagen  
 Jacquie Matson  
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 Roger Bell  
 Michael Costello  
 Russell Carlson

AIS 0-1

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