



SELAH CITY COUNCIL

September 26, 2023

4:30 p.m. – Study Session

*RE: Waste Water Treatment Facilities Design
and Construction Financing*

5:30 p.m. – Regular Scheduled Meeting

Significant items on the Agenda – such as Consent Agenda Items, Public Hearings, Ordinances and Resolutions
– will have an explanatory Agenda Item Sheet (AIS)

A yellow AIS cover page indicates an action item.

A blue AIS cover page indicates an informational/non-action item.



Selah City Council
Meeting Date: September 26, 2023
4:30 pm.: Study Session
5:30 p.m.: Regular Meeting

Mayor:	Sherry Raymond
Mayor Pro Tempore & Councilmember:	Russell Carlson
Councilmembers:	Kevin Wickenhagen Jared Iverson Elizabeth Marquis Clifford Peterson Roger Bell Michael Costello
City Administrator:	Joe Henne
City Attorney:	Rob Case
Clerk/Treasurer:	Dale Novobielski

City of Selah
115 W. Naches Ave.
Selah, WA 98942

AGENDA

- 1) **Call to Order – Mayor Raymond**
- 2) **Roll Call**
- 3) **Registering in record of councilmember absence(s) as excused absence(s), per SMC 1.06.070**
- 4) **Pledge of Allegiance**
- 5) **Invocation**
- 6) **Announcement of changes, if any, from previously-published Agenda**
- 7) **Getting to know local businesses, agencies and/or people (up to 5 minutes total)**
- 8) **Comments from the public (up to 30 minutes total)**

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 pertaining to City business and official actions are the most valued, but comments pertaining to City officials' ability to fulfill their job duties due to events, actions, or activities that occurred outside the scope of their duties as a City official may also be offered. Constructive criticism of City officials is allowed including constructive criticism specifically mentioning City officials or employees by name as to official actions, but defamation, personal attacks and impertinent assertions are not allowed.

Commenters are limited to one comment per meeting and each comment is subject to a duration limit. City staff may disallow or modify any received written comment that exceeds its duration limit or that is deemed inappropriate, and the Mayor or Presiding Officer may turn off the podium microphone or otherwise silence any in-person comment that exceeds its duration limit or is deemed inappropriate.

These standards are subject to revision and will be updated whenever necessary in order to comply with constitutional requirements.

- A. Pre-arranged oral comments (up to 5 minutes each):
- B. Reading of received written comments (up to 2 minutes each):
- C. Oral comments by people in attendance (up to 2 minutes each):

9) **Proclamations/announcements**

10) **Consent Agenda**

Consent Agenda items are listed with an asterisk (). Those items are considered routine and will be addressed via a joint motion, without any discussion or debate. However, upon the request of any Councilmember an item will be removed from the Consent Agenda, will be addressed separately, and will be subject to discussion and debate.*

- A. Treesa Morales * Approval of Minutes from September 12, 2023 Council Meeting
- B. Dale Novobielski * Approval of Claims & Payroll
- 14-A Dale Novobielski * Ordinance Amending the 2023 Budget for Well No. 3 Pump Replacement

11) **Public Hearings – None**

12) **General Business**

- A. New Business – None
- B. Old Business – None

13) **Resolutions**

- A. James Lange Resolution authorizing the Fire Chief to sign a Software and Services Agreement, contract number 00007835.0, with ImageTrend, LLC for records management system software and data tracking for the Selah Fire Department
- B. Dan Christman Inter-Local Agreement for the Yakima Valley Crisis Response Unit (CRU)
- C. Rocky Wallace Resolution Authorizing the Mayor to Sign “Task Order No. 2023-09” with HLA Engineering and Land Surveying, Inc., for Professional Services Related to the City’s Wastewater Treatment Plant Improvements Project

- D. Rob Case Resolution Authorizing the Mayor of Selah to Sign a Seven-Page Telecommunications Franchise Agreement with Zayo Group, LLC, that Grants a Nonexclusive Franchise for Fiber Optic Cable Systems

14) **Ordinances (see consent agenda)**

15) **Reports/Announcements**

- A. Departments
- B. Councilmembers, personally and on behalf of committees and boards
- C. City Attorney
- D. City Administrator
- E. Mayor or Presiding Officer, personally and on behalf of committees and boards

16) **Executive Session**

- A. RE: RCW 42.30.110(1)(b) - Regarding the acquisition of real estate

17) **Closed Session**

18) **Adjournment**

Next Regular Study Session: October 10, 2023 @4:30 p.m.

Next Regular Meeting: October 10, 2023 @5:30 p.m.



Selah City Council
Regular Meeting
AGENDA ITEM SUMMARY

Meeting Date: 9/26/2023

Agenda Number: 10-A*

Action Item

Title: Approval of Meeting Minutes from September 12, 2023 Council Meeting

From: Treesa Morales, Executive Assistant

Action Requested: Approval

Staff Recommendation: Approval

Board/Commission Recommendation: N/A

Fiscal Impact: N/A

Funding Source: N/A

Background/Findings/Facts: N/A

Recommended Motion: I move to approve the Consent Agenda in the form presented (This item is part of the consent agenda).

Record of all prior actions taken by the City Council and/or City Board, City Committee, Planning Commission, or the Hearing Examiner (if not applicable, please state none).

Date: **Action Taken:** None

City of Selah
City Council Meeting Minutes
September 12, 2023
Regular Meeting

Call to Order: Mayor Raymond called the meeting to order at 5:29 pm.

Roll Call

Councilmembers Present: Elizabeth Marquis, Roger Bell, Russell Carlson, Jared Iverson, Kevin Wickenhagen, Clifford Peterson

Staff Present: Joe Henne, City Administrator; Rob Case, City Attorney; Daniel Christman, Police Chief; James Lange, Fire Chief; Rocky Wallace, Public Works Director; Dale Novobielski, City Clerk/Treasurer; Jeff Peters, Community Development Supervisor; Zack Schab, Recreation Director, and Treesa Morales, Executive Secretary.

Registering in record of Councilmember absence(s) as excused absence(s), per SMC 1.06.070

Councilmember Carlson moved to excuse Councilmember Costello from the meeting. Councilmember Wickenhagen seconded the motion. Mayor Raymond called for a voice vote. By voice vote, motion passes.

Pledge of Allegiance was said by all in attendance

Invocation

Mayor Raymond requested Councilmember Carlson to provide prayer since no local pastor was present. Councilmember Carlson gave prayer.

Announcement of changes, if any, from previously-published agenda:

Mayor Raymond discussed the following changes to the agenda.

1. Moving Ordinance 14-D to earlier in the meeting since Chief Lange has another meeting later that he'll need to leave for.
2. Adding the public comment to the agenda, which will be presented by the author of the comment
3. Ordinance 14-C provided in the packet has a typo. The corrected Ordinance is provided to Council tonight and will be included in the signed copy.

Comments from the public

Mayor Raymond read the conditions of public comment and asked if there was anyone from the public who wanted to present.

William Longmire approached the podium and presented his frustrations on how the City chooses to enforce the Selah Municipal Code.

Lisa Gordon came to the podium to explain potential parking issues when they choose to develop the Old Wells Fargo Building.

Katrina Henkle presented next and provided the Council with an update on the Selah Downtown Association.

Jeff Hartwick approached the podium and asked if he could provide comment on the potential new day care or if he should wait until the Public Hearing. Mayor Raymond said he could present now. Mr. Hartwick expressed his gratitude on being able to comment and be involved in the approval process for the new day care on E. Naches Ave.

Sandra Gonzalez came to the podium next stating she was one of the co-owners of the day care and wanted to provide input as well. Community Development Supervisor, Jeff Peters, interrupted, and stated all comments regarding the Public Hearing needed to wait until after the material was presented to Council and the Mayor opened the Public Hearing to receive public comment. Councilmember Carlson commented that this is an open comment time for anyone from the public to provide comment. Mr. Peters said the Council needed to hear the information regarding the Public Hearing before hearing information from the public. Mayor Raymond asked Ms. Gonzalez to wait until the Public Hearing to present her information.

Consent Agenda (all items listed with an asterisk (*) are considered part of the consent agenda and are enacted in one motion).

Mayor Raymond presented the stipulations of the Consent Agenda. Councilmember Wickenhagen moved to approve the consent agenda as presented. Councilmember Peterson seconded. Hearing no further discussion, Mayor Raymond called for Roll Call. Ms. Morales called roll: Councilmember Marquis – yes; Councilmember Bell – yes; Councilmember Costello – absent; Councilmember Carlson – yes; Councilmember Iverson – yes; Councilmember Wickenhagen – yes; Councilmember Peterson – yes. Motion carries.

Ms. Morales read the Consent Agenda:

- | | | |
|------|---------------------|---|
| A. | Treesa Morales | Approval of Minutes: August 22, 2023 Council Meeting |
| B. | Dale
Novobielski | Approval of Claims and Payroll:
Payroll Checks No. 85752-85765 for a total of \$365,978.73
Claim Checks No. 180426-180515 for a total of \$1,509,415.42 |
| 13-B | Rocky Wallace | * Resolution Authorizing Public Works to Purchase a New 2024 For F350 4x4 Pickup Truck and to Surplus the City's Existing 2000 Chevrolet Silverado 1500 4x4 Pickup Truck |
| 13-C | Rob Case | * Resolution Directing City Staff to Publish an Underlying Proposed Resolution in the City's Designated Official Newspaper as Notice of the City's Intent to Grant a Nonexclusive Franchise for Fiber Optic Cable Systems to Zayo Group, LLC, on September 26, 2023 |

13-D Rocky Wallace * Resolution Declaring the City's Welcome to Selah Sign Project as Complete and Accepting the Work and Materials

Mayor Raymond stated to the Council that this is where they are going to go out of order, and called Ordinance 14-D for presentation.

City Attorney Rob Case presented **14-D: Ordinance amending sections 24.24.080, .090, .100 of the Selah Municipal Code; providing for severability; authorizing corrections; and directing publication and establishing an effective date.** After presentation, Councilmember Carlson moved to approve the Ordinance as presented. Councilmember Wickenhagen seconded. Mayor Raymond restated the motion and asked Council for any discussion. Hearing none, Mayor Raymond asked for roll call. Ms. Morales called roll: Councilmember Marquis – yes; Councilmember Bell – yes; Councilmember Costello – absent; Councilmember Carlson – yes; Councilmember Iverson – yes; Councilmember Wickenhagen – yes; Councilmember Peterson – yes. Motion carries.

Mayor Raymond then asked Chief Lange for his department report so he could leave when needed for his other meeting. Chief Lange came to the podium and provided Council with an update on the Fire Department.

Public Hearings

Mayor Raymond thanked Chief Lange and introduced the Closed Record Public Hearing to consider the City of Selah Hearing Examiner's recommendation regarding a Class 3 review use application to locate a new daycare center in an existing building which is located in the business, general (B-2) zoning district and the City's downtown parking exempt area. Jeff Peters presented information on the Public Hearing, the proposed daycare, the Hearing Examiner's findings, and noted that all members of the audience in were at the Open Record Public Hearing and will be allowed to comment again tonight during the Closed Record Public Hearing. Mr. Peters also noted that if council chooses not to approve the findings, they will need to provide direction back to the Hearing Examiner on why the Resolution was not approved and provide information on how he errored in his decision. Mr. Peters also requested for the record that the Council take note of the comment provided by audience member, Mr. Hartwick, earlier in the meeting.

5:53 p.m. - Mayor Raymond opened the public hearing, and asked the audience if anyone would like to provide comment.

Sandra Gonzalez approached the podium again, as a co-owner of the daycare, and provided information on their efforts to address the concerns of safety and parking noted by the Hearing Examiner.

Councilmember Wickenhagen asked how many employees there will be? Ms. Gonzalez stated there will be 2-3 employees, and they are required to park in the back alleyway, near the fenced off playground.

Councilmember Iverson asked how the times were selected. Ms. Gonzalez said the number of children are limited by the state because of the space and number of employees. Ms. Gonzalez said that in order to have the desired number of children, the need to have two sessions.

Councilmember Wickenhagen asked if they have their operating license from the State. Ms. Gonzalez said yes, they have a business license and they are working with the State to allow them to accept State-subsidized payment for the care, but right now, clients can only private pay for services.

Councilmember Iverson asked if the business has a van for school pick-ups, and if so, where will they park it? Ms. Gonzalez said they do not have one yes, but if they get to the point of needing one, they will keep in in the employee parking area. Ms. Gonzalez also noted that most of the planned fieldtrips are within walking distance. Regarding the alley, Councilmember Iverson explained his concerns of parking issues, and asked Ms. Gonzalez how they plan to hold parents accountable? Ms. Gonzalez explained the parents have to sign the handbook stating they understand the drop-off and pick-up requirements, and if they do violate the policy, they will no longer be permitted at the daycare. Councilmember Iverson asked if they have to sign it. Ms. Gonzalez replied, yes. Councilmember Iverson expressed his worry that parents will stop in the road and have the child run in. Ms. Gonzalez said that will not happen because parents have to physical sign their child in and out each day.

Councilmember Carlson noted his concerns about the snow, and asked Ms. Gonzalez and Public Works Director, Rocky Wallace if they knew where the snow was pushed currently? Mayor Raymond clarified Mr. Carlson meant the snow in the alley, Mr. Carlson confirmed. Ms. Gonzalez said she was not sure where the snow is currently moved to, but from what she knows, it has been pushed to the fence, and they are looking into how to get beyond that this year.

Councilmember Carlson noted the issues of safety, and asked what kind of safety the center will have after the child is checked in. Mr. Carlson asked if the City is responsible for the child, and where is the line for the City to draw in this area. City Attorney Case asked Mr. Carlson to explain what he meant by this area. Mr. Carlson explained, with kids running around, similar to what happens now with the Dojo business up the street where people are parked in illegal areas or right on the street; so in terms of enforcement, where does the City draw the link with all the kids coming through there. Mr. Case explained that if someone breaks the rules of the road, it is a Police Department issue; but the City will not have custody of the children, that is not a City issue, that responsibility is with the operator. Mr. Case said there is no real line since the law already draws it. Ms. Gonzalez said they had the same safety concerns so they spoke with the landlord to potentially place locks on the doors so the children cannot get out on their own; and the playground will be fully fenced. Mr. Case noted that Ms. Gonzalez should make sure the Fire Department knows the plan.

Councilmember Iverson asked if an employee would outside during drop off and pick up times to watch. Ms. Gonzalez confirmed, yes.

Councilmember Bell asked for clarification on the total number of clients throughout the entire day. Angel Soler came to the podium and explained that there would be a total of 25 student, maximum throughout the day. Mr. Bell said that would be a total of 50 pick up and drop off, or 50 interactions each day, maximum. Ms. Soler said yes, and the employees will be out front walking them through how to go through the process, then they will continue to make sure students are coming in safe and effectively.

Councilmember Wickenhagen asked about the number of parking spaces, and referred the question to Mr. Peters. Mr. Wickenhagen said they will need 8 stalls available for the business. Mr. Peters noted that it is a parking exempt area. Mr. Wickenhagen noted that there could potentially be 16 cars all coming at the same time and asked Mr. Peters what would be available to accommodate that? Mr. Peters replied that there should be information on that in the packet and staff report which indicates how much is available, but he couldn't remember at the time.

Mayor Raymond commented to Ms. Gonzalez and Ms. Soler that winter is coming, and make sure they have a snow plan figured out.

Councilmember Marquis asked Ms. Gonzalez and Ms. Soler if they have a contingency plan for parking if the Ellensburg Phone company says they cannot park there. Ms. Gonzalez said clients would have to park on the street. Ms. Soler said they are working towards the drop off or pick up time taking 10 minutes for the full process.

Councilmember Wickenhagen asked if the sessions were back to back. Ms. Soler said there is a 30-minute break between sessions to allow for lunch and clean up.

Seeing no further questions, Mayor Raymond thanked Ms. Soler and Ms. Gonzalez.

Lisa Gordon approached the podium again to provide her comment on the record for the public hearing, and noted that the daycare does not have an agreement to use the Wells Fargo building for parking as her goal is to develop the property and the whole property will be fenced off during construction.

Jeff Hartwick came to speak as well. Adding that his concern is with the parking and safety. Mr. Hartwick stated he has owned a house on the alley for 25 years, and with the recent winters, the snow piles up. Mr. Hartwick explained that, currently, they have been pushing the snow to the corner lot, which works for two businesses, but he's not sure if it would work for more. Mr. Hartwick noted that the daycare cannot push their snow onto Christina Williams property or his. Mr. Hartwick also encouraged Council to address the issue of parking as it is a premium in the City.

Ms. Gordon said, in the past, an employee from the Pasttime takes care of the snow in the back because they have deliveries to the restaurant, but she isn't certain if that would continue in the future.

Mr. Peters noted for the record that all audience members who spoke tonight, and all issues discussed, are what was brought up at the open record public hearing.

Councilmember Carlson asked again about snow, and asked Mr. Peters if it is a condition of the application to have a snow removal plan or if the City would just expect them to do it? Mr. Peters said the latter is true, and that they would have to follow the rules and regulations in the parking ordinances when submitted with the application.

Mayor Raymond asked if there were any other comments from the audience or from Council. Hearing none, Mayor Raymond closed the closed record public hearing at 6:19 p.m.

Mayor Raymond introduced Resolution 13-A, accepting the City of Selah Hearing Examiner's recommendation of approval of a Class 3 review use application to locate a new daycare center in an existing building which is located in the Business, General (B-2) zoning district and the City's downtown parking exempt area. Mr. Peters presented the information. After presentation,

Councilmember Carlson asked the Police Chief about enforcement on parking. Chief Christman said with issues like this, he would take a proactive approach, but he anticipates there will be a learning curve. Chief said he predicts there will be some complaints from businesses and motorists, concerned about kids running across the street.

Mayor Raymond asked Council what their desire is. Councilmember Wickenhagen made a motion to approve the Resolution so they could have a discussion. Councilmember Peterson seconded. Mayor Raymond restated the motion and asked for discussion.

Councilmember Wickenhagen said he believes that part of their responsibility as a City is to prepare for what is going on, but have a plan for potential issues, which in this case are parking and snow. Councilmember Iverson agreed, stated his concerns are not in the land use or the findings, but with the traffic. Mr. Iverson said he also has some concerns about the business proposal, that things were said that were not true and are not in place yet. Mr. Iverson said there is some work to be done, but he does support the kids having a place to go.

Councilmember Bell said he has a question for Jeff regarding 50 additional interactions per day, which is predictably during the lunch hour. Mr. Bell said he understands they cannot utilize parking stalls, but the Council could remand this back to the Hearing Examiner to consider the overall impact on businesses in that block and if parking would create an issue. Mr. Peters said he respectfully disagrees due to the principal behind the parking exemption. Mr. Peters explained the parking exemption and ways it helps and hurts the surrounding businesses, and stressed to Council that this issue should have been considered before now. Councilmember Wickenhagen asked if you cannot change the process in the middle then when can you change it? Mr. Peters responded that it should have been done before, and the Council should have had the forethought to look at streets and parking, and put together plan for downtown areas.

Councilmember Iverson asked if they approved the Resolution if the conditions required by the Hearing Examiner are automatically included as well? Mr. Case said yes, it is the Hearing Examiner's recommendation to approve the Resolution with the conditions, and then all conditions would apply. Mr. Case stressed to Council to remember Mr. Peters options, and if they deny the findings, to provide a specific factual reason.

Councilmember Marquis stated the owner of the building is going to rent to someone, and does not believe that 25 to 50 visits a day is too many. Mrs. Marquis said that is less than the restaurant, and probably less than the gym; and believes that would be a poor reason to deny the application.

Councilmember Carlson said he also worries about the safety and parking and adding kids to the busy street, but also stated that people have a right to rent the facility, and it is hard to go against the Hearing Examiner, despite that concern. And, Mr. Carlson added, that if all the conditions are satisfied, then how can Council deny it?

Hearing no further discussion, Mayor Raymond restated the motion and called for a roll-call vote. Ms. Morales called roll: Councilmember Marquis – yes; Councilmember Bell – yes; Councilmember Costello – absent; Councilmember Carlson – yes; Councilmember Iverson – yes; Councilmember Wickenhagen – yes; Councilmember Peterson – yes. Motion carries.

General Business: New Business:

Mayor Raymond called on Joe Henne to present new business item 12-A regarding a study session for September 26th to discuss the Wastewater Treatment Plant needs.

Council agreed. And Joe stated it would start at 4:30 p.m. on September 26, 2023.

Resolutions

13-E. Resolution Authorizing the Mayor to Sign Change Order No. 1 with Northwest Asphalt Striping and Sealing, LLC., Relative to the City's 2023 Crack Seal Project.

Introduced by Mayor Raymond and presented by Public Works Director, Rocky Wallace. After presentation,

Councilmember Carlson moved to approve the Resolution as presented. Councilmember Iverson seconded. Mayor Raymond restated the motion and asked Council for discussion.

Councilmember Bell asked Mr. Wallace if there is a possibility that we will be doing work outside Carlon park, or if the additional work is all within Carlon Park? Rocky said yes, the addition \$15,000 is in Carlon Park, and the \$18,000 is outside the park. Mr. Bell asked where outside the park? Mr. Wallace responded with Merinda Dr, Dwinnel Dr., and Lookout Point Road, and also Volunteer park.

Hearing no further discussion, Mayor Raymond restated the motion and called for a roll-call vote. Ms. Morales called roll: Councilmember Marquis – yes; Councilmember Bell – yes;

Councilmember Costello – absent; Councilmember Carlson – yes; Councilmember Iverson – yes; Councilmember Wickenhagen – yes; Councilmember Peterson – yes. Motion carries.

13-F. Resolution Authorizing the Public Works Director to Sign and Submit a Washington State Recreation and Conservation Office Funding Application for the Local Parks Maintenance Grant Program.

Introduced by Mayor Raymond and presented by Public Works Director, Rocky Wallace. After presentation,

Councilmember Bell moved to approve the Resolution as presented. Councilmember Carlson seconded. Mayor Raymond restated the motion and asked Council for discussion. Hearing none, Mayor Raymond called for a roll-call vote. Ms. Morales called roll: Councilmember Marquis – yes; Councilmember Bell – yes; Councilmember Costello – absent; Councilmember Carlson – yes; Councilmember Iverson – yes; Councilmember Wickenhagen – yes; Councilmember Peterson – yes. Motion carries.

Ordinances

14-A. Ordinance Repealing Chapter 6.10 and 6.58 of the Selah Municipal Code; Providing for Severability; Authorizing Corrections; and Directing Publication and Establishing an Effective Date

Introduced by Mayor Raymond and presented by City Attorney, Rob Case. After presentation,

Councilmember Wickenhagen moved to approve the Ordinance as presented. Councilmember Marquis seconded. Mayor Raymond repeated the motion and asked Council for discussion. Hearing none, Mayor Raymond called for a roll-call vote. Ms. Morales called roll: Councilmember Marquis – yes; Councilmember Bell – yes; Councilmember Costello – absent; Councilmember Carlson – yes; Councilmember Iverson – yes; Councilmember Wickenhagen – yes; Councilmember Peterson – yes. Motion carries.

14-B. Ordinance Repealing Sections 5.01.125 and 5.01.127 of the Selah Municipal Code; Amending the Title of Chapter 5.07 of the Selah Municipal Code; Repealing Sections 5.07.080, 5.07.090 and 5.07.100 of the Selah Municipal Code; Providing for Severability; Authorizing Corrections; and Directing Publication and Establishing an Effective Date

Introduced by Mayor Raymond and presented by City Attorney, Rob Case. After presentation,

Councilmember Peterson moved to approve the Ordinance as presented. Councilmember Wickenhagen seconded. Mayor Raymond repeated the motion and asked Council for discussion.

Councilmember Carlson asked Mr. Case if notice of this was sent to the Animal Control Officer's Superior? Mr. Case confirmed, yes, notice was sent to the Animal Control Officer and Chief Christman.

Hearing no other discussion, Mayor Raymond called for a roll-call vote. Ms. Morales called roll: Councilmember Marquis – yes; Councilmember Bell – yes; Councilmember Costello – absent;

Councilmember Carlson – yes; Councilmember Iverson – yes; Councilmember Wickenhagen – yes; Councilmember Peterson – yes. Motion carries.

14-C. Ordinance Amending Chapter 6.75, “Code Enforcement”, of the Selah Municipal Code; Providing for Severability; Authorizing Corrections; and Directing Publication and Establishing an Effective Date.

Introduced by Mayor Raymond and presented by City Attorney, Rob Case. After presentation,

Councilmember Carlson asked if the City added their own jargon or if they just adapted it as written? Mr. Peters said all of the above, and restated the purpose of the Ordinance. Mr. Peters also mentioned that Council might be wondering where the other provisions are, and confirmed they are in Title 11. Mr. Peters explained that every two to four years, the State comes out with new information regarding building codes, and Title 11 is updated to reflect the changes.

Councilmember Bell moved to approve the Ordinance as presented. Councilmember Carlson seconded. Mayor Raymond repeated the motion and asked Council for any more discussion.

Councilmember Carlson asked about the maintenance portion of the Code as developments are built and zero scaping has been done, rather the builder has installed crushed rock as an inexpensive way to finish with no weed block. Mr. Carlson pointed out that often the rock is put on a steep hillside, where the homeowner has to maintain it because the builder didn't properly finish the build. Mr. Carlson clarified that he is talking about the quality of the City. Mr. Peters said, yes, weedy lots are already addressed and monitored in alignment with the Selah Municipal Code. Councilmember Carlson added that when something like this passes, it no longer becomes a priority, and he doesn't want to see homes built to save money, and now the homeowner has a zero-scape rock, intended to save money by the builder without care of the future owner. Mr. Peters recommended to amend the other building code standards or permit standards to require that, and add it to the code enforcement chapter. Mr. Carlson asked how quickly that could be presented? Mr. Peters said he would have to defer to the Public Works Director. Mr. Wallace said he could start work on it right away, but not sure on the legality of it. Mr. Case said he would have to do some research as there are different requirements to specify the way weeds need to be prevented.

Hearing no other discussion, Mayor Raymond called for a roll-call vote. Ms. Morales called roll: Councilmember Marquis – yes; Councilmember Bell – yes; Councilmember Costello – absent; Councilmember Carlson – yes; Councilmember Iverson – yes; Councilmember Wickenhagen – yes; Councilmember Peterson – yes. Motion carries

Reports/Announcements

Departments

- Police Department – Chief Christman provided a department update.
- Recreation Department – Zack Schab provided a department update.
- Planning Department – Jeff Peters provided a department update.

Councilmember Wickenhagen asked about the Housing Action Plan and Beckworth, and asked what the Council's roll is in this project. Mr. Peters said that Council has the final decision. Mr. Wickenhagen referenced the discussion earlier and how the issue of snow removal is going to be addressed and a plan developed? Mr. Peters replied that he will work with PW and the City Administrator to see what changes can be made.

Councilmember Carlson asked Mr. Peters if the plan was to use Beckwith for the comprehensive plan? Mr. Peters said yes. Mr. Carlson reasoned that is a new project and shouldn't it go out to bid? Mr. Peters said they do not have to if it is an extension of what they have been working on. Mr. Carlson asked if Mr. Peters had a rough ball park cost on the addition? Mr. Peters said \$150,000 is what the state has allotted in the grant application, and, Mr. Peters said, he had a preliminary discussion with Beckwith to see if they were capable of completing the work in that amount of money, and Beckwith confirmed they felt it was sufficient. Mr. Carlson clarified it was a 100% grant? Mr. Peters confirmed, yes.

- Public Works – Rocky Wallace provided a department update on projects.
- Finance – Dale Novobielski provided a department update on City Finances.

Councilmembers

Councilmember Wickenhagen reported his work with the SDA to create business cards with a QR Code to a city map linking them to all the City businesses, which will be given to tournament teams and visitors.

Hearing no further reports, Mayor Raymond stated that there would be 5-minute break and then the Council would go into an Executive Session for RCW 42.30.110(10(b) regarding the acquisition of real estate.

7:45 p.m.: Council took a 5-minute recess.

7:52 p.m.: Mayor Raymond called the meeting back to order. And stated the Council would be back on the record at 8:25 p.m.

7:52 p.m.: Executive Session started.

8:27 p.m.: Executive Session ended. Council was back on the record. Mayor Raymond stated that no votes were held and no decisions were made. Councilmember Carlson requested another 20 minutes. Mayor Raymond stated the Council would go back into the Executive Session for the same reason and be back on the record at 8:48 p.m.

8:27 p.m.: Executive Session started again.

8:49 p.m.: Executive Session ended. Council came back on the record. Mayor Raymond stated that no votes were held and no decisions were made.

Adjournment

Councilmember Wickenhagen moved to adjourn the meeting. Councilmember Carlson seconded. By voice vote, motion carries.

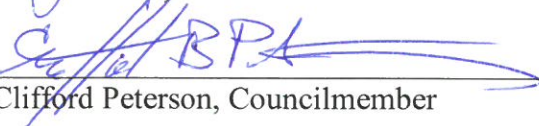
Meeting ended at 8:49 p.m.



Roger Bell, Councilmember



Jared Iverson, Councilmember



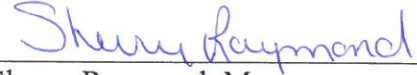
Clifford Peterson, Councilmember

Michael Costello, Councilmember


ATTEST:



Dale Novobielski, Clerk/Treasurer

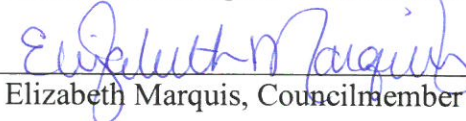


Sherry Raymond, Mayor



Russell Carlson, Councilmember

Kevin Wickenhagen, Councilmember



Elizabeth Marquis, Councilmember



Selah City Council
Regular Meeting
AGENDA ITEM SUMMARY

Meeting Date: 9/26/2023

Agenda Number: 10-B*

Action Item

Title: Approval of Claims and Payroll

From: Dale Novobielski, City Clerk/Treasurer

Action Requested: Approval

Staff Recommendation: Approval

Board/Commission Recommendation: N/A

Fiscal Impact: See claims and payroll registers

Funding Source: See claims and payroll registers

Background/Findings/Facts: N/A

Recommended Motion: I move to approve the Consent Agenda in the form presented (This item is part of the consent agenda).

Record of all prior actions taken by the City Council and/or City Board, City Committee, Planning Commission, or the Hearing Examiner (if not applicable, please state none).

Date: **Action Taken:** None



Selah City Council
Regular Meeting
AGENDA ITEM SUMMARY

Meeting Date: 9/26/2023

Agenda Number: 13-A

Action Item

Title: Resolution Authorizing the Fire Chief to Sign a 38-Page Piggyback Software and Services Agreement with ImageTrend, LLC, for Records Management System Software at the Fire Department

From: Jim Lange, Fire Chief

Action Requested: Approval

Staff Recommendation: Approval

Board/Commission Recommendation: N/A

Fiscal Impact: \$11,250 plus tax for the first year, including setup and implementation. \$8,550 plus tax annually thereafter.

Funding Source: Fire Control Fund 103

Background/Findings/Facts: To operate properly and efficiently, the Fire Department needs to use records management system (RMS) software that is compatible with the software used by other fire departments in Yakima County.

The RMS software vender currently used by county fire departments was recently purchased by a new parent entity and has announced significant forthcoming price increases. In response, the County Fire Chiefs requested demonstrations from other vendors in anticipation of potentially changing vendors.

The vendor of ImageTrend, LLC, can offer RMS software at a lower price and with some improved functionality. All departments are planning to transition to ImageTrend, and the City's Fire Department wants to follow suit.

A 38-page "Piggyback Software and Services Agreement" has been proposed by ImageTrend. A copy is appended to this AIS and its terms are acceptable to City staff.

Transitioning to ImageTrend will ultimately result in a cost savings for the City. Although initial setup and implementation costs will be incurred, the City will realize approximately \$1,500.00 of annual savings after approximately 3.6 years of working with ImageTrend in comparison to the cumulative charges that would be incurred if the City were to stay with its current vendor.

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

Record of all prior actions taken by the City Council and/or City Board, City Committee, Planning Commission, or the Hearing Examiner (if not applicable, please state none).

Date: **Action Taken: None**

RESOLUTION NO. 3049

RESOLUTION AUTHORIZING THE FIRE CHIEF TO SIGN A 38-PAGE
PIGGYBACK SOFTWARE AND SERVICES AGREEMENT WITH
IMAGETREND, LLC, FOR RECORDS MANAGEMENT SYSTEM
SOFTWARE AT THE FIRE DEPARTMENT

WHEREAS, the City's fire department desires to change records management system (RMS) software providers; and

WHEREAS, the entity of ImageTrend, LLC, is an RMS software vendor that can offer services to the fire department at a lower price than what the fire department would be charged by its current vender once a new price increase goes into effect; and

WHEREAS, a 38-page "Piggyback Software and Services Agreement" has been proposed by ImageTrend, its terms are acceptable to City staff, and City staff recommends that the City Council authorize the Mayor to sign it; and

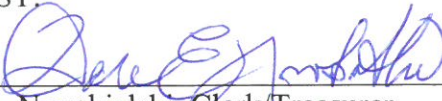
WHEREAS, the City Council finds that good cause exists;

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF SELAH, WASHINGTON that the Fire Chief be and is authorized to sign the 38-page "Piggyback Software and Services Agreement" in the form appended hereto.

PASSED AND ADOPTED BY THE CITY COUNCIL OF THE CITY OF SELAH, WASHINGTON this 26th day of September, 2023.


Sherry Raymond, Mayor

ATTEST:


Dale E. Novobielski, Clerk/Treasurer

APPROVED AS TO FORM:


Rob Case, City Attorney



Piggyback Software and Services Agreement

CONTRACT NUMBER: 00007835.0

BETWEEN

Selah Fire Department
206 W. Fremont Ave.
Selah, WA 98942-1372

AND

IMAGETREND®

ImageTrend, LLC
20855 Kensington Blvd.
Lakeville, Minnesota 55044

THIS AGREEMENT is made and entered into on the date last written below, by and between the ImageTrend, LLC, a Minnesota corporation (hereinafter "ImageTrend"), and Selah Fire Department (hereinafter "Client"), together "the Parties."

RECITALS

WHEREAS, Client desires to have services performed by ImageTrend; or

WHEREAS, Client desires to purchase Commercial-Off-The-Shelf Software from ImageTrend; or

WHEREAS, Client desires to purchase Custom Software Development from ImageTrend; and

WHEREAS, ImageTrend possesses technical skill, knowledge, and capability in consulting and designing custom and off-the-shelf software solutions and performing technical software services and Client desires such services.

NOW, THEREFORE, THE PARTIES HEREBY AGREE AS FOLLOWS:

SECTION 1. DEFINITIONS

"Agreement" and **"This Agreement"** means this Piggyback Software and Services Agreement, the Work Orders issued hereunder, all Attachments and Exhibits attached hereto, or any Amendments made in mutually executed hereto.

"Business Day" means a single 8 hour period occurring on a Monday, Tuesday, Wednesday, Thursday or Friday, 9:00am CST to 5:00pm CST, excluding holidays per §14(b) below. Unless specified in a Service Order, ImageTrend personnel will only perform services during Business Days.

"Business Week" means a 5 day period, beginning Monday at 9:00am CST and ending Friday at 5:00pm CST, excluding holidays per below.

"Confidential information" means the proprietary products and trade secrets, including, but not limited to, computer software, code, technical parameters, price lists, methods of pricing, customer lists, designs, software documentations, manuals, models and account tables, and any and all information maintained or developed. Information shall be considered Confidential Information if it is identified in writing as confidential or proprietary, or if disclosed verbally or visually in discussion, upon written notice specifying and describing the nature of the orally disclosed Confidential Information at that time, or within fifteen (15) days of such disclosure.

"Commercial Off The Shelf" or "COTS" means pre-designed software products which are made available for sale by ImageTrend to many customers. COTS is mutually exclusive to Custom Software or Custom IP. MOTS means Modified Off The Shelf, and is a derivative work of ImageTrend COTS Software.

"Custom IP" or "Custom Software" means software products, or other Intellectual Property, which is designed for a specific purpose, for a specific customer or CLIENT.

"Deliverable" means an intangible or tangible product, material, or service produced as a result of a Work Order, and each Deliverable is specified in the corresponding Work Order from which it is produced.

"Disclosing Party" means the party disclosing Confidential Information to the other party, see also Receiving Party.

"Effective Date" means the date upon which the last party has signed and executed this Agreement.

"Fixed Fee" means a fixed amount of compensation due in return for a fixed Deliverable.

"Governmental Entity" shall have the same meaning as "State and local government entities" as defined in the General Services Administration Acquisition Manual (GSAM) at 538.7001, as updated.

"Intellectual Property" means any intellectual property or proprietary rights in any jurisdiction, whether owned or held for use under license, whether registered or unregistered, including such rights in and to: (i) trademarks, trade dress, service marks, certification marks, logos, trade names, brand names, corporate names, assumed names and business names ("Trademarks", which term shall include the items described in clause (viii) below); (ii) patents and any and all divisions, continuations, continuations-in-part, reissues, continuing patent applications, reexaminations or extensions thereof, any counterparts claiming priority therefrom, utility models, patents of importation/confirmation, certificates of invention, certificates of registration and like statutory rights; inventions, invention disclosures, discoveries and improvements, whether patentable or not; (iii) copyrights and works of authorship; (iv) trade secrets (including those trade secrets defined in the Uniform Trade Secrets Act and under corresponding federal, state or foreign statutory or common law), business, technical and know-how information, non-public information, and confidential information and rights to limit the use or disclosure thereof by any Person; (v) mask works; (vi) moral rights, author's rights or rights of publicity; (vii) claims, causes of action and defenses relating to the enforcement of any of the foregoing; (viii) any applications for registration of any of the foregoing, and all renewals or extensions of any of the foregoing, whether now existing or hereafter arising; and (ix) the goodwill associated with each of the foregoing. For the avoidance of doubt, "Intellectual Property Rights" includes any and all of the foregoing related to computer software, data files, Source Code, Object Code, APIs, manuals, documentation, specifications, databases or other materials or information.

"Licensed Information" means any information pertaining to the Software which is owned by IMAGETREND and is licensed to CLIENT. Licensed Information includes such information as input form, user manuals and user documentation, interface format and input/output format, and any other materials pertaining to the Software.

"Local Travel" means travel to a destination in the Twin Cities Metro area, within 30 miles of Lakeville, MN.

"Master Contract" means Contract Number N20934 between ImageTrend and Washington State Department of Health.

"Materials" and "Expenses" means but is not limited to third party software licenses, physical hardware, test devices, or other items, reasonable travel expenses (including but not limited to food, lodging, and transportation), printing, delivery of materials, or any other cost reasonably incurred arising out of this Agreement.

"Piggyback Services Agreement" means this document excluding Work Orders issued from this document.

"Pre-Existing Materials" means code, documentation, frameworks, development accelerators, tool sets or any other materials owned by ImageTrend and not developed as part of the services performed for Client. It may include, without limitation, Security Framework, Dashboard, ImageTrend Frameworks, Report Writer and any other tools or Intellectual Property made or used by ImageTrend unrelated to this Agreement.

"On-Site Hour" means time an hour worked by ImageTrend personnel on Client premises, or other premises of Client's choosing that are not ImageTrend's corporate offices.

"Statement of Work" means the technical document which outlines a mutually agreed upon specification for particular Custom Development projects and associated costs, payment terms and acceptance procedures. This document requires client acceptance and signature prior to beginning work.

"Support" means technical support for the configuration and functioning of the products, including taking and monitoring defect reports, as defined further below in the Service Level Agreement between ImageTrend and Client.

"Software" means ImageTrend software provided to Client by ImageTrend, specifically software developed and/or written by ImageTrend. Software developed by a third-party which is purchased on behalf of Client is considered Third Party Material.

"System Administrator" means Washington State Department of Health.

"Receiving Party" means the party receiving Confidential Information from the Disclosing Party.

"The Agreement" means collectively this Piggyback Services Agreement, its Exhibits, all Work Orders issued from this Piggyback Services Agreement, and all Exhibits to Work Orders.

"Third Party Material(s)" means software or other materials owned by a party other than Client or ImageTrend.

"Time and Materials Basis" means charges billable to the Client based upon each hour worked, multiplied by the hourly rate for the work, plus the cost of any Materials necessary (including but not limited to, the cost of third party software licenses, travel and accommodation expenses, or otherwise), or Materials beneficial (conditioned upon mutual assent of the parties), billed on a monthly basis in arrears.

"Work Order" means the document which outlines a mutually agreed upon set of services, products, or Deliverables and associated costs, payment terms, and acceptance procedures.

SECTION 2. SYSTEM ADMINISTRATOR'S RIGHTS

To the degree this Piggyback Agreement is made with Client to use functionality or make decisions regarding the modification, disposition, operation, usage, or non-usage of goods or services originally procured for Client by System Administrator or other party to the Master Agreement (e.g. System Administrator's ImageTrend provided software systems), Client's rights are subordinate to those of the parties to the Master Contract. To the degree Client's requests require modification or otherwise impact the parties to the Prime Contract, Client must seek and obtain written permission from the affected parties in the Prime Contract (i.e. System Administrator). Should System Administrator deny this

permission, ImageTrend may rightfully withhold performance under this Agreement to the extent it is not permitted by System Administrator, or not permitted by law or regulation in ImageTrend's sole 12 April 2023 www.imagetrend.com Page | 5 of 26 interpretation. CLIENT is advised ImageTrend is a Business Associate and/or under data confidentiality provisions to the System Administrator and has duties under HIPAA and other data privacy laws which may not be waived or modified without System Administrator's written consent.

SECTION 3. TERM OF AGREEMENT

The Term of this Agreement is coterminous with the Master Contract, unless terminated under the terms of this Agreement or by otherwise giving the other party no less than 30 days or written notice

SECTION 4. WORK ORDERS

CREATION OF WORK ORDERS. The parties may, from time to time, work together to detail the specific engagement scope, pricing, acceptance criteria, and terms of services to be performed and Deliverables to be delivered by ImageTrend. ImageTrend will set forth these details as a Work Order. If the Work Order is for the purchase of COTS Software, the Work Order shall also outline the quantity and SKU of each product or service as applicable. Should a Work Order contain no term regarding a topic, the terms of this Piggyback Software and Services Agreement shall hold instead.

LIMITATIONS OF WORK ORDERS. Work Orders may include requirements on the Client. Such requirements, when executed as part of a mutual agreed writing, form a material part of this Agreement and of the Work Order where the requirement is presented. Additionally, either party may set forth factual assumptions ("Assumption") in each Work Order. Notwithstanding anything in this Agreement or the Work Order, a Work Order will be rendered void to the extent that ImageTrend is obligated to perform services which are impossible or impracticable. Further, a Work Order will be rendered voidable to the extent that ImageTrend is obligated to perform services materially different than originally set out in that Work Order due to an inaccurate Assumption. The parties will make commercially reasonable efforts to negotiate an alternative or modified Work Order in light of the inaccurate Assumption.

MODIFICATION OF WORK ORDERS. Any modification to the scope or tasks identified within the Work Order that change the work budget by an estimated 10 hours of work or more shall require a new modified written Work Order or written Change Order. ImageTrend shall not work on the new tasks in the modified Work Order until the Client has provided signed written acceptance of the new Work Order. The parties may waive this requirement on a case-by-case basis in writing. Modifications requiring less than an estimated 10 hours of work may be proposed and accepted verbally, with such modifications requiring less than 10 hours of work billed on a Time and Materials basis.

FEE MODEL. The Work Order will contain fee and payment terms. The following fee models are contemplated:

Model Name	Definition
Fixed Fee	ImageTrend shall perform the work outlined in the Work Order for a fixed flat fee, plus Expenses. The Fixed Fee is exclusive of Expenses unless the Work Order outlines the Expenses. The Fixed Fee model

	may include milestone payments, with such milestone payments outlined in the Work Order.
Time and Materials	ImageTrend shall perform the work outlined in the Work Order on a Time and Materials basis, at the rate(s) specified in the Work Order.

LEGAL EFFECT. Work Orders issued under this Piggyback Services Agreement are incorporated by reference into this Piggyback Services Agreement which collectively is called “the Agreement.” Work Orders do not override the terms of this Piggyback Services Agreement unless specifically stated that they do so. Work Orders may contain their own Fee/Payment Schedules and Payment Terms; those terms are binding insofar as they concern the services or Deliverables contemplated by the Work Order. For Work Orders without their own fee and payment terms, the payment terms in the Price Sheet and Work Order Attachment below control.

CUSTOMIZED SOFTWARE DEVELOPMENT. The parties may mutually agree to a Work Order also known as a Statement of Work for the development of new or custom software, also known as “Modified Off The Shelf” or MOTS. All normal requirements of the Work Order shall apply, but additionally the parties must work together to mutually define a Statement of Work which outlines the tasks, and their timelines, to be undertaken as part of the project. Any Customized Software or MOTS Software developed under this Agreement will be Intellectual Property owned by ImageTrend. Should Client desire ownership of any Intellectual Property developed by ImageTrend, this must be embodied by a separate, mutually executed contract. For clarity, Client shall not and will not own any ImageTrend Intellectual Property under any circumstance under this Agreement. Client may only receive a license thereto as outlined in each Work Order.

SECTION 5. PERFORMANCE OF SERVICES

COMMENCEMENT. ImageTrend shall begin services described in the Work Order subsequent mutual signed execution the Work Order. No services shall begin before mutual signed and written final acceptance of each Work Order.

USE OF KNOW HOW. ImageTrend shall use its know-how, Intellectual Property, talent, skills, and employees to perform the services. Client shall conditionally receive a license to any and all pre-existing ImageTrend Intellectual Property and Know-How used in the creation of Deliverables and delivery of services as outlined below in §6 “Licensing and Intellectual Property” and the Software Licensing Terms Attachment.

MATERIALS. Materials (including, but not limited to, third party software licenses, physical hardware, test devices, or other items and any other Material) that will be used in the development of the Software will be identified by ImageTrend to Client. ImageTrend shall acquire such Materials as the parties mutually agree should be acquired, and it shall be the Client’s responsibility to pay for those materials.

ACCEPTANCE OF SERVICES AND DELIVERABLES. ImageTrend shall deliver completed Deliverables and services to Client for acceptance. Each Work Order must detail the acceptance criteria for each Deliverable or service contained within that Work Order. If a Deliverable or services acceptance criteria is measurable objectively, it shall be complete upon satisfaction of that objective measurement without

regard to either party's satisfaction with the Deliverable. If 1) a Deliverable's acceptance criteria is based on Client's satisfaction with the Deliverable, or 2) no acceptance criteria is detailed, then the following default clause shall apply:

After delivery of the Deliverable or performance of the service, Client shall have no more than 15 days to: 1) accept the deliverable or service, or 2) reject the deliverable or service by providing a written rejection that reasonably sets forth the reason for the rejection and the changes required to gain Client's acceptance, or 3) provide a written request for a 15 additional day extension to review the Deliverable or service; ImageTrend shall not unreasonably withhold approval of such 15 day extension. If Client does not provide an acceptance within the above time frame inclusive of extensions, the Deliverable or service will be deemed accepted. After delivery of the fourth revision of the service or Deliverable, the service or Deliverable shall be deemed accepted by Client.

SECTION 6. FEES, INVOICING, AND PAYMENT TERMS

PROMPT PAYMENT ACTS. IF CLIENT IS A GOVERNMENTAL ENTITY, THE FOLLOWING PARAGRAPH APPLIES: To the degree any term in this Section 5, or any payment related term in any Work Order, conflicts with the governing prompt payment act or similar procurement act which unambiguously limits client's ability to agree or comply with any term in this section 5 or in any payment related term in any work order ("The PPA"), the term in the PPA will instead control. For clarity, unless there is an unambiguous conflict between the terms of this Section 5 or in any Work Order, the PPA shall not control and this Agreement shall still control.

FEES. Client shall owe to ImageTrend such fees as set forth in each mutually executed Work Order.

SCHEDULING NON-LOCAL TRAVEL. For air travel Client may, and is strongly advised to, schedule travel no less than 3 weeks in advance of the first on-site date by written request; ImageTrend reserves the right to approve or deny travel requests on a per-request basis. Client may also request travel by writing with 3 weeks or less advance notice; ImageTrend reserves the right to approve or deny such travel requests, and to invoice costs to Client due to scheduling changes ImageTrend must make to accommodate such a request if approved.

CANCELLATION, RESCHEDULE, OR DELAY. Client will provide to ImageTrend (10) ten business days prior written notice of Client's intent to delay, reschedule, or cancel ("Staffing Change") any service in a Work Order which requires an ImageTrend employee to perform work at a specific location or at a specific time (e.g. face-to-face meetings, on-site visits, after hours on-call status). If Client fails to provide such notice, Client shall reimburse ImageTrend for loss caused by the Staffing Change. ImageTrend shall use commercially reasonable efforts to mitigate any losses that would be incurred by a Staffing Change and due to ImageTrend by Client.

INVOICING. Unless otherwise specified in a Work Order, invoices must be paid on Net 30 terms. Any objection to an invoice must be made in writing. Client may request up to an additional 15 days to review Deliverables associated with an invoice, approval to which ImageTrend shall not unreasonably withhold. If Client does not object to an invoice, or request an extension to review Deliverables, within

15 days after receipt of the invoice then the invoice is deemed accepted and any right to object to the invoice is waived. Payment shall be made by check or by ACH transfer to ImageTrend.

REMEDIES FOR NON-PAYMENT. Should Client fail to pay per the terms of this Agreement and this Section 5, ImageTrend may; 1) suspend services under all Work Orders until such payment is made in full, and/or 2) charge a late fee at the lesser of 1.5% or the maximum allowed by law, and/or 3) invoice Client for the costs of collection including reasonable attorney's fees.

TRAVEL COSTS. Should Client desire ImageTrend to send personnel to a location of Client's choosing in the continental United States, Client may pay \$1,800 per ImageTrend trainer per trip and a further \$1,750 per trainer per day spent at Client's chosen location. Travel outside of the continental US will be quoted by ImageTrend upon request. Travel may only be scheduled for a maximum of one business week of Monday through Friday per trip; however, Client may book consecutive trips. Non-local travel scheduling which runs from one business week into a subsequent business week(s) (e.g. start date on Friday at 8:00am, end date Wednesday at 5:00pm, "Overlapped Weekend") will result in ImageTrend invoicing Client an additional trip for each Overlapped Weekend. ImageTrend staff will work 8 hours each day, except on the first and last day of each trip ImageTrend may reserve up to 2 hours of the Business Day for travel time.

TIME AND MATERIALS RATE. Unless otherwise specified in a Work Order, ImageTrend's Time and Materials rate is \$225.00 per hour.

PRICE ESCALATION. ImageTrend reserves the right to escalate the prices contained herein, and any recurring fee, by no more than 7% of the then current price for each anniversary of the Effective Date beginning one year from the last signature. ImageTrend further reserves the right to escalate travel prices once per year upon written notice to Client. Such travel price increases will only affect future travel prices and will not change the price or amount due to ImageTrend for previously rendered travel.

SECTION 7. DATA AND INTELLECTUAL PROPERTY

CLIENT DATA. All Client data provided to ImageTrend remains at all times the property of the Client unless otherwise specified by a Work Order. ImageTrend will not to use or make available any personally identifiable information or patient health information other than for performing the services outlined in a Work Order, and for use in an aggregated manner to monitor, operate, train artificial intelligence, and conduct statistical analyses relevant to the application's proper functioning, maintenance, optimization, or improvement. ImageTrend will not in any way transfer to any third party any Confidential Information of Client.

DE-IDENTIFICATION. ImageTrend may create a de-identified data set of Client's data ("the De-identified Data Set") and ImageTrend may, in ImageTrend's discretion, transform, analyze, distribute and redistribute, create derivative works of, license, make available to 3rd party researchers, or otherwise use the De-identified Data Set except as limited by: 1) this Agreement, 2) applicable law and regulation, e.g. State and Local data privacy law and HIPAA/HITECH, 3) notwithstanding any of the prior, ImageTrend shall create the De-identified Data Set in accordance with the then current HIPAA Safe Harbor Rule at 45 CFR § 164.514(2)(i) by removing the 18 listed data elements, and any additional data element designated as 'Personal Information' by State and Local data breach law (or equivalent laws).

ImageTrend shall ensure its methods for creating the De-identified Data Set comport with industry best practices and guidance such as NISTIR 8053 'De-Identification of Personal Information' (available at <http://dx.doi.org/10.6028/NIST.IR.8053>). ImageTrend shall use reasonable administrative, technical, and physical safeguards to protect and prevent unauthorized disclosure of the De-identified Data Set. ImageTrend shall not attempt to re-identify any de-identified records.

GRANT OF LICENSE TO IMAGETREND'S PRE-EXISTING IP AND OWNERSHIP OF NEW IP. All Intellectual Property Rights connected to the ImageTrend pre-existing materials such as architectural structure, modules, processes, and Know-How that may be used in Deliverables ("Pre-existing IP"), shall remain owned by ImageTrend. ImageTrend agrees to grant to Client a royalty-free, worldwide, transferable, non-exclusive, use license for these architectural structures, modules, and processes that may be used solely in conjunction with the Deliverables and services performed under Work Orders and in accordance with the license selected below in the Software Licensing Terms Attachment, conditioned upon full payment of the Work Order from which the Deliverable containing Pre-Existing IP originates. This license may not be transferred, and Client may not sublicense, use, reproduce, distribute or prepare derivative works of ImageTrend's Pre-Existing IP except to the extent strictly necessary to fulfill the purpose of a Work Order. New Deliverables utilizing the same Pre-Existing IP may require another license for that new Deliverable, in ImageTrend's discretion. New Custom Intellectual Property authored by the parties in the course of performing a Work Order shall be owned by the party that authored the Intellectual Property and in the case of derivative works, it shall be owned by the party who owns the work from which the derivative is made, or as otherwise set forth in the Work Order. In the case of ImageTrend Software products licensed per in the Software Licensing Terms Attachment below, or "Modified Off The Shelf Software" as defined above, ImageTrend shall own all Intellectual Property related to or arising out of any Work Order. A Work Order may specify who owns the intellectual property embodied in a Deliverable; however, absent such terms in the Work Order, the terms of this Agreement shall control. Any right not hereby granted is reserved.

SECTION 8. CONFIDENTIALITY

CONFIDENTIALITY ACKNOWLEDGEMENT. Each party hereby acknowledges and agrees that the other Party's Data, potential clients or customers, client or customer lists, business plans, pricing structures, software and database designs, and any other information a Party has marked as Confidential, constitute Confidential Information. Each party agrees to treat (and take precautions to ensure that its authorized personnel treat) Confidential Information as confidential in accordance with the confidentiality requirements and conditions set forth below. Orally transmitted information shall not be Confidential Information unless specified as such in a writing transmitted from the Disclosing party to the Receiving party within 15 days of the oral transmission, with such writing providing a reasonable description and scope of the Confidential Information transmitted.

CONFIDENTIALITY OBLIGATIONS. Each party agrees to keep confidential all confidential information disclosed to it by the other party in accordance herewith, and to protect the confidentiality thereof in the same manner it protects the confidentiality of similar information and data of its own (at all times exercising at least a reasonable degree of care in the protection of confidential information); provided, however, that the provisions of this §7 shall not apply to information which: (i) is in the public domain; (ii) has been acquired by a Party by means other than the disclosure of the information by the Disclosing Party; (iii) is duly obtained by a Party directly or indirectly from a third party who has independently

developed the information and is entitled to disclose the information to the Party, and such disclosure does not directly or indirectly violate the confidentiality obligation of such third party; or (iv) becomes known publicly, without fault on the part of a Party, subsequent to the receipt of the information by Party.

SURVIVAL. This §7 shall survive the termination of this Agreement or of any license granted under this Agreement.

SECTION 9. WARRANTIES

NO CONFLICTS OF INTEREST. ImageTrend does not have any express or implied obligation to a third party which in any way conflicts with any of ImageTrend's obligations under this Agreement.

SERVICES. All services and will be provided in a professional and workmanlike manner in accordance with applicable industry standards and will comply with all applicable laws. All Deliverables will substantially conform to the agreed-upon specifications set forth in the applicable Work Order or as otherwise set forth in this Agreement.

EXCEPT AS SPECIFICALLY SET FORTH IN THIS AGREEMENT ABOVE, THE SERVICES IMAGETREND PROVIDES TO CLIENT ARE PROVIDED WITHOUT ADDITIONAL WARRANTY OF ANY KIND, EITHER EXPRESSED OR IMPLIED, INCLUDING BUT NOT LIMITED TO THE IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE AND ANY ORAL OR WRITTEN REPRESENTATIONS, PROPOSALS, OR STATEMENTS MADE PRIOR TO THIS AGREEMENT. IMAGETREND HEREBY EXPRESSLY DISCLAIM, AND CLIENT HEREBY WAIVES, ANY REPRESENTATION OR WARRANTY OF ANY KIND WITH RESPECT TO THE SERVICES, INCLUDING WITHOUT LIMITATION, THE IMPLIED WARRANTIES OF MERCHANTABILITY, NON-INFRINGEMENT AND FITNESS FOR A PARTICULAR PURPOSE. THE REMEDIES PROVIDED IN THIS AGREEMENT ARE CLIENT'S SOLE AND EXCLUSIVE REMEDIES.

SECTION 10. LIMITATION OF LIABILITY

EACH PARTY SHALL NOT, UNDER ANY CIRCUMSTANCES, BE LIABLE TO THE OTHER PARTY FOR CONSEQUENTIAL, INDIRECT, INCIDENTAL, SPECIAL, PUNITIVE, OR EXEMPLARY DAMAGES OR LOSSES ARISING OUT OF OR RELATED TO THIS AGREEMENT, EVEN IF THAT PARTY IS ADVISED OF THE LIKELIHOOD OF SUCH DAMAGES OCCURRING. EACH PARTY'S CUMULATIVE LIABILITY ARISING OUT OF OR IN ANY MANNER RELATED TO THIS SHALL BE LIMITED TO THE AMOUNT OF THE FEES DUE UNDER THIS AGREEMENT.

SECTION 11. DISPUTE RESOLUTION

DUTY TO NEGOTIATE IN GOOD FAITH PRIOR TO FORMAL DISPUTES. IF CLIENT IS A GOVERNMENTAL ENTITY, THE FOLLOWING 2 PARAGRAPHS APPLY:

The parties shall attempt in good faith to resolve any dispute arising out of or relating to this agreement promptly by negotiation between executives who have authority to settle the controversy and who are at a higher level of management than the persons with direct responsibility for administration of this agreement. Any party may give the other party written notice of any dispute not resolved in the normal course of business. Within 15 days after delivery of the notice, the receiving party shall submit to the other a written response. The notice and response shall include with reasonable particularity (a) a statement of each party's position and a summary of arguments supporting that position, and (b) the

name and title of the executive who will represent that party and of any other person who will accompany the executive. Within 30 days after delivery of the notice, the executives of both parties shall meet at a mutually acceptable time and place, or by teleconference.

All offers, promises, conduct and statements, whether oral or written, made in the course of the negotiation by any of the parties, their agents, employees, experts and attorneys are confidential, privileged and inadmissible for any purpose, including impeachment, in arbitration or other proceeding involving the parties, provided that evidence that is otherwise admissible or discoverable shall not be rendered inadmissible or non-discoverable as a result of its use in the negotiation.

ARBITRATION. If Client is NOT a Governmental Entity the following paragraph applies:

Any dispute between ImageTrend and Client under this Agreement shall be resolved by arbitration by an arbitrator selected under the rules of the American Arbitration Association in the State of the defending party and the arbitration shall be conducted in that same location under the rules of said Association. If an arbitrator cannot be agreed upon by the parties, ImageTrend and Client shall each choose an arbitrator, and those two chosen arbitrators shall choose a third arbitrator, that third arbitrator shall preside over any dispute. ImageTrend and Client shall each be entitled to present evidence and argument to the arbitrator. The arbitrator shall have the right only to interpret and apply the provisions of this Agreement and may not change any of its provisions. The arbitrator shall permit reasonable pre-hearing discovery of facts, to the extent necessary to establish a claim or a defense to a claim, subject to supervision by the arbitrator. The arbitrator shall endeavor to keep costs as low as possible while still allowing for the just and fair disposition of the dispute. The determination of the arbitrator shall be conclusive, final and binding upon the parties and judgment upon the same may be entered in any court having jurisdiction thereof. The arbitrator shall give written notice to the parties stating his determination, and shall furnish to each party a signed copy of such determination. ImageTrend and Client shall equally share the cost of the arbitrator(s) fees. The arbitrator may award reasonable costs and expenses, including reasonable attorney fees, to the prevailing party.

SECTION 12. NON-EXCLUSIVITY

This Agreement does not establish any exclusivity of service, contract, customer relationship, or otherwise between the parties.

SECTION 13. AMENDMENTS

This Agreement may only be modified by a mutually executed writing including but not limited to Work Orders, signed by a person having authority to sign.

SECTION 14. TERMINATION

Either Party may terminate this Agreement upon giving the other Party thirty days (30) days' prior written notice to the other Party in addition to any other remedy or right contained in this Agreement. This right of termination is additive to other rights of termination identified above in this Agreement and does not preclude the exercise of those other rights.

SECTION 15. INDEMNIFICATION

IMAGETREND INDEMNITY. ImageTrend shall defend and indemnify Client from and against third party claims, actions, suits, demands, damages, obligations, losses, settlements, judgments, costs, and

expenses ("Claims"), which arise out of any negligent act or omission, or willful misconduct of ImageTrend. Client shall promptly notify ImageTrend for any actual or prospective Claim for which indemnification is sought. In the event that any third-party Claim is made and Client invokes this clause, ImageTrend shall have the right and option to undertake and control such defense of such action with counsel of ImageTrend's choice with control to settle any such Claim. ImageTrend shall have no obligation to defend or indemnify Client from Claims arising out of Client's negligent or intentional wrongful acts or omissions. Because ImageTrend must provide its own insurers with notice of a claim within 60 days of actual knowledge of a Claim, Client accordingly must provide ImageTrend written notice no more than 60 days after Client has actual knowledge of a Claim else ImageTrend shall have no obligation to indemnify Client.

CLIENT INDEMNITY. IF CLIENT IS A GOVERNMENTAL ENTITY THE FOLLOWING PARAGRAPH DOES NOT APPLY. Client shall defend and indemnify ImageTrend from and against third party claims, actions, suits, demands, damages, obligations, losses, settlements, judgments, costs, and expenses ("Claims"), which arise out of any negligent act or omission, or willful misconduct of Client. ImageTrend shall promptly notify Client for any actual or prospective Claim for which indemnification is sought. In the event that any third-party Claim is made and Client invokes this clause, Client shall have the right and option to undertake and control such defense of such action with counsel of Client's choice with control to settle any such Claim. Client shall have no obligation to defend or indemnify ImageTrend from Claims arising out of Client's negligent or intentional wrongful acts or omissions. ImageTrend accordingly must provide Client written notice no more than 60 days after ImageTrend has actual knowledge of a Claim else Client shall have no obligation to indemnify Client.

SECTION 16. COOPERATIVE USE

Public and nonprofit agencies that have entered into a Cooperative Purchasing Agreement with the CLIENT are eligible to participate in any subsequent Agreement. The parties agree that these lists are subject to change. Any such usage by other municipalities and government agencies must be in accord with the ordinance, charter, rules and regulations of the respective political entity and with applicable State and Federal Laws.

SECTION 17. GENERAL TERMS

- a. **INSURANCE REQUIREMENTS.** ImageTrend will provide to Client a Certificate of Insurance upon request.
- b. **ELECTRONIC SIGNATURES.** The parties agree to conduct transactions primarily via electronic means. Accordingly, each party accepts electronic signatures and Deliverables as equivalent to physical versions of the same.
- c. **BUSINESS DAYS AND HOLIDAYS.** The parties agree a business day is 8 hours long, and excludes Saturdays, Sundays, and days reasonably considered a holiday by either party per each party's written policies. Unless otherwise specified in a Work Order, ImageTrend shall perform services only during business days, from 9:00am CST to 5:00pm CST.
- d. **COUNTERPARTS.** This Agreement may be executed in counterpart originals, duly signed by both parties, each of which will be deemed an original but all of which, together, will constitute one

and the same Agreement. Any terms not present in all counterpart copies are severed and void. Electronic counterparts are equally as valid as original counterparts.

- e. **FORCE MAJEURE.** Neither party will be liable for delays nor for non-performance due to an unforeseeable event, external to this Agreement and the parties, where the occurrence of the event beyond the non-performing or delayed party's reasonable control ("Force Majeure Events.") This clause shall not apply to costs due to ImageTrend to reimburse cancellation, reschedule, or modification of travel arrangements per §5 above. Force Majeure Events may include, but are not limited to: war, terrorism or threats of terrorism, civil disorder, labor strikes, fire, disease, medical epidemics or outbreaks, events which curtail necessary transportation facilities (e.g. airports), or other unforeseeable events where the occurrence of the event is beyond the non-performing or delayed party's control.
- f. **REASONABLE COOPERATION.** Client will reasonably cooperate with ImageTrend to the extent reasonably necessary to enable ImageTrend to perform the Services contemplated in each Work Order. Accordingly, Client will provide access, information or other materials in a fashion timely to the schedule of each Work Order. ImageTrend shall have no liability to Client for delays arising out the actions or non-actions of Client.
- g. **NON ASSIGNABILITY.** A party shall not assign this Agreement or its rights hereunder without the prior written consent of the other party.
- h. **JURISDICTION AND VENUE.** The parties agree that the law governing this Agreement shall be that of the State of Minnesota without regard to its conflict of laws principles. **IF CLIENT IS A GOVERNMENTAL ENTITY** the law governing this Agreement shall be that of the Client's jurisdiction without regard to its conflict of laws principles.
- i. **ENTIRE AGREEMENT.** This Agreement constitutes the entire Agreement between the parties, with respect to this subject matter, including, but not limited to the services, goods, products, and Software provided by ImageTrend for Client and the compensation provided by Client for said provision of such services therefore, and supersedes all previous proposals, both oral and written, negotiations, representations, writings and all other communications between the parties. This Agreement may not be released, discharged, or modified except by an instrument in writing signed by the parties.
- j. **SEVERABILITY.** If any provision of this Agreement is determined by a court of competent jurisdiction to be invalid or unenforceable, such determination shall not affect the validity or enforceability of any other part or provision of this Agreement.
- k. **WAIVER.** No waiver by either party of any of any provision hereof shall constitute a waiver of any other term of this Agreement nor shall it preclude either party from enforcing its rights.
- l. **NONAPPROPRIATION. IF CLIENT IS A GOVERNMENTAL ENTITY THE FOLLOWING PARAGRAPH APPLIES.** The continuation of this Agreement is contingent upon the appropriation of funds by

the legislature or other sources as applicable to fulfill the requirements of the Agreement. If the insufficient monies are appropriated to provide for the continuation of the Contract, or if such appropriation is reduced by the veto of the Governor or by any means provided in the applicable appropriation laws or regulations for any lawful purpose, and the effect of such reduction is to provide insufficient monies for the continuation of this Agreement or any Work Order hereto, the Agreement or applicable Work Order(s) shall terminate on the date of the beginning of the first fiscal year for which funds have not been appropriated. ImageTrend shall be entitled to payment for deliverables in progress, to the extent work has been performed pursuant to this Agreement or any Work Order hereto; obligations that have been incurred that extend beyond the date of termination; and reasonable contract close-out costs.

- m. **ATTORNEYS' FEES.** In any action between the parties to enforce any of the terms of this Agreement, the prevailing party shall be entitled to recover reasonable expenses, including reasonable attorneys' fees.
- n. **INDEPENDENT CONTRACTORS.** It is the express intention of Client and ImageTrend that ImageTrend and its employees and agents will perform the services hereunder as independent contractors to Client. Nothing in this Agreement shall in any way be construed to constitute ImageTrend or its employees or agents as an agent, employee or representative of Client. Without limiting the generality of the foregoing, ImageTrend is not authorized to bind Client to any liability or obligation or to represent ImageTrend has any such authority. Client and ImageTrend agree that neither ImageTrend employees nor its agents will receive Client - sponsored benefits from Client.
- o. **NOTICES.** Any notice required to be given by either party to the other shall be deemed given if in writing on the date actually delivered (including electronic methods such as e-mail), or if deposited in the United States mail in registered or certified form with return receipt requested, postage prepaid, on the postmarked date and addressed to the notified party at the address set forth below, or to such other address as a party may designate from time to time by means of notice given hereunder to the other party.

If to Client:

Selah Fire Department
Attn: Jim Lange
206 W. Fremont Ave.
Selah, WA 98942-1372

If to ImageTrend:

ImageTrend, LLC
Attn: Legal Department
20855 Kensington Boulevard
Lakeville, MN 55044

IN WITNESS WHEREOF: the undersigned parties, each having authority to bind their respective organizations, hereby agree.

ClientImageTrendSignature:Sherry RaymondSignature:Print Name:Sherry RaymondPrint Name:Title:SENIOR MANAGERTitle:Date:9-27-2023Date:

SOFTWARE LICENSING TERMS ATTACHMENT

To the degree any Work Order involves licensing ImageTrend Software, the following terms shall apply:

"ImageTrend Elite Data Marts" means the relational database(s) that contain an enhanced and simplified reporting-ready format of the transactional data collected within ImageTrend Elite. The Elite Data Marts are available for use with the ImageTrend Elite Reporting Tools.

"ImageTrend Elite Reporting Tools" means the Transactional Report Writer, Visual Informatics, Analytical Chart Reporting Tool and Analytical Tabular Reporting Tool in the Software that are based on a set of Elite Data Marts.

"Incident(s)" means an instance where the Client sends a vehicle or emergency responder to a situation requiring emergency response, as measured by the number of incident reports within ImageTrend Software systems.

"Licensed Information" means other Deliverables provided to Client by ImageTrend relating to the operation or design of the Software, or other Deliverables provided to Client by ImageTrend which are common to ImageTrend (e.g. such Deliverables are not unique to Client). A copy of the software specification Licensed Information is available within the Software labeled as "ImageTrend University."

"The Software" means the sum of all software licenses granted by this Agreement or Work Order hereto as provided in Section 1 below.

SECTION 1. GRANT OF LICENSE TO SOFTWARE.

Each Work Order for the sale of Software Licenses shall outline which of the below licenses are being granted by the Work Order. The license selection will be evidenced by the title of each SKU in the Work Order, e.g. "Elite EMS SaaS" shall be licensed under the Software as a Service License below. If the license is not apparent by the name of the SKU, then the license shall default to Software as a Service. ImageTrend may discontinue or replace a license in this table by providing Client reasonable written notice of the change. Replacing this table shall not have the effect of revoking previously agreed licenses, rather, ImageTrend's right to replace this table shall apply to only future Work Orders.

Name of License	Terms of License
Software as a Service License (SaaS) or Integration as a Service (IaaS) ("SaaS")	ImageTrend hereby grants Client a non-exclusive, non-transferable license to use the ImageTrend Software product(s) listed in the Work Order for such time as listed in said Work Order. During the term of the Work Order, the Client shall have access to the Software, which will be installed on servers at the ImageTrend hosting facility and subject to the Service Level Agreement attached. All copies of the Software and/or Licensed Information in any form provided by ImageTrend to Client hereunder are the sole property of ImageTrend and/or its suppliers, and that Client shall not have any right, title, or interest to any such Software

	and/or Licensed Information or copies thereof except as provided in this Agreement.
ImageTrend Hosted License ("License")	ImageTrend will grant Client a non-exclusive, non-transferable, perpetual use license without rights of resale or sublicensing, to the ImageTrend Software product(s) listed in the Work Order. Client shall have access to the Software, which will be installed on servers at the ImageTrend hosting facility and subject to the Service Level Agreement attached. All copies of the Software and/or Licensed Information in any form provided by ImageTrend to Client hereunder are the sole property of ImageTrend and/or its suppliers, and that Client shall not have any right, title, or interest to any such Software and/or Licensed Information or copies thereof except as provided in this Agreement.
Client Hosted License ("On Premise License")	<p>ImageTrend will grant Client a non-exclusive, non-transferable, perpetual use license without rights of resale or sublicensing, to the ImageTrend Software product(s) listed in the Work Order. Client shall have access to the Software, which will be installed on servers at the Client hosting facility and subject to the attached Service Level Agreement. All copies of the Software and/or Licensed Information in any form provided by ImageTrend to Client hereunder are the sole property of ImageTrend and/or its suppliers, and that Client shall not have any right, title, or interest to any such Software and/or Licensed Information or copies thereof except as provided in this Agreement.</p> <p>Initial set up will require direct access to Client servers by ImageTrend personnel. However, after the installation is complete, management of non- ImageTrend software, operating systems, ancillary systems and the responsibility for keeping non- ImageTrend software updated will be the sole responsibility of Client. ImageTrend disclaims any and all liability arising out of out-of-date or otherwise insufficiently maintained non- ImageTrend software or hosting environment. ImageTrend has no duty to maintain the Client's hosted environment's cybersecurity. Client agrees to ensure that ImageTrend will have sufficient server access to fulfill ImageTrend's duties hereunder. Maintenance of Client Hardware, physical environment, storage, processing, patching, operating system maintenance, network device maintenance, Client 3rd party licenses (as outlined below), or any other task which is required to maintain the Client application hosting environment and is not directly arising out of a requirement of or defect to the ImageTrend application(s) are the sole responsibility of Client. It will not be ImageTrend's responsibility to maintain or resolve problems with Client's hosted environment. ImageTrend's sole responsibility shall be to provide application support for ImageTrend developed applications. Tasks which are ultimately discovered to be maintenance of the Client Hosting environment may be charged to Client at ImageTrend's out-of-scope rate.</p>

SECTION 2. PROTECTION OF SOFTWARE AND LICENSED INFORMATION

Client agrees to respect and not to, nor permit any third-party to, remove, obliterate, or cancel from view any copyright, trademark, confidentiality or other proprietary notice, mark, or legend appearing on any of the Software or Licensed Information, and to reproduce and include the same on each authorized copy of the Software and Licensed Information.

Client shall not nor shall Client permit any third-party under Client's control to, copy, reverse engineer, or duplicate the Software or any part thereof except for the purposes of system backup, testing, maintenance, or recovery. Client may duplicate the Licensed Information only for internal training, provided that all the names, trademark rights, product names, copyright statement, and other proprietary right statements of ImageTrend are reserved. ImageTrend reserves all rights which are not expressly granted to Client in this Agreement.

Client shall not, nor shall Client permit any third-party to, modify, reverse engineer, disassemble, or decompile the Software, or any portion thereof, and shall not use the software or portion thereof for purposes other than as intended and provided for in this Agreement.

SECTION 3. IMAGETREND ELITE DATA MARTS NON-EXCLUSIVE USE LICENSE.

In accordance with the terms and conditions hereof, ImageTrend hereby grants the use of the ImageTrend Elite Data Marts only via ImageTrend Elite Reporting Tools, unless an "Elite Data Mart License" is included and detailed in a Work Order. Absent that license, this Agreement does not give the Customer the rights to access and query the ImageTrend Elite Data Marts directly using SQL query tools, reporting tools, ETL tools, or any other tools or mechanisms. Direct access to ImageTrend Elite Data Marts is only available via the aforementioned separately-priced product and service offering from ImageTrend.

SECTION 4. INSTALLATION, INTRODUCTORY TRAINING AND DEBUGGING.

IMPLEMENTATION. ImageTrend shall provide Client with start-up services such as the installation and introductory training relating to the Software, and, if necessary, initial debugging services known as "Implementation". During Implementation, Client must make available sufficient time and resources as is necessary to accomplish the milestones and tasks per the party's project plans (as applicable), typically between 4 and 15 hours a week. Depending on Client's objectives, Client may need to allocate more time or resources to achieve Client's desired timelines.

TRAIN THE TRAINER. ImageTrend may provide "Train-the-trainer" training for administrators as detailed in each Work Order. Additionally, online training videos and user guides in electronic format will be made available via ImageTrend University.

INSTRUCTIONS. ImageTrend will provide installation instructions and assistance for installation of the Software on the Servers appropriate to the License selection in the Work Order per the table above at (e.g. Client Hosted on premise license) as detailed in Service Level Attachment, below.

SOFTWARE SUPPORT. ImageTrend shall provide Software Support as detailed in the Service Level Attachment, below.

TRAINING USAGE AND EXPIRATION. The training line items and quantities as detailed in price table attached must be delivered within 2 years of the Effective Date. It shall be Client's responsibility to request the training session(s). Training not used within the 2 year cut-off shall expire and no refund or credit will be payable to Client.

SECTION 5. SOFTWARE WARRANTIES.

PERFORMANCE WARRANTY. ImageTrend warrants that the Software will conform to the specifications as set forth in the Licensed Information. However, this warranty shall be revoked in the event that any person other than ImageTrend and its agents make any unauthorized modification or change to the Software in any manner outside of the configuration available within the Software's built-in functionality. This warranty does not apply to data extracted from the system.

OWNERSHIP WARRANTY. ImageTrend represents that it is the owner of the entire right, title, and interests in and to the Software, and that it has the sole right to grant licenses thereunder, and that it has not knowingly granted licenses thereunder to any other entity that would restrict rights granted hereunder to Client.

LIMITATIONS ON WARRANTY. All of ImageTrend's obligations under this Section shall be contingent on Client's use of the Software in accordance with this Agreement and in accordance with ImageTrend's instructions as provided by ImageTrend in the Licensed Information, and as such instructions may be amended, supplemented, or modified by ImageTrend from time to time. ImageTrend shall have no warranty obligations with respect to usage which does not conform with ImageTrend's instructions as provided by ImageTrend in the Licensed Information. ImageTrend shall have no warranty obligations with respect to any failures of the Software which are the result of accident, abuse, misapplication, extreme power surge or extreme electromagnetic field of a Client device. In addition to any other limitation on warranty or liability; Client's sole remedy for breach of warranty related to or arising out of the Software, or a defect with the Software, shall be at Client's option 1) repair of the Software or defect, 2) termination of this Agreement for convenience as outlined elsewhere in this Agreement.

THE EXPRESS WARRANTIES PROVIDED HEREIN ARE THE ONLY WARRANTIES MADE BY ImageTrend WITH RESPECT TO THE SOFTWARE AND SUPERSEDE ALL OTHER EXPRESS OR IMPLIED WARRANTIES, INCLUDING, BUT NOT LIMITED TO, ANY WARRANTIES OF MERCHANTABILITY AND WARRANTIES FOR ANY SPECIAL PURPOSE.

SECTION 6. MAINTENANCE.

ImageTrend shall provide scheduled updates and new releases for the Software, as well as defect correction as needed per the Service Level Agreement, attached for so long as Client has contracted for support (as indicated by a recurring fee containing the product name and word 'Support'). Specific out-of-scope system enhancement requests are excluded from support. Should Client desire specific source-code level modifications to the system, Client may submit a request to ImageTrend's UserVoice page at <https://ImageTrend.uservoice.com/>.

SECTION 7. RETURN OF DATA.

Upon termination of this Agreement for any reason, Client may request ImageTrend provide to Client a

copy of Client's data. ImageTrend will produce this data by first using relevant export functionality provided by the application, e.g. for ImageTrend Elite the data would be produced as a NEMSIS Version 3 XML file(s), or by other native data export format should the application provide no export functionality. ImageTrend may redact or remove ImageTrend trade secret and confidential information, such as database schema design details, or data which is used solely in an operational or administrative fashion (e.g. data which was never entered by Client end-users). For clarity, ImageTrend may not redact or remove data that Client or Client's end-users entered. ImageTrend will provide this exported data to Client via secure electronic transfer, such as SFTP/FTPS. ImageTrend shall have 90 days from Client's request to produce the native data export for Client. Should Client desire the data to come in any alternative format, or be in any way different than as described in this section, Client must request those services from ImageTrend separately on a Time and Materials basis under its own time frame. ImageTrend will make efforts to accommodate Client's request, but ImageTrend is under no obligation to do so.

SECTION 8. IMAGETREND ELITE AUTHORIZED USERS AND SCOPE OF USAGE

This Grant of License is strictly conditioned on the Software being used by only Authorized Users. ImageTrend may audit Client's Software, users, and usage to ensure compliance with the scope of usage detailed by this Agreement, in ImageTrend's discretion. Non-compliance with the scope of usage shall be considered a material breach.

If this Agreement is for the licensing of ImageTrend Elite EMS, the following scope of usage and Authorized User definitions apply.

Organization Type	Organization Definition	Authorized User Definition
Private Agency	Client responds to emergency medical incidents for-profit or not-for-profit and the Client <u>is not</u> a Governmental Entity.	All employees & contractors of Client who respond to emergency medical incidents in the regular scope of their employment
Public Agency, County, Region, or City for its own employed EMS workers ("Public Agency")	Client responds to emergency medical incidents and transports patients therefrom and <u>is</u> a Governmental Entity	All employees & contractors of Client who respond to emergency medical incidents in the regular scope of their employment
Hospital or Health Network	Client is a 1) hospital, 2) health network, 3) or other medical institution that provides care which does not involve responding to emergency medical incidents and transporting patients therefrom as a primary service of the organization; and Client is recognized and licensed as such by the Client's governing State	All employees & contractors of Client who respond to emergency medical incidents in their regular scope of employment at or from the named Hospital brick-and-mortar locations. If the specific brick-and-mortar location(s) is not named in a Work Order, then it shall be interpreted as the brick-and-mortar location from which the Client primary contact, Jim Lange or their successor, conducts their job duties most frequently.
State, County, Region, City for its constituents	Client is a Governmental Entity with authority or an official	Licensed individuals within Client's legal or governing jurisdiction and

	mandate to improve, facilitate, organize, surveil, investigate, report, collect reports of, or otherwise govern public health matters; or another entity acting under a grant or contract of and for equivalent authority	geographic boundary, who to respond to emergency medical incidents in the regular scope of their employment, and not individuals whose primary job duty involves law enforcement.
Group Purchase (Multi-Agency)	Client(s) are a plurality of Private Agencies and/or Public Agencies	All employees & contractors of each named organization, who respond to emergency medical incidents
Financing Party (e.g. billing company) on behalf of Agency/City/County third party beneficiary	Client is an entity which does not respond to emergency medical incidents or provide for the care or transportation of patients; rather Client is an entity who procures or pays for a third party beneficiary who is a Private or Public Agency.	All employees & contractors of third party beneficiary Public or Private Agency, who respond to emergency medical incidents in the regular scope of their employment.

PRICE SHEET AND WORK ORDER ATTACHMENT

The prices below are based on the following SaaS transaction volumes, as provided by Client:
2,100 Incidents annually

One Time Fees

Description	SKU	Unit Price	Qty	Extended Amount
Webinar Training 2hr Session	ELT.006.003.009	\$450.00	2	\$900.00
Modules Setup & Implementation	ELT.003.002.037	\$675.00	1	\$675.00
Upgrade EMS NFIRS to Rescue SaaS Setup	ELT.003.002.018	\$1,125.00	1	\$1,125.00

Total One-Time Fees: \$2,700.00

Recurring Fees

Description	SKU	Unit Price	Qty	Extended Amount
CAD Distribution	ELT.002.007.001	\$3,500.00	1	\$3,500.00
Other CAD Vendor	ELT.002.007.022	\$0.00	1	\$0.00
Agency Level Validation EMS	ELT.001.002.001	\$500.00	1	\$500.00
Agency Level Validation Fire	ELT.001.002.002	\$500.00	1	\$500.00
Elite Site to Site Transfers	ELT.002.010.016	\$500.00	1	\$500.00
Elite™ Field Add-On Option	ELT.001.002.049	\$2,500.00	1	\$2,500.00
Upgrade EMS NFIRS to Rescue - SaaS Additional Annual	ELT.001.002.034	\$1,050.00	1	\$1,050.00

Total Recurring Fees: \$8,550.00

TOTAL YEAR 1: \$11,250.00

Send Invoices To:

Jim Lange
james.lange@selahwa.gov
206 W. Fremont Ave.
Selah, WA 98942-1372

Payment Terms:

- "One Time Fees" are due once upon contract signature.
- "Recurring Fees" are annual fees which are due once upon contract signature and recur each year.
- The Recurring Fees will escalate in price annually by 7% beginning one year from the last signature hereto and each year thereafter.

- ImageTrend may temporarily suspend performance (e.g. cease to provide access, hosting, support) due to Client's breach of contract provided Client shall have 30 days to cure such breach before ImageTrend may suspend performance.
- ImageTrend may charge to Client a late fee of 1.5% per month, or the highest rate allowed under the law, whichever is lower, on any overdue amounts. Client also agrees ImageTrend may charge to Client all reasonable costs and expenses of collection, including attorneys' fees where, in ImageTrend's discretion, payments are consistently deficient or late.
- All Annual SaaS Fees are based upon anticipated transaction volumes (as provided by Client) and are subject to an annual usage audit. ImageTrend reserves the right to increase fees in accordance with increased transaction volume per the Unit Price listed in the tables above.
- ImageTrend will not be responsible for third-party fees related to this Agreement unless specifically outlined by this Agreement.

Optional Items

Items in the table below are not goods or services currently contracted or provided by this Agreement, rather, they are included to allow Client to add those goods or services by first providing written notice to ImageTrend, subsequently ImageTrend will provide Client with a Work Order for the Optional item, and upon Client's signature of that Work Order, ImageTrend will begin the work.

Product	SKU	Unit Price	Description
Mobile Fire Inspections - SaaS	ELT.001.002.014	\$2,500.00	Elite Mobile Fire Inspections allows you to enter or edit location, occupant, and inspection records while offline and working in the field. It synchronizes all data bidirectionally with Elite Web. Note: Elite Fire or Rescue is required.

SERVICE LEVEL AGREEMENT ATTACHMENT

ImageTrend is committed to offering exceptional levels of service to our customers. This Service Level Agreement ("SLA") guarantees your website or application's availability, reliability and performance. This SLA applies to any site or application hosted on our network.

1. Customer Support

ImageTrend is committed in providing an exceptional level of customer support. ImageTrend's servers are monitored 24 hours per day, 7 days per week, 365 days per year and our support staff is available via phone (888.469.7789) and email (www.imagetrend.com/support) as posted on the company's website. ImageTrend works to promptly resolve all issues reported by customers, and will acknowledge the disposition and potential resolution according to the chart below:

Severity Level	Example	Acknowledgement of Error Notice	Response Goal
High/Site Down	<ul style="list-style-type: none"> - Complete shutdown or partial shutdown of one or more Software functions - Access to one or more Software functions not available - Major subset of Software application impacted that is necessary for usage of the software 	Within one (1) hour of initial notification during business hours or via support.imagetrend.com	Six (6) hours
Medium	<ul style="list-style-type: none"> - Minor subsystem failure -Data entry or access impaired on a limited basis. 	Within four (4) hours of initial notification	24 Business hours
Low	<ul style="list-style-type: none"> - User error (i.e. training) or forgotten passwords - Issue can or must be delegated to local Client contact as a first level of response for resolution 	Same day or next business day of initial notification	As appropriate depending on nature of issue and party responsible for resolution

2. Data Ownership

All customer data collected and maintained by ImageTrend shall at all times remain the property of the customer.

3. Data Protection

ImageTrend takes data privacy and cybersecurity very seriously. ImageTrend utilizes compliant and industry recognized best practices to ensure data security, and does not use or make available any personally identifiable information to third parties without customer consent or as required by law. ImageTrend acknowledges that its handling of information on behalf of customers may be subject to federal, state or local laws, rules, regulation and restrictions regarding the privacy of consumer information. ImageTrend agrees to comply with all of such laws, rules, regulations and restrictions at its sole cost and expense.

4. Suspension of Service

ImageTrend reserves the right to suspend and limit network resources to customers failing to pay the monthly fee in advance at its own discretion. In the event of service suspension, full service delivery will be restored within 48 hours from the date and time that payment is received.

5. Availability

ImageTrend is fully committed to providing quality service to all customers. To support this commitment, ImageTrend offers the following commitments related to application server Availability:

Availability Objective: ImageTrend will provide 99.5% Availability (as defined below) for the ImageTrend network services within ImageTrend's Immediate Control. For purposes, hereof, "Availability" or "Available" means the ImageTrend Services are available for access and use through the Internet.

"Immediate Control" includes ImageTrend's network services within the ImageTrend data center which extends to, includes and terminates at the Internet Service Provider ("ISP") circuit termination point on the router in ImageTrend's data center (i.e., public Internet connectivity).

Specifically excluded from the definition of "Immediate Control" are the following:

- a. Equipment, data, materials, software, hardware, services and/or facilities provided by or on behalf of Client or a third-party entity (or any of their vendors or service providers) and Client's or a third party entity's network services or end-user hardware.
- b. Acts or omissions of Client, their employees, contractors, agents or representatives, third party vendors or service providers or anyone gaining access to the ImageTrend Services at the request of Client.
- c. Issues arising from bugs, defects, or other problems in the software, firmware, or hardware of third parties.
- d. Delays or failures due to circumstances beyond ImageTrend's reasonable control that could not be avoided by its exercise of due care.
- e. Any outage, network unavailability or downtime outside the ImageTrend data center.

Availability Calculation: Availability is based on a monthly calculation. The calculation will be as follows: $((a - b) / a) \times 100$, where "a" is the total number of hours in a given calendar month, excluding Scheduled Maintenance (as defined below), and "b" is the total number of hours that service is not Available in a given month.

Offline Capability: The Software may have offline capability which provides redundancy when network or server back-end capability is not available. Periods of time when the Software's primary functions continue to function offline shall be excluded from the unavailability calculation "b" above.

Scheduled Maintenance: ImageTrend conducts scheduled maintenance, as necessary, every last Wednesday of the month. ImageTrend will perform scheduled maintenance within that maintenance window between the hours of 9:00 p.m. CST to 11:00 p.m. CST. ImageTrend may change the regularly scheduled maintenance window from time to time at ImageTrend's discretion upon reasonable notice to Client.

Service Disruption: Upon customer's written notice to ImageTrend, if Availability for the month is below the guaranteed level, ImageTrend will issue a credit to customer in accordance with the schedule below:

Availability: 99.0% - 99.5% = 5% of monthly hosting fee credited
 95.0% - 98.99% = 10% of monthly hosting fee credited
 90.0% - 94.99% = 15% of monthly hosting fee credited
 89.99% or below = 2.5% for every 1% of lost Availability (in no event exceeding 50% of monthly hosting fees)

ImageTrend maintains precise and objective Availability metrics, which shall be determinative when calculating any customer requested credit. ImageTrend maintained Availability metrics shall only be requested in good faith to address material customer concerns. To receive a credit, customers must specifically request it during the month following the month for which the credit is requested. Credits shall not be issued if a customer account is past due, suspended or pending suspension.

6. General

ImageTrend reserves the right to change or modify this SLA and the related services being provided to benefit its customers, including changes to hosting environments and infrastructure, provided that any such improvements shall adhere to the regulatory guidelines and best practices referenced herein.

BUSINESS ASSOCIATE AGREEMENT ATTACHMENT

This Business Associate Agreement ("Agreement") dated 09/20/2023 (the "Effective Date"), is entered into by and between **Selah Fire Department** located at 206 W. Fremont Ave., Selah, WA 98942-1372 (the "Covered Entity") and ImageTrend, LLC, a Minnesota corporation (the "Business Associate").

WHEREAS, Covered Entity (also referred to as "Client") and Business Associate have entered into, or are entering into, or may subsequently enter into, agreements or other documented arrangements (collectively, the "Business Arrangements") pursuant to which Business Associate may provide products and/or services for Covered Entity that require Business Associate to access, create and use health information that is protected by state and/or federal law; and

WHEREAS, pursuant to the Administrative Simplification provisions of the Health Insurance Portability and Accountability Act of 1996 ("HIPAA"), the U.S. Department of Health & Human Services ("HHS") promulgated the Standards for Privacy of Individually Identifiable Health Information (the "Privacy Standards"), at 45 C.F.R. Parts 160 and 164, requiring certain individuals and entities subject to the Privacy Standards (each a "Covered Entity", or collectively, "Covered Entities") to protect the privacy of certain individually identifiable health information ("Protected Health Information", or "PHI"); and

WHEREAS, pursuant to HIPAA, HHS has issued the Security Standards (the "Security Standards"), at 45 C.F.R. Parts 160, 162 and 164, for the protection of electronic protected health information ("E PHI"); and

WHEREAS, in order to protect the privacy and security of PHI, including E PHI, created or maintained by or on behalf of the Covered Entity, the Privacy Standards and Security Standards require a Covered Entity to enter into a "business associate agreement" with certain individuals and entities providing services for or on behalf of the Covered Entity if such services require the use or disclosure of PHI or E PHI; and

WHEREAS, on February 17, 2009, the federal Health Information Technology for Economic and Clinical Health Act was signed into law (the "HITECH Act"), and the HITECH Act imposes certain privacy and security obligations on Covered Entities in addition to the obligations created by the Privacy Standards and Security Standards; and

WHEREAS, the HITECH Act revises many of the requirements of the Privacy Standards and Security Standards concerning the confidentiality of PHI and E PHI, including extending certain HIPAA and HITECH Act requirements directly to business associates; and

WHEREAS, Business Associate and Covered Entity desire to enter into this Business Associate Agreement.

NOW THEREFORE, in consideration of the mutual promises set forth in this Agreement and the Business Arrangements, and other good and valuable consideration, the sufficiency and receipt of which are hereby severally acknowledged, the parties agree as follows:

1. **Business Associate Obligations.** Business Associate may receive from Covered Entity, or create or receive on behalf of Covered Entity, health information that is protected under applicable state and/or federal law, including without limitation, PHI and E PHI. All capitalized terms not

otherwise defined in this Agreement shall have the meanings set forth in the Privacy Standards, Security Standards or the HITECH Act, as applicable (collectively referred to hereinafter as the "Confidentiality Requirements"). All references to PHI herein shall be construed to include EPHI. Business Associate agrees not to use or disclose (or permit the use or disclosure of) PHI in a manner that would violate the Confidentiality Requirements if the PHI were used or disclosed by Covered Entity in the same manner.

2. **Use of PHI.** Except as otherwise required by law, Business Associate shall use PHI in compliance with 45 C.F.R. § 164.504(e). Furthermore, Business Associate shall use PHI (i) solely for Covered Entity's benefit and only for the purpose of performing services for Covered Entity as such services are defined in Business Arrangements, and (ii) as necessary for the proper management and administration of the Business Associate or to carry out its legal responsibilities, provided that such uses are permitted under federal and state law. Covered Entity shall retain all rights in the PHI not granted herein.
3. **Disclosure of PHI.** Subject to any limitations in this Agreement, Business Associate may disclose PHI to any third party persons or entities as necessary to perform its obligations under the Business Arrangement and as permitted or required by applicable federal or state law. Further, Business Associate may disclose PHI for the proper management and administration of the Business Associate, provided that (i) such disclosures are required by law, or (ii) Business Associate: (a) obtains reasonable assurances from any third party to whom the information is disclosed that it will be held confidential and further used and disclosed only as required by law or for the purpose for which it was disclosed to the third party; (b) requires the third party to agree to immediately notify Business Associate of any instances of which it is aware that PHI is being used or disclosed for a purpose that is not otherwise provided for in this Agreement or for a purpose not expressly permitted by the Confidentiality Requirements. Additionally, Business Associate shall ensure that all disclosures of PHI by Business Associate and the third party comply with the principle of "minimum necessary use and disclosure," i.e., only the minimum PHI that is necessary to accomplish the intended purpose may be disclosed; provided further, Business Associate shall comply with Section 13405(b) of the HITECH Act, and any regulations or guidance issued by HHS concerning such provision, regarding the minimum necessary standard and the use and disclosure (if applicable) of Limited Data Sets. If Business Associate discloses PHI received from Covered Entity, or created or received by Business Associate on behalf of Covered Entity, to agents, including a subcontractor (collectively, "Recipients"), Business Associate shall require Recipients to agree in writing to the same restrictions and conditions that apply to the Business Associate under this Agreement. Business Associate shall report to Covered Entity any use or disclosure of PHI not permitted by this Agreement, of which it becomes aware, such report to be made within three (3) business days of the Business Associate becoming aware of such use or disclosure. In addition to Business Associate's obligations under Section 9, Business Associate agrees to mitigate, to the extent practical and unless otherwise requested by Covered Entity in writing or as directed by or as a result of a request by Covered Entity to disclose to Recipients, any harmful effect that is known to Business Associate and is the result of a use or disclosure of PHI by Business Associate or Recipients in violation of this Agreement.
4. **Individual Rights Regarding Designated Record Sets.** If Business Associate maintains a Designated Record Set on behalf of Covered Entity, Business Associate shall (i) provide access to, and permit inspection and copying of, PHI by Covered Entity or, as directed by Covered Entity,

an individual who is the subject of the PHI under conditions and limitations required under 45 CFR §164.524, as it may be amended from time to time, and (ii) amend PHI maintained by Business Associate as requested by Covered Entity. Business Associate shall respond to any request from Covered Entity for access by an individual within five (5) days of such request and shall make any amendment requested by Covered Entity within ten (10) days of such request. Any information requested under this Section 4 shall be provided in the form or format requested, if it is readily producible in such form or format. Business Associate may charge a reasonable fee based upon the Business Associate's labor costs in responding to a request for electronic information (or a cost-based fee for the production of non-electronic media copies). Covered Entity shall determine whether a denial is appropriate or an exception applies. Business Associate shall notify Covered Entity within five (5) days of receipt of any request for access or amendment by an individual. Covered Entity shall determine whether to grant or deny any access or amendment requested by the individual. Business Associate shall have a process in place for requests for amendments and for appending such requests to the Designated Record Set, as requested by Covered Entity.

5. **Accounting of Disclosures.** Business Associate shall make available to Covered Entity in response to a request from an individual, information required for an accounting of disclosures of PHI with respect to the individual in accordance with 45 CFR §164.528, as amended by Section 13405(c) of the HITECH Act and any related regulations or guidance issued by HHS in accordance with such provision. Business Associate shall provide to Covered Entity such information necessary to provide an accounting within thirty (30) days of Covered Entity's request or such shorter time as may be required by state or federal law. Such accounting must be provided without cost to the individual or to Covered Entity if it is the first accounting requested by an individual within any twelve (12) month period. For subsequent accountings within a twelve (12) month period, Business Associate may charge a reasonable fee based upon the Business Associate's labor costs in responding to a request for electronic information (or a cost-based fee for the production of non-electronic media copies) so long as Business Associate informs the Covered Entity and the Covered Entity informs the individual in advance of the fee, and the individual is afforded an opportunity to withdraw or modify the request. Such accounting obligations shall survive termination of this Agreement and shall continue as long as Business Associate maintains PHI.
6. **Withdrawal of Authorization.** If the use or disclosure of PHI in this Agreement is based upon an individual's specific authorization for the use of his or her PHI, and (i) the individual revokes such authorization in writing, (ii) the effective date of such authorization has expired, or (iii) the consent or authorization is found to be defective in any manner that renders it invalid, Business Associate agrees, if it has notice of such revocation or invalidity, to cease the use and disclosure of any such individual's PHI except to the extent it has relied on such use or disclosure, or where an exception under the Confidentiality Requirements expressly applies.
7. **Records and Audit.** Business Associate shall make available to the U.S. Department of Health and Human Services or its agents, its internal practices, books, and records relating to the use and disclosure of PHI received from, created, or received by Business Associate on behalf of Covered Entity for the purpose of determining Covered Entity's compliance with the Confidentiality Requirements or any other health oversight agency, in a time and manner designated by the Secretary. Except to the extent prohibited by law, Business Associate agrees to notify Covered Entity immediately upon receipt by Business Associate of any and all requests

by or on behalf of any and all federal, state and local government authorities served upon Business Associate for PHI.

8. **Implementation of Security Standards; Notice of Security Incidents.** Business Associate will use appropriate safeguards to prevent the use or disclosure of PHI other than as expressly permitted under this Agreement. Business Associate will implement administrative, physical and technical safeguards that reasonably and appropriately protect the confidentiality, integrity and availability of the PHI that it creates, receives, maintains or transmits on behalf of Covered Entity. Business Associate acknowledges that the HITECH Act requires Business Associate to comply with 45 C.F.R. §§ 164.308, 164.310, 164.312, 164.314, and 164.316 as if Business Associate were a Covered Entity, and Business Associate agrees to comply with these provisions of the Security Standards and all additional security provisions of the HITECH Act. Furthermore, **to the extent feasible, Business Associate will use commercially reasonable efforts to ensure that the technology safeguards used by Business Associate to secure PHI will render such PHI unusable, unreadable and indecipherable to individuals unauthorized to acquire or otherwise have access to such PHI in accordance with HHS Guidance published at 74 Federal Register 19006 (April 17, 2009), or such later regulations or guidance promulgated by HHS or issued by the National Institute for Standards and Technology ("NIST") concerning the protection of identifiable data such as PHI.** Business Associate acknowledges and agrees that the HIPAA Omnibus Rule finalized January 25, 2013 at 78 Fed. Reg. 5566 requires Business Associate to comply with new and modified obligations imposed by that rule under 45 C.F.R. § 164.306, 45 C.F.R. § 164.308, 45 C.F.R. § 163.310, 45 C.F.R. § 164.312, 45 C.F.R. § 164.316, 45 C.F.R. § 164.502, 45 C.F.R. § 164.504. Lastly, Business Associate will promptly report to Covered Entity any successful Security Incident of which it becomes aware. At the request of Covered Entity, Business Associate shall identify: the date of the Security Incident, the scope of the Security Incident, the Business Associate's response to the Security Incident and the identification of the party responsible for causing the Security Incident, if known. Business Associate and Covered Entity shall take reasonable measures to ensure the availability of all affirmative defenses under the HITECH Act, HIPAA, and other state and federal laws and regulations governing PHI and EPHI.

9. **Data Breach Notification and Mitigation.**

- A. **HIPAA Data Breach Notification and Mitigation.** Business Associate agrees to implement reasonable systems for the discovery and prompt reporting of any "breach" of "unsecured PHI" as those terms are defined by 45 C.F.R. § 164.402 (hereinafter a "HIPAA Breach"). The parties acknowledge and agree that 45 C.F.R. § 164.404, as described below in this Section 9.1, governs the determination of the date of a HIPAA Breach. In the event of any conflict between this Section 9.1 and the Confidentiality Requirements, the more stringent requirements shall govern. Business Associate will, following the discovery of a HIPAA Breach, notify Covered Entity immediately and in no event later than three (3) business days after Business Associate discovers such HIPAA Breach, unless Business Associate is prevented from doing so by 45 C.F.R. § 164.412 concerning law enforcement investigations. For purposes of reporting a HIPAA Breach to Covered Entity, the discovery of a HIPAA Breach shall occur as of the first day on which such HIPAA Breach is known to the Business Associate or, by exercising reasonable diligence, would have been known to the Business Associate. Business Associate will be considered to have had knowledge of a HIPAA Breach if the HIPAA Breach is known, or

by exercising reasonable diligence would have been known, to any person (other than the person committing the HIPAA Breach) who is an employee, officer or other agent of the Business Associate. No later than seven (7) business days following a HIPAA Breach, Business Associate shall provide Covered Entity with sufficient information to permit Covered Entity to comply with the HIPAA Breach notification requirements set forth at 45 C.F.R. §164.400 *et seq.* Specifically, if the following information is known to (or can be reasonably obtained by) the Business Associate, Business Associate will provide Covered Entity with: (i) contact information for individuals who were or who may have been impacted by the HIPAA Breach (e.g., first and last name, mailing address, street address, phone number, email address); (ii) a brief description of the circumstances of the HIPAA Breach, including the date of the HIPAA Breach and date of discovery; (iii) a description of the types of unsecured PHI involved in the HIPAA Breach (e.g., names, social security number, date of birth, address(es), account numbers of any type, disability codes, diagnostic and/or billing codes and similar information); (iv) a brief description of what the Business Associate has done or is doing to investigate the HIPAA Breach, mitigate harm to the individual impacted by the HIPAA Breach, and protect against future HIPAA Breaches; and (v) appoint a liaison and provide contact information for same so that the Covered Entity may ask questions or learn additional information concerning the HIPAA Breach. Following a HIPAA Breach, Business Associate will have a continuing duty to inform Covered Entity of new information learned by Business Associate regarding the HIPAA Breach, including but not limited to the information described in items (i) through (v), above.

- B. Data Breach Notification and Mitigation Under Other Laws. In addition to the requirements of Section 9.1, Business Associate agrees to implement reasonable systems for the discovery and prompt reporting of any breach of individually identifiable information (including but not limited to PHI, and referred to hereinafter as "Individually Identifiable Information") that, if misused, disclosed, lost or stolen, Covered Entity believes would trigger an obligation under one or more State data breach notification laws (each a "State Breach") to notify the individuals who are the subject of the information. Business Associate agrees that in the event any Individually Identifiable Information is lost, stolen, used or disclosed in violation of one or more State data breach notification laws, Business Associate shall promptly: (i) cooperate and assist Covered Entity with any investigation into any State Breach or alleged State Breach; (ii) cooperate and assist Covered Entity with any investigation into any State Breach or alleged State Breach conducted by any State Attorney General or State Consumer Affairs Department (or their respective agents); (iii) comply with Covered Entity's determinations regarding Covered Entity's and Business Associate's obligations to mitigate to the extent practicable any potential harm to the individuals impacted by the State Breach; and (iv) assist with the implementation of any decision by Covered Entity or any State agency, including any State Attorney General or State Consumer Affairs Department (or their respective agents), to notify individuals impacted or potentially impacted by a State Breach.
- C. Breach Indemnification. Business Associate shall indemnify, defend and hold Covered Entity and its officers, directors, employees, agents, successors and assigns harmless, from and against all reasonable losses, claims, actions, demands, liabilities, damages, costs and expenses (including costs of judgments, settlements, court costs and

reasonable attorneys' fees actually incurred) (collectively, "Information Disclosure Claims") arising from or related to: (i) the use or disclosure of Individually Identifiable Information (including PHI) by Business Associate in violation of the terms of this Agreement or applicable law, and (ii) whether in oral, paper or electronic media, any HIPAA Breach of unsecured PHI and/or State Breach of Individually Identifiable Information by Business Associate. If Business Associate assumes the defense of an Information Disclosure Claim, Covered Entity shall have the right, at its expense and without indemnification notwithstanding the previous sentence, to participate in the defense of such Information Disclosure Claim. Business Associate shall not take any final action with respect to any Information Disclosure Claim without the prior written consent of Covered Entity. Covered Entity likewise shall not take any final action with respect to any Information Disclosure Claim without the prior written consent of Business Associate. To the extent permitted by law and except when caused by an act of Covered Entity or resulting from a disclosure to a Recipient required or directed by Covered Entity to receive the information, Business Associate shall be fully liable to Covered Entity for any acts, failures or omissions of Recipients in furnishing the services as if they were the Business Associate's own acts, failures or omissions.

- A. **If Client is a Governmental Entity the following clause does not apply:** Covered Entity shall indemnify, defend and hold Business Associate and its officers, directors, employees, agents, successors and assigns harmless, from and against all reasonable losses, claims, actions, demands, liabilities, damages, costs and expenses (including costs of judgments, settlements, court costs and reasonable attorneys' fees actually incurred) (collectively, "Information Disclosure Claims") arising from or related to: (i) the use or disclosure of Individually Identifiable Information (including PHI) by Covered Entity, its subcontractors, agents, or employees in violation of the terms of this Agreement or applicable law, and (ii) whether in oral, paper or electronic media, any HIPAA Breach of unsecured PHI and/or State Breach of Individually Identifiable Information by Covered Entity, its subcontractors, agents, or employees.
- B. Covered Entity and Business Associate shall seek to keep costs or expenses that the other may be liable for under this Section 9, including Information Disclosure Claims, to the minimum reasonably required to comply with the HITECH Act and HIPAA. Covered Entity and Business Associate shall timely raise all applicable affirmative defenses in the event a violation of this Agreement, or a use or disclosure of PHI or EPHI in violation of the terms of this Agreement or applicable law occurs.

10. Term and Termination.

- A. This Agreement shall commence on the Effective Date and shall remain in effect until terminated in accordance with the terms of this Section 10, provided, however, that termination shall not affect the respective obligations or rights of the parties arising under this Agreement prior to the effective date of termination, all of which shall continue in accordance with their terms.
- B. Covered Entity shall have the right to terminate this Agreement for any reason upon thirty (30) days written notice to Business Associate.

- C. Covered Entity, at its sole discretion, may immediately terminate this Agreement and shall have no further obligations to Business Associate if any of the following events shall have occurred and be continuing:
 - A. Business Associate fails to observe or perform any material covenant or obligation contained in this Agreement for ten (10) days after written notice thereof has been given to the Business Associate by Covered Entity; or
 - B. A violation by the Business Associate of any provision of the Confidentiality Requirements or other applicable federal or state privacy law relating to the obligations of the Business Associate under this Agreement.
 - D. Termination of this Agreement for either of the two reasons set forth in Section 10.c above shall be cause for Covered Entity to immediately terminate for cause any Business Arrangement pursuant to which Business Associate is entitled to receive PHI from Covered Entity.
 - E. Upon the termination of all Business Arrangements, either Party may terminate this Agreement by providing written notice to the other Party.
 - F. Upon termination of this Agreement for any reason, Business Associate agrees either to return to Covered Entity or to destroy all PHI received from Covered Entity or otherwise through the performance of services for Covered Entity, that is in the possession or control of Business Associate or its agents. In the case of PHI which is not feasible to "return or destroy," Business Associate shall extend the protections of this Agreement to such PHI and limit further uses and disclosures of such PHI to those purposes that make the return or destruction infeasible, for so long as Business Associate maintains such PHI. Business Associate further agrees to comply with other applicable state or federal law, which may require a specific period of retention, redaction, or other treatment of such PHI.
11. **No Warranty.** PHI IS PROVIDED TO BUSINESS ASSOCIATE SOLELY ON AN "AS IS" BASIS. COVERED ENTITY DISCLAIMS ALL OTHER WARRANTIES, EXPRESS OR IMPLIED, INCLUDING, BUT NOT LIMITED TO, IMPLIED WARRANTIES OF MERCHANTABILITY, AND FITNESS FOR A PARTICULAR PURPOSE.
12. **Ineligible Persons.** Business Associate represents and warrants to Covered Entity that Business Associate (i) is not currently excluded, debarred, or otherwise ineligible to participate in any federal health care program as defined in 42 U.S.C. Section 1320a-7b(f) ("the Federal Healthcare Programs"); (ii) has not been convicted of a criminal offense related to the provision of health care items or services and not yet been excluded, debarred, or otherwise declared ineligible to participate in the Federal Healthcare Programs, and (iii) is not under investigation or otherwise aware of any circumstances which may result in Business Associate being excluded from participation in the Federal Healthcare Programs. This shall be an ongoing representation and warranty during the term of this Agreement, and Business Associate shall immediately notify Covered Entity of any change in the status of the representations and warranty set forth in this section. Any breach of this section shall give Covered Entity the right to terminate this Agreement immediately for cause.

13. Miscellaneous.

- A. **Notice.** All notices, requests, demands and other communications required or permitted to be given or made under this Agreement shall be in writing, shall be effective upon receipt or attempted delivery, and shall be sent by (i) personal delivery; (ii) certified or registered United States mail, return receipt requested; or (iii) overnight delivery service with proof of delivery. Notices shall be sent to the addresses below. Neither party shall refuse delivery of any notice hereunder.

If to Covered Entity:

ATTN: Compliance Department
206 W. Fremont Ave.
Selah, WA 98942-1372

If to Business Associate:

ImageTrend, LLC
Attn: Legal Department
20855 Kensington Blvd.
Lakeville, MN 55044

14. **Waiver.** No provision of this Agreement or any breach thereof shall be deemed waived unless such waiver is in writing and signed by the Party claimed to have waived such provision or breach. No waiver of a breach shall constitute a waiver of or excuse any different or subsequent breach.
15. **Assignment.** Neither Party may assign (whether by operation or law or otherwise) any of its rights or delegate or subcontract any of its obligations under this Agreement without the prior written consent of the other Party. Notwithstanding the foregoing, Covered Entity shall have the right to assign its rights and obligations hereunder to any entity that is an affiliate or successor of Covered Entity, without the prior approval of Business Associate.
16. **Severability.** Any provision of this Agreement that is determined to be invalid or unenforceable will be ineffective to the extent of such determination without invalidating the remaining provisions of this Agreement or affecting the validity or enforceability of such remaining provisions.
17. **Entire Agreement.** This Agreement constitutes the complete agreement between Business Associate and Covered Entity relating to the matters specified in this Agreement, and supersedes all prior representations or agreements, whether oral or written, with respect to such matters. In the event of any conflict between the terms of this Agreement and the terms of the Business Arrangements or any such later agreement(s), the terms of this Agreement shall control unless the terms of such Business Arrangements are more strict with respect to PHI and comply with the Confidentiality Requirements, or the parties specifically otherwise agree in writing. No oral modification or waiver of any of the provisions of this Agreement shall be binding on either Party; provided, however, that upon the enactment of any law, regulation, court decision or relevant government publication and/or interpretive guidance or policy that the Covered Entity believes in good faith will adversely impact the use or disclosure of PHI under

this Agreement, Covered Entity may amend the Agreement to comply with such law, regulation, court decision or government publication, guidance or policy by delivering a written amendment to Business Associate which shall be effective thirty (30) days after receipt. No obligation on either Party to enter into any transaction is to be implied from the execution or delivery of this Agreement. This Agreement is for the benefit of, and shall be binding upon the parties, their affiliates and respective successors and assigns. No third party shall be considered a third-party beneficiary under this Agreement, nor shall any third party have any rights as a result of this Agreement.

18. **Governing Law.** This Agreement shall be governed by and interpreted in accordance with the laws of the state in which Business Associate is located, excluding its conflicts of laws provisions. Jurisdiction and venue for any dispute relating to this Agreement shall exclusively rest with the state and federal courts in the county in which Business Associate is located.
19. **Equitable Relief.** The parties understand and acknowledge that any disclosure or misappropriation of any PHI in violation of this Agreement will cause the other irreparable harm, the amount of which may be difficult to ascertain, and therefore agrees that the injured party shall have the right to apply to a court of competent jurisdiction for specific performance and/or an order restraining and enjoining any such further disclosure or breach and for such other relief as the injured party shall deem appropriate. Such right is to be in addition to the remedies otherwise available to the parties at law or in equity. Each party expressly waives the defense that a remedy in damages will be adequate and further waives any requirement in an action for specific performance or injunction for the posting of a bond.
20. **Nature of Agreement; Independent Contractor.** Nothing in this Agreement shall be construed to create (i) a partnership, joint venture or other joint business relationship between the parties or any of their affiliates, or (ii) a relationship of employer and employee between the parties. Business Associate is an independent contractor, and not an agent of Covered Entity. This Agreement does not express or imply any commitment to purchase or sell goods or services.
21. **Counterparts.** This Agreement may be executed in one or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same document. In making proof of this Agreement, it shall not be necessary to produce or account for more than one such counterpart executed by the party against whom enforcement of this Agreement is sought. Signatures to this Agreement transmitted by facsimile transmission, by electronic mail in portable document format (".pdf") form, or by any other electronic means intended to preserve the original graphic and pictorial appearance of a document, will have the same force and effect as physical execution and delivery of the paper document bearing the original signature.

IN WITNESS WHEREOF: the undersigned parties, each having authority to bind their respective organizations, hereby agree.

ClientImageTrendSignature:Sherry RaymondSignature:Print Name:SHERRY RAYMONDPrint Name:Title:SERAH MAYORTitle:Date:9-27-2023Date:

DATA EXCHANGE AUTHORIZATION

Between the Parties to this Agreement with Client as "Data Controller"

Whereas; ImageTrend is a provider of data management services and a current Business Associate to the Data Controller and;

Whereas; the Data Controller wishes ImageTrend to exchange certain ePHI data from and to the Data Controller's System, in ImageTrend's capacity as a Business Associate

Data Exchange Purpose The purpose of this Data Exchange Authorization is to exchange Data Controller's data in accordance with the table below that lists the data exchange work items to be fulfilled by ImageTrend ("the Identified Data Exchanges"). It is Data Controllers sole obligation to ensure the "Destination" column is accurate. ImageTrend will fulfill and exchange data with the listed Destination party, and will not deviate from the identified destination unless ImageTrend is directed otherwise in writing by Data Controller. Notwithstanding any term to the contrary, ImageTrend shall not be liable in any manner for sending or receiving data as outlined below; Data Controller assumes all risk for the data source(s) and destination(s) identified below.

Description	Quote Description	Data Source	Data Destination
Elite Site to Site Transfers	Elite Site to Site Transfers allows your agency to transfer EMS incidents in the field from your agency to other agencies using an Elite site that exists outside of your Elite System. The setup is based on a per agency basis.	ImageTrend at Lakeville, MN	AMR

Authorization. Data Controller hereby authorizes ImageTrend to transmit, import, and/or disclose in accordance with the Identified Data Exchanges, and to transmit, import and/or disclose other data reasonably necessary to achieve the purpose of each work line item outlined in the table above. This Agreement modifies any prior agreements of the parties only to the extent necessary to effect this agreement, and does not otherwise change the terms of any prior agreements between the parties.

Right to Revoke or Terminate. Data Controller may terminate or revoke the right to transmit or disclose data granted to ImageTrend by this Agreement at any time by providing reasonable written notice to ImageTrend and providing a commercially reasonable period of time in which to effect the termination.

The Parties hereby agree to this Data Exchange Authorization:

IN WITNESS WHEREOF: the undersigned parties, each having authority to bind their respective organizations, hereby agree.

Client

ImageTrend

Signature:

Sherry Raymond

Signature:

Print Name:

SHERRY RAYMOND

Print Name:

Title:

SERAH MAYOR

Title:

Date:

9-27-2023

Date:



Selah City Council
Regular Meeting
AGENDA ITEM SUMMARY

Meeting Date: 9/26/2023

Agenda Number: **13-B**

Action Item

Title: Inter-Local Agreement for the Yakima Valley Crisis Response Unit (CRU)

From: Daniel Christman, Chief of Police

Action Requested: Approval

Staff Recommendation: Approval

Board/Commission Recommendation: N/A

Fiscal Impact: Our contribution is estimated to be \$11,165 which will be included in our 2024 budget departmental request.

Funding Source: General Fund

Background/Findings/Facts: The Selah Police Department along with nine (9) other local law enforcement agencies, desire to establish and maintain a multi-jurisdictional Crisis Response Unit (CRU), which will be comprised of two specialized teams:

1. The Crisis Negotiations Team (CNT), and
2. The Special Weapons and Tactics Team (SWAT Team).

The purpose of the CRU is to utilize specialized training and weapons, and provide an effective response to combat any high-risk, high liability incident. The CRU deploys when local law enforcement is involved in a critical incident that is beyond their capabilities.

Attachments:

1. Interlocal Agreement
Attachment A: Annual Cost Allocation per City
Attachment B: CRU Budget for FY 2024

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

Record of all prior actions taken by the City Council and/or City Board, City Committee, Planning Commission, or the Hearing Examiner (if not applicable, please state none).

Date: **Action Taken:** None

9/26/2023 Ordinance No. XXXX:

RESOLUTION NO. 3050

A RESOLUTION AUTHORIZING THE MAYOR TO SIGN AN INTERLOCAL
AGREEMENT WITH THE YAKIMA VALLEY CRISIS RESPONSE UNIT (YVCRU).

WHEREAS, the Selah Police Department desires to partner with other local law enforcement agencies to improve delivery of services to our community, increase the safety of our officers and the community, and improve cost-effectiveness, and

WHEREAS, the Selah Police Department along with nine (9) other local law enforcement agencies wish to enter into this agreement to respond to specific high-risk, high-liability incidents in a manner that provides for effective use of personnel, equipment, funds, and training, and

WHEREAS, the YVCRU provides an effective response to specific critical high-risk, field operations that exceed the capabilities of a standard patrol response, and

WHEREAS, the City is required to enter into an interlocal agreement to join the YVCRU;

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

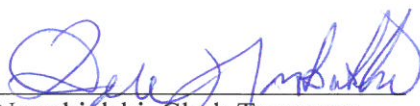
The Mayor is authorized and directed to sign the interlocal agreement with the Yakima Valley Crisis Response Unit on behalf of the City of Selah, and in care of the Selah Police Department.

This Resolution shall be effective immediately upon passage and signatures hereto.


PASSED AND ADOPTED BY THE CITY COUNCIL OF THE CITY OF SELAH, WASHINGTON, this 26th day of September, 2023.

ATTEST:


Sherry Raymond, Mayor


Dale Novobielski, Clerk Treasurer

APPROVED AS TO FORM:


Rob Case, City Attorney

INTERLOCAL COOPERATIVE AGREEMENT BETWEEN YAKIMA COUNTY, CITY OF GRANDVIEW, CITY OF MOXEE, CITY OF SELAH, CITY OF SUNNYSIDE, CITY OF TOPPENISH, CITY OF UNION GAP, CITY OF WAPATO, CITY OF YAKIMA, AND CITY OF ZILLAH

YAKIMA VALLEY CRISIS RESPONSE UNIT

I. PARTIES

The parties to this Agreement are Yakima County, City of Grandview , City of Moxee, City of Selah, City of Sunnyside, City of Toppenish, City of Union Gap, City of Wapato, City of Yakima, and the City of Zillah (hereinafter the “parties” or “jurisdictions”). Each of which is operating under the laws of the State of Washington.

II. AUTHORITY

This Agreement is entered into pursuant to Chapters 10.93 and 39.34 of the Revised Code of Washington.

III. PURPOSE

The parties desire to establish and maintain a multi-jurisdictional Crisis Response Unit. The CRU will be comprised of two specialized teams: The Crisis Negotiations Team (CNT) and the Special Weapons and Tactics Team (SWAT). The Unit will be established to provide specialized support in handling critical field operations where intense negotiations and/or special tactical deployment methods beyond the capacity of law enforcement officers in the field appear to be necessary.

IV. FORMATION

The parties hereby create a multi-jurisdictional unit comprised of the CNT and SWAT to be hereafter known as the “Yakima Valley Crisis Response Unit (YVCRU or “unit”)”. The testing process for participating jurisdiction’s employees to join YVCRU will be detailed in a policy manual that is approved by the Executive Board as outlined in Section VIII.

V. BENEFITS AND GOALS

A multi-jurisdictional effort to handle specific high-risk critical field operations, as well as incidents involving weapons of mass destruction, results in a more effective pooling of personnel, improved utilization of available funds, reduced duplication of equipment, improved training, development of specialized expertise, and increased utilization/application of a combined special response team. This results in improved services for the citizens of all participating jurisdictions, increased safety for officers and the community, and improved cost-effectiveness.

VI. UNIT OBJECTIVES

The objective of the YVCRU is to respond to specific high-risk incidents in a manner that provides for the effective use of personnel, equipment, funds, and training. The YVCRU shall respond as determined by the Unit Commander in accordance with Unit SOPs to any of the participating jurisdictions and provide a coordinated response to high-risk incidents. As special needs arise, it may be necessary to request from other law enforcement agencies assistance and/or personnel, at the discretion of the Incident Commander and/or the YVCRU Tactical Commander.

The YVCRU may also be available to law enforcement agencies outside Yakima County as provided by chapter 10.93 RCW when appropriate as determined by the YVCRU Commander and Presiding Officer of the Board, or their designees, and pursuant to SOPs pertaining to out-of-County response as created by the Executive Board.

VII. DURATION AND TERMINATION

The minimum term of this Agreement shall be one (1) year, effective upon the date of final signature. This Agreement shall automatically extend for consecutive one (1) year terms without the action of the legislative bodies of the participating jurisdictions, unless and until terminated pursuant to the terms of this Agreement. Termination shall be effective if notice is provided at least ninety (90) days before the end of any term.

A jurisdiction may withdraw its participation in the YVCRU by providing written notice of its withdrawal and serving such notice upon each Executive Board member of the remaining jurisdictions. A notice of withdrawal shall become effective ninety (90) days after service of the notice on all participating members.

The YVCRU may be terminated by a majority vote of the Executive Board. Any vote for termination shall occur only when the sheriff or police chief or his/her designee of each participating jurisdiction has been given a 30-day notice of the meeting in which such vote is taken.

The Board may, at its discretion and upon 30-day notice, terminate the participation of any participating jurisdiction for breach of this Agreement, including, but not limited to, its contribution or staffing obligations, unless such breach is cured to the satisfaction of the Board within the 30-day notice period. Any participating jurisdiction in breach of this Agreement shall not have the right to vote on any matter before the Board during the notice period and until the breach has been cured.

VIII. GOVERNANCE

The affairs of the YVCRU shall be governed by an Executive Board ("Board"), whose members are composed of the sheriff and police chiefs, or his/her designee, from each participating jurisdiction. If a Board member elects to send their designee they must be of a command-level rank and have decision-making authority. Each member of the Board shall have an equal vote and voice on all Board decisions. All Board decisions shall be made by a majority vote of the Board members, or their designees, appearing at the meeting in which the decision is made, provided a quorum of at least a majority of members is present. However, any prevailing vote to change the written policies, regulations, and operational procedures of the YVCRU shall require the consent of a super-majority of the Board. In-person attendance is preferred. However, virtual meetings or a combination of virtual meetings and in-person meetings are authorized when warranted. A presiding officer shall be elected by the members of the Board to serve a term of two (2) years. The Board may also elect a deputy presiding officer from the membership of the board to act as the presiding officer during times the presiding officer is unavailable. Neither the presiding officer nor the deputy presiding officer should be from the same jurisdiction as the current team commander. The presiding officer and deputy presiding officer will serve staggered two-year terms, except the first term of the presiding officer will be three years and the first term of the deputy presiding officer will be two years. In the instance that a tie-breaking vote is needed for a decision of the Board, the Unit Commander will be the deciding vote.

The presiding officer is responsible for facilitating the meetings, providing notice of meetings and providing any materials for the meetings in advance so that all participants are fully advised of the agenda and items being discussed.

The Board shall meet quarterly unless otherwise determined by the Board. The presiding officer, or any Board member, may call extra meetings as deemed appropriate. The presiding officer shall provide no less than seventy-two (72) hours' notice of all meetings to all members of the Board. However, in an emergency situation, the presiding officer may conduct a telephonic meeting or virtual meeting to resolve any issues related to such an emergency.

The YVCRU written policies, regulations, and operational procedures shall apply to all YVCRU operations. Thus, to the extent that the written policies, regulations, and operational procedures of the YVCRU conflict with the policies, regulations, and operational procedures

of the individual jurisdictions, the YVCRU written policies, regulations, and procedures shall prevail.

Within 30 days of the effective date of this agreement, the Board shall hold its initial Board meeting in order to appoint the Unit Commander, presiding officer, and deputy presiding officer, and draft written policies, regulations, and operational procedures.

IX. STAFF

A Unit Commander, which shall be a command-level officer with sufficient tactical knowledge and experience for the position, shall be appointed annually by the Board to act as the principal liaison and facilitator between the Board and the members of the YVCRU. The Unit Commander shall operate under the direction of the presiding officer of the Board. The Unit Commander shall be responsible for informing the Board on all matters relating to the function, expenditures, accomplishments, training, number of calls that the YVCRU responds to, problems of the YVCRU, and any other matter as requested by the Board. The Unit Commander may be removed by the action of the Board at any time and for any reason, with or without cause.

The Unit Commander shall prepare monthly written reports to the Board on the actions, progress, and finances of the YVCRU. In addition, the Unit Commander shall be responsible for presenting rules, procedures, regulations, and revisions thereto for Board evaluation.

Each jurisdiction will be expected to contribute a minimum of ten percent (10%) of their commissioned staff to YVCRU. Board approval must be obtained for the jurisdiction to assign less than this staffing requirement. The personnel assigned to the YVCRU shall be considered employees of the contributing jurisdiction. The contributing jurisdiction shall be solely and exclusively responsible for the compensation and benefits for the personnel it contributes to the YVCRU. All rights, duties, and obligations of the employer and the employee shall remain with the contributing jurisdiction. Each jurisdiction shall be responsible for ensuring compliance with all applicable laws with regard to employees and with provisions of any applicable collective bargaining agreements and civil service rules and regulations.

The Executive Board, at its discretion, may consider volunteers with specific skills needed by the unit. Volunteers would also have to be sponsored by a member agency. An example of volunteers whom the unit might need are physicians, paramedics, or mental health professionals.

The Board shall appoint the finance department of a participating jurisdiction to manage the finances of the YVCRU. Before appointing the finance department of a particular jurisdiction to manage the finances of the YVCRU, the Board shall consult with the finance department of the jurisdiction and obtain its approval. The duty of managing the finances of the YVCRU may be rotated to other participating jurisdictions at the discretion of the Board.

The Board may, upon unanimous vote, appoint one (1) or more legal advisors to advise the Board on legal issues affecting the YVCRU. The legal advisor(s) shall, when appropriate or when requested by the Board, consult with the legal representatives of all participating jurisdictions before rendering legal advice. In the event a Board member withdraws his or her consent to the appointment of a legal advisor(s), the appointment shall be terminated immediately.

X. COMMAND AND CONTROL

During tactical field activation of the YVCRU, an Incident Commander from the agency in which the incident is occurring, YVCRU Tactical Commander and YVCRU Team Leader(s) will be designated in accordance with Unit SOPs. The duties and procedures to be utilized by the Incident Commander, the YVCRU Tactical Commander, and YVCRU Team Leaders shall be set forth in the standard operating procedures approved by the Board. The standard operating procedures approved by the Board may designate other personnel to be utilized during an incident.

XI. EQUIPMENT, TRAINING, AND BUDGET

Each participating jurisdiction shall acquire the individual equipment of its participating YVCRU members. Each participating jurisdiction shall provide sufficient funds to update, replace, repair, and maintain the equipment and supplies utilized by its participating YVCRU members, and to provide for the training of its participating YVCRU members.

The equipment, supplies, and training provided by each jurisdiction to its personnel participating in the YVCRU shall, unless otherwise determined by the Board, be of the capability and quality consistent with industry and Unit standards.

Each member jurisdiction shall maintain an independent budget system to account for funds allocated and expended by its participating YVCRU members.

There shall be a YVCRU annual budget. The purpose of the budget is to fund repairs and maintenance of equipment, purchase supplies, and fund new equipment for the unit. Each jurisdiction will contribute to the budget based on its percentage of the population in Yakima County as determined by the latest United State Census. The Board must approve the proposed annual budget, which shall be on a calendar basis, for the upcoming year by July 1st of the current year, except for the initial budget year. Each police chief or sheriff shall then present their participating jurisdiction's required budget contribution for the following year to that jurisdiction's governing body or person(s) with budgeting authority with sufficient timeliness to allow for evaluation of the jurisdiction's proposed contribution. All

contributions owed from each participating jurisdiction shall be due by January 31st of the current budget year.

XII. DISTRIBUTION OF ASSETS UPON TERMINATION

Termination shall be in accordance with those procedures set forth in proper sections. Each participating jurisdiction shall retain sole ownership of equipment it solely purchased and provided to its participating YVCRU members and YVCRU.

Any capital assets acquired with joint funds of the YVCRU or unspent funds shall be divided among the participating jurisdictions based on the proportion of each participating jurisdiction's percentage of the population in Yakima County as determined by the latest United State Census at the assets' fair market value upon termination. The value of the assets of the YVCRU shall be determined by using commonly accepted methods of valuation. If two (2) or more participating jurisdictions desire an asset and cannot reach an agreement, the asset shall be declared surplus by the Board and disposed of pursuant to RCW 39.33 for the disposition of surplus property. The proceeds from the sale or disposition of any YVCRU property, after payment of any and all costs of sale or debts of the agency, shall be distributed to those jurisdictions participating in the YVCRU at the time of dissolution in proportion to the jurisdiction's percentage participation in the YVCRU as the date of dissolution. In the event that one (1) or more jurisdictions terminate their participation in the Yakima Valley Crisis Response Unit, but the YVCRU continues to exist, the jurisdiction terminating participation shall have the right to be paid the equivalent of their contributions to the capital budget for the previous three years, paid out over the proceeding five years. The right to such compensation shall not apply if the terminating jurisdiction is not current on its budget contributions.

XIII. LIABILITY, HOLD HARMLESS, AND INDEMNIFICATION

It is the intent of the participating jurisdictions to provide services of the YVCRU without the threat of being subject to liability to one another and to fully cooperate in the defense of any claims or lawsuits arising out of or connected with YVCRU actions that are brought against the jurisdictions.

To this end, the participating jurisdictions agree to equally share responsibility and liability for the acts or omissions of their participating personnel when acting in furtherance of this Agreement and within the course and scope of their employment with the employing agency.

In the event that an action is brought against any of the participating jurisdictions or its employees, resultant from actions taken under the scope of this agreement or the YVCRU Command, each jurisdiction shall be responsible for an equal share of any award for or

settlement of claims including but not limited to the costs of defense, settlement, costs, judgment, or awards, regardless of which jurisdiction or employee that action is taken against or which jurisdiction or employee is ultimately responsible for the conduct. The jurisdictions shall share the expense of the claim equally regardless of the number of jurisdictions named in the lawsuit or claim or the number of officers from each jurisdiction named in the lawsuit or claim. This section shall be subject to the conditions and limitations set forth in subsections A through H below. Payment of any award for punitive damages is the sole responsibility of the person the award is entered against or their employing agency. Nothing herein shall be construed to create joint responsibility for punitive damages.

- A. **Jurisdiction Not Involved In YVCRU Response.** In the event that a jurisdiction or its personnel were not involved in the actions, coordination, command or any other aspect of the YVCRU response to the incident that gives rise to a claim or lawsuit, and judgment on the claim or lawsuit does not, in any manner, implicate the acts of a particular jurisdiction or its personnel, such jurisdiction shall not be required to share responsibility for the payment of the judgment, defense costs, settlement, or award.
- B. **Automobile Liability.** Nothing herein shall require, or be interpreted to require, indemnification or sharing in the payment of any claim or loss for automobile liability.
- C. **Intentionally Wrongful or Conduct Beyond the Scope of Employment.** Nothing herein shall require, or be interpreted to require indemnification or sharing in the payment of any judgment against any YVCRU personnel for intentionally wrongful or conduct that is outside of the scope of employment of any individual or for any judgment of punitive damages against any individual or jurisdiction. The legislative authority of the employing agency will be the determinant of good faith conduct within the scope of employment as defined by RCW 4.96.041.
- D. **Collective Representation and Defense.** The jurisdictions shall make efforts to work with their respective risk pools to retain joint legal counsel to collectively represent and defend the jurisdictions in any legal action. Those jurisdictions retaining joint counsel shall share equally the costs of such representation or defense.

In the event a jurisdiction does not agree to joint representation, or there is a conflict with their employee necessitating separate representation, that jurisdiction shall be solely responsible for all defense attorney's fees accrued by its individual representation or defense.

The jurisdictions and their respective defense counsel shall make a good faith attempt to cooperate with the other participating jurisdictions by, including but not limited to, providing all documentation requested, and making YVCRU members available for depositions, discovery, settlement conferences, strategy meetings, and trial.

- E. **Removal from Lawsuit.** In the event a jurisdiction or employee is successful in withdrawing or removing the jurisdiction or employee from a lawsuit by summary judgment, qualified immunity, or otherwise, the jurisdiction shall nonetheless be required to pay its equal share of any award for or settlement of the lawsuit; PROVIDED, however, that in the event a jurisdiction or employee is removed from the lawsuit and subsection (A) of this section is satisfied, the jurisdiction shall not be required to pay any share of the award or settlement.
- F. **Settlement Process.** It is the intent of the Agreement that the jurisdictions act in good faith on behalf of each other in conducting settlement negotiations on liability claims or lawsuits so that, whenever possible, all parties agree with the settlement or, in the alternative, agree to proceed to trial. In the event a claim or lawsuit requires the sharing of liability, no individual jurisdiction shall be authorized to enter into a settlement agreement with a claimant or plaintiff unless a majority of the YVCRU Board agrees with the terms of the settlement. Any settlement made by an individual jurisdiction without the agreement of the remaining jurisdictions, when required, shall not relieve the settling jurisdiction from paying an equal share of any final settlement or award.
- G. **Defense Waiver.** This section shall not be interpreted to waive any defense arising out of RCW Title 51.

H. **Insurance.** The failure of any insurance carrier or self-insured pooling organization to agree to or follow the terms of this section shall not relieve any individual jurisdiction from its obligations under this Agreement.

XIV. NOTICE OF CLAIMS, LAWSUITS, AND SETTLEMENTS

In the event a claim is filed or a lawsuit is brought against a participating jurisdiction or its employees for actions arising out of their conduct in support of YVCRU operations, the jurisdiction shall promptly notify the other jurisdictions that the claim or lawsuit has been initiated. Any documentation, including the claim or legal complaints, shall promptly be provided to each participating jurisdiction.

Any jurisdiction or member who believes or knows that another jurisdiction may be liable for a claim, settlement, or judgment that arises from a YVCRU action or operation, shall have the burden of notifying each participating jurisdiction of all claims, lawsuits, settlements, or demands made to that jurisdiction. In the event a participating jurisdiction has a right, pursuant to section XIII of this Agreement, to be defended and held harmless by another participating jurisdiction, the jurisdiction having the right to be defended and held harmless shall promptly tender the defense of such claim or lawsuit to the jurisdiction that must defend and hold the other harmless.

Each Sheriff or Chief will be responsible for making any required notification or providing required documentation to the appropriate legal counsel and governmental officials or departments within their jurisdiction.

XV. PROCESSING OF CLAIMS.

A. Designation of Lead Jurisdiction.

There shall be a lead jurisdiction for processing a claim that is filed with and against counties/cities for alleged damages and injuries that occur as a result of YVCRU activities. The lead jurisdiction shall be the jurisdiction within which the YVCRU response occurred; PROVIDED, that in the event the jurisdiction within which the YVCRU response occurred did not participate in the YVCRU response, the lead jurisdiction shall be the jurisdiction within which the incident that required the YVCRU response originated. In the event that a jurisdiction that was not involved in the YVCRU response receives the claim, that jurisdiction shall notify the other jurisdictions in accordance with Section XIV of this Agreement and shall use its best efforts to determine who the appropriate lead jurisdiction is.

B. Assistance of Unit Commander.

The YVCRU Commander shall assist the lead jurisdiction in responding to a claim. The YVCRU Commander shall be responsible for gathering all records relating to the YVCRU response. These records shall include, but are not limited to, incident reports, notes, transcripts, photos, evidence logs, recorded statements, documents from emergency dispatch centers, and warrants from all jurisdictions that participated in the YVCRU response. The Unit Commander shall also provide a list of personnel who participated in the response and their contact information. The Unit Commander shall deliver all copies of the records to the lead jurisdiction promptly upon request. All jurisdictions shall provide any requested documents regarding any claim in a timely manner upon request.

C. Claims of \$5,000 or less.

i. Lead Jurisdiction Responsibilities.

The lead jurisdiction shall be responsible for working with the Unit Commander to gather records relating to the YVCRU response. The lead jurisdiction shall provide records to its claims administrator and shall assist in assessing liability for acts associated with the claim. The lead jurisdiction shall notify the other jurisdictions of any determinations as to liability. In determining whether a claim should be paid, the lead jurisdiction and its claims administrator shall, at a minimum, consider the potential legal defenses to the claim and the costs of defending the claim.

ii. Liability Determination – Appointment of Damages.

The lead jurisdiction, with the assistance of its claims administrator and risk manager, shall determine whether the YVCRU is liable for damages set forth in a claim and whether the payment of the claim would be in the best interest of the jurisdictions and/or the YVCRU. In the event the lead jurisdiction determines that payment of a claim is appropriate, such determination shall be final and binding upon other jurisdictions and payment shall be apportioned equally among all jurisdictions that participated in the YVCRU response. The lead jurisdiction shall provide full payment to the claimant, and each jurisdiction that participated in the response shall reimburse the lead jurisdiction for its equal share of such payment.

Prior to the payment of any claim, and as a condition of such payment, the lead jurisdiction providing payment shall obtain from the claimant a complete

and total release of liability on behalf of all jurisdictions participating in the YVCRU and each and every officer, agent, or volunteer of those participating jurisdictions.

D. Claims over \$5,000.

i. Lead Jurisdiction Responsibilities.

The lead jurisdiction shall schedule a meeting with all jurisdictions participating in the YVCRU to discuss the claim and to determine the appropriate manner in which to respond and/or defend the claim. The Board and persons listed in Section XVII of this Agreement shall be notified of the meeting.

XVI. PROCESSING OF LAWSUITS.

A. Notification to Other Jurisdictions.

In the event a jurisdiction is served with a lawsuit, that jurisdiction shall provide notice and documentation of the lawsuit to each of the other jurisdictions in accordance with Section XIV of this Agreement.

B. Coordination of Initial Meeting.

The jurisdiction that initially receives a lawsuit shall schedule a meeting with all of the jurisdictions participating in the YVCRU to discuss the lawsuit. The Board and persons listed in Section XVII of this Agreement shall be notified of the meeting.

XVII. COMPLIANCE WITH THE LAW

The YVCRU and all its members shall comply with all federal, state, and local laws that apply to the YVCRU.

XIII. ALTERATIONS

This Agreement may be modified, amended, or altered by agreement of all participating jurisdictions and such alteration, amendment, or modification shall be effective when reduced to writing and executed in a manner consistent with paragraph XXII of this Agreement.

XIX. RECORDS

Each jurisdiction shall maintain training records related to the YVCRU for a minimum of seven (7) years. A copy of these records will be forwarded and maintained with the designated YVCRU Training Coordinator. All records shall be available for full inspection and copying by each participating jurisdiction to the extent allowable by law.

XX. FILING

Upon execution hereof, this Agreement shall be filed with the city clerks of the respective participating municipalities, and such other governmental agencies as may be required by law.

XXI. SEVERABILITY

If any part, paragraph, section, or provision of this Agreement is held to be invalid by any court of competent jurisdiction, such adjudication shall not affect the validity of any remaining section, part, or provision of this Agreement.

XXII. MUNICIPAL AUTHORIZATIONS

This Agreement shall be executed on behalf of each participating jurisdiction by its duly authorized representative and pursuant to an appropriate resolution or ordinance of the governing body of each participating jurisdiction. The Agreement shall be deemed effective upon the last date of execution by the last so authorized representative. This Agreement may be executed by counterparts and be valid as if each authorized representative had signed the original document.

By signing below, the signor certifies that he or she has the authority to sign this Agreement on behalf of the jurisdiction, and the jurisdiction agrees to the terms of this Agreement.

County of Yakima

Sheriff Bob Udell

Date: _____

City of Grandview

Gloria Mendoza, Mayor

Date: _____

Kal Fuller, Chief

Date: _____

City of Moxee

LeRoy Lenseigne, Mayor

Date: _____

Jeff Burkett, Chief

Date: _____

City of Selah

Sherry Raymond
Sherry Raymond, Mayor

Date: 9-28-23

Dan Christman, Chief

Date: _____

City of Sunnyside

Elizabeth Alba, City Manager

Rob Layman, Chief

Date: _____

Date: _____

City of Toppenish

Debbie Zabell, City Manager

John Clary, Chief

Date: _____

Date: _____

City of Union Gap

Sharon Bounds, City Manager

Gregory Cobb, Chief

Date: _____

Date: _____

City of Wapato

Margaret Estrada, Mayor

Nolan Wentz, Chief

Date: _____

Date: _____

City of Yakima

Bob Harrison, City Manager

Matthew Murray, Chief

Date: _____

Date: _____

City of Zillah

Dr. Scott Carmack, Mayor

Tim Quantrell, Chief

Date: _____

Date: _____

ATTACHMENT A**Crisis Response Unit – Cost per Jurisdiction:**

JURISDICTION	POPULATION	% OF POPULATION	COST
Grandview	10,960	4.25 %	\$14,875
Granger	3,690	1.43 %	\$5,005
Harrah	580	0.2 %	\$700
Mabton	1,975	0.77 %	\$2,695
Moxee	4,405	1.71 %	\$5,985
Naches	1,110	0.43 %	\$1,505
Selah	8,235	3.19 %	\$11,165
Sunnyside	16,400	6.35 %	\$22,225
Tieton	1,430	0.55 %	\$1,925
Toppenish	8,870	3.44 %	\$12,040
Union Gap	6,595	2.56 %	\$8,960
Wapato	4,610	1.79 %	\$6,265
Yakima	97,810	37.9 %	\$132,650
Yakima County	88,240	34.19 %	\$119,665
Zillah	3,190	1.24 %	\$4,340
TOTALS	258,100	100 %	\$350,000

ATTACHMENT B

Crisis Response Unit – First Fiscal Year Budget:

Fund					Account	Title	Budget
						Operations	
650	589	30	31	0		SUPPLIES	13,000
650	589	30	32	0		FUEL	5,000
650	589	30	35	0		SMALL TOOLS & EQUIP	10,000
650	589	30	41	0		PROFESSIONAL SERVICES	20,000
650	589	30	43	0		TRAVEL	5,000
650	589	30	48	0		REPAIRS & MAINT	10,000
650	589	30	49	0		MISCELLANEOUS	5,000
						Training	
650	589	30	31	1		TRAINING SUPPLIES	47,000
650	589	30	43	1		TRAINING TRAVEL	15,000
650	589	30	49	1		TRAINING MISCELLANEOUS	15,000
						Capital Reserve	
650	589	30	64	0		Machinery and Equipment	40,000
650	589	30	64	1		CNT Vehicle	165,000
						Total	350,000



Selah City Council
Regular Meeting
AGENDA ITEM SUMMARY

Meeting Date: 9/26/2023

Agenda Number: 13-C

Action Item

Title: Resolution Authorizing the Mayor to Sign "Task Order No. 2023-09" with HLA Engineering and Land Surveying, Inc., for Professional Services Related to the City's Wastewater Treatment Plant Improvements Project

From: Rocky D. Wallace, Public Works Director

Action Requested: Approval

Staff Recommendation: Approval

Board/Commission Recommendation: N/A

Fiscal Impact: \$2,800,000.00 for professional engineering fees.

Funding Source: 465 Sewer Reserve Fund. (The City received a direct budget appropriation of \$1,398,740.00 and will seek additional funding via grant/loan applications.)

Background/Findings/Facts: The City desires to construct a new wastewater treatment plant (WWTP), as summarized and recommended in the recent Wastewater Treatment Facilities Engineering Report. The proposed project will address deficiencies associated with the condition of existing processes and equipment, a lack of redundancy in critical processes, and a projected shortfall in treatment capacity.

The City submitted a request for direct budget appropriation in December 2022 to complete environmental permitting and design of the new WWTP. The request identified a total project cost of \$2,800,000.00 for this phase of work with an expectation that the City would finance approximately 50% of the preconstruction effort from sewer reserves. The City was awarded a direct budget appropriation in the 2023-2025 State Capital Budget, resulting in a net grant award of \$1,398,740.00 (\$1,440,000.00 appropriation – 3% Department of Commerce administrative fee = \$1,398,740.00).

As identified in the Wastewater Treatment Facilities Engineering Report and subsequent legislative appropriation application, the anticipated total cost for design of the WWTP, including inflation, is approximately \$4,960,000.00. Therefore, the initial phase described by the direct budget appropriation application is expected to include environmental review and permitting, site layout, and 60% design of the new WWTP. This phase of work will also include preparation of funding applications for securing the remaining design funding and construction funding. This Task Order will be amended in the future to include the remaining design efforts for development of final plans and specifications necessary for competitive bidding contracting with

subconsultants for support services (architectural, electrical, geotechnical, mechanical, and structural engineering).

The entity of HLA Engineering and Land Surveying, Inc. (HLA) is one of the City's contracted engineering firms and provides professional engineering services to the City on a project-by-project basis, because the City does not directly employ any engineer(s) on its staff. HLA is willing and able to provide the necessary engineering services on this Project. A written task order – labeled "Task Order No. 2023-09" – has been prepared, reflecting HLA's expected maximum fees of \$2,800,000.00.

The attached proposed Resolution will, if approved, authorize the Mayor to sign Task Order No. 2023-09, so that work can commence on this Project forthwith. There will be the need for a budget adjustment since this Project was not included in the City's 2023 budget.

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

Record of all prior actions taken by the City Council and/or City Board, City Committee, Planning Commission, or the Hearing Examiner (if not applicable, please state none).

Date:	Action Taken:
2/28/2023	Resolution No. 2987 adopting the City's Wastewater Treatment Plant Facility Plan and approving submission of the Plan by Public Works to the Department of Ecology for approval of the Plan
1/24/2023	Resolution No. 2973 authorizing the Mayor to sign, on behalf of the City, Amendment No. 1 to Task Order 2021-02 with HLA Engineering and Land Surveying, Inc., Pertaining to the Wastewater Treatment Plant Facility Plan
12/16/2022	Submission of the 2023 Legislative Session Member Requested Local Community Project Information Form
4/13/2021	Resolution No. 2840 authorizing the Mayor to sign Task Order 2021-02 between the City of Selah and HLA Engineering and Land Surveying, Inc. to provide Engineering and Land Surveying Services for the Wastewater Treatment Plant Facility Plan (Project)

RESOLUTION NO. 3051

RESOLUTION AUTHORIZING THE MAYOR TO SIGN "TASK ORDER NO. 2023-09"
WITH HLA ENGINEERING AND LAND SURVEYING, INC., FOR PROFESSIONAL
SERVICES RELATED TO THE CITY'S WASTEWATER TREATMENT PLANT
IMPROVEMENTS PROJECT

WHEREAS, the City desires – as part of what will be known as the its Wastewater Treatment Plant Improvements Project – to begin the design phase for a new wastewater treatment plant, and to also undertake related tasks and actions; and

WHEREAS, the entity of HLA Engineering and Land Surveying, Inc. (HLA) is one of the City's contracted engineering firms and provides professional engineering services to the City on a project-by-project basis pursuant to a previously-entered-into Contract for Professional Engineering Services, because the City does not directly employ any engineer(s) on its staff; and

WHEREAS, HLA is willing and able to provide the professional planning services that are necessary for the design phase of this Project; and

WHEREAS, HLA has drafted a four-page "Task Order No. 2023-09", which recites HLA's scope of work and HLA's expected maximum fees of \$64,900.00; and

WHEREAS, the terms of Task Order No. 2023-09 are acceptable to City staff and City staff recommends that the City Council authorize the Mayor to sign it; and

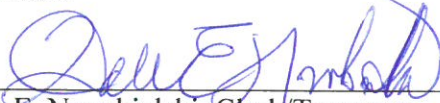
WHEREAS, the City Council finds that good causes exists;

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF SELAH, WASHINGTON that the Mayor be and is authorized to sign the four-page Task Order No. 2023-09 with HLA in the form appended hereto.

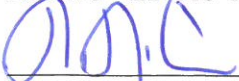
PASSED AND ADOPTED BY THE CITY COUNCIL OF THE CITY OF SELAH, WASHINGTON this 26th day of September, 2023.


Sherry Raymond, Mayor

ATTEST:


Dale E. Novobielski, Clerk/Treasurer

APPROVED AS TO FORM:


Rob Case, City Attorney

TASK ORDER NO. 2023-09

REGARDING GENERAL AGREEMENT BETWEEN THE CITY OF SELAH
AND

HLA ENGINEERING AND LAND SURVEYING, INC. (HLA)

PROJECT DESCRIPTION:

Wastewater Treatment Plant Improvements
HLA Project No. 23166E

The City of Selah (CITY) desires to construct a new wastewater treatment plant (WWTP) in the vicinity of the existing industrial pretreatment plant east of the main treatment plant, as summarized and recommended in the recent *Wastewater Treatment Facilities Engineering Report*. The proposed project will address deficiencies associated with the condition of existing processes and equipment, a lack of redundancy in critical processes, and a projected shortfall in treatment capacity.

The CITY submitted a request for direct budget appropriation in December 2022 to complete environmental permitting and design of the new WWTP. The request identified a total project cost of \$2,800,000 for this phase of work with an expectation that the CITY would finance approximately 50% of the preconstruction effort from sewer fund reserves. The CITY was awarded a direct budget appropriation in the 2023-25 State Capital Budget, resulting in a net grant award of \$1,398,740 (\$1,442,000 appropriation - 3% Department of Commerce administrative fee = \$1,398,740).

As identified in the *Wastewater Treatment Facilities Engineering Report* and subsequent legislative appropriation application, the anticipated total cost for design of the new WWTP, including inflation, is approximately \$4,960,000. Therefore, the initial phase described by the direct budget appropriation application is expected to include environmental review and permitting, site layout, and 60% design of the new WWTP. This phase of work will also include preparation of funding applications for securing the remaining design funding and construction funding. This Task Order will be amended in the future to include remaining design efforts for development of final plans and specifications necessary for competitive bidding and contracting with subconsultants for support services (architectural, electrical, geotechnical, mechanical, and structural engineering).

SCOPE OF SERVICES:

At the direction of the CITY, HLA and its subconsultants shall provide the following professional services for the Wastewater Treatment Plant Improvements (PROJECT):

1.0 Design and Construction Funding Applications

- 1.1 Coordinate with funding agency staff to review the PROJECT and determine eligibility for funding. The potential funding sources are assumed to be Department of Ecology (Ecology) Clean Water State Revolving Fund (CWSRF), USDA Rural Development (USDA-RD), Public Works Board (PWB), and additional direct budget appropriations administered by the Washington State Department of Commerce (Commerce).
- 1.2 Prepare drawing exhibits as necessary for the PROJECT.
- 1.3 Attend meetings with funding agency staff to develop a funding plan for the PROJECT. A maximum of five (5) meetings are included.
- 1.4 Provide draft funding application documents for CITY review.
- 1.5 Based on comments from the CITY, prepare final funding applications for submittal by the CITY through funding agency online portals.

2.0 Funding Administration

- 2.1 Complete reporting requirements for administration of the grant(s)/loan(s) throughout the PROJECT as required for Ecology, USDA-RD, PWB, and/or Commerce. It is assumed that reporting and payment requirements will be completed throughout the duration of both this task and supplementary design funding, on a monthly basis.
- 2.2 Administration services associated with the construction funding will be provided in a future construction services Task Order.

3.0 Environmental and Cultural Resources Review

- 3.1 Assist the CITY with State Environmental Policy Act (SEPA), State Environmental Review Policy (SERP), National Environmental Policy Act (NEPA), wetland investigation/delineation, and cultural resources review requirements for transmittal to regulatory authorities for review and action. An Environmental Impact Statement (EIS) is not anticipated to be required for this PROJECT. Should it be determined that an EIS must be prepared, it will be addressed in an Amendment to this Task Order.

4.0 Design Engineering

- 4.1 Call for utility locates prior to survey and perform topographic survey of the PROJECT area as required to complete design, plans, and specifications.
- 4.2 Prepare site topographic survey in AutoCAD format showing field-located improvements and utilities.
- 4.3 Attend monthly design meetings with CITY as needed to obtain input regarding proposed improvements.
- 4.4 Incorporate results of environmental review into site mapping to determine proposed site layout and which areas of the CITY property can support construction efforts without significant mitigation requirements.
- 4.5 Prepare permitting documents for proposed work to be completed within flood plains, wetlands, railroad rights-of-way, or other affected entities identified during public comment periods for environmental review.
- 4.6 Provide and review 30 percent plans and cost estimate with CITY staff.
- 4.7 Provide and review 60 percent plans, specifications, and cost estimate with CITY staff.

5.0 Additional Services

- 5.1 Provide professional engineering services for additional work requested by the CITY that is not included in this Task Order.

6.0 Items to be Furnished and Responsibility of the CITY

The CITY will provide or perform the following:

- 6.1 Provide full information as to the CITY's requirements for 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 the 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 so as not to delay the work of HLA.
- 6.4 Obtain approval from all required governmental authorities for the PROJECT, and approvals and consents from other individuals or bodies as necessary for completion of improvements. This includes any public comment efforts, CITY Council presentations, or other public meetings. Pay all review fees and costs associated with obtaining such approvals.
- 6.5 Pay for all necessary testing, permitting, and/or advertisement costs.

TIME OF PERFORMANCE:

The services described above shall be completed as follows:

1.0 Design and Construction Funding Applications

- 1.1 Complete Ecology preconstruction funding application for submittal in October 2023.
- 1.2 Coordinate with Ecology staff to update construction cost estimate based upon 60% design progress and provide information as requested for them to provide letter of conditions for construction funding without requiring completion of construction funding application in October 2024.
- 1.3 Complete additional design and construction funding applications for USDA-RD and PWTF programs and State budget appropriations if funding meetings determine this to be in the CITY's best interest.
- 1.4 Prepare Engineering Report Amendment and provide supplemental project documentation as requested by USDA-RD and PWTF programs to meet Preliminary Engineering Report requirements, as needed.

2.0 Funding Administration

Time to prepare reports for funding agencies will begin upon first reimbursement request from Commerce for the direct appropriation funds and will continue through the completion of design engineering. Upon expenditure of Commerce funding, reimbursement requests are expected to cease until receipt of additional design funding through Ecology, anticipated in February 2025.

3.0 Environmental and Cultural Resources Review

Time of completion for work will begin upon receipt of this signed Task Order (September 2023) and is expected to conclude in approximately September 2024.

4.0 Design Engineering

Time of completion for work directed by the CITY under this phase shall begin upon receipt of this signed Task Order (September 2023), and a 60% design milestone is estimated for August 2025. It is anticipated that a Task Order amendment will be executed prior to completion of the tasks described herein in order to expand the scope of work to include 100% design completion and full execution of subconsultant contracts. Subconsultant progress through 60% completion will be limited to project coordination to assist in decision making and layout. As such, 60% plans and specifications for electrical, structural, architectural, and HVAC designs are expected to be generic in nature. The timing of the Task Order amendment will be dependent upon when design funding is received from Ecology, anticipated in February 2025.

5.0 Additional Services

Time of completion for 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 SERVICES:

For services furnished by HLA as described in this Task Order, the CITY agrees to pay HLA the fees as set forth herein. The amounts listed below may be revised only by written agreement of both parties.

1.0 Design and Construction Funding Applications

All work for this phase shall be performed on a time-spent basis at normal hourly billing rates included in our Agreement for Professional Services, plus reimbursement for non-salary expenses for the estimated fee of \$100,000.

2.0 Funding Administration

All work for this phase shall be performed on a time-spent basis at normal hourly billing rates included in our Agreement for Professional Services for the not to exceed fee of \$50,000.

3.0 Environmental and Cultural Resources Review

All work for this phase shall be performed on a time-spent basis at normal hourly billing rates included in our Agreement for Professional Services for the not to exceed fee of \$80,000.

4.0 Design Engineering

All work for this phase shall be performed for the lump sum fee of \$2,570,000, based on the following estimated breakdown:

4.1 Preliminary Design (30% Submittal): \$1,200,000

This task includes preparation of preliminary design layouts and utility routing for review with the CITY to guide design efforts.


4.2 Design Plans and Specifications (60% Submittal): \$1,370,000

This task includes preparation of design plan and specifications for review with the CITY to refine design focus, identify preferred site layout, and develop cost estimates with sufficient accuracy to apply for construction funding.

5.0 Additional Services

Additional work requested by the CITY not included in this Task Order 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 in affect at the time of service, plus reimbursement for direct non-salary expenses such as laboratory testing, printing expenses, vehicle mileage, and outside consultants.

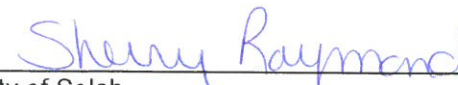
Proposed:



HLA Engineering and Land Surveying, Inc.
Michael T. Battle, PE, President

9/14/2023
Date

Approved:



City of Selah
Sherry Raymond, Mayor

9-28-29
Date



Selah City Council
Regular Meeting
AGENDA ITEM SUMMARY

Meeting Date: 9/12/2023

Agenda Number: 13-D

Action Item

Title: Resolution Authorizing the Mayor of Selah to Sign a Seven-Page Telecommunications Franchise Agreement with Zayo Group, LLC, that Grants a Nonexclusive Franchise for Fiber Optic Cable Systems

From: Rob Case, City Attorney

Action Requested: Approval

Staff Recommendation: Approve the Resolution as submitted

Board/Commission Recommendation: N/A

Fiscal Impact: N/A

Funding Source: 001, General Fund, for publishing costs.

Background/Findings/Facts: On September 12th, the City Council approved Resolution No. 3044, which directed City staff to publish a proposed Resolution in the Yakima Herald-Republic. Such proposed Resolution provided notice of the City Council's intent to grant a nonexclusive franchise for fiber optic cables to the entity of Zayo Group, LLC.

As directed, City staff subsequently published a copy of the proposed Resolution in the Yakima Herald-Republic.

Today, the City Council can now take final action on the prospective franchise.

The Resolution that accompanies the instant AIS will, if approved by the City Council, grant the franchise and authorize the Mayor to sign the seven-page Telecommunications Franchise Agreement that has been previously negotiated between City staff and agents of the applicant. A copy of the Agreement is attached to this AIS.

As a code city, Selah is authorized – by state law – to grant nonexclusive franchise rights to any person or entity that desires to use a portion of the City's public infrastructure for certain purposes. The permissible purposes include the transmission and distribution of signals and other methods of communication. *See* RCW 35A.47.040 (1st ¶).

If granted the franchise, the applicant will locate fiber optic cables both overhead and underground on rights-of-way owned by the City. The City will not incur any financial outlay under the Agreement. Nor will the City receive any annual franchise fee payments, because state law prohibits the City from charging such due to the fact that the applicant's fiber optic cables will be used – at least in part – for telephone services. *See* RCW 35.21.860 & 82.16.010.

City staff recommends that the franchise be granted and that the Mayor be authorized to sign the Agreement.

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

Record of all prior actions taken by the City Council and/or City Board, City Committee, Planning Commission, or the Hearing Examiner (if not applicable, please state none).

Date:	Action Taken:
09/12/23	Resolution No. 3044: Resolution Directing City Staff to Publish an Underlying Proposed Resolution in the City Designated Official Newspaper as Notice of the City's Intent to Grant a Nonexclusive Franchise for Fiber Optic Cable Systems to Zayo Group, LLC, on September 26, 2023
09/22/23	City Staff Published the Proposed Resolution in the Yakima Herald-Republic

RESOLUTION NO. 3052

RESOLUTION AUTHORIZING THE MAYOR OF SELAH TO SIGN A SEVEN-PAGE TELECOMMUNICATIONS FRANCHISE AGREEMENT WITH ZAYO GROUP, LLC, THAT GRANTS A NONEXCLUSIVE FRANCHISE FOR FIBER OPTIC CABLE SYSTEMS

WHEREAS, the entity known as Zayo Group, LLC, desires to obtain a nonexclusive franchise from the City of Selah so that it can locate fiber optic cable systems, both underground and above ground, within rights-of-way owned by the City; and

WHEREAS, state law – specifically RCW 35A.47.040 – authorizes the City to grant nonexclusive franchises for such purpose; and

WHEREAS, a proposed seven-page Telecommunications Franchise Agreement has been drafted and its terms are acceptable to City staff; and

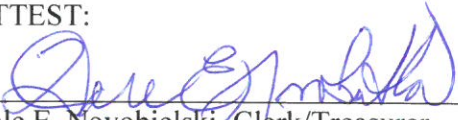
WHEREAS, the City Council finds that good cause exists to authorize the Mayor to sign the Agreement and to thus grant the franchise;

NOW THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF SELAH, WASHINGTON, that the Mayor be and is authorized to sign the seven-page Telecommunications Franchise Agreement in the form appended hereto, and to thus grant the franchise.

PASSED AND ADOPTED BY THE CITY COUNCIL OF THE CITY OF SELAH, WASHINGTON, this 26th day of September, 2023.


Sherry Raymond, Mayor

ATTEST:


Dale E. Novobielski, Clerk/Treasurer

APPROVED AS TO FORM:


Rob Case, City Attorney

**TELECOMMUNICATIONS FRANCHISE AGREEMENT
BETWEEN ZAYO GROUP, LLC AND THE CITY OF SELAH, WASHINGTON**

THIS TELECOMMUNICATIONS FRANCHISE AGREEMENT ("Franchise") is entered into by and between Zayo Group, LLC ("Zayo"), a Delaware Limited Liability Company, and the City of Selah, Washington ("City").

RECITALS

1. In order to maintain control over the use of City's right-of-ways by fiber optic and telecommunications providers operating within the City, it is appropriate to enter into franchise agreements with such telecommunications providers.
2. Zayo Group, LLC has negotiated this Franchise with the City, and this Franchise is acceptable to both parties.

Section 1. Definitions. Where used in this Franchise, the following terms shall mean:

- A. "Affiliate" means an entity which owns or controls, is owned or controlled by, or is under common ownership with Zayo.
- B. "City" means the City of Selah, a municipal corporation of the State of Washington.
- C. "Emergency Situation" means an emergency involving likely loss of life or substantial property damage as determined by City in good faith.
- D. "Facilities" means Zayo's fiber optic cable system constructed and operated within the City's Rights-of-Way, and shall include all cables, wires, conduits, ducts, pedestals and any associated converter, equipment or other facilities within the City's Rights-of-Way, designed and constructed for the purpose of providing Telecommunications Service and other lawful services not prohibited by this Franchise.
- E. "Franchise" means this Telecommunications Franchise Agreement
- F. "Franchise Area" means the present municipal boundaries of the City, and shall include any additions thereto by annexation or other legal means.
- G. "Person" means an individual, partnership, association, joint stock company, trust, corporation, or limited liability company.
- H. "Rights-of-Way" means land acquired by or dedicated to the City for public roads and streets, but does not include:
 1. State highways
 2. Land dedicated for roads, streets, and highways not opened and not improved for motor vehicle use by the public;
 3. Structures, including poles and conduits, located within the right-of-way;
 4. Federally granted trust lands or forest board trust lands;
 5. Lands owned or managed by the State Parks and Recreation Commission.
- I. "Telecommunications Service" means the transmission of information by wire, radio, optical cable, electromagnetic, or other similar means for hire, sale, or resale to the general public. For the purpose of this chapter, telecommunications service excludes the over-the-air transmission of broadcast television or broadcast radio signals.

- J. "Zayo" means Zayo Group, LLC, a Delaware limited liability company, and its respective Affiliates, successors, and assigns.

Section 2. Franchise Area and Authority Granted.

- A. Facilities within Franchise Area. Subject to and in accordance with all applicable laws, the City does hereby grant to Zayo the right, privilege, authority and franchise to construct, support, attach, connect and stretch Facilities between, maintain, repair, replace, enlarge, operate, use, and remove Facilities in, upon, over, under, along and across Rights-of-Way in the Franchise Area for the purpose of providing Telecommunications Services. This grant is non-exclusive. This grant does not convey any right, title or interest in the right-of-way, but shall be deemed a Master Permit only to use and occupy the right-of-way for the limited purposes and term stated in the grant. Further, no Master Permit shall be construed as any warranty of title.
- B. Permission Required to Enter Onto Other City Property. Nothing contained in this Franchise is to be construed as granting permission to Zayo to go upon any public place other than Rights-of-Way within the Franchise Area in this Franchise. Permission to go upon any other property owned or controlled by the City must be sought on a case by case basis from the City.
- C. Compliance with WUTC Regulations. At all times during the term of the Franchise, Zayo shall fully comply with all applicable regulations of the Washington Utilities and Transportation Commission.
- D. Fees and Charges. Subject to the limitations under federal and State law, the City reserves the right to require compensation for use of the rights-of-way as a condition of granting permission to use and occupy the rights-of-way or other permitted areas. The City may impose on Zayo all fees, taxes, and requirements authorized by RCW § 35.21.860, as written or hereafter amended. Zayo shall, within 30 days after written demand, reimburse the City for all direct and indirect costs and expenses incurred by the City in connection with any modification, amendment, renewal or transfer of this Franchise when such is requested by Zayo. In addition, Zayo shall, within 30 days after written demand, reimburse the City for any and all costs the City reasonably incurs in response to any Emergency Situation involving Zayo's facilities. Within 30 days after written demand, Zayo shall reimburse the City for Zayo's proportionate share of all actual, identified expenses incurred by the City in planning, constructing, installing, repairing or altering any municipal infrastructure as a result of the presence in the right-of-way of Zayo's Facilities.

Section 3. Construction and Maintenance.

- A. Zayo's Facilities shall be located, relocated and maintained within the Rights-of-Way in accordance with applicable law, and so as not to unreasonably interfere with the free and safe passage of pedestrian and vehicular traffic and ingress or egress to or from the abutting property. Whenever it is necessary for Zayo, in the exercise of its rights under this Franchise, to make any excavation in the Rights-of-Way, Zayo shall obtain prior approval from the City, pay the applicable permit fees, and obtain any necessary permits for the excavation work. Upon completion of such excavation, Zayo shall restore the surface of the Rights-of-Way to the same condition the property was in prior to such excavation. If Zayo should fail to leave any portion of the excavation in a condition the property was in prior to such excavation, the City may, on 30 days' written notice to Zayo, which notice shall not be required in case of an Emergency Situation, cause all work necessary to restore the excavation to a safe condition. Zayo shall pay to the City the reasonable cost of such work within 30 days of receipt of a detailed invoice from the City.
- B. Any surface or subsurface failure occurring during the term of this Franchise caused by any excavation by Zayo shall be repaired within thirty (30) days, or, upon five (5) days written notice to Zayo, the City may order all work necessary to restore the damaged area to a safe and acceptable condition and Zayo shall pay the reasonable costs of such work to the City, including City overhead (provided that in no event shall such overhead exceed 5% of the total costs, fees and expenses of third parties).

- C. In the event of an Emergency Situation, Zayo may, without prior notice, commence such emergency and repair work as required under the circumstances, provided that Zayo shall notify the City in writing as promptly as possible before such repair or emergency work commences, or as soon thereafter as possible. The City may act, at any time, without prior written notice in the case of an Emergency Situation, but shall notify Zayo in writing as promptly as possible under the circumstances.
- D. Zayo agrees that if any of its actions under the Franchise materially impair or damage any City property, survey monument, or property owned by a third-party, Zayo will restore, at its own cost, the impaired or damaged property to the same condition the property was in prior to such work. Such repair work shall be performed and completed to the reasonable satisfaction of the City.

Section 4. Location, Relocation, and Removal of Facilities.

- A. Location. Zayo shall place any new Facilities underground where existing telecommunications and cable facilities are located underground. Any new Facilities to be located above-ground shall be placed on utility poles.
- B. Relocation. Subject to and in accordance with all applicable Laws, Zayo will, at Zayo's cost and expense, remove, relocate, change, and/or alter the position or location of any Facilities located within the Right-of-Way whenever City determines that such removal, relocation, change, and/or alteration is necessary for any of the following reasons: (a) an Emergency; (b) construction, repair, installation, and/or maintenance of any City and/or other public work or improvement; (c) City's operations (or those of other governmental entities) in, on, and/or under the Right-of-Way requires the removal, relocation, change, and/or alteration of the Facilities; (d) a beautification, streetscape, and/or other City improvement project; and/or (e) public convenience and/or necessity (as reasonably determined by City). If any moving and/or relocation work is done for or at the request of a private individual, entity, developer, and/or development, the costs of such moving or relocation work will be borne by the requesting private individual, entity, developer, and/or development. Nothing contained in this Franchise will be construed in any way to prevent City from sewerage, grading, planking, rocking, paving, repairing, altering, and/or improving any Right-of-Way in and/or on which the Facilities are or will be placed.
- C. Removal. Upon the termination or expiration of this Franchise, City may require Zayo to remove Facilities located in the Right-of-Way. Removal of the Facilities will be at Zayo's cost and expense. Upon removal, Zayo shall restore the Right-of-Way to the condition of the property prior to such removal. Notwithstanding the expiration of this Franchise, and so as long as the parties are negotiating in good faith, and until such time as either a new agreement has been reached or Zayo has determined not to renew this Franchise, Zayo shall have the right to continue to occupy and use the Right-of-Way pursuant to the terms of this Franchise.

Section 5. Indemnification.

- A. In accordance with and subject to applicable law, and except to the extent of City's negligence or willful misconduct, Zayo will defend, indemnify, and hold City and its employees, officers, agents, and representatives harmless for, from, and against all third party claims, actions, proceedings, damages, liabilities, losses, and expenses of every kind, including, without limitation, attorney fees and costs, resulting from or arising out of, whether directly or indirectly, the following: (a) the acts or omissions of Zayo and/or its employees, officers, agents, and representatives, whether such acts or omissions are authorized, allowed, or prohibited by this Franchise; (b) damage, injury, and/or death to person or property caused directly or indirectly by the acts or omissions of Zayo and/or its employees, officers, agents, and representatives; and/or (c) Zayo's breach and/or failure to perform any of its representations, warranties, covenants, and/or obligations under this Franchise. Zayo's indemnification obligations provided in this section will survive the termination of this Franchise. Except for third party claims covered under the indemnification provisions in this Franchise, in no event shall either party be liable to the other party for any incidental, special, punitive, or consequential damages arising out of or in connection with this Franchise.

- B. In the event of liability for damages arising out of bodily injury to persons or damages to property resulting from or arising out of, whether directly or indirectly, concurrent negligence of Zayo and/or its employees, officers, agents, and representatives, and the City and/or its employees, officers, agents, and representatives, Zayo's liability hereunder shall be only to the extent of Zayo's negligence.
- C. Notwithstanding any other provisions of this section, Zayo assumes the risk of damage to its facilities located in the City's public rights-of-way, easements, and property from activities conducted by the City, its employees, officers, agents, and representatives. Zayo releases and waives any and all claims against the City, its employees, officers, agents, and representatives for damage to or destruction of Zayo's Facilities caused by or arising out of activities conducted by the City, its employees, officers, agents, and representatives, in the public rights-of-way, easements, or property subject to this Franchise, except to the extent any such damage or destruction is caused by or arises from the negligence, willful misconduct, or malicious action on the part of the City, its employees, officers, agents, or representatives.
- D. The provisions of this Section 5 shall survive the expiration or termination of this Franchise.

Section 6. Default.

No party's act or omission will be considered a default under this Franchise unless and until the alleged defaulting party has received ten (10) days' prior written notice from the non-defaulting party specifying with reasonable particularity the nature of the default the non-defaulting party believes exists (the "Default Notice"). Commencing from the defaulting party's receipt of the Default Notice, the alleged defaulting party will have thirty (30) days within which to cure or remedy the default (the "Cure Period") before the defaulting party will be deemed in default of this Franchise; provided, however, that if the nature of the default is such that it cannot be completely remedied or cured within the Cure Period, there will not be a default by the alleged defaulting party under this Franchise if the alleged defaulting party begins correction of the default within the Cure Period and thereafter proceeds with reasonable diligence to effect the remedy as soon as practicable. Subject to the immediately preceding sentence, if the alleged defaulting party is Zayo, and Zayo fails to cure or remedy the default within the Cure Period or an extension thereto, the non-defaulting party may terminate this Franchise based on such default and may pursue all rights and remedies available to the non-defaulting party under this Franchise and/or applicable law.

Section 7. Nonexclusive Franchise.

This Franchise is not and shall not be deemed to be an exclusive agreement, and shall not in any manner prohibit the City from granting other and further franchises over, upon, and along the Franchise Area. This Franchise shall not prohibit or prevent the City from using the Franchise Area or affect the jurisdiction of the City over the same or any part thereof.

Section 8. Franchise Term.

- A. This Franchise is and shall remain in full force and effect for a period of ten years from and after the Effective Date of this Franchise.
- B. At the end of the initial ten year term, this Franchise shall continue to renew automatically every year unless either party provides the other party with notice of intent to terminate this Franchise no more than six months and no less than three months prior to the expiration of the then current term.

Section 9. Compliance with Codes and Regulations.

- A. The rights, privileges and authority herein granted are subject to and governed by this Franchise, the applicable laws of the State of Washington and the applicable laws of the United States, and all other

applicable ordinances and codes of the City, as they now exist or may hereafter be amended. Nothing in this Franchise limits the City's lawful power to exercise its police power to protect the safety and welfare of the general public. Any location, relocation, construction, or excavation by Zayo shall be performed in accordance with applicable federal, state and city rules and regulations.

- B. In the event that any territory served by Zayo is annexed to the City after the effective date of this Franchise, such territory shall be governed by the terms and conditions contained herein upon the effective date of such annexation.

Section 11. Record of Installations and Service.

- A. Upon written request of the City, Zayo shall provide the City with the most recent update available of any plan of potential improvements to its Facilities within the Franchise Area; provided, however, any such plan so submitted shall be for informational purposes only within the Franchise Area, nor shall such plan be construed as a proposal to undertake any specific improvements within the Franchise Area.
- B. Zayo shall make as-built drawings and maps of the precise location of any Facilities placed by Zayo in any Rights-of-Way available to the City within ten (10) working days of the City's written request. These plans and maps shall be provided at no cost to the City and shall include hard copies and/or digital copies in a format commonly used in the telecommunications industry.
- C. If Zayo provides any books, records, and/or information to the City that Zayo reasonably believes to be confidential or proprietary, and Zayo clearly and specifically identifies such books, records, and/or information as confidential or proprietary upon initial submission to the City, the City will take reasonable steps to protect the confidentiality of such books, records, and/or information subject to the City's obligations under applicable public records laws.

Section 12. Shared Use of Excavations and Trenches.

- A. If either the City or Zayo shall at any time after installation of the Facilities plan to make excavations in the Franchise Area and as described in this Section, the party planning such excavation shall afford the other, upon receipt of written request to do so, an opportunity to share such an excavation, *provided that*: (1) such joint use shall not unreasonably delay the work of the party causing the excavation to be made or unreasonably increase its costs; (2) such joint use shall be arranged and accomplished on terms and conditions satisfactory to both parties. In addition, pursuant to RCW 35.99.070, the City may request that Zayo install additional conduit, ducts and related access structures for the City pursuant to contract, under which Zayo shall recover its incremental costs of providing such facilities to the City.
- B. The City reserves the right to not allow open trenching for five years following a street overlay or improvement project. Zayo shall be given written notice at least ninety (90) days prior to the commencement of the project. Required trenching due to an emergency will not be subject to five (5) year street trenching moratoriums.
- C. The City reserves the right to require Zayo to joint trench with other franchisees if both entities are anticipating trenching within the same area where Zayo is planning to trench, and provided that the terms of this Section are met.

Section 13. Insurance.

Zayo shall maintain in full force and effect during the term of this Franchise, comprehensive general liability insurance in the amount of One Million Dollars (\$1,000,000) combined single limit for bodily injury and property damages. Prior to commencing construction of the telecommunications system, Zayo shall provide the City with a

certificate of insurance designating the City as an additional insured. Such insurance shall be non-cancelable except upon thirty (30) days prior written notice to the City.

Section 14. Assignment.

Subject to the terms and conditions contained in this Franchise, Zayo will not transfer all or any part of the Facilities, Zayo's interest in or to this Franchise, or the telecommunications system without City's prior written consent, which consent will not be unreasonably withheld, conditioned, or delayed. If The City consents to a transfer, the following will apply: (a) the terms and conditions of this Franchise will in no way be deemed to have been waived or modified; and (b) consent will not be deemed consent to any further transfer. Nothing in this section shall prevent or limit Zayo from subletting or leasing capacity within Zayo's telecommunications system provided that Zayo maintains dominion and control over the portions of the telecommunications system that are within The City's right-of-way. Notwithstanding the foregoing, Zayo may assign this Franchise and the privileges granted herein without the consent of the City, to: (a) a subsidiary, a commonly owned affiliate, or a parent company provided that such assignee has the financial resources equivalent to or greater than Zayo and has the capability to perform its obligations under this Franchise; or (b) an entity which succeeds to all or substantially all of Zayo's assets as a result of a merger, sale or other similar transaction. Subject to the conditions contained in this Section 14, this Franchise will be binding on the parties and their respective heirs, executors, administrators, successors, and assigns, and will inure to their benefit

Section 15. Abandonment and Removal of Facilities.

Upon the termination or expiration of this Franchise, the City may require Zayo to remove Facilities located in the Right-of-Way. Removal of the Facilities will be at Zayo's cost and expense. Upon removal, Zayo shall restore the Right-of-Way the condition of the property prior to such removal. Notwithstanding the expiration of this Franchise, and so as long as the parties are negotiating in good faith, and until such time as either a new agreement has been reached or Zayo has determined not to renew this Franchise, Zayo shall have the right to continue to occupy and use the Right-of-Way pursuant to the terms of this Franchise.

Section 16. Miscellaneous.

- A. If any term, provision, condition or portion of this Franchise shall be held to be invalid, such invalidity shall not affect the validity of the remaining portions of this Franchise, which shall continue in full force and effect. The headings of sections and paragraphs of this Franchise are for convenience of reference only and are not intended to restrict, affect, or be of any weight in the interpretation or construction of the provisions of such sections or paragraphs. In the event of any conflict between this Franchise and the City of Selah Municipal Code, the Municipal Code shall control.
- B. Failure of either party to declare any breach or default under this Franchise or any delay in taking action shall not waive such breach or default, but the non-defaulting party shall have the right to declare any such breach or default at any time. Failure of either party to declare one breach or default does not act as a waiver of that party's right to declare another breach or default.
- C. Notwithstanding anything to the contrary herein, any determination by the City with respect to matters contained in this Franchise and matters related to the Franchise shall be made in accordance with applicable law.

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Section 17. Notice.

Any notice or information required or permitted to be given to the parties under this Franchise may be sent to the following addresses unless otherwise specified:

City

City of Selah
ATTN: City Administrator
ATTN: City Clerk-Treasurer
ATTN: City Attorney
115 West Naches Avenue
Selah, WA 98942

Zayo

Zayo Group, LLC
Attn: Legal - Underlying Rights
1401 Wynkoop St., Suite 500
Denver, CO 80202

Zayo Group, LLC

Attn: Legal - General Counsel
1821 30th St., Unit A
Boulder, CO 80301

For Emergencies:

Network Operations Center & Repair
Phone: (888)404-9296
Email: zayoncc@zayo.com

Notices under this Franchise shall be in writing and shall be deemed given upon receipt by hand delivery, certified mail return receipt requested, or nationally recognized overnight courier to the above addresses, or such other address as either party may designate from time to time by providing written notice of such change of address.

Section 18. Effective Date.

This Franchise shall be effective upon written acceptance by Zayo.

City

Zayo Group, LLC

By: Sherry Raymond

By: _____

Name: SHERRY RAYMOND
[Title]

Name: _____
[Title]

Date: 9-27-2023

Date: _____



Selah City Council
Regular Meeting
AGENDA ITEM SUMMARY

Meeting Date: 9/26/2023

Agenda Number: 14-A*

Action Item

Title: Ordinance Amending the 2023 Budget for Well No. 3 Pump Replacement

From: Dale Novobielski, Clerk/Treasurer

Action Requested: Approval

Staff Recommendation: Approval

Board/Commission Recommendation: Approval

Fiscal Impact: \$ 100,000

Funding Source: 461 Water Reserve

Background/Findings/Facts: The City Council approved the replacement of the Well No. 3 pump.

Recommended Motion: I move to approve an Ordinance amending the 2023 budget for the replacement of the Well No. 3 pump.

Record of all prior actions taken by the City Council and/or City Board, City Committee, Planning Commission, or the Hearing Examiner (if not applicable, please state none).

Date: **Action Taken:**

2-14-2023 City Council approved the replacement of the Well No. 3 pump.

ORDINANCE NO. 2207

AN ORDINANCE AMENDING THE 2023 BUDGET FOR THE REPLACEMENT OF THE
WELL NO. 3 PUMP

WHEREAS, the City desires to adjust the 2023 Budget for the replacement of the Well No. 3 pump;

NOW THEREFORE, THE CITY COUNCIL OF THE CITY OF SELAH, WASHINGTON, does ordain as follows: that the Clerk-Treasurer be authorized to amend the 2023 Budget as follows:

411 Water

411.000.034.397.00.00.00 Operating Transfers-In – Fund 461 Water Res. \$ 100,000

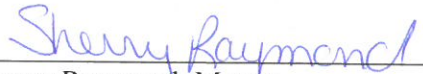
411.000.094.594.34.65.45 Well No. 3 Rehab \$ 100,000

461 Water Reserve

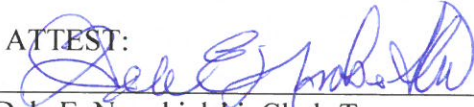
461.000.097.597.00.00.00 Operating Transfers-Out – Fund 411 Water \$ 100,000

461.000.008.508.51.00.00 Ending assigned Cash & Investments \$ 1,169,836

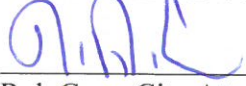
PASSED AND ORDAINED BY THE CITY COUNCIL OF THE CITY OF SELAH,
WASHINGTON this 26th day of September 2023.


Sherry Raymond, Mayor

ATTEST:


Dale E. Novobielski, Clerk-Treasurer

APPROVED AS TO FORM:


Rob Case, City Attorney

ORDINANCE NO. _____

ORD#
2207
pg 1

Morales, Treesa

From: Selah Webmaster
Sent: Monday, September 25, 2023 1:59 AM
To: Morales, Treesa
Subject: New Public Comment Submission

Meeting Type / Tipo de Reunión

Council Meeting

Meeting Date / Fecha de la Reunión

09/26/2023

Topic / Tema

Libel comment in 9/12/2023 meeting minutes

How would you like to provide your comment? / ¿Cómo le gustaría dar su comentario?

I will submit my comment below for the Meeting Secretary to read aloud at the meeting. / Enviaré mi comentario a continuación para que el Secretario de la reunión lo lea en voz alta en la reunión.

How will you attend the meeting? / ¿Cómo te unirás a la reunión virtual?

I will attend the meeting in person. If so, please provide your name in the form below in order for the Meeting Secretary to identify you. / Asistiré a la reunión en persona. En caso afirmativo, proporcione su nombre en el siguiente formulario para que el Secretario de la Reunión lo identifique.

First & Last Name / Nombre y Apellido

William Longmire

Registered Voter?

Yes

Residency / Residencia

Selah 98942
United States
[Map It](#)

Email Address / Correo Electrónico

selahresident@outlook.com

Written Comment / Comentario Escrito Público

My 09/12/2023 comments were exactly this not what is in the current meeting minutes:
"Agenda item 14-C is not a new chapter, it is the rewriting of an existing chapter that pertains to building code violations and enforcement.
The "new chapter" negates the intended purpose of the current chapter as it is currently written, as well as ordinance 1631. There are no provisions in this new ordinance to address new construction as it only addresses existing structures. How are new building code violations going to be handled if this resolution is passed? This ordinance only enables the city to continue to allow builders to construct new buildings that don't meet current building code standards without any consequence to the builder. Where are the strike throughs for the current chapter 6.75 and this new proposed chapter 6.75? Why is this being hidden? Title 11 "BUILDING CODES" Chapter 11.04.050 "Enforcement" specifically references Chapter 6.75 and is the true purpose of the current Chapter 6.75. Why is new building code enforcement being intentionally left out of this new ordinance? Where are the new development regulations? Selah is going to keep growing and we need to grow responsibly and not allow contractors to break the laws and build homes that don't meet current building code standards. I know

from experience
the city is allowing contractors to break the current building code laws and this will make it somewhat okay to do so. This is immoral and not what is best for our community! These new provisions should be in addition to, not the overwriting of what is currently in chapter 6.75 for development within Selah! This is overwriting a whole chapter on building code enforcement and staff presenting this under the guise of a graffiti and nuisance update appears dishonest and reflects negatively on staff and the city. Agenda items 14-A and 14-C do not comprehensively address the current codes they are replacing and should not be adopted in the form presented."

COUNCIL ROLL CALL LIST: Meeting Date: 9-26-2023

YES	ATTENDANCE	NO
✓	Councilmember Marquis	
✓	Councilmember Bell	
✓	Councilmember Costello	
✓	Councilmember Carlson	
✓	Councilmember Iverson	
✓	Councilmember Wickenhagen	
✓	Councilmember Peterson	

YES	AIS: 13-B	NO
✓	Councilmember Marquis	
✓	Councilmember Bell	
✓	Councilmember Costello 1	
	Councilmember Carlson	✓
✓	Councilmember Iverson	
✓	Councilmember Wickenhagen 1	
✓	Councilmember Peterson 2	

YES	AIS: CONSENT	NO
✓	Councilmember Marquis	
✓	Councilmember Bell	
✓	Councilmember Costello	
✓	Councilmember Carlson	
✓	Councilmember Iverson	
✓	Councilmember Wickenhagen 2	
✓	Councilmember Peterson 1	

YES	AIS: 13C	NO
✓	Councilmember Marquis	
✓	Councilmember Bell 1	
✓	Councilmember Costello	
✓	Councilmember Carlson	
✓	Councilmember Iverson	
✓	Councilmember Wickenhagen 2	
✓	Councilmember Peterson	

YES	AIS: 13-A	NO
✓	Councilmember Marquis	
✓	Councilmember Bell	
✓	Councilmember Costello	
✓	Councilmember Carlson 2	
✓	Councilmember Iverson	
✓	Councilmember Wickenhagen 1	
✓	Councilmember Peterson	

YES	AIS: 13-D	NO
✓	Councilmember Marquis	
✓	Councilmember Bell 2	
✓	Councilmember Costello 1	
✓	Councilmember Carlson	
✓	Councilmember Iverson	
✓	Councilmember Wickenhagen	
✓	Councilmember Peterson	

COUNCIL ROLL CALL LIST: Meeting Date: 9-26-2023

YES	ATTENDANCE	NO
	Councilmember Marquis	
	Councilmember Bell	
	Councilmember Costello	
	Councilmember Carlson	
	Councilmember Iverson	
	Councilmember Wickenhagen	
	Councilmember Peterson	

YES	AIS: <u>PD Property</u>	NO
✓	Councilmember Marquis	
✓	Councilmember Bell <u>2</u>	
✓	Councilmember Costello	
✓	Councilmember Carlson	
✓	Councilmember Iverson	
✓	Councilmember Wickenhagen <u>1</u>	
✓	Councilmember Peterson	

YES	AIS: <u>other property</u>	NO
	Councilmember Marquis	✓
✓	Councilmember Bell	
✓	Councilmember Costello	
✓	Councilmember Carlson <u>1</u>	
	Councilmember Iverson	✓
	Councilmember Wickenhagen	✓
✓	Councilmember Peterson <u>2</u>	

YES	AIS: <u>Adjourn</u>	NO
	Councilmember Marquis	
	Councilmember Bell	
	Councilmember Costello	
	Councilmember Carlson	
	Councilmember Iverson <u>2</u>	
	Councilmember Wickenhagen <u>1</u>	
	Councilmember Peterson	

YES	AIS:	NO
	Councilmember Marquis	
	Councilmember Bell	
	Councilmember Costello	
	Councilmember Carlson	
	Councilmember Iverson	
	Councilmember Wickenhagen	
	Councilmember Peterson	

YES	AIS:	NO
	Councilmember Marquis	
	Councilmember Bell	
	Councilmember Costello	
	Councilmember Carlson	
	Councilmember Iverson	
	Councilmember Wickenhagen	
	Councilmember Peterson	

DATE: SEPTEMBER 26, 2023

[illegible]



SELAH CITY COUNCIL
Study Session Materials
September 26, 2023 Meeting



Wastewater Treatment Facilities Design and Construction Financing

September 26, 2023



Vicinity Map





Main Treatment Plant



Pretreatment and Sludge Handling





History

Past Improvement	Year
Aeration Basins and Activated Sludge Process	1968
Industrial Pretreatment Facility	1985
UV Disinfection System	2003
Solids Handling Facility to Produce Class A Biosolids	2007
Main Treatment Plant Electrical Upgrades	2007
Main Treatment Plant Clarifier Mechanism Replacement	2012
Energy Efficiency Upgrades	2016



TABLE 3-22 MAIN PLANT: PROJECTIONS AT 2% GROWTH

Parameter	Baseline	2026	2031	2036	2041
Service Population	8,313	9,362	10,336	11,412	12,600
Annual Average Flow (MGD)	1.132	1.275	1.407	1.554	1.716
Maximum Monthly Flow (MGD)	1.311	1.426	1.533	1.651	1.781
Peak Day Flow (MGD)	1.585	1.785	1.970	2.176	2.402
Peak Hour Flow (gpm)	2,329	2,592	2,834	3,098	3,387
Annual BOD Loading (lb/d)	2,276	2,563	2,830	3,124	3,450
Annual TSS Loading (lb/d)	2,236	2,518	2,780	3,070	3,389
Maximum Month BOD Loading (lb/d)	2,834	3,127	3,400	3,700	4,032
Maximum Month TSS Loading (100% Industrial Rating) (lb/d)	5,026	5,187	5,337	5,502	5,684
Maximum Month TSS Loading (Combined Historical Loading) (lb/d)	3,091	3,481	3,843	4,243	4,686

Rated for
3,300 lb/d

Rated for
4,400 lb/d



Existing Deficiencies – Liquid Processes

- **Aging** – General wear of components 50+ years old
- **North and South Lift Stations** – Undersized force main and confined space issues
- **Headworks Screen** – Insufficient flow capacity for 20 year growth
- **Aeration Basins**
 - Unable to remove from service for repairs and maintenance
 - Unable to meet aeration demand for BOD₅ and ammonia removal
 - Questionable structural integrity
- **Secondary Clarifiers**
 - Exceed desired solids loading at high mixed liquor concentrations
 - Lack of ability to control distribution of flow to clarifiers



Existing Deficiencies – Solids Processes

- **Aerobic Digester**
 - Deteriorated covers
 - Inefficient air distribution and oxygen transfer
- **Sludge Dryer**
 - No source for specialized parts
 - Future operating hours exceed available staffing



Improvement Options

- **Expand Existing Process**
 - Lowest cost
 - Land locks the WWTP
- **Convert to MBR Process**
 - High Cost
 - Allows for further growth in future
- **Construct New WWTP**
 - Highest Cost
 - Plenty of room for construction at Industrial WWTP site



Proposed New WWTP Site





Proposed Design Project Financing

Item	Estimated Cost
State Appropriation Grant (Secured)	\$1,398,740
Ecology SRF Forgivable Principal (Proposed)	\$1,780,630
Ecology SRF 1.6%, 30-Yr Loan (Proposed)	\$1,780,630
Total Estimated Project Funding	\$4,960,000
Annual Debt Service	\$75,200



Potential Construction Funding Sources

- **Department of Ecology**
 - 30 Year Loan @ 1.6%
 - Hardship Sewer Rate: \$107.45 / mo (2% of MHI)
 - Forgivable Principal up to \$5M
 - Interest Rate 0 – 1.1%
- **USDA Rural Development**
 - 40 Year Loan @ 2.25%
 - Hardship for Sewer Rate: \$80.59 (1.5% of MHI)
 - Forgivable Principal based on availability
- **Legislative Appropriation**
 - Based upon available State funds and political considerations



Potential Construction Financing Scenarios

Scenario	Estimated Annual Construction Debt Service	Estimated Annual Design Debt Service	Estimated Rate Increase	Estimated 2028 Sewer Rate
Ecology, No Grant \$44,100,000 @ 1.6%, 30 Years	\$1,862,424	\$75,199	\$36.33	\$89.96
Rural Development, No Grant \$44,100,000 @ 2.25%, 40 Years	\$1,683,622	\$75,199	\$32.98	\$86.61
Rural Development, 20% Grant \$35,280,000 @ 2.25%, 40 Years	\$1,346,898	\$75,199	\$26.67	\$80.30
Ecology, 30% State Grant \$30,870,000 @ 1.6%, 30 Years	\$1,303,697	\$75,199	\$25.86	\$79.49



Sewer Rate Recommendations

Year	Facility Plan	Revised	Conservative
2023	\$58.99 (+21%)	\$53.63 (+10%)	\$53.63 (+10%)
2024	\$71.37 (+21%)	\$67.04 (+25%)	\$67.04 (+25%)
2025	\$73.52 (+3%)	\$73.52 (+10%)	\$82.46 (+23%)
2026	\$75.72 (+3%)	\$75.72 (+3%)	\$84.93 (+3%)
2027	\$77.99 (+3%)	\$77.99 (+3%)	\$87.48 (+3%)
2028	\$80.33 (+3%)	\$80.33 (+3%)	\$90.10 (+3%)