



Agenda
City Council Regular Meeting
Tuesday, September 6, 2022
Richland City Hall Council Chambers
625 Swift Boulevard

City Council Regular Meeting - 6:00 p.m.

Welcome and Roll Call

Pledge of Allegiance

Approval of Agenda: (Approved by Motion)

Presentations:

1. Constitution Week Proclamation
 - Mayor Alvarez
2. Attendance Matters Proclamation
 - Mayor Alvarez
3. Allied Arts Association
 - Mary Jecha, Allied Arts Association President
4. JustServe.org
 - Becky Kreutz, JustServe Volunteer Specialist
 - Kristin Hunt, JustServe Area Volunteer Specialist
5. New Hires & Retirements
 - Lacey Paulsen, Human Resources Director

Public Hearing: Please limit public hearing comments to 3 minutes. Comments must speak only to the item for which the hearing is convened. Records intended for Council consideration must be given to the City Clerk for distribution.

Public Comments: Please limit public comments to 2 minutes. The public comment period is not an opportunity for dialogue with councilmembers, or for posing questions with the expectation of an immediate answer. Many questions require an opportunity for information-gathering and deliberation. For this reason, Council will accept comments, but will not directly respond to comments, questions or concerns during public comment. Records intended for Council consideration must be given to the City Clerk for distribution.

Consent Calendar: Items on the Consent Calendar have been distributed to the City Council in advance for reading and study, are considered to be routine, and will be enacted by one motion of the Council with no discussion. Councilmembers may transfer individual items to Items of Business for deliberation before voting.

Minutes:

6. Approval of the August 16, 2022 City Council Regular Meeting Minutes and the August 30, 2022 City Council Special Workshop Meeting Minutes
 - Jennifer Rogers, City Clerk

Ordinances - First Reading:

7. Ordinance No. 2022-33, Amending Chapter 2.04 of the Richland Municipal Code related to the City of Richland's Administrative Code
 - Heather Kintzley, City Attorney
8. Ordinance No. 2022-34, Amending Richland Municipal Code Section 12.08.065 regarding Pavement Cut Requirements
 - Pete Rogalsky, Public Works Director

Ordinances - Second Reading & Passage:

9. Ordinance No. 2022-27, Amending Richland Municipal Code Section 13.06.330 related to Billing for Ambulance Transports
 - Tom Huntington, Fire Chief
10. Ordinance No. 2022-30, Granting a Solid Waste Collection Transition Franchise to Waste Management of Washington, Inc. for Properties affected by the Badger Mountain Estates Lots 1-8 and 300.1 Acres of Department of Energy (DOE) Land Annexations
 - Pete Rogalsky, Public Works Director
11. Ordinance No. 2022-31, Granting a Solid Waste Collection Transition Franchise to Basin Disposal, Inc. and Ed's Disposal, Inc. for Properties affected by the Badger Mountain Estates Lots 1-8 and 300.1 Acres of Department of Energy (DOE) Land Annexations
 - Pete Rogalsky, Public Works Director
12. Ordinance No. 2022-32, Amending Multiple Sections of Richland Municipal Code Title 14: Electricity, related to Underground Service Lines, Net Metering, Line Extensions and Pole Attachments
 - Clint Whitney, Energy Services Director

Resolutions - Adoption:

13. Resolution No. 2022-111, Accepting a Request for Annexation of 1,643 Acres to be known as the North Horn Rapids Industrial Park
 - Kerwin Jensen, Development Services Director
14. Resolution No. 2022-113, Authorizing a Grant Application to the State of Washington Tourism Program for Tourism Sustainability Grant Funds
 - Kerwin Jensen, Development Services Director
15. Resolution No. 2022-114, Ratification of the 2022-2032 Richland Public Library Strategic Plan
 - Joe Schiessl, Deputy City Manager
16. Resolution No. 2022-115, Authorizing a Consultant Agreement with Hill International, Inc. for Project Management and Construction Management Services in Support of Fire Station No. 76
 - Joe Schiessl, Deputy City Manager
17. Resolution No. 2022-116, Authorizing a Progressive Design-Build Agreement with DGR Grant Construction, Inc. for Fire Station No. 76
 - Joe Schiessl, Deputy City Manager

18. Resolution No. 2022-117, Authorizing an Interagency Agreement with the Washington State Department of Natural Resources for Wildlife Emergency Response and Reimbursement
- Tom Huntington, Fire Chief

Items - Approval:

19. Relocation Expenses for the BCES Executive Director
- Drew Florence, Assistant City Manager
20. Travel for Mayor Alvarez and Councilmember Richardson
- Jon Amundson, City Manager

Items of Business:

21. Resolution No. 2022-112, Establishing Richland City Council Meeting Dates for Calendar Year 2023
- Jon Amundson, City Manager

Reports and Comments:

1. City Manager
2. City Council
3. Mayor

Adjournment

This meeting will be broadcast live on [CityView Channel 192](#) on the City's website and on the [City's YouTube Channel](#).

Richland City Hall is ADA accessible. Any individual who has difficulty attending the meeting in-person may request to provide comments remotely. (Ch. 42.30 RCW) Requests for sign interpreters, audio equipment, and/or other special services must be received 48 hours prior to the meeting by calling the City Clerk's Office at 509-942-7389.



Proclamation

WHEREAS, the Constitution of the United States of America is a testament to the resolve of the American people to maintain their rights, liberties and freedoms; and

WHEREAS, President Dwight D. Eisenhower declared the national observance of Constitution Week in 1956; and

WHEREAS, Constitution Week provides the nation with an opportunity to read and reflect on this important document in America's history; and

WHEREAS, the Daughters of the American Revolution, including the Columbia River Chapter, have promoted and encouraged this week-long commemoration of the Constitution; and

WHEREAS, September 17, 2022 is celebrated as Constitution Day and marks the 235th anniversary of the drafting of the Constitution of the United States of America.

NOW, THEREFORE, I, Michael Alvarez, by virtue of the authority vested in me as Mayor of the City of Richland, Washington, do hereby proclaim September 17-23, 2022 to be "**CONSTITUTION WEEK**" in the City of Richland.

IN WITNESS WHEREOF, I have hereunto set my hand and caused to be affixed hereto the official seal of the City of Richland, Washington on this 6th day of September, 2022.



Michael Alvarez, Mayor



Proclamation

WHEREAS, now, more than ever before, good attendance in school is essential to student achievement and progress toward graduation; and

WHEREAS, the COVID-19 pandemic has created additional barriers to student participation in school; and

WHEREAS, chronic absence – missing 10 percent, two or three days a month, or more – is a proven predictor of academic trouble and dropout rates, and weakens our communities and local economy; and

WHEREAS, all students, even those who show up regularly, are affected by chronic absence because teachers must spend time reviewing for students who missed lessons; and

WHEREAS, student absenteeism can be significantly reduced when schools, parents, and communities work together to monitor and promote good attendance and address hurdles that keep children from participating in school; and

WHEREAS, the Richland City Council hereby reaffirms its commitment to the academic success of all students, and encourages all community members to focus on reducing absenteeism so all children have an equal opportunity to learn, grow, and thrive.

NOW, THEREFORE, I, Michael Alvarez, by virtue of the authority vested in me as Mayor of the City of Richland, Washington, do hereby proclaim the month of September to be

“Attendance Awareness Month”

IN WITNESS WHEREOF, I have hereunto set my hand and caused to be affixed hereto the official seal of the City of Richland, Washington on this 6th day of September, 2022.


Michael Alvarez, Mayor



JUST SERVE

JustServe.org



What is JustServe?

JustServe is a free community resource. The JustServe.org website is used by **faith, nonprofit, community, and government organizations** to post service opportunities. People in the community use JustServe.org to work with community partners to identify needs and respond to those needs in the spirit of charitable service.



Why we serve in the community

“Those who are happiest
are those who do the
most for others.”

Booker T. Washington
African American Civil Rights Leader

“If you can’t feed a hundred
people, then feed just
one.”

Mother Teresa



Finding Service Opportunities

- Free website & app used in all 50 states and internationally
- Learn about ways to serve in the community
- Match your availability to needs
- Strengthens and unifies the community (3,000 registered users in the Tri-Cities)



How JustServe might help the community

Easier to Find
Community Needs

Invite Others

Meaningful Service

Community

Build Lasting
Relationships

Easy to Post
Service Projects



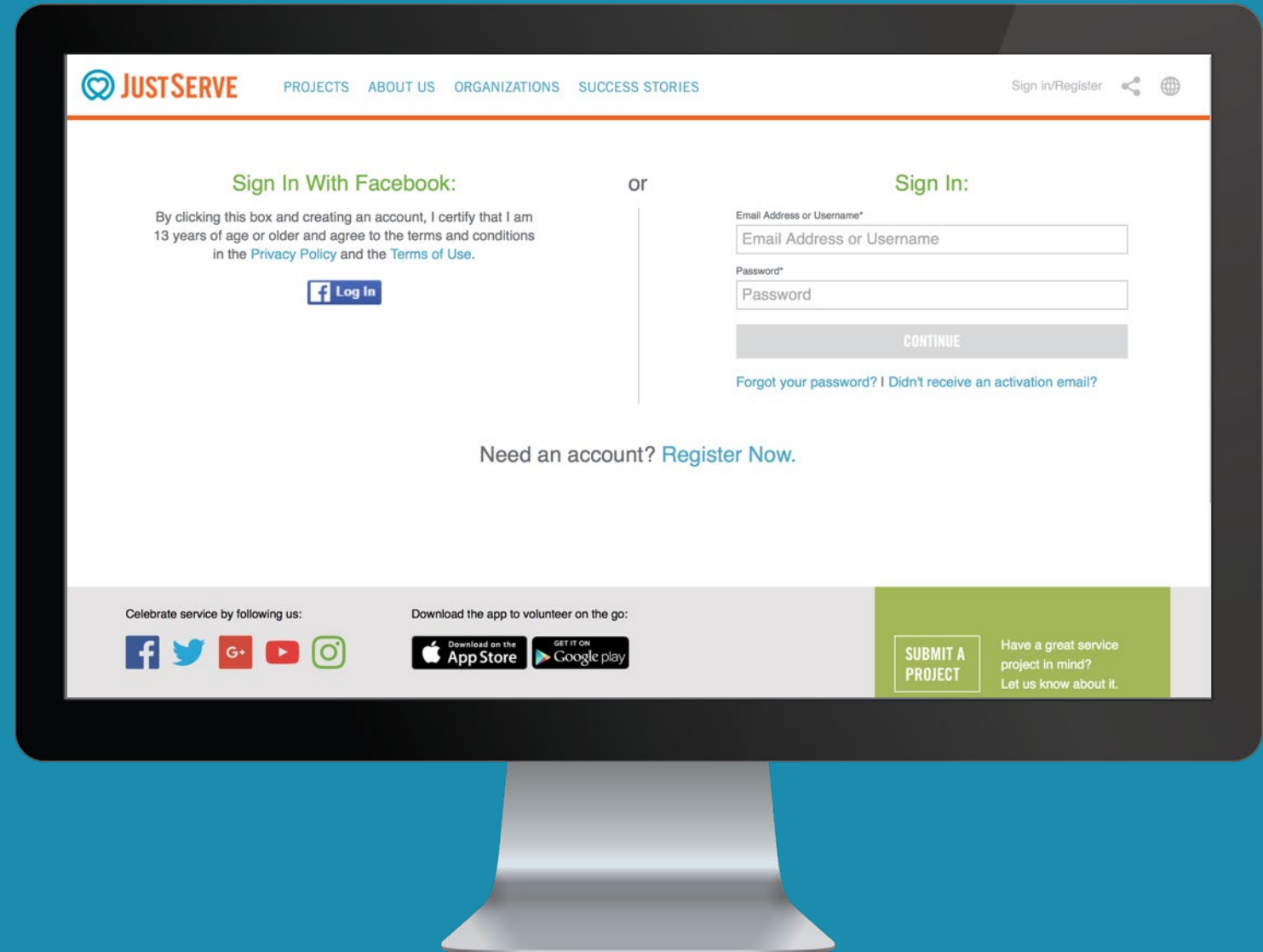
How does JustServe make my life easier?

JustServe.org reduces the time needed to find meaningful service opportunities and allows more time to give service. It helps you get involved in the community and allows you to select service opportunities that are a perfect fit for yourself, your family, or your organization.



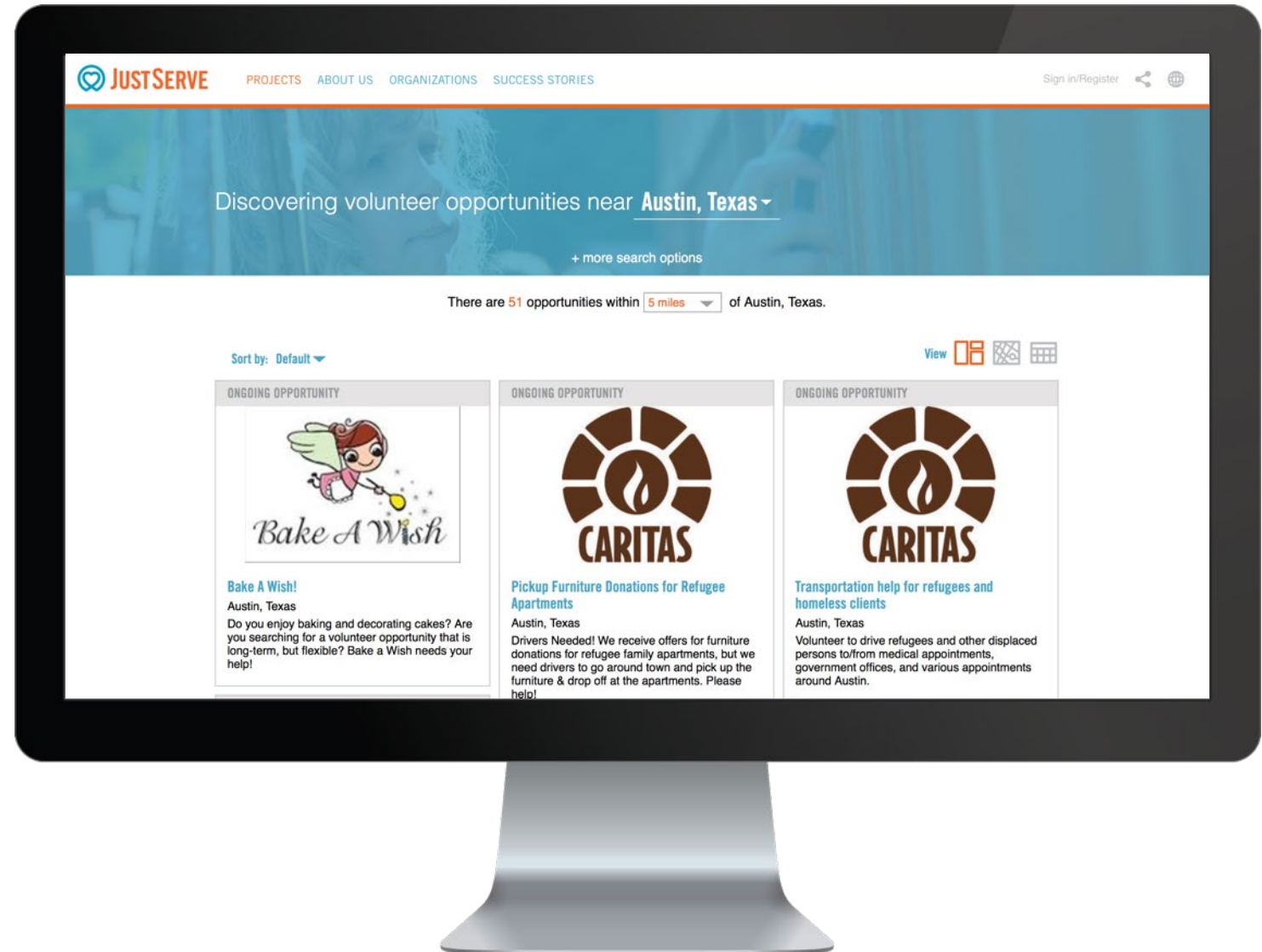
How do I sign up?

1. Visit JustServe.org
2. Select “**Sign in/Register**”
3. Sign in with your Facebook account, or select **Register Now**
4. Respond to the confirmation email



How do I volunteer?

1. Visit JustServe.org
2. Enter city, state, or zip
3. Apply advanced search filters if desired
4. Choose your desired project
5. Select Volunteer



Local Participating Organizations







JUST SERVE

JustServe.org



COUNCIL AGENDA ITEM COVERSHEET

Council Date: 9/6/2022

Agenda Category: Minutes

Core Focus Area I - Promote Financial Stability & Operational Effectiveness

Subject:

Approval of the August 16, 2022 City Council Regular Meeting Minutes and the August 30, 2022 City Council Special Workshop Meeting Minutes

Department/Office
City Attorney

Ordinance/Resolution Number:

Document Type:
Minutes

Recommended Motion:

Approve the meeting minutes from the City Council regular meeting held on August 16, 2022 and the City Council special workshop meeting held on August 30, 2022.

Summary:

Draft minutes from the August 16, 2022 City Council regular meeting Minutes and the August 30, 2022 City Council special workshop meeting minutes are presented for Council's consideration and approval.

Fiscal Impact: None.

Attachments:

1. Draft August 16, 2022 City Council Meeting Minutes
2. Draft August 30, 2022 City Council Special Workshop Meeting Minutes



MINUTES

RICHLAND CITY COUNCIL REGULAR MEETING

Tuesday, August 16, 2022

Richland City Hall ~ Council Chambers

625 Swift Boulevard

City Council Regular Meeting - 6:00 p.m.

Mayor Alvarez called the City Council regular meeting to order at 6:00 p.m.

Welcome and Roll Call

Mayor Alvarez welcomed those in the audience and expressed appreciation for their attendance.

Attendance: Mayor Alvarez, Mayor Pro Tem Christensen, and Councilmembers Lukson, Richardson and VanDyke were present. Councilmembers Jones and Kent were absent.

MAYOR PRO TEM CHRISTENSEN MOVED AND COUNCILMEMBER RICHARDSON SECONDED THE MOTION TO EXCUSE COUNCILMEMBERS JONES AND KENT. MOTION CARRIED 5-0.

Also present were City Manager Amundson, Deputy City Manager Schiessl, Assistant City Manager Florence, City Attorney Kintzley, Chief of Police Clary, Fire Chief Huntington, Development Services Director Jensen, Public Works Director Rogalsky, Energy Services Director Whitney, Finance Director Allen, Human Resources Director Paulsen and City Clerk Rogers.

Pledge of Allegiance

Mayor Alvarez led the Council and audience in the recitation of the Pledge of Allegiance.

Approval of Agenda

MAYOR PRO TEM CHRISTENSEN MOVED AND COUNCILMEMBER VANDYKE SECONDED THE MOTION TO APPROVE THE AGENDA AS PUBLISHED. MOTION CARRIED 5-0.

Presentations

1. Boys & Girls Clubs of Benton and Franklin Counties

Brian Ace, Executive Director of Boys & Girls Clubs of Benton and Franklin Counties (BGCBFC) provided an overview of the BGCBFC Mission statement and the benefits of investing in the BGCBFC, then played a video featuring activities and programs offered.

Chad Mitchell, Board President of BGCBFC, announced that BGCBFC was awarded a contract to provide before and after school childcare in Richland elementary schools.

A Boys & Girls Club Richland Strategic Plan Taskforce was created for the purpose of identifying which youth age groups and school site locations would most benefit from activities and programs offered by BGCBFC.

Council was invited to ask questions of Mr. Ace and Mr. Mitchell.

2 Support, Advocacy & Resource Center (SARC)

JoDee Garretson, Executive Director of Support, Advocacy & Resource Center (SARC) provided an overview of the agency's mission, programs offered at SARC and data outlining local client demographics, age groups and types of assault. Additional information can be found in the PowerPoint presentation included in the agenda packet.

3 Development Services Mid-Year Review

With the aid of a PowerPoint presentation, Development Services Director Jensen provided the semi-annual department update on construction, planning, and economic development projects handled by the Development Services Department.

Public Hearings

None.

Public Comments

City Clerk Rogers read the Public Comments procedures.

The following individuals provided comments:

- JoAnn Neely - 1704 Manchester St. Richland, WA: Prior to the start of the meeting, Ms. Neely distributed copies of Richland Municipal Code Section 9.16.045 regarding Public Nuisance Noise and Revised Code of Washington (RCW) 46.37.390 addressing muffler smoke and air contaminant standards, penalties, and exceptions. During public comment, Ms. Neeley conveyed concerns regarding noise nuisance violations associated with street racing on Keene Road, Gage Boulevard and Leslie Road. Steet racers often have modified mufflers installed on their vehicles which disturbs the peace in the neighborhood. Ms. Neely stated her husband submitted a complaint to the Richland Police Department last February about this noise nuisance, yet the issue continues to exist. Ms. Neeley suggested posting patrol officers on certain streets to mitigate speed driving.
- Greg McLellan - 1113 Oxford, Richland, WA: Mr. McLellan voiced concerns regarding street racing and associated accidents in his Leslie Canyon neighborhood.
- Stephanie Hays - 1814 Mint Loop, Richland, WA: Ms. Hays shared concerns relating to street racing on Gage Boulevard and Keene Road, then requested Council consider

reducing speed limits on these streets to mitigate racing.

- Kylie Tinsley - 1827 Sagewood Loop, Richland, WA: Ms. Tinsley stated she lives near Badger Mountain Park and has witnessed street racing on Keene Road. Ms. Tinsley reported that street racing often occurs between the hours of 9:00 p.m. and 2:00 a.m., which creates safety issues and violates the noise ordinance.

Consent Calendar

City Clerk Rogers read the Consent Calendar.

MAYOR PRO TEM CHRISTENSEN MOVED AND COUNCILMEMBER RICHARDSON SECONDED THE MOTION TO APPROVE THE CONSENT AGENDA AS PUBLISHED. MOTION CARRIED 5-0.

Minutes

4. Approval of the August 1, 2022 City Council Special Meeting Minutes

Ordinances - First Reading

5. Ordinance No. 2022-27, Amending Richland Municipal Code Section 13.06.330 related to Billing for Ambulance Transports
6. Ordinance No. 2022-30, Granting a Solid Waste Collection Transition Franchise to Waste Management of Washington, Inc. for Properties affected by the Badger Mountain Estates Lots 1-8 and 300.1 Acres of Department of Energy (DOE) Land Annexations
7. Ordinance No. 2022-31, Granting a Solid Waste Collection Transition Franchise to Basin Disposal, Inc. and Ed's Disposal, Inc. for Properties affected by the Badger Mountain Estates Lots 1-8 and 300.1 Acres of Department of Energy (DOE) Land Annexations
8. Ordinance No. 2022-32, Amending Multiple Sections of Richland Municipal Code Title 14: Electricity, related to Underground Service Lines, Net Metering, Line Extensions and Pole Attachments

Ordinances - Second Reading & Passage

9. Ordinance No. 2022-19, Amending Richland Municipal Code Title 23: Zoning Regulations related to Emergency Shelters and Transitional Housing
10. Ordinance No. 2022-26, Amending the 2022 Budget in the General Fund, Industrial Development Fund, Streets Capital Construction Fund, Wastewater Utility Fund and Equipment Replacement Fund

11. Ordinance No. 2022-28, Amending Chapters 9.05 and 9.07 of the Richland Municipal Code related to Domestic Violence and Non-Domestic Violence Court Orders

Resolutions – Adoption

12. Resolution No. 2022-103, Authorizing an Interlocal Agreement with the City of Kennewick, and County of Benton for the 2022 Byrne Justice Assistance Grant
13. Resolution No. 2022-104, Setting a Meeting Date for the North Horn Rapids Industrial Park Annexation
14. Resolution No. 2022-105, Authorizing Distribution of Commercial Façade Improvement Program Funds to 707 Parkway LLC
15. Resolution No. 2022-107, Authorizing Grant Applications to the Washington State Transportation Improvement Board 2022 Urban Arterial Program and Active Transportation Program
16. Resolution No. 2022-108, Authorizing Award of Bid to Clearwater Construction & Management LLC for the Wastewater Treatment Plant Aeration Basin Retrofit Project Re-Bid
17. Resolution No. 2022-109, Authorizing a Grant Application to the Washington State Library for a Financial Aid Outreach Pilot Grant
18. Resolution No. 2022-110, Authorizing a Professional Services Agreement with Matrix Consulting Group for a Development Review Process Performance Audit

Items - Approval

19. Appointment to the Tri-City Regional Hotel-Motel Commission: Linda Hendricks

Expenditures - Approval

20. Expenditures from July 1, 2022 to July 31, 2022 for \$25,295,811.02 including Travel Check Nos. 20170-20174, Accounts Payable Check Nos. 302109- 303113, Accounts Payable Wire Nos. 9130-9165, Payroll Wires & ACH Nos. 12827-12875, Payroll Direct Deposit & Check Nos. 195416-196604, and Pension Check Nos. 6216-6240.

Items of Business

21. Resolution No. 2022-106, Authorizing Distribution of Commercial Façade Improvement Program Funds to Tri-County Partners Habitat for Humanity

Councilmember Richardson recused herself from this item due to a conflict of interest and left the Council Chambers while the matter was taken to a vote by the remaining members of the Richland City Council.

MAYOR PRO TEM CHRISTENSEN MOVED AND COUNCILMEMBER LUKSON SECONDED THE MOTION TO ADOPT RESOLUTION NO. 2022-16, AUTHORIZING DISTRIBUTION OF COMMERCIAL FACADE IMPROVEMENT PROGRAM FUNDS TO TRI-COUNTY PARTNERS HABITAT FOR HUMANITY. MOTION CARRIED 4-0.

Reports and Comments

City Manager

City Manager Amundson asked individual directors to provide a brief update on items in their respective departments.

Chief Huntington reported the Queesngate Drive/I-82 fire was determined to have been caused by a mechanical failure in a passing vehicle. Fire Chief Huntington shared that the Richland Fire Department received critical regional assistance which prevented the loss of structures. Mayor Alvarez thanked the Richland Fire Department for their work.

Public Works Director Rogalsky announced that the City was awarded a \$1.8M grant by the State of Washington for pedestrian safety improvements and unsignalized intersection safety projects. In addition, the Benton-Franklin Council of Governments (BFCG) awarded grant funds to the City of Richland for the South George Washington Way Intersection Improvements project and the Downtown Connectivity Improvements project.

Chief of Police Clary responded to concerns raised during public comment regarding street racing, and provided an overview of what the Richland Police Department is doing to address street racing and modified exhaust noise violations. Chief Clary fielded questions from City Council.

City Manager Amundson supplemented Chief Clary's information by noting that Chapter 9.16 RMC was amended earlier in the year to allow RPD to issue citations for vehicle exhaust-related noise violations. City Manager Amundson then announced that a request for additional RPD staff will come forward in the proposed 2023 budget.

City Manager Amundson thanked councilmembers and staff for their participation in the National Night Out (NNO) and City Fair event, then reminded City Council that the August 23, 2022 Council workshop is rescheduled to August 30, 2022. Lastly, City Manager Amundson briefly identified the August 30, 2022 workshop agenda items.

City Council

Councilmember Richardson announced that she was selected by the Washington State Department of Commerce to serve on the Hanford Area Economic Investment Fund Advisory Committee (HAEIFAC).

Councilmember Lukson shared frustrations with residents who are affected by street

racing and speeding through neighborhoods, then voiced support for staff recommendations to address the issue. Councilmember Lukson also agreed that the NNO event was a success.

Councilmember VanDyke thanked Chief Clary for her responses to the street racing concerns.

Mayor Pro Tem Christensen thanked staff for the information provided. Mayor Pro Tem Christensen then shared that he spoke to police officers during the NNO event who gave him positive feedback on the use of body-worn cameras. Lastly, Mayor Pro Tem Christensen thanked all city staff for the job well done and for making Richland a great place to live.

Mayor

Mayor Alvarez spoke favorably of the NNO event location and added that the event was a success. Mayor Alvarez then inquired whether the City has a vehicle collision simulator that could possibly be used to demonstrate the experience of a crash for the benefit of high school students.

Adjournment

Mayor Alvarez adjourned the meeting at 7:29 p.m.

APPROVED:

ATTEST:

Michael Alvarez, Mayor

Jennifer Rogers, City Clerk

DATE APPROVED:

DATE PUBLISHED:



MINUTES

RICHLAND CITY COUNCIL SPECIAL WORKSHOP MEETING

Tuesday, August 30, 2022

Richland City Hall ~ Council Chambers

625 Swift Boulevard

City Council Special Workshop - 6:00 p.m.

Mayor Alvarez called the Council special workshop meeting to order at 6:00 p.m.

Attendance: Mayor Alvarez, Mayor Pro Tem Christensen, and Councilmembers Jones, Kent, Lukson (remotely via Zoom), Richardson and VanDyke were present.

Also present were City Manager Amundson, Deputy City Manager Schiessl, Assistant City Manager Florence, City Attorney Kintzley, Chief of Police Clary, Fire Chief Huntington, Public Works Director Rogalsky, Development Services Director Jensen, Energy Services Director Whitney, Finance Director Allen and City Clerk Rogers.

Agenda Items

1. Richland Public Facilities District & Arts Center Task Force

City Manager Amundson introduced Steve Wiley, Chair of the Arts Center Task Force. Mr. Wiley provided an overview of the Arts Center Task Force's history and goals. Mr. Wiley then asked Richland City Council to take the following action:

- Amend the by-laws of The REACH to establish The Reach Foundation as the REACH operator;
- Support the Art Task Force's engagement with the U.S. Army Corps of Engineers and local tribes for the purpose of identifying a site on land leased by the City for a Mid-Columbia Performing Arts Center;
- Allow Richland residents to vote on a tax measure to support a Mid-Columbia Performing Arts Center as a Richland Public Facilities District project;
- Consider a public-private partnership with the Arts Center Task Force to build a Mid-Columbia Performing Arts Center in Richland.

Council engaged in a lengthy question and answer session with Mr. Wiley and other members of the Arts Center Task Force.

2. National Community Survey Results Presentation

Assistant City Manager Florence introduced Polco Senior Survey Associate Joe Dell'Olio, who presented the community survey results via Zoom. Mr. Dell'Olio gave a brief overview of the survey process before highlighting the following key findings:

1. Richland's economy is a strong community feature;
2. Many aspects of Richland's community design receive positive reviews, but

- residents identify some potential areas of opportunity for the City;
3. Most residents feel a strong sense of safety in Richland;
 4. Residents appreciate Richland's natural environment and recreational opportunities.

Detail in support of these key findings is available in the materials published in the agenda packet and in the PowerPoint presentation on file in the Richland City Clerk's Office.

3. Strategic Planning - Citizen Focus Groups

Assistant City Manager Florence shared with City Council the idea of creating focus groups to assist in guiding the City's upcoming strategic planning effort. Staff proposes inviting individuals to come together for the specific purpose of representing the following focused interests in the City: Economic Development/Vitality; Quality of Life; New Residents < 5 years; Community Leaders; and Boards, Commissions & Committee Chairs.

Council spoke favorably of the idea of creating focus groups to aid in strategic planning. Councilmember Kent suggested adding another category to capture residents with considerable longevity (i.e., > 20 years) to counterbalance the New Residents < 5 focus group.

4. Capital Improvement Plan (CIP) Discussion

With the aid of a PowerPoint presentation, Finance Director Allen provided a detailed overview of the preliminary 2023-2028 Capital Improvement Plan (CIP) and its associated fiscal impacts. 65 projects are included in the proposed 2023-2028 CIP. The PowerPoint presentation is on file in the Richland City Clerk's Office.

Adjournment

Mayor Alvarez adjourned the meeting at 8:40 p.m.

APPROVED:

ATTEST:

Michael Alvarez, Mayor

Jennifer Rogers, City Clerk

DATE APPROVED:

DATE PUBLISHED:



COUNCIL AGENDA ITEM COVERSHEET

Council Date: 9/6/2022

Agenda Category: Ordinances - First Reading

Core Focus Area I - Promote Financial Stability & Operational Effectiveness

Subject:

Ordinance No. 2022-33, Amending Chapter 2.04 of the Richland Municipal Code related to the City of Richland's Administrative Code

Department/Office
City Attorney

Ordinance/Resolution Number:
2022-33

Document Type:
Ordinance

Recommended Motion:

Give first reading, by title only, to Ordinance No. 2022-33, amending Title 2.04 of the Richland Municipal Code related to the City of Richland's Administrative Code.

Summary:

The City has need, from time to time, to update the Richland Municipal Code to bring it into alignment with municipal practices and to eliminate ambiguities. The edits proposed in Ordinance No. 2022-33 reflect changes in organization structure introduced by a change in city leadership. Primarily, the ordinance establishes finance as a separate department under the direction of a finance director.

Fiscal Impact: None.

Attachments:

- I. Ordinance No. 2022-33

ORDINANCE NO. 2022-33

AN ORDINANCE OF THE CITY OF RICHLAND, WASHINGTON, AMENDING CHAPTER 2.04 OF THE RICHLAND MUNICIPAL CODE RELATED TO THE ADMINISTRATIVE CODE.

WHEREAS, the City has need, from time to time, to update the Richland Municipal Code to eliminate ambiguities and align with current practices; and

WHEREAS, due to changes in staffing and organizational structure, updates to Title 2.04 RMC are necessary to bring the Richland Municipal Code into alignment with municipal operations.

NOW, THEREFORE, BE IT ORDAINED by the City of Richland as follows:

Section 1. Chapter 2.04 of the Richland Municipal Code, entitled Administrative Code, as first enacted by Ordinance No. 125, and last amended by Ordinance No. 2022-02, is hereby amended as follows:

Chapter 2.04 ADMINISTRATIVE CODE

Sections:

- 2.04.010 Purpose.**
- 2.04.020 Charter defined.**
- 2.04.030 City manager – Responsibilities.**
- 2.04.040 City manager – Duties.**
- 2.04.050 City manager – Administrative supervision.**
- 2.04.060 City manager – Administrative rules.**
- 2.04.070 City manager – Staff.**
- 2.04.080 City manager – Reports to the council.**
- 2.04.090 City manager – Absence or disability.**
- 2.04.100 Groups, departments, and officers established.**
- 2.04.105 Oaths of office.**
- 2.04.110 Boards, commissions and committees.**
- 2.04.115 Ad hoc citizens committees.**
- 2.04.120 Procedure for filling vacancies on boards, commissions, and committees.**
- 2.04.125 Selection process for council appointments and all other appointments not covered by RMC 2.04.120.**
- 2.04.126 Deputy city manager.**
- 2.04.127 *Repealed.***
- 2.04.128 Assistant city manager.**
- 2.04.130 City clerk.**
- 2.04.140 City attorney.**
- 2.04.150 *Repealed.***
- 2.04.155 Administrative services department.**

- 2.04.156 Human resources department.
- 2.04.158 Finance department.
- 2.04.160 Development services department.
- 2.04.161 Parks and public facilities department.
- 2.04.165 *Repealed.*
- 2.04.170 Public works department.
- 2.04.180 Energy services department.
- 2.04.200 *Repealed.*
- 2.04.205 Fire and emergency services department.
- 2.04.210 Police department.
- 2.04.220 *Repealed.*
- 2.04.260 Severability.
- 2.04.270 Interpretation.

2.04.010 Purpose.

This chapter is adopted pursuant to Article II, Section 2.07(K) of the Richland City Charter authorizing council to adopt an administrative code to govern the administration of the city, to create or eliminate departments, offices, and positions of employment not created by the Charter, and to determine the powers and duties of any department and office.

2.04.020 Charter defined.

“Charter” when used in this chapter means the Richland City Charter.

2.04.030 City manager – Responsibilities.

The city manager shall be the chief administrative officer of the general city government and shall supervise and be responsible for the effective management of the administrative and financial affairs of the city, and shall supervise all city departments and offices, except as otherwise provided by the Charter, general laws or ordinances. The city manager is responsible for the proper execution of the policies set by the city council and the enforcement of all laws and ordinances. The city manager is responsible to the city council for the efficient operation of all city departments and offices under the manager’s jurisdiction, and shall likewise be responsible to the city council for the economical conduct and operation of all city departments and offices under the manager’s jurisdiction.

2.04.040 City manager – Duties.

The city manager shall:

- A. Keep the council informed of the conditions and needs of the city;
- B. Make such reports and recommendations as the manager deems desirable or as may be requested by the council;
- C. Prepare and submit to the council the proposed annual budget for the city;
- D. Prepare and submit annually to the council a five-year capital expense budget;
- E. Control city expenditures so that actual expenditures do not exceed amounts available for expenditures;

F. Supervise the purchase, lease, rental, use, maintenance and assignment of city property required by the city;

G. Appoint, remove, suspend or discipline all officers and employees of the city under the city manager's jurisdiction, subject to the Charter, ordinances or general laws; provided, that this authority may be delegated by the city manager, in the city manager's discretion, to a department head or department director;

H. Fix and establish the number of employees in the various city departments and offices under the manager's jurisdiction and determine their duties and compensation, subject to the compensation plan and appropriations adopted by the city council;

I. Exercise all powers conferred by law upon the city but not specifically conferred upon any official or the city council;

J. Negotiate and sign, on behalf of the city, contracts duly authorized by the council or by ordinance and administer the provisions of such contracts;

K. Take or cause to be taken or recommend to the city council in the proper case all and every action necessary to protect the best interests and promote the welfare of the city;

L. Represent the city at meetings with other governmental units, agencies, commissions, and associations as deemed necessary or as directed by the city council;

M. Perform such other duties and have and exercise such other powers as may be prescribed by law.

2.04.050 City manager – Administrative supervision.

The city manager, in exercising general control over the administrative affairs of the general government of the city, shall deal insofar as it is possible through the administrative officers of the general government designated by this code, and except as otherwise provided by Charter or general law, all such officers shall be directly and exclusively responsible to the city manager, and to no other person or body, for the efficient or economical conduct of their respective departments and offices.

2.04.060 City manager – Administrative rules.

The city manager is authorized to issue rules or administrative regulations not inconsistent with general law, the Charter or ordinances of the city, outlining the general procedures for the administration of city activities under the city manager's jurisdiction, and may provide for a system of administrative regulations to be issued by the heads of the various departments and offices of the city's general government.

2.04.070 City manager – Staff.

The city manager may, within the limits of the annual budget adopted by the city council, appoint administrative assistants or designate employees of the city as such whose duties shall be to assist the city manager in such a manner as the city manager may designate and to conduct studies and research into the most advantageous administrative practices and other matters affecting the city, its government and its administration, the application of which will improve the administration of the city government. The city manager may, within the limits of the annual budget adopted by the

city council, determine appropriate staffing levels for the city manager's office and for the other departments and divisions of the city.

2.04.080 City manager – Reports to the council.

The city manager shall prepare and submit to the city council annually, at the close of each fiscal year, a complete report of the city's administrative activities and finances for the preceding year, which report shall be made available for public distribution. The city manager shall prepare and present such other reports as the city council may require or as the manager deems advisable. The city manager, as part of the adoption of the annual budget, shall provide to city council a current organizational chart.

2.04.090 City manager – Absence or disability.

In the event of an absence, suspension, or disability of the manager exceeding 60 calendar days, or if a vacancy should occur in the office, the council may designate a qualified administrative officer of the city to perform the duties of the office until the manager shall return to duty or until the appointment of a successor.

2.04.100 Groups, departments, and officers established.

Administrative services of the city shall be organized into departments and officers whose titles are created and established as follows:

Department/Office	Administrative Officer
City Manager's Office	City Manager
City Clerk's Office	City Clerk
City Attorney's Office	City Attorney
Administrative Services Department	Assistant City Manager
Human Resources Department	Human Resources Director
Finance Department	Finance Director
Development Services Department	Development Services Director
Parks & Public Facilities Department	Parks & Public Facilities Director
Public Works Department	Public Works Director
Energy Services Department	Energy Services Director
Fire and Emergency Services Department	Fire Chief
Police Department	Chief of Police

2.04.105 Oaths of office.

For purposes of Article VIII, Section 8.05 of the Richland City Charter, an "officer of the city" means all elected officials, the city manager, any assistant and/or deputy city manager(s), all administrative officials established in RMC 2.04.100, and all general authority Washington peace officers in the Richland Police Department.

2.04.110 Boards, commissions and committees.

A. Boards, Commissions and Committees Created. There shall be boards, commissions and

committees as defined in this title and such other boards, commissions and committees as have been or are hereafter established by ordinance or by general laws. Each board, commission or committee shall be so organized and shall have such powers as are conferred and such duties as are required by general laws, the Charter and ordinances.

B. Applicability. This section shall apply to all boards, commissions and committees except the firemen's pension board and the police relief and pension board.

C. Officers, Liaisons, Staff Assistance.

1. Officers. The board, commission or committee shall elect its own chairperson and vice chairperson and create and fill such other offices as it may determine it requires.

2. Council Liaisons. Except as otherwise provided in this title, all boards, commissions and committees shall have a liaison appointed from the council who shall serve consistent with RMC 2.04.125(A).

3. Staff Liaisons. The administrative officer of the department or offices most closely connected with the activity of a board, commission or committee shall serve as a staff liaison to that board, commission or committee. To the extent such communication is warranted, the staff liaison is responsible for facilitating communication between the assigned board, commission or committee and city employees, consultants, contractors, customers, applicants, city manager, city council, and members of the public.

4. Liaisons shall not be members of the board, commission or committee to which they are appointed and shall fulfill the role of facilitation and transfer of information between the respective board, committee and commission.

D. Membership.

1. Appointment. All board, commission and committee members shall be appointed by the council. The appointment procedure referenced in RMC 2.04.120 shall be used to recruit and evaluate candidates for appointment.

2. Compensation and Political Affiliation. All board, commission and committee members shall serve without compensation and without regard to political affiliation.

3. Membership Limitations. Excepting the personnel committee, a board, commission or committee member is limited to membership on two boards, commissions or committees, including ad hoc or temporary committees in existence for a period exceeding six months. See RMC 2.28.125 for limitations on members of the personnel committee.

E. Residency Qualification. Except as provided herein, all board, commission and committee members shall reside within Richland city limits, both at the time of appointment and for the duration of the member's term. Youth members of the arts commission and the parks and recreation commission must reside within the boundaries of the Richland School District or the Kennewick School District within Richland city limits. Members of the lodging tax advisory committee and economic development committee must be corporate citizens of Richland. Three

members of the Americans with disabilities citizens review committee may reside outside Richland city limits.

F. Term Limits. Except for the library board and personnel committee, all board, commission and committee members shall serve no more than 12 consecutive years on the same commission or committee. See RCW 27.12.190 for library board terms and RMC 2.28.125 for personnel committee terms. With the exception of the library board of trustees, the council may waive this limitation for any member of any board, commission or committee by majority vote. All board, commission and committee members shall continue to serve until their successors are appointed by the council.

G. Removal.

1. A board, commission or committee may, by majority vote, recommend to the council that an appointed member be removed upon such grounds as may be deemed appropriate by the board, commission or committee. The council shall take action to approve or deny the recommendation.

2. The council may, on its own motion and by majority vote, remove any appointed member of a board, commission or committee upon such grounds as it may deem appropriate and declare the position vacant.

3. A commission or committee member shall be removed upon absences from three consecutive regular meetings or four regular meetings within a 12-month period. For purposes of this subsection, workshops are excluded from the definition of “regular meeting.”

H. Vacancies.

1. Vacancies occurring other than by expiration of a term shall be filled for any unexpired term in the manner used for regular appointments. For purposes of determining the number of terms served by a member, service in excess of one year shall qualify as a full term.

2. If a member’s residence status changes during his or her term such that the member no longer complies with the residency qualification, the member must immediately vacate his or her position on the board, commission or committee.

3. Vacancies shall be filled using the appointment procedure referenced in RMC 2.04.120.

I. Training. Each new board, commission and committee member shall take the state-required open government training within 90 days of appointment. Board, commission and committee members are required to repeat this training every four years. This training shall be coordinated and monitored for compliance by the city clerk’s office.

J. Expenditures. Any approved expenses incurred by a board, commission or committee shall be paid from the affiliated department’s annual budget.

K. Open Meetings – Executive Session. All meetings shall comply with Chapter 42.30 RCW, the Open Public Meetings Act.

L. Parliamentary Procedure. Boards, commissions and committees shall follow Robert’s Rules of Order when conducting meetings and making decisions.

M. Quorum – Voting – Tie.

1. Quorum. Except for the lodging tax advisory committee, a majority of any members of a board, commission or committee present at a meeting shall constitute a quorum allowing for the transaction of business. Quorum for the lodging tax advisory committee shall be as provided in RMC 2.15.030(B).

2. In the event of a vacancy or vacancies, the majority of any of the remaining members shall constitute a quorum for the transaction of business; provided, however, that at least three members must be present to constitute a quorum of the planning commission, library board and the Americans with disabilities citizens review committee.

3. A majority vote of the quorum shall be sufficient to accomplish an action; provided, however, that board of adjustment, library board and code enforcement board action requires at least three affirmative votes of those present.

4. Members not present for a hearing held by the board, commission or committee shall not participate in the decision unless the member first reads and reviews the full record made at the hearing.

5. All members present participate in a vote, including youth members and the chair, unless a member has recused himself or herself due to a real or apparent conflict of interest or has been disqualified based on an appearance of fairness concern. In the case of a tie vote, the action fails. Members must be present at the meeting to participate in a vote.

N. Records. All boards, commissions, committees and ad hoc committees shall prepare, for each meeting, special meeting or workshop, an agenda and agenda packet for publication on the city's website. Meeting minutes shall be prepared for each meeting and, once approved, shall be published on the city's website. All agendas, agenda packets and meeting minutes shall be prepared pursuant to the procedures adopted by the city. Such records shall be maintained according to the state-mandated retention schedule and the city's established retention policies. All records shall be open to public inspection.

2.04.115 Ad hoc citizens committees.

An ad hoc citizens committee may be constituted upon the motion of the city council.

A. At the time of passing the motion establishing the committee, the following shall be made a part of the motion:

1. A written statement of purpose for the committee.
2. A written description of recommendations which the council expects from the committee.
3. The specific due date of material and recommendation back to the council.
4. An estimated date of completion of the committee assignment.
5. The number of members that shall be on the committee and a statement of qualifications required of committee members.

6. If special circumstances warrant the inclusion of one or more councilmembers as voting members of the committee, the motion shall provide justification for so doing.

B. Other Applicable Rules.

1. The council, through the city manager, will provide oral or written statements to nominated members of the ad hoc committee relating the purpose of the committee, a description and due date of recommendations back to the council and the anticipated date of completion of the committee assignment.

2. Ad hoc committee members shall normally be nominated by members of the city council. Appointment of ad hoc committee members shall be by majority vote of the city council.

3. The ad hoc committee shall appoint a chairperson, vice-chairperson and other officers as they see fit from the membership of the committee. Council may choose to assign a council liaison consistent with the process identified in RMC 2.04.125.

4. *Repealed by Ord. 03-20.*

5. City staff shall provide assistance to the committee as appropriate.

6. A quorum of the ad hoc committee must be present to conduct business. A quorum shall consist of the lowest number of members of the committee that exceeds one-half the stated number of members of the committee.

7. Unless otherwise directed by city council, formal minutes need not be kept except for formal motions.

8. Written reports issued by the ad hoc committee activities shall be approved by majority vote of the committee and signed or initialed by the ad hoc committee chairperson.

2.04.120 Procedure for filling vacancies on boards, commissions, and committees.

The procedure for filling vacancies on boards, commissions and committees shall be kept on file with the city clerk's office and made available for public inspection upon request and by posting on the city's website.

2.04.125 Selection process for council appointments and all other appointments not covered by RMC 2.04.120.

Biennially, generally at the first workshop after newly elected councilmembers take office, the council shall choose from among its members those who will serve as council liaisons to the various boards, commissions, committees and outside agencies, council appointees to ad hoc committees, and all other council and non-council appointments not covered by RMC 2.04.120. The recommendations generated during the workshop will be presented by resolution to the full city council for approval. Each assignment to a board, commission, committee, or outside agency shall be assigned a category which shall be defined as follows:

A. Liaison Assignment to City of Richland Boards, Commissions and Committees. A councilmember shall not be a voting member of the board, commission or committee and shall participate only to a limited degree. The councilmember's purpose is primarily to communicate council policy to the board, commission or committee and to take back to the council

recommendations and questions. The councilmember shall also gather information about the boards, commissions or committees and communicate it to the council when appropriate. In particular, councilmembers shall not direct any activities as a leader of boards, commissions or committees to which they are assigned.

B. Liaison Assignment to Non-City Organization – Nonparticipant. Councilmembers shall not be voting members of non-city organizations in these kinds of assignments. The councilmember's purpose is primarily to communicate council policy to the organization and to take back to the council recommendations and questions. The councilmember shall also gather information about the organization and communicate it to the council when appropriate. In particular, councilmembers shall not direct any activities as a leader of organizations to which they are assigned.

C. Assignment to Non-City Organization – Board Member. Councilmembers may be voting members of non-city organizations in these kinds of assignments. However, councilmembers shall not participate as officers of the assignee organizations in these kinds of assignments. The councilmember's purpose is not only to communicate council policy to the organization and bring recommendations and questions back to council; the councilmember shall also encourage implementation of city objectives. The councilmember shall also gather information about the organization and communicate that information to the council when appropriate.

D. Assignment to Non-City Organization – Board Member/Officer. Councilmembers may be voting members and participate as officers of non-city organizations in these kinds of assignments. The councilmember's purpose is not only to communicate council policy to the organization and bring recommendations and questions back to the council; the councilmember shall also encourage implementation of city objectives. The councilmember shall also gather information about the organization and communicate to the council when appropriate.

E. Assignment to Local, Regional, State, National or International Boards/Commissions and Committees Relating to City or Council Business – Member/Officer. Councilmembers who seek membership, election or reelection for office in local, regional, state, national or international boards/commissions and committees relating to city or council business must, prior to the workshop, submit a request for consideration during the council assignments discussion. Where circumstances require travel outside the local area at city expense, the councilmember shall adhere to RMC 1.01.040.

F. The category of each assignment signals the level of participation required of the councilmember as to each organization or board to which the councilmember is assigned. A roster reflecting the category of each assignment will be kept on file in the city clerk's office.

2.04.126 Deputy city manager.

The deputy city manager, under the direction of the city manager and subject to the provisions of the Charter and general laws, shall [assist the City Manager in the day-to-day administration of the City government, represent the City Manager as directed,](#) provide general administrative oversight of the development services department, parks & public facilities department, public works department, and energy services department, and perform other duties as assigned not inconsistent with the position of deputy city manager.

2.04.127 Deputy city manager for community and development services.

Repealed by Ord. 47-20.

2.04.128 Assistant city manager.

An assistant city manager may be appointed by the city manager and shall have such duties as shall be assigned to him or her by the city manager. The office of assistant city manager may, at the direction of the city manager, be combined with the office of any city official described in the city code.

2.04.130 City clerk.

The city clerk, subject to the provisions of the Charter, general laws and ordinances, shall be responsible for the publication, filing, indexing and safekeeping of all the records of all the proceedings of the council; record and certify all ordinances and resolutions; serve as custodian of the city seal and official city records; prescribe and furnish sample forms for all petitions provided for by Charter and ordinances; serve as registrar of voters for the city, and keep and maintain all election records and have custody of all property in connection with elections and perform such other duties in relation to registration of voters and elections as required by Charter and general law; publish all legal notices unless otherwise provided by general law or ordinance; and perform other duties as may be required by the Charter, the general laws, ordinances, the city council, or the city manager. The city clerk shall attend all meetings of the council and keep a permanent journal of its proceedings.

2.04.140 City attorney.

The city attorney, subject to the provisions of the Charter and general laws, shall advise and assist in the preparation of, and prepare in final form and review for legal correctness, all ordinances, resolutions and regulations; prepare and review for legal correctness all contracts, bonds, franchises and other instruments to which the city is a party; attend all regular and special council sessions unless excused by the city manager; advise the council, the city manager, all department heads and other administrative officials and all boards, commissions and committees as to the legality of any proposed action; be responsible for all prosecutions for violations of ordinances, unless the manager, with the approval of the council, otherwise provides; represent the city in all legal proceedings in which the city is a party or has an interest, before any court or judicial, administrative or other tribunal, unless the manager, with the approval of the council, otherwise provides; settle or compromise, with the approval of the council, claims or suits at law or in equity to which the city may be a party; and preserve in the office of the city attorney copies of all legal opinions rendered.

2.04.150 Administrative services group.

Repealed by Ord. 47-20.

2.04.155 Administrative services department.

The administrative services department, under the direction of the assistant city manager, shall be responsible for internal city services such as purchasing, warehousing, equipment maintenance, fleet management, [and information technology](#). ~~licensing and taxation, and all finance functions including financial and utility reporting, budget, and cash and investment management including debt financing.~~

2.04.156 Human resources department.

The human resources department, under the direction of the human resources director, shall direct and administer the City's personnel program in accordance with the Charter, state and federal laws, and established best practices; maintain proper records of examinations, appointments, removals, leaves of absence, and other significant events in the service of all employees in the classified service and provide administrative support to the City's Personnel Committee; recruit personnel; and perform other duties as may be required by the Charter, the general laws, ordinances, or the city manager. The term "human resources director" has the same meaning as the term "personnel officer" in the Charter.

2.04.158 Finance department.

The finance department, under the direction of the finance director, shall direct and administer licensing and taxation; all finance functions including financial and utility reporting, budget, and cash and investment management including debt financing; and perform other duties as may be required by the Charter, the general laws, ordinances, or the city manager.

2.04.160 Development services department.

The development services department, under the direction of the development services director, shall be responsible for land use planning, development, permits, building inspections, redevelopment and neighborhood improvement, and business and economic development.

2.04.161 Parks & public facilities department.

The parks & public facilities department, under the direction of the parks and public facilities director, shall be responsible for construction and maintenance of certain city facilities, implementation of recreation and enrichment programs for citizens of all ages, physical park planning, maintenance of park areas and related facilities, library, municipal golf, and such other duties as may be assigned.

2.04.165 Utility and public works group.

Repealed by Ord. 47-20.

2.04.170 Public works department.

The public works department, under the direction of the public works director, shall be responsible for engineering and utility operations of water, sewer, stormwater, and solid waste, transportation planning, and road maintenance.

2.04.180 Energy services department.

The energy services department, under the direction of the energy services director, shall be responsible for the provision of energy services.

2.04.200 Public safety group.

Repealed by Ord. 47-20.

2.04.205 Fire and emergency services department.

The fire and emergency services department, under the direction of the fire chief, shall be responsible for emergency medical services, fire prevention, fire operations and fire training.

2.04.210 Police department.

The police department, under the direction of the chief of police, shall be responsible for patrol, investigations, code enforcement and community relations.

2.04.220 Benton County emergency services department.

Repealed by Ord. 47-20.

2.04.260 Severability.

The invalidity of any chapter, section, subsection, provision, clause or portion thereof, or the invalidity of the application thereof to any person or circumstance, shall not affect the validity of the remainder of the ordinance codified herein or the validity of its application to other persons or circumstances.

2.04.270 Interpretation.

A. Conflicts. In any case where the change of department or position title causes a question or conflict in the responsibility or function to be administered, the city manager shall review the matter and clarify the assignment of responsibility among the departments and officials established by this chapter.

B. Salaries. In cases of reassignment of duties or establishment of positions, the city manager shall review the responsibilities and recommend appropriate salary ranges or adjustments as a part of the annual budget process. Where individuals are assigned temporary acting responsibilities significantly different from their present responsibilities, the city manager, within existing budgetary appropriations, may make interim compensation adjustments as allowed under the personnel rules.

C. Benefits. Notwithstanding the current compensation plan for unaffiliated employees, the city manager, within existing budgetary appropriations, is authorized to approve provision of benefits as provided herein to limited term employees when such employees are hired for the specific purpose of supporting a recognized project-based initiative. Access to medical, dental, vision, deferred compensation, paid time off/sick leave and all other benefits for a limited term employee shall be on the same terms and conditions as they are made available to unaffiliated city employees. The city manager shall determine when a city project qualifies as a recognized "project-based initiative" such that this section applies. Nothing herein shall be construed so as to require the city manager to approve provision of such benefits to any limited term employee. In the event of a conflict between this section and any other section in this title, this section shall prevail.

Section 2. This Ordinance shall take effect the day following its publication in the official newspaper of the City of Richland.

Section 3. Should any section or provision of this Ordinance be declared by a court of competent jurisdiction to be invalid, that decision shall not affect the validity of the Ordinance as a whole or any part thereof, other than the part so declared to be invalid.

Section 4. The City Clerk and the codifiers of this Ordinance are authorized to make necessary corrections to this Ordinance, including but not limited to the correction of scrivener's errors/clerical errors, section numbering, references, or similar mistakes of form.

PASSED by the City Council of the City of Richland, Washington, at a regular meeting on the _____ day of _____, 2022.

Michael Alvarez, Mayor

Attest:

Approved as to Form:

Jennifer Rogers, City Clerk

Heather Kintzley, City Attorney

First Reading: _____

Second Reading: _____

Date Published: _____



COUNCIL AGENDA ITEM COVERSHEET

Council Date: 9/6/2022

Agenda Category: Ordinances - First Reading

Core Focus Area 2 - Manage & Maintain Infrastructure & Facilities

Subject:

Ordinance No. 2022-34, Amending Richland Municipal Code Section 12.08.065 regarding Pavement Cut Requirements

Department/Office
Public Works

Ordinance/Resolution Number:
2022-34

Document Type:
Ordinance

Recommended Motion:

Give first reading, by title only, to Ordinance No. 2022-34, amending Richland Municipal Code Section 12.08.065 related to pavement cut requirements.

Summary:

The City has the need, from time to time, to amend the Richland Municipal Code (RMC) to update standards and improve clarity.

In March of this year, Richland City Council adopted Ordinance No. 2022-05 to codify a standard for pavement cut restoration that was the product of a regional technical collaboration.

An unanticipated consequence of the standards set by Ordinance No. 2022-05 was the high cost borne by city residents confronted with emergency repairs to sewer service lines, and from new utility service extensions that occur in city streets. This experience caused staff to reconsider the standards in light of balancing the high costs of pavement restoration on local streets with the benefits of extended pavement life and quality. Modifying the pavement restoration standards of RMC 12.08.065 to reduce the cost of pavement restoration for projects on local streets, while maintaining high standards for arterial streets and major collector streets, will properly balance the best interests of the City and Richland residents.

Staff recommends approval of Ordinance No. 2022-34 for first reading, by title only.

Fiscal Impact: None.

Attachments:

I. Ordinance No. 2022-34

ORDINANCE NO. 2022-34

**AN ORDINANCE OF THE CITY OF RICHLAND, WASHINGTON,
AMENDING RICHLAND MUNICIPAL CODE SECTION 12.08.065
RELATED TO PAVEMENT CUT REQUIREMENTS.**

WHEREAS, the City has need, from time to time, to amend the Richland Municipal Code (RMC) to update standards and improve clarity; and

WHEREAS, Chapter 12.08 RMC related to Right-of-Way Construction establishes a process for issuing permits for construction in the City's public rights-of-way; and

WHEREAS, the City issues permits for right-of-way construction that result in cutting and removing pavement from existing public streets; and

WHEREAS, cutting, removing, and patching pavement reduces the effective service life of the pavement; and

WHEREAS, the City requires permittees to restore damage caused by construction; and

WHEREAS, the City, as the owner and party responsible for pavement maintenance, has an interest in obtaining high quality pavement patches that minimize the impact to pavement service life; and

WHEREAS, on March 1, 2022, through approval of Ordinance No. 2022-05, Richland City Council codified a standard for pavement cut restoration based on a collaborative regional review and recommendation; and

WHEREAS, an unanticipated consequence of the standards set by Ordinance No. 2022-05 was the high cost borne by city residents confronted with emergency repairs to sewer service lines, and from new utility service extensions that occur in city streets; and

WHEREAS, modifying the pavement restoration standards of RMC 12.08.065 to reduce the cost of pavement restoration for projects on local streets, while maintaining high standards for arterial streets and major collector streets, will properly balance the best interests of the City and Richland residents.

NOW, THEREFORE, BE IT ORDAINED by the City of Richland as follows:

Section 1. Richland Municipal Code Section 12.08.065, entitled Pavement cut requirements, as first enacted by Ordinance No. 2022-05, is hereby amended as follows:

12.08.065 Pavement cut requirements.

All construction work on paved streets resulting in cutting or excavation within the street shall be restored per public works standards and as required in this section.

A. For streets that are functionally classified as arterial or major collector, and with a PCI equal to or greater than 75, or that have been resurfaced with a slurry seal, chip seal, cape seal or similar treatment less than one inch thick within the calendar year in which the construction permit ~~was~~ is issued, no cutting or excavation is permitted, except for the following situations and at the discretion of the director:

1. Emergencies that endanger life, property, or public health and safety.
2. Interruption of essential utility service.
3. Work mandated by city, state, or federal legislation.
4. New service to a specific location cannot be reasonably provided by another route or using trenchless technology methods.
5. Minor core drilling or potholing (maximum eight-inch bell hole) to locate utilities.

B. If construction work is authorized by the city for the reasons identified in subsections (A)(1) through (5) of this section, pavement patches shall meet the following requirements:

1. Lateral cuts perpendicular to the flow of traffic shall ~~be~~ have the pavement removed and replaced a minimum of 25 feet wide, centered on the trench cut, to include the full width of each travel lane or shoulder disturbed by the cut or excavation. Removal shall be by grinding pavement a minimum of 1.75 inches deep, or by saw cutting and excavation. Paving shall be accomplished with a paving machine.
2. Longitudinal cuts parallel with the flow of traffic shall have the pavement removed and replaced to include the full width of each travel lane or shoulder disturbed by the cut or excavation. The minimum longitudinal patch length shall be 25 feet. Removal shall be by grinding pavement a minimum of 1.75 inches deep, or by saw cutting and excavation. Paving shall be accomplished with a paving machine.
3. For lateral patches less than 25 feet apart from edge-of-patch to edge-of-patch, work shall be incorporated into a single patch. For longitudinal patches, if the outside travel lane is patched, the adjacent paved shoulder shall also be replaced if less than four feet of width remains.
4. All patches shall be at least as thick as the adjacent road section or shall meet the public works standards' minimum road section thickness for the classification of the street, whichever is thicker.
5. Minor core-drilled holes and potholes shall be backfilled with control density fill (CDF), or as approved by the director.
6. All patches shall have the perimeter joints of the patch crack-sealed.
7. Disturbed traffic markings and striping shall be restored with approved in-kind materials.

C. Functionally classified arterial and major collector streets ~~Streets~~ with a PCI of less than 75 that have not been resurfaced with any pavement treatment within the calendar year in which the

construction permit ~~was~~ is issued may be cut or excavated if utility work cannot reasonably utilize another route or trenchless technology. A functionally classified minor collector street or local street that has not been resurfaced with any pavement treatment within the calendar year in which the construction permit is issued, regardless of PCI rating, may be cut or excavated if utility work cannot reasonably utilize another route or trenchless technology. Emergency residential sewer service repairs may cut paved streets, regardless of street classification and PCI rating, subject to the following restoration requirements. If construction work is authorized by the city under this subsection, pavement patches shall meet the following requirements:

1. Lateral cuts perpendicular to the flow of traffic shall ~~be~~ have the pavement removed and replaced a minimum of six feet wide, centered on the trench cut, to include one-half width or all of each travel lane disturbed by the cut (to prevent a joint in the wheel path). There shall be a minimum of one foot of patch width beyond each side of the trench cut.
2. Longitudinal cuts parallel with the flow of traffic shall have the pavement removed and replaced to include one-half width or all of each travel lane disturbed by the cut or excavation (to prevent a joint in the wheel path). There shall be a minimum of one foot of patch width beyond each side of the trench cut. Minimum length of the patch in a travel lane shall be six feet.
3. For lateral patches less than 25 feet apart from edge-of-patch to edge-of-patch, work shall be incorporated into a single patch. For longitudinal patches, if the outside travel lane is patched, the adjacent paved shoulder shall also be replaced if less than four feet of width remains.
4. All patches shall be at least as thick as the adjacent road section or shall meet the public works standards' minimum road section thickness for the classification of the street, whichever is thicker.
5. Minor core-drilled holes and potholes shall be backfilled with control density fill (CDF), or as approved by the director.
6. All patches shall have the perimeter joints of the patch crack-sealed.
7. Disturbed traffic markings and striping shall be restored with approved in-kind materials.

D. The completed surface of the pavement shall not vary more than one-fourth inch from the lower edge of a 10-foot straightedge placed parallel with the flow of traffic.

E. The contractor shall be responsible for the continued performance of the patched asphalt to conform to this section and the public works standards for two years after the permit is closed by the city's acceptance of the patch.

Section 2. This Ordinance shall take effect the day following its publication in the official newspaper of the City of Richland.

Section 3. Should any section or provision of this Ordinance be declared by a court of competent jurisdiction to be invalid, that decision shall not affect the validity of the Ordinance as a whole or any part thereof, other than the part so declared to be invalid.

Section 4. The City Clerk and the codifiers of this Ordinance are authorized to make necessary corrections to this Ordinance, including but not limited to the correction of scrivener's errors/clerical errors, section numbering, references, or similar mistakes of form.

PASSED by the City Council of the City of Richland, Washington, at a regular meeting on the ____ day of _____, 2022.

Michael Alvarez, Mayor

Attest:

Approved as to Form:

Jennifer Rogers, City Clerk

Heather Kintzley, City Attorney

First Reading: _____

Second Reading: _____

Date Published: _____



COUNCIL AGENDA ITEM COVERSHEET

Council Date: 9/6/2022

Agenda Category: Ordinances - Second Reading & Passage

Core Focus Area I - Promote Financial Stability & Operational Effectiveness

Subject:

Ordinance No. 2022-27, Amending Richland Municipal Code Section 13.06.330 related to Billing for Ambulance Transports

Department/Office
Fire & Emergency Services

Ordinance/Resolution Number:
2022-27

Document Type:
Ordinance

Recommended Motion:

Give second reading and pass Ordinance No. 2022-27, amending Richland Municipal Code Section 13.06.330 related to billing for ambulance transports.

Summary:

In 2020 and 2021, Fire & Emergency Services and Finance worked with the Utility Advisory Committee (UAC) to generate a strategic plan, workplan, and rate modeling for the Medical Services Utility. Proposed Ordinance No. 2022-27 codifies a recommended increase in medical transport fees from \$660 to \$1,042 for Richland residents and \$990 to \$1,563 for non-residents, as well as an increase in mileage fees from \$10 to \$14 per mile.

The proposed fee increases are based on recommendations from the 2018 Utility Rate Study conducted by FCS. Although identified in 2018, these rate increases were not immediately pursued due to the influx of Ground Emergency Medical Transport (GEMT) funding that began in 2020. These rate changes will primarily affect private-pay/commercially insured patients since the GEMT funding filled a significant gap in transport revenue for Medicaid patients.

The proposed rate increases will take effect January 1, 2023 and have been endorsed by the Utility Advisory Committee.

Staff recommend approval of Ordinance No. 2022-27 for second reading and passage.

Fiscal Impact: Ordinance No. 2022-27 is expected to generate approximately \$275,000 in additional revenue annually. This equates to an \$0.87 off-set to the monthly utility rate for all rate payers.

Attachments:

I. Ordinance No. 2022-27

ORDINANCE NO. 2022-27

**AN ORDINANCE OF THE CITY OF RICHLAND, WASHINGTON,
AMENDING RICHLAND MUNICIPAL CODE SECTION 13.06.330
RELATED TO BILLING FOR AMBULANCE TRANSPORTS.**

WHEREAS, since 1976, the City of Richland has provided emergency transport service to Richland citizens; and

WHEREAS, Richland City Council is authorized by RCW 35.21.766, RCW 35.27.370(15), and Chapter 13.06 of the Richland Municipal Code to set fees, rates, and charges to support an ambulance utility, emergency medical services (EMS), and ambulance transport service; and

WHEREAS, the current ambulance transport fee went into effect on June 1, 2012; and

WHEREAS, pursuant to RCW 35.21.766(3), the monthly service fee for operation of the utility was established based on the costs of regulating ambulance services; and

WHEREAS, the 2018 cost-of-service study indicated a need to increase the transport fee based on rising service costs, and to allow users of the system to contribute a more equitable share; and

WHEREAS, the ambulance base transport fee needs to increase from \$660.00 to \$1,042.00 for Richland residents, increase from \$990.00 to \$1,563.00 for non-residents, and increase the mileage rate from \$10.00 per mile to \$14.00 per mile; and

WHEREAS, all adjustments to the ambulance utility rates will be effective January 1, 2023.

NOW, THEREFORE, BE IT ORDAINED by the City of Richland as follows:

Section 1. Richland Municipal Code Section 13.06.330, entitled Billing for ambulance transports, as first enacted by Ordinance No. 28-06, and last amended by Ordinance No. 31-20, is hereby amended to read as follows:

A. Each person who is transported by the city's EMS program shall be billed by the city at a rate of ~~\$660.00~~ \$1,042.00, provided the patient is a city resident or is employed at (and transported from) a place of business within the city and the patient:

1. Supplies the city with all requested information and documentation, including, but not limited to, insurance information and medical records relative to billing for the ambulance service; and
2. Assigns to the city the patient's right to receive payment from all applicable third-party payers.

B. A patient who is not a city resident and is not employed at and transported from a place of business within the city shall be subject to a 50 percent surcharge on such transport services.

C. A mileage rate of \$14.00 ~~\$10.00~~ per mile will also be charged, regardless of resident or nonresident status.

D. Reciprocity. The ambulance service shall be provided within the city's ambulance response and mutual aid areas at no additional cost to any resident of the cities of Pasco and Kennewick who resides:

1. In a household that pays a charge similar to the utility charge; and
2. In a city that provides medical and ambulance services within its ambulance response and mutual aid areas to Richland residents at no additional cost.

E. The city shall have reciprocity with each of these cities unless they cease to have an ambulance utility or withdraw from the reciprocal agreement.

Section 2. This Ordinance shall be published in the official newspaper of the City of Richland on September 11, 2022 and take effect on January 1, 2023.

Section 3. Should any section or provision of this Ordinance be declared by a court of competent jurisdiction to be invalid, that decision shall not affect the validity of the Ordinance as a whole or any part thereof, other than the part so declared to be invalid.

Section 4. The City Clerk and the codifiers of this Ordinance are authorized to make necessary corrections to this Ordinance, including but not limited to the correction of scrivener's errors/clerical errors, section numbering, references, or similar mistakes of form.

PASSED by the City Council of the City of Richland, Washington, at a regular meeting on the 6th day of September, 2022.

Michael Alvarez, Mayor

Attest:

Approved as to Form:

Jennifer Rogers, City Clerk

Heather Kintzley, City Attorney

First Reading: August 16, 2022

Second Reading: September 6, 2022

Date Published: September 11, 2022



COUNCIL AGENDA ITEM COVERSHEET

Council Date: 9/6/2022

Agenda Category: Ordinances - Second Reading & Passage

Core Focus Area I - Promote Financial Stability & Operational Effectiveness

Subject:

Ordinance No. 2022-30, Granting a Solid Waste Collection Transition Franchise to Waste Management of Washington, Inc. for Properties affected by the Badger Mountain Estates Lots 1-8 and 300.1 Acres of Department of Energy (DOE) Land Annexations

Department/Office
Public Works

Ordinance/Resolution Number:
2022-30

Document Type:
Ordinance

Recommended Motion:

Give second reading and pass Ordinance No. 2022-30, granting a solid waste collection transition franchise to Waste Management of Washington, Inc. related to solid waste collection in the Annexed Territories identified therein.

Summary:

On July 5, 2022, the City of Richland completed two (2) annexations referred to as the Badger Mountain Estates and United States Department of Energy (DOE) annexations.

Waste Management of Washington, Inc. holds Certificate No. G-237 issued by the Washington State Utilities & Transportation Commission (WUTC) for the collection of solid waste in certain areas, including the annexed properties. RCW 35.13.280 requires the City to grant a franchise for solid waste collection in the annexed areas to Waste Management of Washington, Inc. for a term of not less than seven (7) years.

The proposed Solid Waste Collection Transition Franchise grants a franchise for a 10-year term to comply with RCW 35.13.280 and to resolve any potential claim against the City for damages. The proposed franchise requires Waste Management of Washington, Inc. to pay City utility occupation tax and such other fees as required by the Richland Municipal Code. The proposed franchise also includes a transition planning process that will allow the City to evaluate the best path forward for its residents upon expiration.

Per the Richland City Charter, franchises are granted by ordinance and are effective at the expiration of thirty days (30) following publication.

Staff recommends approval of Ordinance No. 2022-30 for second reading and passage.

Fiscal Impact:

Fiscal impact is minimal. Established properties will continue to be served by Waste Management of Washington, Inc. The resulting solid waste services will generate utility tax revenues paid into the City's general fund. In addition, the franchise allows the City's solid waste utility to collect a surcharge from Waste Management of Washington, Inc. customers to support the customer's use of the City's landfill at city resident rates.

Attachments:

- I. Ordinance No. 2022-30

ORDINANCE NO. 2022-30

**AN ORDINANCE OF THE CITY OF RICHLAND, WASHINGTON,
GRANTING A SOLID WASTE COLLECTION TRANSITION
FRANCHISE TO WASTE MANAGEMENT OF WASHINGTON,
INC. FOR PROPERTIES AFFECTED BY ANNEXATION OF LOTS
1-8 IN BADGER MOUNTAIN ESTATES AND THE 300.1 ACRES OF
DEPARTMENT OF ENERGY (DOE) LAND.**

WHEREAS, Richland was incorporated as a city of the first class on December 10, 1958; and

WHEREAS, pursuant to the Richland City Charter, franchises are granted by ordinance; and

WHEREAS, on July 5, 2022, the City annexed certain territory identified in Ordinance No. 2022-20 (**Exhibit A**) as Lots 1-8 of Badger Mountain Estates (the “Badger Mountain Annexed Territory”); and

WHEREAS, on July 5, 2022, the City annexed certain territory identified in Ordinance No. 2022-21 (**Exhibit B**) as the United States Department of Energy (DOE) 300.1 Acres (the “DOE Annexed Territory”, and collectively with the Badger Mountain Annexed Territory, the “Annexed Territory”); and

WHEREAS, Waste Management of Washington, Inc. (hereafter “WMW”) holds Certificate No. G-237 issued by the Washington Utilities and Transportation Commission (the “WUTC”) for the collection of solid waste in certain areas in Washington State, including within Benton County and within the Annexed Territory; and

WHEREAS, Basin Disposal, Inc. (“Basin Disposal”) holds Certificate No. G-118 issued by the WUTC for the collection of solid waste in certain areas of Washington State, including within Benton County and in the Annexed Territory; and

WHEREAS, Ed’s Disposal, Inc. (“Ed’s Disposal”) holds Certificate No. G-110 issued by the WUTC for the collection of solid waste in certain areas in Washington State, including within Benton County and in the Annexed Territory; and

WHEREAS, pursuant to RCW 35.13.280, the WUTC regulates the collection of solid waste within the Annexed Territory until such time as the City notifies the WUTC in writing of its decision to contract for solid waste collection or to provide solid waste collection itself, pursuant to RCW 81.77.020; and

WHEREAS, the City has given notice to the WUTC, pursuant to RCW 35.13.280, of its intent to undertake the collection of municipal solid waste, as defined in WAC 173-350-100, from residents and businesses within the Annexed Territory, and is therefore required by RCW 35.13.280 to grant WMW a franchise for the collection of municipal solid waste in the Annexed Territory for a term of not less than seven (7) years.

NOW, THEREFORE, BE IT ORDAINED by the City of Richland as follows:

Section 1. Transition Period. The Parties agree that the transition period shall commence on the Effective Date and shall terminate on **December 31, 2032** unless extended by written agreement of the Parties (the “Transition Period”). The Parties agree and acknowledge that the Transition Period is longer than the seven (7)-year franchise period required under RCW 35.13.280 in order to compensate WMW for any and all measurable damages WMW has incurred as a result of the annexation and cancellation of its municipal solid waste collection business within the Annexed Territory.

Section 2. Grant of Exclusive Franchise. Except with respect to Basin Disposal and Ed’s Disposal (as discussed in Section 0 below), the City hereby grants to WMW the exclusive right and obligation to collect municipal solid waste from residential and commercial customers within the Annexed Territory during the Transition Period (the “Collection Services”). During the Transition Period, the City agrees that it shall not contract for the Collection Services with a contractor other than WMM, or itself provide the Collection Services.

Section 3. Non-Exclusivity regarding Basin Disposal and Ed’s Disposal. Notwithstanding any other provision in this Agreement, the Parties agree that nothing in this Agreement, including the grant of an exclusive franchise for the Annexed Territory, shall interfere with the existing rights of Basin Disposal and/or Ed’s Disposal, under RCW 35.13.280, to provide the Collection Services.

Section 4. Rates and Compensation. WMW shall be compensated for its performance of the Collection Services by charging its residential, commercial and industrial customers within the Annexed Territory the same rates and charges authorized under the tariffs approved by the WUTC for WMW’s customers located within WMW’s G-237 service territory in Benton County (the “WUTC Tariffs”), subject to the following adjustments, which shall be independent of WUTC tariff jurisdiction:

4.1. WMW shall increase the rates and charges to include any taxes, fees, or charges applicable to the Collection Services that are not otherwise included within the WUTC Tariffs; and

4.2. WMW shall decrease the rates and charges to exclude any taxes, fees, or charges that are included in the WUTC Tariffs, but are not applicable to the Collection Services.

Section 5. Notification of Taxes, Fees, and Other Charges. If, as a result of the City’s annexation of the Annexed Territory, the City imposes any taxes, fees, or charges on the Collection Services, the City shall notify WMW of such charges no less than thirty (30) days before such taxes, fees, or other charges become effective.

Section 6. Revisions to WUTC Tariffs. Nothing in this Agreement is intended to restrict or prohibit WMW from seeking approval from the WUTC for new and/or revised WUTC Tariffs applicable to municipal solid waste collection within its Certificate No. G-237 territory in Benton County. In the event that the WUTC approves revisions to the WUTC Tariffs, WMW shall similarly adjust the rates and charges applicable to the Collection Services.

Section 7. Additional Services. If the City elects to offer additional solid waste collection services to residential and/or commercial customers within the Annexed Territory, the City shall notify WMW in writing of the additional services requested, and WMW shall have the right to provide such additional services during the Transition Period. If WMW elects to provide such additional services, WMW shall notify the City in writing within thirty (30) days of receipt of the City's notice that WMW shall offer such services either:

7.1. at the same rates as the WUTC Tariffs; or

7.2. if WMW does not offer similar services under the WUTC Tariffs, pursuant to a separate written agreement between the Parties.

If WMW either (a) notifies the City in writing of its decision not to provide such additional services, or (b) fails to notify the City of its decision in writing within thirty (30) days of receipt of the City's notice, the City may contract for such additional services or provide such additional services itself within the Annexed Territory.

Section 8. Billing. WMW shall be responsible for billing its residential, commercial, and industrial customers for the Collection Services. WMW shall invoice its customers generally consistent with the WUTC procedures set forth in WAC 480-70-396 through WAC 480-70-416.

Section 9. Delinquent Accounts and Refusal of Service. WMW shall have and retain all rights authorized by law to collect delinquent accounts (as defined in WAC 480-70-396), including but not limited to, the right to cancel Collection Services for any of the reasons set forth in WAC 480-70-376(1). In addition, WMW shall have and retain all rights authorized by law to refuse or cancel service to a customer, including the right to refuse or cancel service for any reason set forth in WAC 480-70-366(2).

Section 10. Collection Service Requirements. Except as otherwise stated herein or unless inconsistent with any provision contained herein, WMW shall provide the Collection Services consistent with the requirements set forth in WAC 480-70 and the WUTC Tariffs.

Section 11. Transition of WMW's Collection Services to the City. Upon the expiration of the Transition Period:

11.1. the City shall assume full responsibility for municipal solid waste collection within the Annexed Territory, as authorized under RCW 81.77.020, either by contracting for municipal solid waste collection or providing municipal solid waste collection itself;

11.2. unless otherwise agreed to by the Parties in writing, WMW shall have no further obligation or right under this Agreement to perform the Collection Services; and

11.3. WMW acknowledges that by entering into this Agreement, it waives all claims under RCW 35.13.280, including those for measurable damages, which waiver shall be fully effective immediately upon the expiration of the Transition Period.

Upon request of the City, the Parties shall confer, prior to the expiration of the Transition Period to plan for the transition of the Collection Services. WMW shall cooperate with the City by

providing all reasonably necessary information required by the City to allow for an orderly transition of the Collection Services from WMW to the City or its contractor. Such information shall include service account addresses, billing addresses, current service levels, frequency and types of services, customer container sizes, and other similar information requested by the City that is reasonably necessary to effectively transition the Collection Services.

Section 12. Required Notices to WUTC. The City shall be responsible for submitting any and all notices to the WUTC of its decision to contract for solid waste collection or to provide solid waste collection itself within the Annexed Territory, pursuant to RCW 81.77.020. As required by WAC 480-70-141(3), WMW shall be responsible for notifying the WUTC that WMW and the City have entered into this Agreement, including submission of a fully executed copy of this Agreement to the WUTC.

Section 13. Cooperation in Execution of Documents. The Parties agree to cooperate in preparing, executing, and delivering any and all additional documents that may be necessary to render this Agreement legally and practically effective; provided, however, that this Section shall not require the execution of any document that expands, alters, or in any way changes the terms of this Agreement.

Section 14. Force Majeure. If either Party is prevented from or delayed in performing its duties under this Agreement by circumstances beyond its control, whether or not foreseeable, including, without limitation, fires, typhoons, hurricanes, severe weather, floods, volcanic eruptions, pandemics, quarantines, war, civil disturbances, acts of terrorism, labor disputes, acts of God, or threats of any such circumstances, or any future laws, rules, regulations, orders, or acts of any local, state, federal, or provincial government (“Force Majeure”), then the affected Party shall be excused from performance hereunder during the period of such disability. The Party claiming Force Majeure shall promptly notify the other Party when it learns of the existence of a Force Majeure condition and when the Force Majeure condition has terminated. Notwithstanding anything in this Agreement to the contrary, the term “Force Majeure” does not include, and a Party shall not be excused from performance under this Agreement for, events relating to increased costs, including, without limitation, increased costs of fuel, labor, insurance or other expenses related to performance of the Collection Services.

Section 15. Successors and Assigns. Neither Party shall assign this Agreement without the prior written consent of the other Party, except that WMW may assign this Agreement to any subsidiary, parent or affiliated company without the other Party’s consent. If this Agreement is assigned as provided above, it shall be binding on and shall inure to the benefit of the Parties hereto and their respective successors and assigns.

Section 16. Notices. All notices required or contemplated by this Agreement shall be in writing and shall be effective upon receipt and delivered by certified US mail, return receipt requested, overnight delivery by a nationally recognized courier/delivery service, or by hand delivery to the Party’s address shown below, as may be amended by the Parties from time to time:

If to WMW:

Waste Management of Washington
720 4th Avenue, Suite 400
Kirkland, WA 98033-8136
Attn: Area Director, Public Sector Solutions

If to City:

City of Richland
625 Swift Boulevard, MS-26
Richland, Washington 99352
Attn: Public Works Director

Section 17. Entire Agreement; Amendment. This Agreement constitutes the entire agreement among the Parties concerning the subject matter hereof and supersedes all previous correspondence, communications, agreements, and understandings among the Parties, whether oral or written. This Agreement may not be modified, in whole or in part, except upon unanimous approval of the Parties and by a writing signed by all Parties.

Section 18. Advice of Counsel. This Agreement was negotiated at arms-length with each Party receiving advice from independent legal counsel. It is the intent of the Parties that no part of this Agreement be construed against either of the Parties because of the identity of the drafter. Moreover, the Parties each acknowledge, represent and agree that they have read this Agreement, that they fully understand the terms thereof, and that they have been fully advised by their independent legal counsel, accountants, and other advisors with respect thereto.

Section 19. No Third-Party Beneficiaries. This Agreement is made solely and specifically among and for the benefit of the Parties, and their respective successors and assigns, and no other person will have any rights, interest, or claim hereunder or be entitled to any benefits under or on account of this Agreement, whether as a third-party beneficiary or otherwise.

Section 20. Alternative Dispute Resolution; Legal Fees. Any dispute, controversy or claim arising out of or relating to this Agreement, including any question regarding breach, termination or invalidity thereof shall be resolved by arbitration (unless both Parties agree to mediation) in Richland, Washington, in accordance with the American Arbitration Association or Judicial Dispute Resolution rules which are deemed to be incorporated herein by reference. The maximum number of arbitrators shall be one (1) in any claim, suit, action or other proceeding relating in any way to this Agreement or any claims arising out of this Agreement, except as otherwise ordered or agreed to by the Parties. If mediation is agreed to, each Party shall pay its own mediation costs and one-half of the cost of the mediator. In the event any arbitration or legal action is taken by either Party against the other to enforce any of the terms and conditions of this Agreement, it is agreed that the substantially prevailing Party of such action shall be entitled to recover all court costs, reasonable attorneys' fees and expenses from the non-prevailing Party.

Section 21. Governing Law. This Agreement, and all amendments or supplements thereto, shall be governed by and construed in accordance with the laws of the State of Washington.

Section 22. Counterparts; Signatures. Execution of this Agreement and any amendment or other document related to this Agreement may be by electronic signature and in any number of counterpart originals, each of which shall be deemed to constitute an original agreement, and all of which shall constitute one whole agreement.

Section 23. Authority. The Parties each represent and warrant that they have full power and actual authority to enter into this Agreement and to carry out all actions required of them by this

Agreement. All persons executing this Agreement in representative capacities represent and warrant that they have full power and authority to bind their respective corporation.

Section 24. Binding Effect. This Agreement shall bind and inure to the benefit of the Parties hereto and their respective officers, employees and agents, heirs, legatees, representatives, receivers, trustees, successors, transferees and assigns.

Section 25. Severability. If any provision of this Agreement is found by a court of competent jurisdiction to be invalid or in violation of any statute, rule, regulation or common law, such provision shall be considered null and void, with the remaining provisions remaining viable and in effect. Notwithstanding the foregoing, the Parties acknowledge and agree that this Agreement, and the releases provided for above, are each necessary to this Agreement; without any of these, the Parties would not enter this Agreement.

Section 26. Headings Not Controlling. The paragraph headings included herein are for reference only. The headings shall not control or alter the meaning of this Agreement as set forth in the text.

Section 27. Waiver. Any of the terms or conditions of this Agreement may be waived, but only by a written notice signed by the Party waiving such term(s) or condition(s). A waiver or any breach of, or failure to enforce, any of the terms or conditions of this Agreement shall not in any way affect, limit or waive a Party's right to enforce compliance thereafter with each and every term and condition of this Agreement.

Section 28. Agreement Not Legal Precedent. The Parties acknowledge and agree that this Agreement is not intended to constitute legal precedent in any future dispute or litigation regarding any unrelated matter involving the Parties or any other municipality, government entity or third party related to any damages that may result from the annexation of territories for which a solid waste collection company has previously been granted operating authority by the WUTC.

Section 29. Publication. The City Clerk is authorized and directed to publish this Ordinance in accordance with the Richland City Charter.

Section 30. Effective Date. This Ordinance shall become effective on the thirtieth (30th) day after its first publication as required by law, but if, and only if, Franchisee has endorsed this Ordinance and accepted the terms and conditions thereof.

This space intentionally left blank.

PASSED by the City Council of the City of Richland, Washington, at a regular meeting on the 6th day of September, 2022.

Michael Alvarez, Mayor

Attest:

Approved as to Form:

Jennifer Rogers, City Clerk

Heather Kintzley, City Attorney

First Reading: August 16, 2022

Second Reading: September 6, 2022

Date Published: September 11, 2022

ACCEPTANCE

Waste Management of Washington, Inc., a Delaware corporation, hereby acknowledges and accepts the above franchise as full and fair compensation for any measurable damages caused by the City of Richland under Washington law with regard to Solid Waste Franchise continuation.

Jason Rose – President

Date



COUNCIL AGENDA ITEM COVERSHEET

Council Date: 9/6/2022

Agenda Category: Ordinances - Second Reading & Passage

Core Focus Area I - Promote Financial Stability & Operational Effectiveness

Subject:

Ordinance No. 2022-31, Granting a Solid Waste Collection Transition Franchise to Basin Disposal, Inc. and Ed's Disposal, Inc. for Properties affected by the Badger Mountain Estates Lots 1-8 and 300.1 Acres of Department of Energy (DOE) Land Annexations

Department/Office
Public Works

Ordinance/Resolution Number:
2022-31

Document Type:
Ordinance

Recommended Motion:

Give second reading and pass Ordinance No. 2022-31, granting a solid waste collection transition franchise to Basin Disposal, Inc. and Ed's Disposal, Inc. related to solid waste collection in the Annexed Territories identified therein.

Summary:

On July 5, 2022, the City of Richland completed two (2) annexations, referred to as the Badger Mountain Estates and United States Department of Energy (DOE) annexations.

Basin Disposal, Inc. and Ed's Disposal, Inc. hold a certificate issued by the Washington State Utilities & Transportation Commission (WUTC) for the collection of solid waste in certain areas, including the annexed properties. RCW 35.13.280 requires the City of Richland to grant a franchise for solid waste collection in the annexed areas to BDI and Ed's for a term of not less than seven (7) years.

The proposed Solid Waste Collection Transition Franchise grants a franchise for a 10-year term to comply with RCW 35.13.280 and to resolve any potential claim against the City for damages. The proposed agreement requires BDI and Ed's to pay City utility occupation tax and such other fees as required by the Richland Municipal Code. The proposed franchise also includes a transition planning process that will allow the City to evaluate the best path forward for its residents upon expiration of the franchise.

Per the Richland City Charter, franchises are granted by ordinance and are effective at the expiration of thirty days (30) following publication.

Staff recommends approval of Ordinance No. 2022-31 for second reading and passage.

Fiscal Impact:

Fiscal impact is minimal. Established properties will continue to be served by Basin Disposal, Inc. and Ed's Disposal, Inc. The resulting solid waste services will generate utility tax revenues paid into the City's general fund. In addition, the franchise allows the City's solid waste utility to collect a surcharge from Basin Disposal, Inc. and Ed's Disposal, Inc. customers to support the customer's use of the City's landfill at city resident rates.

Attachments:

1. Ordinance No. 2022-31

ORDINANCE NO. 2022-31

AN ORDINANCE OF THE CITY OF RICHLAND, WASHINGTON, GRANTING A SOLID WASTE COLLECTION TRANSITION FRANCHISE TO BASIN DISPOSAL, INC. AND ED'S DISPOSAL, INC. FOR PROPERTIES AFFECTED BY ANNEXATION OF LOTS 1-8 IN BADGER MOUNTAIN ESTATES AND THE 300.1 ACRES OF DEPARTMENT OF ENERGY (DOE) LAND.

WHEREAS, Richland was incorporated as a city of the first class on December 10, 1958; and

WHEREAS, pursuant to the Richland City Charter, franchises are granted by ordinance; and

WHEREAS, on July 5, 2022, the City annexed certain territory identified in Ordinance No. 2022-20 (**Exhibit A**) as Lots 1-8 of Badger Mountain Estates (the "Badger Mountain Annexed Territory"); and

WHEREAS, on July 5, 2022, the City annexed certain territory identified in Ordinance No. 2022-21 (**Exhibit B**) as the United States Department of Energy (DOE) 300.1 Acres (the "DOE Annexed Territory", and collectively with the Badger Mountain Annexed Territory, the "Annexed Territory"); and

WHEREAS, Basin Disposal, Inc. ("BDI") holds Certificate No. G-118 issued by the Washington Utilities and Transportation Commission (WUTC) for the collection of solid waste in certain areas of Washington State, including within Benton County and in the Annexed Territory; and

WHEREAS, Ed's Disposal, Inc. ("Ed's") holds Certificate No. G-110 issued by the WUTC for the collection of solid waste in certain areas in Washington State, including within Benton County and in the Annexed Territory; and

WHEREAS, Waste Management of Washington, Inc. ("WMW") holds Certificate No. G-237 issued by the WUTC for the collection of solid waste in certain areas in Washington State, including within Benton County and in the Annexed Territory; and

WHEREAS, pursuant to RCW 35.13.280, the WUTC regulates the collection of solid waste within the Annexed Territory until such time as the City notifies the WUTC in writing of its decision to contract for solid waste collection or to provide solid waste collection itself, pursuant to RCW 81.77.020; and

WHEREAS, the City has given notice to the WUTC, pursuant to RCW 35.13.280, of its intent to undertake the collection of municipal solid waste, as defined in WAC 173-350-100, from residents and businesses within the Annexed Territory, and is therefore required by RCW 35.13.280 to grant Ed's and BDI a franchise for the collection of municipal solid waste in the Annexed Territory for a term of not less than seven (7) years.

NOW, THEREFORE, BE IT ORDAINED by the City of Richland as follows:

Section 1. Transition Period. The Parties agree that the “Transition Period” shall commence on the Effective Date of this Agreement and shall terminate on **December 31, 2032** unless extended by written agreement of the Parties. The Parties agree and acknowledge that the Transition Period is longer than the seven-year franchise period required under RCW 35.13.280 in order to compensate BDI and Ed’s for any and all measurable damages BDI and Ed’s has incurred as a result of the annexation and cancellation of their municipal solid waste collection business within the Annexed Territory.

Section 2. Grant of Exclusive Franchise. Except with respect to WMW (as discussed in Section 0 below), the City hereby grants to BDI and Ed’s the exclusive right and obligation to collect municipal solid waste from residential and commercial customers within the Annexed Territory during the Transition Period (hereinafter the “Collection Services”). During the Transition Period, the City agrees that it shall not contract for Collection Services or itself provide Collection Services within the Annexed Territory.

Section 3. Non-Exclusivity regarding WMW. Notwithstanding any other provision in this Agreement, the Parties agree that nothing in this Agreement, including the grant of an exclusive franchise for the Annexed Territory, shall interfere with the existing rights of WMW, under RCW 35.13.280, to provide Collection Services within the Annexed Territory.

Section 4. Rates and Compensation. BDI and Ed’s shall be compensated for the Collection Services hereunder by charging their residential, commercial and industrial customers within the Annexed Territory the same rates and charges authorized under the tariffs approved by the WUTC for BDI and Ed’s customers located within Certificate Nos. G-118 and G-110 service territory in Benton County (the “WUTC Tariffs”), subject to the following adjustments, which shall be independent of WUTC tariff jurisdiction:

4.1. BDI and Ed’s shall increase the rates and charges to include any taxes, fees, or charges applicable to BDI and/or Ed’s Collection Services within the Annexed Territory that are not otherwise included within the WUTC Tariffs; and

4.2. BDI and Ed’s shall decrease the rates and charges to exclude any taxes, fees, or charges that are included in the WUTC Tariffs, but are not applicable to BDI and/or Ed’s Collection Services within the Annexed Territory.

Section 5. Notification of Taxes, Fees, and Other Charges. If, as a result of the City’s annexation of the Annexed Territory, the City imposes any taxes, fees, or charges on BDI and/or Ed’s Collection Services within the Annexed Territory, the City shall notify BDI and/or Ed’s of such charges no less than thirty (30) days before such taxes, fees, or other charges take effect.

Section 6. Revisions to WUTC Tariffs. Nothing in this Agreement is intended to restrict or prohibit BDI and/or Ed’s from seeking approval from the WUTC for new and/or revised WUTC Tariffs applicable to municipal solid waste collection within their Certificate Nos. G-118 and G-110 territory in Benton County. In the event that the WUTC approves revisions to BDI and/or Ed’s WUTC Tariffs, BDI and/or Ed’s shall similarly adjust the rates and charges applicable to the Collection Services within the Annexed Territory.

Section 7. Additional Services. If the City elects to offer additional solid waste collection services to residential and commercial customers within the Annexed Territory, the City shall notify BDI and Ed's in writing of the additional services requested, and BDI and Ed's shall have the right to provide such additional services during the Transition Period. If BDI and/or Ed's elect to provide such additional services, BDI and/or Ed's shall notify the City in writing within thirty (30) days of receipt of the City's notice and shall offer such services either:

7.1. consistent with the rates under its WUTC Tariff; or

7.2. if BDI and/or Ed's do not offer similar services under their WUTC Tariffs, pursuant to written agreement between the Parties.

If BDI and/or Ed's either (a) notify the City in writing of their decision not to provide such additional services, or (b) fails to notify the City in writing within thirty (30) days of receipt of the City's notice, the City may contract for those Additional Services or provide those services itself within the Annexed Territory

Section 8. Billing. BDI and Ed's shall be responsible for billing their residential, commercial and industrial customers within the Annexed Territory for the Collection Services. BDI and Ed's shall invoice their customers generally consistent with WUTC procedures found in WAC 480-70-396 through WAC 480-70-416.

Section 9. Delinquent Accounts and Refusal of Service. BDI and Ed's shall have and retain all rights authorized by law to collect delinquent accounts (as defined WAC 480-70-396), including but not limited to the right to cancel Collection Services for any of the reasons under WAC 480-70-376(1). BDI and Ed's shall have and retain all rights authorized by law to refuse or cancel service to a customer, including the right to refuse or cancel service for any reason under WAC 480-70-366(2).

Section 10. Collection Service Requirements. Except as otherwise stated herein or unless inconsistent with any provision herein, BDI and Ed's shall provide the Collection Services consistent with the requirements of Chapter 480-70 WAC and BDI and Ed's WUTC Tariffs.

Section 11. Transition of BDI and Ed's Collection Services to City. After the end of the Transition Period:

11.1. the City shall assume full responsibility for municipal solid waste collection within the Annexed Territory as authorized under RCW 81.77.020, either by contracting for municipal solid waste collection or providing municipal solid waste collection itself;

11.2. unless otherwise agreed to in writing by the Parties, BDI and Ed's shall have no further obligation or right under this Agreement to provide the Collection Services within the Annexed Territory;

11.3. BDI and Ed's acknowledge that by entering into this franchise, they waive all claims under RCW 35.13.280, including those for measurable damages, which waiver shall be fully effective immediately after the expiration of the transition period.

Upon request of the City, the Parties shall meet prior to the end of the Transition Period to plan for the transition of Collection Services within the Annexed Territory. BDI and Ed's shall cooperate with the City by providing all reasonably necessary information required by the City to allow for an orderly transition of the Collection Services from BDI and Ed's to the City or its contractor. Such information shall include service account addresses, billing addresses, current service levels, frequency and types of services, customer container sizes, and other similar information requested by the City and reasonably necessary to the transition of service.

Section 12. Required Notices to WUTC. The City shall be responsible for submitting any and all notices to the WUTC of its decision to annex an area and commence services pursuant to RCW 81.77.020. As required by WAC 480-70-141(3), BDI and Ed's shall be responsible for notifying the WUTC that BDI and Ed's and the City have entered into this Agreement, including submission of this executed Agreement to the WUTC.

Section 13. Cooperation in Execution of Documents. The Parties agree to cooperate in preparing, executing, and delivering any and all additional documents that may be necessary to render this Agreement legally and practically effective; provided, however, that this provision shall not require the execution of any document that expands, alters, or in any way changes the terms of this Agreement.

Section 14. Force Majeure. If any Party is prevented from or delayed in performing its duties under this Agreement by circumstances beyond its control, whether or not foreseeable, including, without limitation, fires, typhoons, hurricanes, severe weather, floods, volcanic eruptions, pandemics, quarantines, war, civil disturbances, acts of terrorism, labor disputes, acts of God, or threats of such circumstances, or any future laws, rules, regulations, orders, or acts of any local, state, federal, or provincial government ("Force Majeure"), then the affected Party shall be excused from performance hereunder during the period of such disability. The Party claiming Force Majeure shall promptly notify the other Party when it learns of the existence of a Force Majeure condition and when the Force Majeure condition has terminated. Notwithstanding anything in this Agreement to the contrary, the term "Force Majeure" does not include, and a Party shall not be excused from performance under this Agreement for, events relating to increased costs, including, without limitation, increased costs of fuel, labor, insurance or other expenses of performing the Services hereunder.

Section 15. Successors and Assigns. No Party shall assign this Agreement without the prior written consent of all other Parties, except that BDI and/or Ed's may assign this Agreement to any subsidiary, parent, sister or affiliated company without the other Parties' consent. If this Agreement is assigned as provided above, it shall be binding on and shall inure to the benefit of the Parties hereto and their respective successors and assigns.

Section 16. Notice. Any notice required or permitted hereunder shall be in writing (including, without limitation, by facsimile or electronic transmission) and sent to the address shown below:

If to BID and Ed's:
Basin Disposal Inc.
P.O. Box 3850
Pasco, WA 99302-3850
Attn: Darrick Dietrich, President

If to City:
City of Richland
625 Swift Boulevard, MS-26
Richland, Washington 99352
Attn: Public Works Director

Section 17. Entire Agreement; Amendment. This Agreement constitutes the entire agreement among the Parties concerning the subject matter hereof and supersedes all previous correspondence, communications, agreements and understandings among the Parties, whether oral or written. This Agreement may not be modified, in whole or in part, except upon unanimous approval of the Parties and by a writing signed by all Parties.

Section 18. Advice of Counsel. This Agreement was negotiated at arms-length with each Party receiving advice from independent legal counsel. It is the intent of the Parties that no part of this Agreement be construed against any Party because of the identity of the drafter. Moreover, the Parties each acknowledge, represent and agree that they have read this Agreement, that they fully understand the terms thereof, and that they have been fully advised by their independent legal counsel, accountants, and other advisors with respect thereto.

Section 19. No Third Party Beneficiaries. This Agreement is made solely and specifically among and for the benefit of the Parties hereto, and their respective successors and assigns, and no other person will have any rights, interest, or claim hereunder or be entitled to any benefits under or on account of this Agreement, whether as a third party beneficiary or otherwise.

Section 20. Alternative Dispute Resolution/Legal Fees. Any dispute, controversy or claim arising out of or relating to this Agreement, including any question regarding breach, termination or invalidity thereof shall be resolved by arbitration (unless all Parties agree to mediation) in Pasco or Richland, Washington, in accordance with the American Arbitration Association or Judicial Dispute Resolution rules which are deemed to be incorporated herein by reference. The maximum number of arbitrators shall be one (1) in any claim, suit, action or other proceeding relating in any way to this Agreement or any claims arising out of this Agreement, except as otherwise ordered or agreed to by the Parties. If mediation is agreed to, each Party shall pay its own mediation costs and one-half of the cost of the mediator. In the event any arbitration or legal action is taken by any Party against another to enforce any of the terms and conditions of this Agreement, it is agreed that the substantially prevailing party of such action shall be entitled to recover all court costs, reasonable attorney's fees and expenses from the non-prevailing Party.

Section 21. Governing Law. This Agreement, and all amendments or supplements thereto, shall be governed by and construed in accordance with the laws of the State of Washington.

Section 22. Counterparts. Execution of this Agreement and any amendment or other document related to this Agreement may be by electronic signature and in any number of counterpart originals, each of which shall be deemed to constitute an original agreement, and all of which shall constitute one whole agreement.

Section 23. Authority. The Parties each represent and warrant that they have full power and actual authority to enter into this Agreement and to carry out all actions required of them by this

Agreement. All persons executing this Agreement in representative capacities represent and warrant that they have full power and authority to bind their respective corporation.

Section 24. Binding Effect. This Agreement shall bind and inure to the benefit of the Parties hereto and their respective officers, employees and agents, heirs, legatees, representatives, receivers, trustees, successors, transferees and assigns.

Section 25. Severability. If any provision of this Agreement is found by a court of competent jurisdiction to be invalid or in violation of any statute, rule, regulation or common law, such provision shall be considered null and void, with the remaining provisions remaining viable and in effect. Notwithstanding the foregoing, the Parties acknowledge and agree that this Agreement, and the releases provided for above, are each necessary to this Agreement; without any of these, the Parties would not enter this Agreement.

Section 26. Headings Not Controlling. The paragraph headings included herein are for reference only. The headings shall not control or alter the meaning of this Agreement as set forth in the text.

Section 27. Waiver. Any of the terms or conditions of this Agreement may be waived, but only by a written notice signed by the Party waiving such terms or conditions. A waiver or any breach of, or failure to enforce, any of the terms or conditions of this Agreement shall not in any way affect, limit or waive a Party's right to enforce compliance thereafter with each and every term and condition of this Agreement.

Section 28. Agreement Not Legal Precedent. The Parties acknowledge and agree that this Agreement is not intended to constitute legal precedent in any future dispute or litigation regarding any unrelated matter involving the Parties or any other municipality, government entity or third party related to any damages that may result from the annexation of territories for which a solid waste collection company has previously been granted operating authority by the Washington Utilities and Transportation Commission.

Section 29. Publication. The City Clerk is authorized and directed to publish this Ordinance in accordance with the Richland City Charter.

Section 30. Effective Date. This Ordinance shall become effective on the thirtieth (30th) day after its first publication as required by law, but if, and only if, Franchisee has endorsed this Ordinance and accepted the terms and conditions thereof.

This space intentionally left blank.

PASSED by the City Council of the City of Richland, Washington, at a regular meeting on the 6th day of September, 2022.

Michael Alvarez, Mayor

Attest:

Approved as to Form:

Jennifer Rogers, City Clerk

Heather Kintzley, City Attorney

First Reading: August 16, 2022

Second Reading: September 6, 2022

Date Published: September 11, 2022

ACCEPTANCE

Basin Disposal, Inc., a Washington public utility corporation, and Ed's Disposal, Inc., a Washington public utility corporation, hereby acknowledge and accept the above franchise as full and fair compensation for any measurable damages caused by the City of Richland under Washington law with regard to Solid Waste Franchise continuation.

Darrick Dietrich, President-Basin Disposal, Inc.

Date

Darrick Dietrich, President-Ed's Disposal, Inc.

Date



COUNCIL AGENDA ITEM COVERSHEET

Council Date: 9/6/2022

Agenda Category: Ordinances - Second Reading & Passage

Core Focus Area 1 - Promote Financial Stability & Operational Effectiveness

Core Focus Area 2 - Manage & Maintain Infrastructure & Facilities

Subject:

Ordinance No. 2022-32, Amending Multiple Sections of Richland Municipal Code Title 14: Electricity, related to Underground Service Lines, Net Metering, Line Extensions and Pole Attachments

Department/Office
Energy Services

Ordinance/Resolution Number:
2022-32

Document Type:
Ordinance

Recommended Motion:

Give second reading and pass Ordinance No. 2022-32, amending multiple sections of Richland Municipal Code Title 14: Electricity, relating to underground service lines, net metering, line extensions and pole attachments.

Summary:

See attached memo.

Fiscal Impact:

Approval of the Title 14 RMC changes will recover costs for development activities associated with electrical distribution materials. No budget impact is expected in 2022 from existing development activities.

Attachments:

1. 2022 Staff Memo - Title 14 RMC – Line Extension and Miscellaneous Changes
2. Ordinance No. 2022-32
3. 2022 Subdivision Example
4. 2022 Commercial Example
5. 2022 Apartment Example

**MEMORANDUM**

TO: City Council

FROM: Clint Whitney, Energy Services Director

DATE: August 16, 2022 (second reading 9/6/2022)

SUBJECT: Title 14 RMC – Line Extension Changes

The primary purpose of the changes to the Richland Municipal Code (RMC) Title 14 is to update Section 14.30 Line Extensions where developers will pay for all necessary electrical infrastructure. Secondly, there are miscellaneous Title 14 changes for clarification and to identify rental lighting infrastructure as legacy with future lighting installations to be customer-owned and maintained.

Line extensions supporting new development have typically been budgeted at \$1.25M per year with actual costs increasing to approximately \$1.75M per year. The increase in costs over time is compounded by recent cost increases for distribution transformers, switchgear, and underground cable. Distribution transformers ordered prior to 2021 were typically \$1.5k for a 50kVA transformer. In 2021, a similar 50kVA transformer increased to \$4.5k and almost \$10k in 2022. Correspondingly, distribution transformer lead times have increased from 8-12 weeks to 46-63 weeks. Costs and lead times for switchgear, underground cable and other electrical infrastructure are experiencing similar issues.

The changes to Section 14.30 will require developers to pay for all electrical distribution infrastructure including distribution transformers and switchgear which were previously City provided as capitalized equipment from inventory. Attached are three examples of line extension estimates which show an existing estimated work order total and then the subtractions for City provided capitalized equipment (shown as COR Owned Material & Equipment & Overhead). Standard construction allowances are managed through the annual [City Fee Schedule](#). Implementation of the RMC changes for Section 14.30 Line Extensions would eliminate the subtraction of City provided capitalized equipment (COR Owned Material & Equipment & Overhead).

The changes are consistent with previous discussions for cost causation. The Title 14 revisions were reviewed and endorsed by UAC on May 10, 2022.

	Est Work Order Total, \$	COR Material & Equip & OH, \$	Standard Construction Allowance, \$	Construction Costs, \$
Subdivision Example	\$42,417.38	-\$9,015.77	\$0	\$33,401.61
Commercial Example	\$64,344.72	-\$58,801.33	\$0	\$5,543.39
Apartment Example	\$53,241.11	-\$35,239.18	-\$1,239.00	\$16,762.93

ORDINANCE NO. 2022-32

AN ORDINANCE OF THE CITY OF RICHLAND, WASHINGTON, AMENDING MULTIPLE SECTIONS OF RICHLAND MUNICIPAL CODE TITLE 14: ELECTRICITY, RELATED TO UNDERGROUND SERVICE LINES, NET METERING, LINE EXTENSIONS AND POLE ATTACHMENTS.

WHEREAS, the City has need, from time to time, to amend the Richland Municipal Code (RMC) to bring local ordinances into alignment with development approaches and best business practices; and

WHEREAS, the City strives to provide the lowest responsible cost of service to citizens, and is responsible for recovering the costs of operating and maintaining its electric utility primarily through retail rates; and

WHEREAS, the City utilizes a cost of service analysis (COSA) to align costs to the respective rate classes and development services; and

WHEREAS, the electrical distribution material costs necessary to support development services have increased substantially; and

WHEREAS, the Utility Advisory Committee (UAC) has reviewed and approved a recommendation to recover upfront electrical distribution material costs associated with line extensions supporting development services; and

WHEREAS, the UAC has reviewed and approved additional proposed changes to Title 14 RMC as provided herein.

NOW, THEREFORE, BE IT ORDAINED by the City of Richland as follows:

Section 1. Richland Municipal Code Section 14.16.050, entitled Underground service lines, as first enacted by Ordinance No. 90, and last amended by Ordinance No. 41-17, is hereby amended as follows:

14.16.050 Underground service lines.

The department will provide underground electric service in accordance with the following regulations:

A. Underground Service to a Development.

1. Primary Service Lines. High voltage underground service will be provided to developments where feasible. The department will provide and install ~~all or a portion of the trenching,~~ cable, junction boxes, and pad-mounted transformers and will coordinate the work with any other utilities involved for that portion of construction performed by the department. Developer will provide and install the conduit and vault system as designed by the department.

2. Secondary Service Lines. The department will provide and install cable and junction boxes. Developer will provide and install the conduit system as designed by the department. ~~Secondary service lines are usually installed for the convenience of the department and will be provided as needed by the department.~~

3. Service Lines. The service lines between the transformer, the secondary service lines or distributing points will, except for trenching and conduit, be installed by the department and sized to provide adequate service reliability, voltage regulation and safety.

B. Underground Service to a Subdivision.

1. Primary Service to a Subdivision. The department will ~~may~~ provide and install ~~all or a portion of the trenching~~, cable, junction boxes and pad-mounted transformers and will coordinate the work with other utilities involved for that portion of construction performed by the department. Developer will provide and install the conduit and vault system as designed by the department.

2. Secondary Service Lines. The department will provide and install cable and junction boxes. Developer will provide and install the conduit system as designed by the department. ~~Secondary service lines will be installed for convenience to the department and constructed as needed.~~

3. Service Lines. All service lines will be underground except in those instances where the owner or builder has justifiably proved that it is not feasible and that overhead lines are required.

C. Conversion of Existing Overhead to Underground.

1. Service Lines. Existing overhead service lines may be converted to underground as follows:

a. Customer Convenience. When the customer wishes to have overhead services placed underground before normal replacement is required, the department will inspect premises and prepare cost estimates of the new installation. If it is determined that underground installation is feasible, the customer will be advised of technical aspects of their part in revamping building service entrance. The department will install underground service from pole to the customer's point of connection and prorate charge to the customer on the following basis:

i. Customer provides trench and conduit and pays all costs incurred.

ii. Customer shall be responsible for coordinating with other utilities which may be affected.

b. Department Convenience. When it becomes necessary to relocate service lines for reasons pertinent only to the department, each customer will be offered an opportunity to convert his entrance to concealed underground service and assume at least a portion of the expense. The department will install a conduit riser on outside of building to connect from underground to existing entrance connection in those instances where customer does not desire a concealed service entrance.

2. Secondary Service Lines. These lines are only for use by the department and will be placed underground where feasible.

3. Primary Service Lines.

a. Customer Convenience. All primary lines may be placed underground for customer's convenience with the total cost of the project paid by a local improvement district and/or the customer.

b. Utility Department Convenience. The department may convert primary service lines in an entire area from overhead to underground when pole deterioration or other factors pertinent to the operation of an electric utility makes such work necessary.

D. Commercial and Industrial Services.

1. Underground service to commercial and industrial customers will be provided and owned by the customer ~~by the department when deemed feasible by the director.~~

2. Since commercial and industrial installations combine varied arrangements, the director reserves the right to evaluate each individual installation.

E. Easements. The department will be provided with necessary easements at no cost to the city.

F. Overhead Services. Overhead services can be provided from an underground installation where justified by setting a short service pole adjacent to the power source.

Section 2. Richland Municipal Code Section 14.16.110, entitled Meter tests, as first enacted by Ordinance No. 90, and last amended by Ordinance No. 41-17, is hereby amended as follows:

14.16.110 Meter tests.

The department will make periodic tests and inspections of meters and will make additional tests or inspections of meters at the request of any customer. No charge shall be made for any such additional test if there is a meter error of more than two percent.

If the meter error is two percent or less, the actual cost of such additional test ~~but not less than \$25.00~~ shall be charged to and collected from the customer.

If any test shows a meter error of more than two percent, a pro rata adjustment shall be made in the customer's billing for a period of not more than 90 days prior to the date of the test; provided, that in no event shall any adjustment be made for any period prior to the date of any previous meter test.

Section 3. Richland Municipal Code Section 14.24.040, entitled Trouble calls, as first enacted by Ordinance No. 90, and last amended by Ordinance No. 13-19, is hereby amended as follows:

14.24.040 Trouble calls.

The customer shall notify the department immediately should service be unsatisfactory for any reason or should there be any defects, trouble or accidents affecting the supply of electricity.

The department will be responsible for promptly making repairs to damage occurring to city equipment, which impairs service to its customers or results in a hazardous condition. When a trouble call is made at a customer's request, and the trouble is due to the customer's acts, negligence, or to failure of his equipment or wiring, the minimum charge shall be actual cost, plus overhead costs, ~~but in no case less than \$15.00~~. Billing costs shall be as determined by the chief electrical engineer.

Section 4. Richland Municipal Code Section 14.24.130, entitled Rental lightings, as first enacted by Ordinance No. 39-15, and last amended by Ordinance No. 13-19, is hereby amended as follows:

14.24.130 Rental lighting.

For municipally owned legacy rental lighting facilities consisting of overhead construction with mast arms and luminaires mounted on poles, service shall be provided at the request of property owners or long-term lessees of property pursuant to the applicable rental lighting rates published in the city's user fees and charges schedule. Lighting facilities supplied under this provision shall remain the property of the city and shall be supplied only pursuant to a contract with the customer, the term of which shall be a period of not less than three years. Current lighting practice is for new lighting to be owned and maintained by customer on customer property without city infrastructure or maintenance support.

Section 5. Richland Municipal Code Section 14.24.130, entitled Net metering, as first enacted by Ordinance No. 13-19, is hereby amended as follows:

14.24.220 Net metering.

A net metering customer shall be billed according to the applicable retail electric rate in RMC 14.24.060. Each net metering customer shall be charged the daily service charge and the energy charge for all energy delivered to the customer from the utility for the applicable billing period. Each net metering customer shall be credited the energy charge for all real energy received by the utility from the net metering system. This shall occur until the earlier of June 30, 2029, or the first date the electric utility's cumulative generating capacity of net metering systems equals four percent of the utility's 1996 peak demand as specified in Chapter 80.60 RCW, at which time the customer shall be credited the avoided cost of energy per kWh. The electric utility's 1996 peak demand was 204,768 kilowatts.

Any received real energy (kWh) accumulated from the customer as of March 31st each calendar year shall be granted to the utility without any compensation to the customer-generator. ~~Customers with net metering systems approved and installed after November 1, 2018, shall be assessed a net metering infrastructure fee per kWh of received generation as listed in the city fee schedule. The net metering infrastructure fee shall be calculated as the current retail kWh rate less the avoided cost of energy.~~

Each net metering customer ~~Customers with net metering systems approved and installed after November 1, 2018,~~ shall be assessed a net metering application ~~installation~~ fee as listed in the city fee schedule.

Section 6. Richland Municipal Code Section 14.30.030, entitled Standard construction and construction payment classifications, as first enacted by Ordinance No. 12-94, and last amended by Ordinance No. 59-15, is hereby amended as follows:

14.30.030 Standard construction and construction payment classifications.

A. Permanent Service. Permanent service is applicable to overhead or underground electric line extensions for secondary or primary service where the use of service is to be permanent and where a continuous return to the department of sufficient revenue to support the necessary investment is reasonably assured.

~~For electric service of a permanent character, the department will install, at its expense, necessary overhead or underground electric distribution extension facilities equivalent in cost to the gross embedded investment per customer as the standard construction allowance. A review and recalculation of the standard construction allowances will be made from time to time.~~

Applicant shall be required to pay to the department as a construction payment all estimated costs for electric distribution facilities necessary to serve applicant in excess of the standard construction allowance. Said construction payment shall be refundable in part or in its entirety during a five-year period if a valid latecomer agreement has been signed. At the end of said five-year period, any remaining construction payment becomes nonrefundable.

B. Indeterminate Service. Indeterminate service is applicable to overhead or underground electric line extensions for service which is of an indefinite or indeterminate nature, such as that required by, but not limited to:

1. Real estate subdivisions and development of property for sales;
2. Other enterprises of speculative characteristics; or
3. All other service to which neither permanent service or temporary service is applicable.

For electric service of an indeterminate character involving real estate subdivisions and development of land for sale, applicant shall be required to pay to the department as a construction payment all estimated costs for necessary overhead or underground electric distribution extension facilities. Said construction payment may be refundable to the developer in part or in its entirety during a five-year period if a valid latecomer agreement has been signed ~~commencing with the extension completion date after which~~ At the end of said five-year period, any remaining unrefunded construction payment becomes nonrefundable. For all other types of electric service of an indeterminate character, applicant shall be required to pay to the department the entire estimated cost for necessary overhead or underground electric distribution extension facilities as a nonrefundable construction payment. No standard construction allowance will be permitted in these instances.

The amount of the refund to developers of commercial real estate, where more than one meter can be installed, shall be determined by the department on a case-by-case basis. The refund amount shall be based on the number of lots connected to permanent residential service in the five-year period following completion of the project ~~investment and projected revenue considerations~~. In no event shall the refund ~~standard construction allowance~~ be greater than the estimated cost for the

line extension ~~nonresidential standard construction allowance or less than the applicable residential standard construction allowance.~~

C. Temporary Service. Temporary service is applicable to overhead or underground electric line extensions where service is of a known temporary nature.

For electric service of a temporary character, the applicant shall be required to pay to the department as a construction payment an amount equal to the estimated cost of installing and removing all necessary overhead or underground electric distribution extension facilities, less the estimated salvage value. If temporary service is continued for more than 18 months following the extension completion date, the nature of such continued service will be evaluated and, if appropriate, reclassified as indeterminate service.

Section 7. Richland Municipal Code Section 14.31.020, entitled Notification and coordination, as first enacted by Ordinance No. 8-98, and last amended by Ordinance No. 29-01, is hereby amended as follows:

14.31.020 Notification and coordination.

A. Each joint pole user shall submit a joint use application to the department for approval for each attachment project ~~give prior written notification to the public works director for each attachment project. The notification shall be given in a timely manner to allow for ample engineering and coordination by all affected joint pole users.~~ The joint pole user shall obtain a construction permit per RMC 14.31.030 before attaching to city-owned poles.

B. Each joint pole user shall promptly respond to city notifications related to, but not limited to, maintenance, relocation, rearrangement, violations or abandonment of joint pole installations.

C. Whenever it is necessary to replace or relocate a joint-use pole, the city shall give notice thereof in writing at least 30 days prior to date on which it intends to change such pole (except in case of emergency, when verbal notice will be given and subsequently confirmed in writing) to the joint pole users. Each joint pole user shall relocate facilities to the new pole within 60 days at the expense of the joint pole user as provided below. When circumstances warrant additional time to relocate, the director or his authorized representative may grant such additional time as is reasonable under the circumstances.

1. Relocation of poles requiring overhead lines to be relocated overhead. If such relocation is reasonably necessary for construction, alteration or improvement of the right-of-way for purposes of public health, safety and welfare, as required by the city, grantees may not seek reimbursement for their relocation expenses from the city unless otherwise provided for by law. In the event the relocation is requested by a private third party, that third party shall pay the cost of relocation.

2. Relocation of facilities from overhead to underground. If such relocation is requested by the city when reasonably necessary for construction, alteration or improvement of the right-of-way for purposes of public welfare, health and safety, the grantee may not seek reimbursement for its relocation expenses from the city, unless otherwise provided by law. If requested by a private third party, the third party shall pay the cost of such relocation.

3. In the event of abandoned poles by the city, all joint pole users may be afforded an opportunity to purchase such poles at a fair market value, in accordance with city policy and state law.

D. The city, as pole owner, may deny access if the attachment project will result in safety, reliability, or generally accepted engineering standards not being met, and where the city retains future use of structure. Nothing herein contained shall be construed to compel the city to maintain any of its poles for a period longer than is necessary for its own service requirements. In the event the city wishes to discontinue use of any such pole or poles and to remove, relocate and/or retire it or them, it shall send a written notice to that effect to the joint pole users and the joint pole users shall remove their attachments from such pole or poles within 60 days after the sending of such notice, or within such shorter period of time as is required in case of emergency.

E. Sufficient coordination including submittal of project plans and exchange of information shall take place between joint pole users so that the attachment does not create a WAC violation or conflict. All joint users shall promptly share design specifications for their infrastructure with others upon request.

F. Notwithstanding any other provisions of this chapter, notification requirements and reimbursement for relocation of facilities of a service provider as defined under ~~RMC~~ Title 28 RMC shall be in accordance with RCW 35.99.060.

Section 8. This Ordinance shall take effect the day following its publication in the official newspaper of the City of Richland.

Section 9. Should any section or provision of this Ordinance be declared by a court of competent jurisdiction to be invalid, that decision shall not affect the validity of the Ordinance as a whole or any part thereof, other than the part so declared to be invalid.

Section 10. The City Clerk and the codifiers of this Ordinance are authorized to make necessary corrections to this Ordinance, including but not limited to the correction of scrivener's errors/clerical errors, section numbering, references, or similar mistakes of form.

PASSED by the City Council of the City of Richland, Washington, at a regular meeting on the 6th day of September, 2022.

Michael Alvarez, Mayor

Attest:

Approved as to Form:

Jennifer Rogers, City Clerk

Heather Kintzley, City Attorney

First Reading: August 16, 2022

Second Reading: September 6, 2022

Date Published: September 11, 2022



CITY OF RICHLAND
ENERGY SERVICES DEPARTMENT
Work Order Summary

Prepared By:
Job Extension #:
Work Order #:
Run Date: **3/30/2022**
Run Time: **10:05:52AM**

Work Order Description:
Work Location:

Billing Information

Name:

Address:

Phone:

Svc Request: _____
Drawings: _____
Other: _____
Fee Est#: _____

Material Summary

Inventory Cost: **\$ 12,778.43**
CoR Owned Material & Equipment: **6,678.35**
Overhead on Inventory Costs: 35% **\$ 4,472.45**
Overhead on CoR Owned Material & Equipment: 35% **2,337.42**
Subtotal: **\$ 26,266.66**

Equipment Summary

Equipment Charges: **\$ 1,510.58**

Crew & Labor Summary

Install Hours:	160.11	Install Costs:	\$ 7,312.41
Retired Hours:	0.40	Retired Costs:	\$ 18.27
Total Hours:	160.51		
Overhead @:	52.40%	Overhead Costs:	\$ 3,841.27
		Subtotal:	\$ 11,171.95

Additional Costs Summary

Additional Costs: **\$ 725.00**

Engineering Summary

Estimated Man Hours:	40	Engineering Costs:	\$ 1,800.00
		Overhead @: 52.40%	\$ 943.20
		Subtotal:	\$ 2,743.20

Construction Payment Summary

Estimated Work Order Total:	\$ 42,417.38
CoR Owned Material & Equipment & Overhead:	- \$ 9,015.77
Standard Construction Allowance:	- \$ 0.00
Contingency:	\$ 0.00
Construction Costs:	\$ 33,401.61

Approved By:

Approved Date:

4/28/2022



CITY OF RICHLAND
ENERGY SERVICES DEPARTMENT
Work Order Summary

Prepared By:
Job Extension #:
Work Order #:
Run Date: **4/26/2022**
Run Time: **7:46:41AM**

Work Order Description:
Work Location:

Billing Information

Name:

Address:

Phone:

Svc Request: _____
Drawings: _____
Other: _____
Fee Est#: _____

Material Summary

Inventory Cost: \$ 394.99
CoR Owned Material & Equipment: 43,556.54
Overhead on Inventory Costs: 35% \$ 138.25
Overhead on CoR Owned Material & Equipment: 35% 15,244.79
Subtotal: \$ 59,334.57

Equipment Summary

Equipment Charges: \$ 820.16

Crew & Labor Summary

Install Hours:	41.60	Install Costs:	\$ 1,899.87
Retired Hours:	18.60	Retired Costs:	\$ 849.46
Total Hours:	60.20		
Overhead @:	52.40%	Overhead Costs:	\$ 1,440.65
		Subtotal:	\$ 4,189.99

Additional Costs Summary

Additional Costs: \$ 0.00

Engineering Summary

Estimated Man Hours:	0	Engineering Costs:	\$ 0.00
		Overhead @:	52.40% \$ 0.00
		Subtotal:	\$ 0.00

Construction Payment Summary

Estimated Work Order Total:	\$ 64,344.72
CoR Owned Material & Equipment & Overhead:	- \$ 58,801.33
Standard Construction Allowance:	- \$ 0.00
Contingency:	\$ 0.00
Construction Costs:	\$ 5,543.39

Approved By:

Approved Date:

4/26/2022



CITY OF RICHLAND
ENERGY SERVICES DEPARTMENT
Work Order Summary

Prepared By:
Job Extension #:
Work Order #:
Run Date: **3/30/2022**
Run Time: **2:10:12PM**

Work Order Description:
Work Location:

Billing Information

Name:

Address:

Phone:

Svc Request: _____
Drawings: _____
Other: _____
Fee Est#: _____

Material Summary

Inventory Cost: **\$ 5,814.48**
CoR Owned Material & Equipment: **26,103.10**
Overhead on Inventory Costs: 35% **\$ 2,035.07**
Overhead on CoR Owned Material & Equipment: 35% **9,136.08**
Subtotal: **\$ 43,088.73**

Equipment Summary

Equipment Charges: **\$ 1,505.60**

Crew & Labor Summary

Install Hours:	89.36	Install Costs:	\$ 4,080.98
Retired Hours:	8.60	Retired Costs:	\$ 392.76
Total Hours:	97.96		
Overhead @:	52.40%	Overhead Costs:	\$ 2,344.24
		Subtotal:	\$ 6,817.98

Additional Costs Summary

Additional Costs: **\$ 0.00**

Engineering Summary

Estimated Man Hours:	24	Engineering Costs:	\$ 1,200.00
		Overhead @: 52.40%	\$ 628.80
		Subtotal:	\$ 1,828.80

Construction Payment Summary

Estimated Work Order Total:	\$ 53,241.11
CoR Owned Material & Equipment & Overhead:	- \$ 35,239.18
Standard Construction Allowance:	- \$ 1,239.00
Contingency:	\$ 0.00
Construction Costs:	\$ 16,762.93

Approved By:

Approved Date:

3/31/2022



COUNCIL AGENDA ITEM COVERSHEET

Council Date: 9/6/2022

Agenda Category: Resolutions - Adoption

Core Focus Area 3 - Increase Economic Vitality

Subject:

Resolution No. 2022-III, Accepting a Request for Annexation of 1,643 Acres to be known as the North Horn Rapids Industrial Park

Department/Office
Development Services

Ordinance/Resolution Number:
2022-III

Document Type:
Resolution

Recommended Motion:

Adopt Resolution No. 2022-III, accepting a request for annexation of 1,643 acres to be known as the North Horn Rapids Industrial Park subject to the conditions identified therein.

Summary:

The City of Richland Economic Development Division, on behalf of the Port of Benton and Energy Northwest, has submitted a formal request to the City of Richland for the annexation of approximately 1,643 acres of land commonly referred to as the North Horn Rapids Industrial Park described as Assessor's Tax Parcel Nos. 110081000001003, 110081000001004, 103084000001000, 134183000001000, 103081000001000 and 134183000002000 and generally located north of Horn Rapids Road and west of Stevens Drive within portions of sections 3, 4, 9, 10, 15 & 16, Township 10 North, Range 28 East and portions of sections 33 & 34, Township 11 North, Range 28 East, W.M., Benton County, Washington.

The Richland City Council is required by state law to meet with the annexation proponent(s) to discuss the merits of the request during a regular city council meeting. At this stage of the annexation process, City Council deliberates over the annexation proposal and has the authority to decide if it will be accepted as proposed, rejected, or modified at the Council's direction.

Adoption of Resolution No. 2022-III authorizes the property owner(s) to formally submit a petition/application to the City's Development Services Department to officially begin the annexation process, and directs the Richland Planning Commission to conduct a public hearing to determine the appropriate zoning classification(s) for the site prior to returning the item to City Council for further review and processing.

Staff recommends adoption of Resolution No. 2022-III.

Fiscal Impact: None.

Attachments:

1. Resolution No. 2022-III
2. Vicinity Map

RESOLUTION NO. 2022-111

A RESOLUTION OF THE CITY OF RICHLAND, WASHINGTON, ACCEPTING A REQUEST FOR ANNEXATION OF 1,643 ACRES, TO BE KNOWN AS THE NORTH HORN RAPIDS INDUSTRIAL PARK, LOCATED WITHIN PORTIONS OF SECTIONS 3, 4, 9, 10, 15 & 16, TOWNSHIP 10 NORTH, RANGE 28 EAST AND PORTIONS OF SECTIONS 33 & 34, TOWNSHIP 11 NORTH, RANGE 28 EAST, W.M., BENTON COUNTY, WASHINGTON.

WHEREAS, the City received a written request for the annexation of 1,643 acres located in what will be known as the North Horn Rapids Industrial Park from the City of Richland Development Services Department; and

WHEREAS, on August 16, 2022, Richland City Council was presented with the request for annexation and passed Resolution No. 2022-104, establishing September 6, 2022 as the date for Council to meet with the proponent of the annexation; and

WHEREAS, as required by RCW 35.13.125, Richland City Council met with the annexation proponent on September 6, 2022 and reviewed the proposed annexation.

NOW, THEREFORE, BE IT RESOLVED by the City Council of the City of Richland as follows:

Section 1. The City of Richland hereby accepts the request for annexation subject to the following conditions:

1. That the annexation be accepted as proposed.
2. That simultaneous adoption of the City's Comprehensive Plan for the proposed annexation is required.
3. That the City requires the assumption of an appropriate share of all existing City indebtedness by the area to be annexed.
4. That adequate health/safety infrastructure and/or improvements required by the Richland Municipal Code are installed at owner expense to serve any existing structures.

Section 2. The Richland Planning Commission is hereby directed to review the proposal and forward a recommendation to City Council as to the most appropriate zoning designation(s) for the area proposed for annexation.

BE IT FURTHER RESOLVED that this Resolution shall take effect immediately.

This space intentionally left blank.

ADOPTED by the City Council of the City of Richland, Washington, at a regular meeting on the 6th day of September, 2022.

Michael Alvarez, Mayor

Attest:

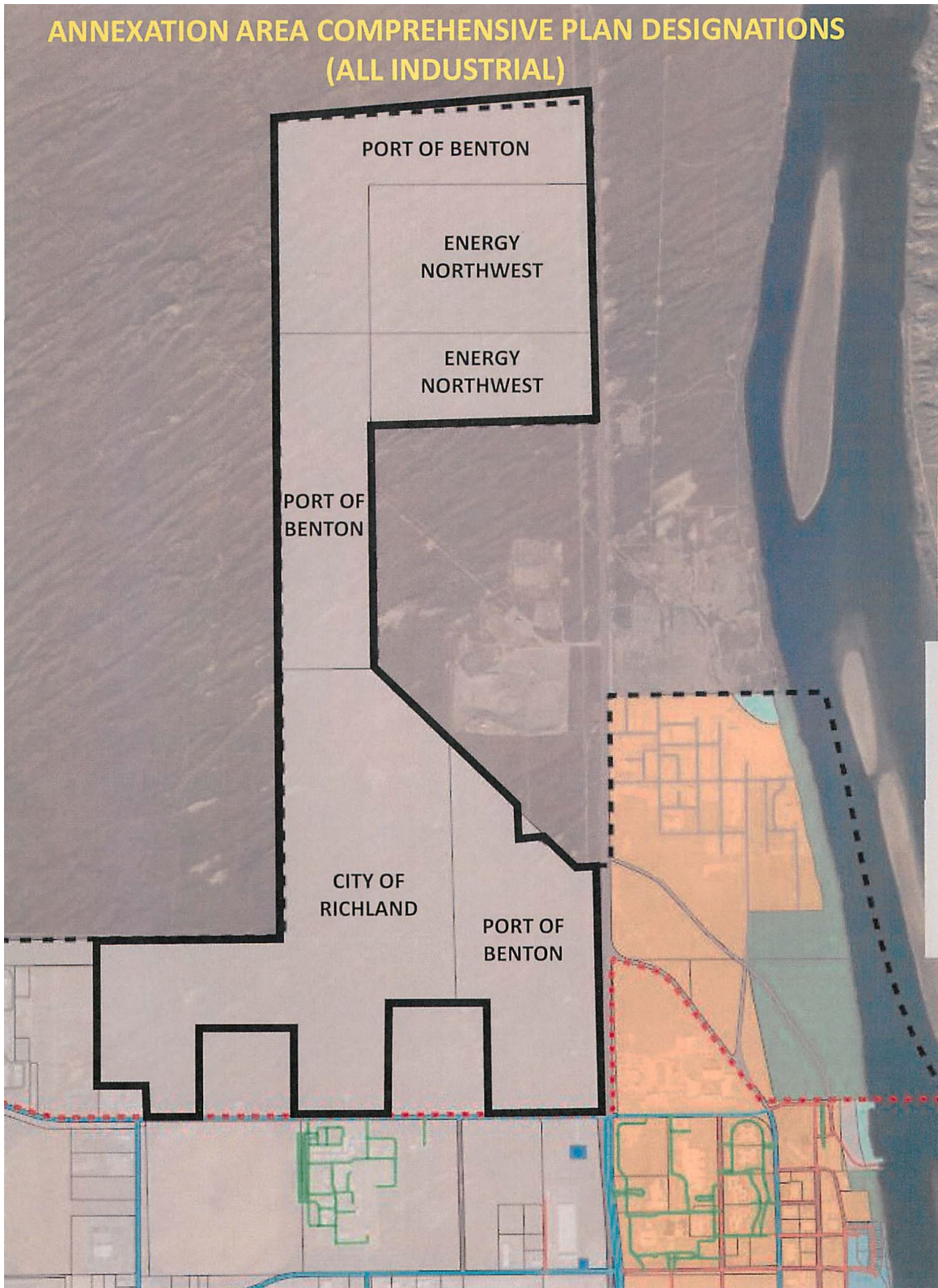
Approved as to Form:

Jennifer Rogers, City Clerk

Heather Kintzley, City Attorney

VICINITY MAP
ANX2022-101

**ANNEXATION AREA COMPREHENSIVE PLAN DESIGNATIONS
(ALL INDUSTRIAL)**





COUNCIL AGENDA ITEM COVERSHEET

Council Date: 9/6/2022

Agenda Category: Resolutions - Adoption

Core Focus Area 3 - Increase Economic Vitality

Subject:

Resolution No. 2022-113, Authorizing a Grant Application to the State of Washington Tourism Program for Tourism Sustainability Grant Funds

Department/Office
Development Services

Ordinance/Resolution Number:
2022-113

Document Type:
Resolution

Recommended Motion:

Adopt Resolution No. 2022-113, authorizing submission of a grant application to the State of Washington Tourism Program for Tourism Sustainability Grant funds.

Summary:

The State of Washington Tourism Program is offering up to \$30,000 in grant funding for tourism sustainability projects. Eligible projects include capital investments in infrastructure and beautification that foster safer, more inclusive, and sustainable visitor experiences in local business districts. If awarded, these funds will be used for proposed revitalization projects in the Uptown and Downtown (Parkway) Business Improvement Districts during 2023.

Staff recommends adoption of Resolution No. 2022-113.

Fiscal Impact:

Any grant award will be used as a funding source for proposed improvements during 2023 and would reduce the General Fund contribution to the total project cost of \$117,000 for 2023.

Attachments:

1. Resolution No. 2022-113
2. Tourism Sustainability Grant Criteria

RESOLUTION NO. 2022-113

**A RESOLUTION OF THE CITY OF RICHLAND, WASHINGTON,
AUTHORIZING SUBMITTAL OF A GRANT APPLICATION TO
THE STATE OF WASHINGTON TOURISM PROGRAM FOR
TOURISM SUSTAINABILITY GRANT FUNDS.**

WHEREAS, the State of Washington Tourism Program funds a Tourism Sustainability Grant;
and

WHEREAS, the purpose of the Tourism Sustainability Grant is to fund projects that foster
safer, more inclusive, and sustainable visitor experiences in the State of Washington; and

WHEREAS, the State of Washington Tourism Program is accepting applications for projects
that support local governments and business districts to undertake capital projects that revitalize
public infrastructure, wayfinding enhancements and beautification; and

WHEREAS, improvements planned in the Downtown Business Improvement District (DBID)
and Uptown Business Improvement District (UBID) during 2023 are needed to attract visitors and
grow economic participation by businesses within each district; and

WHEREAS, the City's best interests are served by obtaining State of Washington Tourism
funds to support these projects.

NOW, THEREFORE, BE IT RESOLVED by the City Council of the City of Richland that
staff is authorized to prepare and submit a grant application to the State of Washington Tourism
Program for Tourism Sustainability Grant funds to revitalize the Downtown Business Improvement
District and the Uptown Business Improvement District.

BE IT FURTHER RESOLVED that this Resolution shall take effect immediately.

ADOPTED by the City Council of the City of Richland, Washington, at a regular meeting on
the 6th day of September, 2022.

Michael Alvarez, Mayor

Attest:

Approved as to Form:

Jennifer Rogers, City Clerk

Heather Kintzley, City Attorney

STATE OF WASHINGTON TOURISM

Tourism Sustainability Grant Program

State of Washington Tourism (SWT) is committed to the full recovery of the tourism sector in the wake of the coronavirus pandemic, and it has prioritized industry segments within the sector to hasten and maximize recovery efforts. As tourism continues to rebound toward pre-pandemic levels, the Tourism Sustainability Grant program will foster safer, more inclusive, and sustainable visitor experiences in the State of Washington.

Washington-based tourism stakeholders may request up to \$30,000 in grant funding based on project eligibility. They must submit a complete and thorough application with details on project objectives, longevity, and budget. If awarded grant funding, the grantee must submit all contracts/contractors involved with each project to SWT for review and approval. The total funding available for the Tourism Sustainability Grant program is \$200,000.

Though not required for this grant, applicants are strongly encouraged to match a portion of their grant request with cash or in-kind contributions. Grant funds from SWT should not pay for staff salaries, debt, or interest payments associated with eligible projects. Applicants are also strongly encouraged to collaborate with local destination marketing organizations and other tourism-related partners on eligible projects.

SWT will accept applications for the Tourism Sustainability Grant between August 15 – September 15, 2022. A review committee of industry experts will evaluate the leading grant applications and SWT will announce award decisions by September 30 via email. Grant funds must be expended by August 1, 2023.

SWT will release grant funds as a lump sum to awardees upon approval of their grant applications. Awardees will be expected to submit a project evaluation by October 1, 2023. If awardees fail to submit an evaluation, their consideration for future grants may be adversely affected. Each project evaluation should include a final budget, proof of spending, photos, and a written account of how grant funds were used and their impact on travel and tourism.

The grantee must acknowledge the Tourism Sustainability Grant program and include the SWT logo in material associated with the grant project. SWT must also review and approve this material.

Eligible Applicants

Eligible applicants for the Tourism Sustainability Grant include entities that operate in the State of Washington and directly support travel and tourism:

- Local government
- Tribes
- Non-profit organizations registered with the Washington Secretary of State's Office
 - o 501(c)(3) organizations and other 501(c) organizations that support travel and tourism

STATE OF WASHINGTON TOURISM

Project Eligibility

The Tourism Sustainability Grant program will foster safer, more inclusive, and sustainable visitor experiences through—but not limited to—capital projects, new festivals and events, outdoor recreation, business districts, and main street associations in the State of Washington.

Capital Projects

This grant program will help support the construction or rehabilitation of public infrastructure and facilities linked to the tourism sector, including airports, seaports, railway stations, as well as visitor and convention centers.

Festivals and Events

This grant program will aid the planning and management of NEW festivals and events that drive overnight stays and visitor spending for destination communities.

Outdoor Recreation

Eligible projects include but are not limited to:

- Initiatives that improve access to outdoor recreation opportunities for the BIPOC community
- Projects that increase the accessibility of outdoor experiences
- Trail development and improvements (includes wayfinding/signage/kiosks)
- Recreation site improvements and stewardship (includes wayfinding/signage/kiosks)
- Water recreation (includes access points/wayfinding/mile markers/signage)
- Cycling infrastructure (includes repair stations, restrooms, seating)
- Garbage/waste management solutions
- Parking/transportation strategies and solutions that encourage less usage of single-occupancy vehicles
- Projects that create easier access for drive market visitors

Business Districts and Main Street Associations

Eligible projects include but are not limited to:

- Wayfinding enhancements
- Clean-up/beautification

STATE OF WASHINGTON TOURISM

- Environmental sustainability efforts
- Historical interpretation, preservation, rehabilitation, restoration, and reconstruction
- Projects that increase accessibility
- Projects that enhance art and culture
- "Buy local" campaigns and incentive programs
- Projects that create easier access for drive market visitors
- Projects that drive international tourism

Award Decision

Industry partners may apply for the Tourism Sustainability Grant between August 15 – September 15, 2022. No applications or materials will be accepted after the deadline. Award decisions will be announced by September 30 via email. A committee of industry experts will review applications and award grant funds on the following criteria:

- Demonstrates an immediate need for the project
- Demonstrates the ability to complete the project in a timely manner (expend grant funds by August 1, 2023)
- Preference is given to projects that ensure accessibility and inclusion of all visitors, including under-represented communities
- Preference is given to applications that match a portion of their grant request with cash or in-kind contributions
- Preference is given to projects with construction permits already secured (if needed)

State of Washington Tourism reserves the right to award grants in amounts totaling less than all funds that are available under the Tourism Sustainability Grant program, to award a different amount than is requested in a grant application, to make changes to the grant criteria or to cancel the Tourism Sustainability Grant program in its entirety. Contact Matthew Ozuna (509-945-3026, matthew@stateofwatourism.com), SWT destination development manager, for inquiries regarding the Technical Assistance Grant program, including project eligibility, contractors, and budget.

Grant Timeline:

- August 15, 2022 – Grant application opens
- September 15, 2022 – Grant application closes
- September 30, 2022 – Notification of grant funds
- August 1, 2023 – Grant funds expended

STATE OF WASHINGTON TOURISM

- October 1, 2023 – Project evaluation is due; provide a written report on the project, including the final budget, proof of spending, photos, written account of how grant funds were used and their impact on travel and tourism

State of Washington Tourism supports social justice, human rights, cultural preservation, and public safety for all. As such, all travelers should feel welcome and safe, and host communities and travel and tourism suppliers should be respected by their guests. At its best, travel offers inherent social and cultural exchange that fosters understanding and acceptance. SWT seeks to advance these values throughout its marketing, communications, and travel advisory programs.



COUNCIL AGENDA ITEM COVERSHEET

Council Date: 9/6/2022

Agenda Category: Resolutions - Adoption

Core Focus Area I - Promote Financial Stability & Operational Effectiveness

Subject:

Resolution No. 2022-114, Ratification of the 2022-2032 Richland Public Library Strategic Plan

Department/Office
Parks & Public Facilities

Ordinance/Resolution Number:
2022-114

Document Type:
Resolution

Recommended Motion:

Adopt Resolution No. 2022-114, ratifying adoption of the Richland Public Library 2022-2032 Strategic Plan by the Richland Public Library Board of Trustees.

Summary:

Through Resolution No. 2022-114, the Richland Public Library Board of Trustees is submitting the final draft of the 2022-2032 Richland Public Library (RPL) Strategic Plan to Richland City Council for ratification.

The 10-year RPL Strategic Plan will guide principles of operation for the Richland Public Library through 2032. The final vision in the Plan is that "All Richland residents experience the library as a durable, trusted institution for the public good that is finely interwoven into the entire fabric of our community."

The plan provides roles, goals, strategies, and measures of success to reach the Library's stated destination. These efforts will be supported by annual work plans.

The Plan was approved by the Richland Public Library Board of Trustees on August 9, 2022. Given the unique legal relationship between cities and their municipal library boards, Richland City Council's ratification of the Richland Public Library Board of Trustees' adoption of the Richland Public Library 2022-2032 Strategic Plan is appropriate.

Staff recommends adoption of Resolution No. 2022-114.

Fiscal Impact: None.

Attachments:

1. Resolution No. 2022-114
2. Richland Public Library 2022-2032 Strategic Plan

RESOLUTION NO. 2022-114

**A RESOLUTION OF THE CITY OF RICHLAND, WASHINGTON,
RATIFYING THE ADOPTION OF THE RICHLAND PUBLIC
LIBRARY 2022-2032 STRATEGIC PLAN BY THE RICHLAND
PUBLIC LIBRARY BOARD OF TRUSTEES.**

WHEREAS, the City of Richland has operated the Richland Public Library since the City's incorporation as a first class city in 1958; and

WHEREAS, the Richland Public Library is a valued community institution; and

WHEREAS, the Richland Public Library Board of Trustees recently completed a comprehensive public effort to generate a ten-year strategic plan; and

WHEREAS, on August 9, 2022, the Richland Public Library Board of Trustees adopted the Richland Public Library 2022-2032 Strategic Plan; and

WHEREAS, given the unique legal relationship between cities and their municipal library boards, Richland City Council's ratification of the Richland Public Library Board of Trustees' adoption of the Richland Public Library 2022-2032 Strategic Plan is appropriate.

NOW, THEREFORE, BE IT RESOLVED by the City Council of the City of Richland that the Richland Public Library Board of Trustees' adoption of the Richland Public Library 2022-2032 Strategic Plan is hereby ratified.

BE IT FURTHER RESOLVED that this Resolution shall take effect immediately.

ADOPTED by the City Council of the City of Richland, Washington, at a regular meeting on the 6th day of September, 2022.

Michael Alvarez, Mayor

Attest:

Approved as to Form:

Jennifer Rogers, City Clerk

Heather Kintzley, City Attorney

RICHLAND PUBLIC LIBRARY

RICHLAND PUBLIC LIBRARY STRATEGIC PLAN

2022-2032



CONTENTS



3	Letter from the Manager
4	Our Community
6	Our Library
8	Vision
8	Mission
9	Values
10	Roles of the Library
11	Goals of the Library
12	Strategies
15	Success Measures
16	Our Process
18	Acknowledgments

LETTER FROM THE LIBRARY MANAGER



Libraries have provided fundamental resources to communities around the world for millennia. Here in our City, the free services that we offer have evolved with our population. The Richland Public Library may have started as a collection of fundamental resources, but, today, the library is also flourishing as a melting pot of ideas and fellowship for all ages. Through all these wonderful improvements, the library has always been invested in supporting the next chapter of life in Richland.

We are proud to deliver a 10-year strategic plan that was influenced by Richland residents for the City of Richland. We owe a great deal of thanks to everyone who contributed to its creation. Our collaboration doesn't stop there though. A plan only comes to life when the community it serves is along for the ride. I encourage the residents and future residents of Richland to be a part of this journey. Get a library card, check out our collection, participate in a fun program, give feedback, lead a library event, volunteer, display artwork, connect with others in our meeting space, or become a partner!

A library is at its best when it adapts with its community to reflect the residents, organizations, volunteers, partners, and City employees that make up the neighborhoods we share every day. With your help, the library's potential in this City is limitless, and I look forward to brainstorming our next big adventure together.

Chris Nulph
Library Manager

OUR COMMUNITY

Throughout the course of this strategic plan, the library is often referenced as a place for community. Where did that community start and where is it going? Our community is far more than just boundaries on a map. With a long history and bright future, the City is one we are proud to call home. Located near the confluence of the Yakima and Columbia Rivers, this is home to traditional lands of the Nez Perce, Palouse, Umatilla, Walla Walla, Wanapum, and Yakama tribes. As we moved into the 20th century, Richland became one of the Manhattan Project sites and a critical cog in the World War II effort and beyond. The City became accustomed to quality government

services during that time as a federally planned community. The City of Richland was incorporated in 1958 and is now part of the Tri-Cities region, which includes Kennewick, Pasco, and West Richland.

The innovative spirit is still alive and well in our community. Science and medicine are among the highest employers in the City, with Pacific Northwest National Laboratory, Kadlec Regional Medical Center, and Bechtel National driving much of the area's workforce. The region also supports a booming wine and agricultural industry.





With more than 300 days of sunshine each year, weather that ranges from wintertime snow to summertime heat, and an average yearly precipitation of just 7.7 inches, Richland is a community in which residents and visitors alike enjoy an abundance of recreational, educational, and business opportunities. Richland is known for its many parks and paved walking trails throughout the city; recreational activities ranging from waterskiing, boating, and fishing on the Columbia River to walking miles of paved riverfront trails, hiking Badger Mountain, and golfing at Columbia Point; a vibrant arts community hosting concerts, plays, festivals, and art shows; hundreds of wineries, craft breweries, and restaurants within easy driving distance; and much more.



As of 2020, Richland was a community of about 60,560 residents, with the greater Tri-Cities having a population of 237,884. It is a community that has substantially grown and continues to be one of the fastest-growing areas in Washington State. In an area full of innovators and entrepreneurs, Richland will continue to be at the forefront of tomorrow. This is the community the City of Richland supports through quality municipal services, and we are honored to be a part of its unique history and future.

OUR LIBRARY

Initial library service in Richland was established in 1944 by the Hanford Engineer Works Employees' Association, providing resources to the employees of the Hanford Project. Once the organization dissolved, the collection eventually found a home at the Richland Public Library in April 1951. Doris Roberts received the honor of being the first manager of the library, when the General Electric Company opened a library building in downtown Richland. Doris maintained that title for the first 33 years of library operation. She noted the tremendous community support at the time: "At some time or another, almost every organization in Richland has contributed financially or with service to the support of their library."



In August 1959, the library transferred operation to the City of Richland, and it has been a municipal service ever since. In 1962, the Library Board set the expectation for library service with this statement of purpose: "The Richland Public Library shall endeavor to provide facilities, staff, and services which will anticipate the needs and stimulate the interest of as many children and adults as possible. New concepts in library procedures, services, and programming shall be introduced when applicable to the interest of the community and economically practicable."

Today, the Richland Public Library is a result of that early purpose statement. It is housed in a modern, light-filled, 58,000-square-foot building for public use. It currently has two study rooms, two conference rooms, a large gallery, a book sale room run by the Friends of the Richland Public Library, and a two-story lobby that frequently hosts art exhibits and displays from a diverse collection of community groups. The library currently has a physical collection of more than 167,000 items, plus thousands more titles available online. Our total physical and digital circulation, including renewals, was 709,920 in 2021. By the beginning of 2022, we had over 46,000 library cardholders in our system.

The Richland Public Library provides a robust array of programming for all ages. The library traditionally performs among the highest per capita program engagement for all libraries in Washington state serving between 25,001 and 100,000 people. The library has a long history of public enjoyment and support in this community with no signs of letting up. Over the next decade, we will continue to find new and creative ways for weaving the library into the fabric of Richland.





VISION

All Richland residents experience the library as a durable, trusted institution for the public good that is finely interwoven into the entire fabric of our community.

MISSION

Be the hope-inspiring presence in our community where every person belongs and is supported in enjoyment, learning, and understanding.



VALUES

INTELLECTUAL FREEDOM

The library is committed to the right of library users to confidentially access information from all points of view without restriction, censure, or oversight.

DIVERSITY, EQUITY, AND INCLUSION

The library will support an environment where all individuals have equitable access to services, are valued and respected for their unique traits, and are welcomed to be a part of the library.

PROACTIVE HOSPITALITY

The library is committed to a proactive approach to customer service in which staff make the first move to help customers. Library staff go out of their way to first find potential needs and then resolve them before customers need to ask for help.

LITERACY

The library is committed to helping children and adults develop the ability to read, to use technology, and to seek and effectively utilize information.

PUBLIC AWARENESS AND ADVOCACY

The library is committed to increasing public awareness of libraries and the critical role they play in transforming lives and communities through diverse forms of education.

PARTNERSHIPS AND COLLABORATION

The library is committed to developing and sustaining relationships between the library and other entities for the benefit of the residents and the community.

SUSTAINABILITY

The library is committed to mindful use of resources and to supporting sustainability broadly through programming, collections, exhibits, events, advocacy, communication, and library building and space design.

WORKPLACE CULTURE

The library is committed to fostering a workplace where staff, volunteers, and advocates feel valued, included, and empowered to champion the library's vision, values, and purposes.

ROLES OF THE LIBRARY

Through the strategic planning process, three key roles for how Richland Public Library serves our community emerged. These roles set the context for how we will achieve the goals of this strategic plan.



PUBLIC SQUARE

The library is a welcoming, comfortable, and evolving community space for everyone. It serves the multifaceted needs of our community members—creative, cultural, economic, educational, intellectual, interpersonal, recreational, and social. Wherever library service is offered, it embodies a friendly, respectful, safe, and hospitable environment. The library is a valued community destination and a trusted hub for neighborly fellowship.

USER EXPERIENCE

Hope, belonging, and a sense of well-being.



COMMUNITY ADVOCATE

Leveraging outreach and partnerships, the library facilitates a connected web of community support. In this way, the library is without walls—meeting people where they are and facilitating their access to a network of library and regional resources. The library is committed to the growth and well-being of its partners.

USER EXPERIENCE

A supported and resilient community.



KNOWLEDGE NURSERY

The library is fertile ground for the propagation and nurturing of knowledge for everyone in our community. It is the ultimate source of reliable information. The library is an easily accessible virtual and physical environment that facilitates the freedom to discover new ideas and cultivate the diverse learning pursuits of residents throughout their lifetimes. Its favorable conditions improve quality of life for every person and for the City as a whole.

USER EXPERIENCE

An inspired and empowered City.

GOALS OF THE LIBRARY

This strategic plan sets out three goals for Richland Public Library over the next ten years. The actions recommended in this document in the upcoming strategies section will contribute to the achievement of these goals.



GOAL A

All residents experience, enjoy, and benefit from the library.

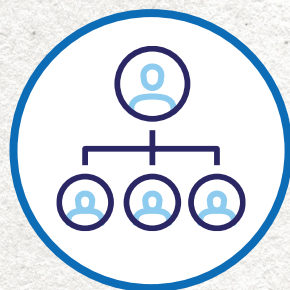
.....



GOAL B

All residents experience convenient access to the library from anywhere in the city.

.....



GOAL C

Community members and advocacy partners effectively connect through a network of library and regional resources.



1. Relevancy

Library users should be aware of what the library has to offer, and the library needs to provide users with benefits that make using the library worthwhile. This is what makes the library relevant.



- a.** Develop and describe a plan of service and budget that focuses on the three roles of the library: public square, knowledge nursery, and community advocate.
- b.** Align service, support, and staffing models.
- c.** Develop organizational capacity to understand what is relevant to the library's served, underserved, and unserved market segments.
 - Market intelligence
 - Needs assessment
 - Various outreach methods
 - Partnerships
- d.** Launch and sustain an effective public awareness and advocacy campaign.
- e.** Refurbish, refresh, and re-brand the existing library
- f.** Incorporate the roles of the library in marketing materials and public information.
- g.** Involve Library Board of Trustees, Friends of the Library, and the Library Foundation.
- h.** Identify resources for investments that will progressively enable achievement of the 2032 vision and goals.



2. Inclusion

To ensure residents feel included, the library will identify what residents need to create a continuous loop of learning. We will seek out partners to help us achieve this.

- a.** Engage and sustain mutually beneficial relationships with community partners.
- b.** Using creative and resourceful methods, determine who the hard-to-reach residents are, and how best to serve them.
- c.** Select smart outreach and programming, focused on engaging hard-to-reach residents.
- d.** Collaborate with partners to make residents' access to needed services, resources, and expertise convenient, timely, and accurate.
- e.** Host partners, providers, and programs through the physical and virtual spaces of the library.
- f.** Creatively conduct continuous outreach and assessment, and sculpt responsive services and collections.

STRATEGIES



3. Accessibility

The library is committed to accessibility by removing barriers and creating a presence that includes physical spaces, as well as virtual, distributed programmatic offerings throughout the City, and through a network of partners and collaborators.

- a. Maximize the interior and exterior spaces of the existing library.
- b. Expand the physical proximity of the library with a location in south Richland.
- c. Develop, implement, and improve the "library without walls" concept to achieve a library presence proximate to residents and integral to the neighborhoods and community at large.
- d. Expand partnerships and possible reciprocity with other libraries.
- e. Utilize cutting-edge technology to increase accessibility.
- f. Through an equity, diversity, and accessibility lens, improve operations and practices affecting residents and staff.
- g. Develop a physical and virtual collection that is reflective of all our community.
- h. Continuously connect with residents to learn how the library can improve access.

SUCCESS MEASURES

The success of the strategies in this document will be assessed using these five success measures. Specific criteria for these measures will be identified and reviewed through the development of annual work plans.



A. GROW USERSHIP

The resident user base of the library increases proportionately to match or exceed population growth.

.....



B. GROW CUSTOMER SATISFACTION

Improve the experience, including hospitality, enjoyment, and benefit.

.....



C. GROW ACCESSIBILITY

Increase access to the library—physically, virtually, and programmatically.

.....



D. GROW COMMUNITY ADVOCACY

Regional advocacy support is effective in meeting client and partner needs and strengthening resiliency.

.....



E. GROW RELEVANCY

The library is a valued institution that inspires hope, belonging, and a sense of well-being.

OUR PROCESS

The creation of this plan has been an inclusive, collaborative, and iterative process. We believe the process to help inform the strategic plan is one of the most robust public input efforts to occur in the history of the library. We are thankful for the committed work of many individuals who have made it a reality.

To encourage the broadest participation by the community, we announced our planning process on the City and the library websites. We invited participation at physical and virtual forums. We set up a social networking platform called Social Pinpoint. This website informed the public about the strategic planning

process and provided a means for anyone to post online feedback, comments, questions, and ideas. We set up comment boards at various locations as well. We interviewed many specific stakeholder organizations, groups, and individuals to listen to voices that may have otherwise not had the opportunity to provide input. We met with citywide leadership staff and City Council members who serve and represent the community. Also central to the process was the Library Planning Team, a group of library staff led by Christopher Nulph, Library Manager, for its role in reflecting and responding to the community input.



Central to this process was the 16-member, community-based Library Strategic Planning Task Force. Invited to bring a cross-section of community perspectives, the Task Force participated in monthly work sessions from January through March 2022. The Task Force helped process findings from meetings, forums, and key informant interviews, as well as input from individuals and the Library Planning Team and staff. From this analysis, the Task Force helped the Project Team identify community needs and the prospective roles of the library in addressing those needs over a 10-year span.

The Library Board of Trustees recognized the need for a strategic plan and has overseen the process through a Trustee representative on the

Task Force and via Project Team briefings at its monthly meetings. This plan is supported and affirmed by the Board of Trustees.

From all the foregoing synthesis, the Library Planning Team developed the strategic framework for the next decade. This strategic plan is the overarching framework for guiding policies, practices, services, and resource allocation decisions that will achieve the goals, and ultimately, the vision for 2032. The strategies include that library management will take steps to actualize the plan. Specific work plans will be created and executed yearly with the goal of balancing circumstantial variables with plan progress.

COMMUNITY ENGAGEMENT: DATA SOURCES

Our engagement was conducted with multiple stakeholders, including 124 hours of Library Planning Team interviews, forums, work sessions, and library staff meetings.

Social Pinpoint was used to collect survey data and capture online comments. Community input was also captured from idea boards, interviews, pop-up engagement, and planned events. 509 comments were recorded from all sources.



INTERVIEWS

- Community forums
- City and community leaders
- Residents
- Key informants and other stakeholders
- Community Task Force work sessions



INDIVIDUAL COMMENTS

- Community needs
- Roles of the library
- Challenges to access
- Future imperatives

ACKNOWLEDGEMENTS

- Our thanks to the following teams and individuals who invested their time and energy in our process and to every member of the community who participated in forums, surveys, and other forms of input. Every bit of input has been heard and considered, and we are thankful.

We would like to thank all of the staff for their work in developing this plan and for the future execution of this plan.

LIBRARY STRATEGIC PLANNING TASK FORCE MEMBERS

- Karen Buxton
- Andrew Cook
- YiChien Cooper
- Amanda Divine
- Nancy Doran
- Megan Fullmer
- Dori Luzzo Gilmour
- Nadine Kemp
- Syd Koegler
- Isaac Marroquin
- KD Organ
- Sarah Rapoza
- Alan Rither
- Clinton Sherman
- Steve Slate
- Anne Spilman

LIBRARY BOARD OF TRUSTEES

- Emily Booth, Chair
- Lindsay Lightner, Vice Chair
- Karen Buxton
- Cara Hernandez
- Kurt Maier

RICHLAND CITY COUNCIL

- Michael Alvarez, Mayor
- Terry Christensen, Mayor Pro Tem
- Sandra Kent
- Jhoanna Jones
- Phillip Lemley
- Ryan Lukson
- Theresa Richardson

LIBRARY STRATEGIC PLANNING TEAM

- Joe Schiessl, Parks and Public Facilities Director
- Chris Nulph, Library Manager
- Lisa Adams, Parks & Recreation Coordinator
- Theresa Barnaby, Collection Development & Circulation Supervisor
- Michelle Haffner, Teen Services Librarian
- Gavin Lightfoot, Adult Service Librarian
- Michael Scarfo, Reference Supervisor
- Daurice Siller, Library Technical Support Specialist
- Johanna Talbott, Library Technical Support Specialist

STRATEGIC PLANNING CONSULTANTS

- James Clanton, BerryDunn
- Jason Genck, BerryDunn
- Ruth Metz, Ruth Metz Associates
- Adrian Newman, Adrian-Designs.com





RICHLAND PUBLIC LIBRARY STRATEGIC PLAN

2022-2032





COUNCIL AGENDA ITEM COVERSHEET

Council Date: 9/6/2022

Agenda Category: Resolutions - Adoption

Core Focus Area 1 - Promote Financial Stability & Operational Effectiveness

Core Focus Area 2 - Manage & Maintain Infrastructure & Facilities

Subject:

Resolution No. 2022-115, Authorizing a Consultant Agreement with Hill International, Inc. for Project Management and Construction Management Services in Support of Fire Station No. 76

Department/Office
Parks & Public Facilities

Ordinance/Resolution Number:
2022-115

Document Type:
Resolution

Recommended Motion:

Adopt Resolution No. 2022-115, authorizing the City Manager to sign and execute a consultant agreement with Hill International, Inc. for project management and construction management services in support of Fire Station No. 76.

Summary:

The Badger Mountain South Fire Station No. 76 capital project is funded in the adopted 2022 Budget. The City is in need of construction management services for the project. Hill International, Inc. is the area's industry and subject matter expert in design-build project delivery, and has proven success on similar projects with various public agencies, including the City of Richland. The selection of Hill International, Inc. for this work is consistent with purchasing policy and state law.

A scope of work has been negotiated that represents good value to the City for the cost.

Staff recommends adoption of Resolution No. 2022-115.

Fiscal Impact: The contract amount is \$139,574.57. The funds are available in the 2022 Budget for the Fire Station No. 76 capital project.

Attachments:

1. Resolution No. 2022-115
2. Draft Consultant Agreement - Hill International, Inc. for Fire Station 76

RESOLUTION NO. 2022-115

**A RESOLUTION OF THE CITY OF RICHLAND, WASHINGTON,
AUTHORIZING A CONSULTANT AGREEMENT WITH HILL
INTERNATIONAL, INC. FOR THE FIRE STATION NO. 76
PROJECT.**

WHEREAS, the adopted 2021-2026 Capital Improvement Plan (CIP) includes a project to design and construct Fire Station No. 76; and

WHEREAS, Hill International, Inc. successfully provided third-party project and construction management services for the construction of Fire Station Nos. 73, 74 & 75 and Richland City Hall; and

WHEREAS, Hill International, Inc. is the area's industry and subject matter expert in design-build project delivery, and has assisted the City in obtaining design-build approval from the State of Washington Project Review Committee; and

WHEREAS, the City is in need of project and construction management services for the Fire Station No. 76 project; and

WHEREAS, the selection of Hill International, Inc. for this work is consistent with purchasing policy and state law.

NOW, THEREFORE, BE IT RESOLVED by the City Council of the City of Richland that the City Manager is authorized to sign and execute a consultant agreement with Hill International, Inc. in the amount of \$139,574.57 to provide project and construction management services in support of the Fire Station No. 76 project.

BE IT FURTHER RESOLVED that this Resolution shall take effect immediately.

ADOPTED by the City Council of the City of Richland, Washington, at a regular meeting on the 6th day of September, 2022.

Michael Alvarez, Mayor

Attest:

Approved as to Form:

Jennifer Rogers, City Clerk

Heather Kintzley, City Attorney



AGREEMENT BETWEEN CITY AND CONSULTANT

Consulting Services Fire Station 76

This Agreement is entered into this 1st day of June, 2022 ("Effective Date") by and between the **City of Richland** ("**City**"), a Washington municipal corporation located at 625 Swift Blvd. Richland, WA 99352, and **Hill International, Inc.** ("**Consultant**"), a foreign for-profit corporation with service at 818 W. Riverside Ave. Ste 400 Spokane WA 99201. **City** and **Consultant** are referred to individually herein as a "Party" and collectively herein as the "Parties."

WITNESSETH:

1. SCOPE OF WORK

- a. Consultant shall furnish all services, labor and related equipment necessary to conduct and complete the work outlined in Exhibit A. In performing these services, Consultant shall at all times comply with all federal, state and local statutes, rules and ordinances applicable to the performance of such services. In addition, these services and all duties incidental or necessary therefore, shall be performed diligently and completely and in accordance with professional standards of conduct and performance. All services performed under this Agreement will be conducted solely for the benefit of the City and will not be used for any other purpose without written consent of the City.
- b. This Agreement consists of this Agreement and other documents listed below. These form the entire Agreement between the Parties, and are fully integrated into this Agreement as if stated or repeated herein. In the event of a conflict between documents, the order of precedence will be the order listed below. An enumeration of the Agreement documents is set forth below (mark all that apply):
 1. ☒ City of Richland Agreement No. _____
 2. ☒ Exhibit A: Scope of Work
 3. ☐ City Richland Solicitation No. N/A
 4. ☐ Exhibit B: Solicitation No. N/A proposal response submitted by Consultant dated N/A.
 5. ☐ Additional Documents – N/A.

2. TIME FOR COMPLETION

Consultant shall not begin any work under the terms of this Agreement until authorized in writing by the City. Consultant agrees to use best efforts to complete all work described under this Agreement by October 31, 2024.

3. TERM

The term of this Agreement shall commence on the Effective Date identified above and end at midnight on October 31, 2024.

4. PAYMENT

- a. Services rendered by Consultant under this Agreement will be paid at the rate set forth in Exhibit A Scope of Work, but in no event shall the total compensation for services rendered under this Agreement exceed **One Hundred Thirty-Nine Thousand Five Hundred Seventy-Four Dollars and Fifty-Seven Cents (\$139,574.57)**, including all fees and those reimbursable expenses listed in Exhibit A.
- b. City shall pay Consultant for services rendered after receipt of a detailed invoice. Invoices not in dispute by the City will be paid net thirty (30) days and shall reference the contract number and/or purchase order applicable to the work. The invoice shall provide sufficient detail on the work being billed and include detailed receipts for any invoices.
- c. Partial payments to cover the percentage of work completed may be requested by Consultant. These payments shall not be more than one (1) per month.
- d. Pre-approved travel, meals and lodging will be reimbursed at cost and only when consultant travels at least 150 miles per one way trip. Reimbursable expenses are limited to the following: coach airfare, ground transportation (taxi, shuttle, car rental), hotel accommodations as provided below, personal or company vehicle use at the then-current federal mileage rate, and meals at the current federal per-diem meal allowance or up to the current federal per-diem with detailed receipts, no alcohol, and a 20% maximum gratuity.
 - i. Hotel accommodations: eligible lodging expenses include the room cost only; itemized receipts must be provided for hotel reimbursements.
 - ii. Hotel reimbursement is limited to the single room rate. If two or more consultants are sharing a room, reimbursement is allowable for only one consultant at the double room rate.
 - iii. The maximum reimbursement should be limited to the best discount rate available and allowable that meets traveler's business needs and basic needs for health, safety and cleanliness. Non-smoking rooms are authorized even if they are more expensive.
- e. Reimbursement for extra services/reimbursable expenses are not authorized under this Agreement unless detailed in the Scope of Work or agreed upon in writing as a modification to this Agreement.
- f. Consultant will allow access to the City, State of Washington, Federal Grantor Agency, Comptroller General of the United States, or any of their duly authorized representatives, to any books, documents, papers, and records which are directly pertinent to this Agreement for the purpose of making audit, examination, excerpts, and transcriptions. Unless otherwise provided, said records must be retained for three (3) years from the date of receipt of final payment. If any litigation, claim, or audit arising out of, in connection with, or relating to this Agreement is initiated before the expiration of the three-year period, the records shall be retained until such litigation, claim, or audit involving the records is completed.

5. INDEPENDENT CONTRACTOR

Consultant, and any and all employees of Consultant or other persons engaged in the performance of any work or services required of Consultant under this Agreement, are

independent contractors and shall not be considered employees of the City. Any and all claims that arise at any time under any Workers' Compensation Act on behalf of said employees or other persons while so engaged, and any and all claims made by a third party as a consequence of any act or omission on the part of Consultant's employees or other persons engaged in any of the work or services required to be provided herein, shall be the sole obligation and responsibility of Consultant.

6. OWNERSHIP OF DOCUMENTS

Any and all data, analyses, documents, photographs, plans, designs, drawings, specifications, surveys, films, documents, reports and other work products created, prepared, produced, constructed, assembled, made, performed, or otherwise produced by Consultant or Consultant's subcontractors for delivery to the City pursuant to this Agreement shall become the sole and absolute property of the City upon completion of the services and payment in full of all payment due to Consultant of the fees set forth in this Agreement. Such property shall constitute "work made for hire" as defined by the U.S. Copyright Act of 1976, 17 U.S.C. § 101, and the ownership of the copyright and any other intellectual property rights in such property shall vest in the City at the time of its creation. Ownership of the intellectual property includes the right to copyright, patent, and register, and the ability to transfer these rights. Material which Consultant uses to perform this Agreement but is not created, prepared, constructed, assembled, made, performed or otherwise produced for or paid for by the City is owned by Consultant and is not "work made for hire" within the terms of this Agreement. Consultant will ensure that all independent contractors have written agreements in place that transfers ownership of all Intellectual Property created by them or provided by them to the City.

The City may make or permit to be made any modifications to the plans and specifications without the prior written authorization of Consultant. The City agrees to waive any claim against Consultant arising from any unauthorized reuse of the plans and specifications, and to indemnify and hold Consultant harmless from any claim, liability or cost arising or allegedly arising out of any reuse of the plans and specifications by the City or its agent not authorized by Consultant.

7. TERMINATION

- a. This Agreement may be terminated by either Party upon thirty (30) days' written notice. In the event this Agreement is terminated by Consultant, the City shall be entitled to reimbursement of costs occasioned by such termination. In the event the City terminates this Agreement, the City shall pay Consultant for the work performed, which shall be an amount equal to the percentage of completion of the work as mutually agreed between the City and Consultant.
- b. If any work covered by this Agreement shall be suspended or abandoned by the City before Consultant has completed the assigned work, Consultant shall be paid an amount equal to the costs incurred up to the date of termination or suspension as mutually agreed upon between the City and Consultant.

8. AVAILABILITY OF RECORDS FOR PUBLIC INSPECTION

- a. As a public contract, all records prepared, generated or used by Consultant or its agents, employees and subcontractors relating to this Agreement and associated work (hereinafter "public records") may be subject to disclosure under the Washington State Public Record Act, Chapter 42.56 RCW.

- b. Contractor shall maintain and retain all such public records in a manner that is readily accessible for a minimum term of no less than three (3) years following completion of the contract work. City shall have the right to timely review all such public records upon request. Contractor shall provide copies of any public records requested by City within thirty (30) calendar days of City's request. If City requests that copies of public records be provided to City in an electronic format, said records shall be provided at no cost to City. If paper copies are requested by City, City shall pay \$.10 per page. Payment for paper copies shall be rendered to Consultant within twenty (20) calendar days of receipt.
- c. All records subject to a public disclosure request will be provided to a requester unless exempted from disclosure by law. The City's decision to exempt or redact any public record shall be based only upon valid exemptions that apply to the City. City will not refrain from disclosing any record under an exemption that may be personal to Consultant. In the event Consultant objects to release of any public record under this Agreement, Consultant may seek judicial approval to prevent such disclosure at Consultant's sole expense. City shall neither aid nor interfere with Consultant's request for an injunction to prevent disclosure of any public record under this Agreement.
- d. Consultant shall insert this provision in all contracts with subcontractors or agents providing services relating to this Agreement.

9. DISPUTE RESOLUTION

- a. The City and Consultant agree to negotiate in good faith for a period of thirty (30) days from the date of notice of all disputes between them prior to exercising their rights under this Agreement, or under law.
- b. All disputes between the City and Consultant not resolved by negotiation between the Parties may be arbitrated only by mutual agreement of the City and Consultant. If not mutually agreed to resolve the claim by arbitration, the claim will resolve by legal action.

10. DEBARMENT CERTIFICATION

Consultant certifies that neither Consultant nor its principals are presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participating in this contract by any federal or state department or agency. Further, Consultant agrees not to enter into any arrangements or contracts related to completion of the work contemplated under this Agreement with any party that is on the "General Service Administration List of Parties Excluded from Federal Procurement or Non-Procurement Programs" which can be found at:

www.sam.gov and <https://secure.lni.wa.gov/verify/>

11. VENUE, APPLICABLE LAW AND PERSONAL JURISDICTION

In the event that either Party deems it necessary to initiate a legal action to enforce any right or obligation under this Agreement, the Parties agree that any such action shall be initiated in the Superior Court of the State of Washington situated in Benton County. The Parties agree that all questions shall be resolved by application of Washington law, and that the Parties to such action shall have the right of appeal from such decision of the Superior Court in accordance with the laws of the State of Washington. Consultant hereby consents to the personal jurisdiction of the Superior Court of the State of Washington situated in Benton County.

12. ATTORNEY'S FEES

The Parties agree that should legal action be necessary to enforce any of the provisions of this Agreement, that the substantially prevailing Party will be awarded its reasonable attorney's fees and costs in action, including costs and attorney's fees on appeal if appeal is taken.

13. INSURANCE

Consultant shall procure and maintain for the duration of the Agreement insurance against claims for injuries to persons or damage to property which may arise from or in connection with the performance of the work hereunder by Consultant, its agents, representatives, or employees.

- a. No Limitation. Consultant's maintenance of insurance as required by this Agreement shall not be construed to limit the liability of Consultant to the coverage provided by such insurance, or otherwise limit the City's recourse to any remedy available at law or in equity.
- b. Minimum Scope of Insurance. Consultant shall obtain insurance of the types described below:
 1. Automobile Liability insurance covering all owned, non-owned, hired and leased vehicles. Coverage shall be written on Insurance Services Office (ISO) form CA 00 01 or a substitute form providing equivalent liability coverage.
 2. Commercial General Liability insurance shall be as least as broad as ISO occurrence form CG 00 01 and shall cover liability arising from premises, operations, stop-gap independent contractors and personal injury and advertising injury. The City shall be named as an insured under the Consultant's Commercial General Liability insurance policy with respect to the work performed for the City using an additional insured endorsement at least as broad as ISO CG 20 26.
 3. Workers' Compensation coverage as required by the Industrial Insurance laws of the State of Washington.
 4. Professional Liability, Errors or Omissions insurance appropriate to the Consultant's profession. Coverage shall be provided if Consultant is providing services under this Agreement as a licensed professional, including, but not limited to, engineers, architects, accountants, surveyors, and attorneys.
- c. Minimum Amounts of Insurance. Consultant shall maintain the following insurance limits:
 1. Automobile Liability insurance with a minimum combined single limit for bodily injury and property damage of \$1,000,000 per accident.
 2. Commercial General Liability insurance shall be written with limits no less than \$2,000,000 each occurrence, \$2,000,000 general aggregate.
 3. Professional Liability insurance shall be written with limits no less than \$1,000,000 per claim and \$1,000,000 policy aggregate limit.

- d. Other Insurance Provisions. Consultant's Automobile Liability and Commercial General Liability insurance policies are to contain, or be endorsed to contain that they shall be primary insurance with respect to the City. Any insurance, self-insurance, or self-insured pool coverage maintained by the City shall be excess of Consultant's insurance and shall not contribute with it.
- e. Acceptability of Insurers. Insurance is to be placed with insurers with a current A.M. Best rating of not less than A:VII.
- f. Verification of Coverage. Consultant shall furnish the City with original certificates and a copy of the amendatory endorsements, including but not necessarily limited to, the additional insured endorsement, evidencing the insurance requirements of Consultant before commencement of the work.
- g. Notice of Cancellation. Consultant shall provide the City with written notice of any policy cancellation within two (2) business days of Consultant's receipt of such notice.
- h. Failure to Maintain Insurance. Failure on the part of Consultant to maintain the insurance as required shall constitute a material breach of contract, upon which the City may, after giving five (5) business days' notice to Consultant to correct the breach, immediately terminate the contract or, at its discretion, procure or renew such insurance and pay any and all premiums in connection therewith, with any sums so expended to be repaid to the City on demand, or at the sole discretion of the City, offset against funds due Consultant from the City.
- i. Public Entity Full Availability of Consultant Limits. If Consultant maintains higher insurance limits than the minimum shown above, the City shall be insured for the full available limits of the Commercial General and Excess or Umbrella liability maintained by Consultant, irrespective of whether such limits maintained by Consultant are greater than those required by this contract or whether any certificate of insurance furnished to the City evidences limits of liability lower than those maintained by Consultant.

14. INDEMNIFICATION / HOLD HARMLESS

- a. Consultant shall defend, indemnify, and hold the City, its officers, officials, employees and volunteers harmless from any and all claims, injuries, damages, losses or suits including attorney fees, arising out of or resulting from the willful or negligent acts, or alleged willful or alleged negligent acts, errors or omissions of the Consultant or the Consultant's employees or agents in performance of this Agreement, except for injuries and damages caused by the sole negligence of the City.
- b. Should a court of competent jurisdiction determine that this Agreement is subject to RCW 4.24.115, then, in the event of liability for damages arising out of bodily injury to persons or damages to property caused by or resulting from the concurrent negligence of the Consultant and the City, its officers, officials, employees, and volunteers, the Consultant's liability, including the duty and cost to defend, shall be only to the extent of the Consultant's negligence. It is further specifically and expressly understood that the indemnification provided herein constitutes the Consultant's waiver of immunity under Industrial Insurance, Title 51 RCW, solely for the purposes of this indemnification. This waiver has been mutually negotiated by the Parties. The provisions of this section shall survive the expiration or termination of this Agreement.

15. STANDARD OF CARE

The professional services will be furnished in accordance with the care and skill ordinarily used by members of the same profession practicing under similar conditions at the same time and in the same locality.

16. SUCCESSORS OR ASSIGNS

All of the terms, conditions and provisions hereof shall inure to the benefit of and be binding upon the Parties hereto, and their respective successors and assigns; provided, however, that no assignment of the Agreement shall be made without written consent of the non-assigning Party, which may be given in the non-assigning Party's sole discretion.

17. NOTICES

Any notices required under this Agreement will be in writing, addressed to the appropriate Party at the address which appears below (as modified in writing from time to time by such party), and given by electronic submission, by facsimile personally, by registered or certified mail, return receipt requested, or by nationally recognized overnight courier service. All notices shall be effective upon the date sent.

Purchasing Manager
City of Richland
625 Swift Blvd., MS-11
Richland, WA 99352
Email: purchasing@ci.richland.wa.us
Phone: (509) 942-7710
Fax: (509) 942-7397

Contact Name: Gregory Heinz
Name of Firm: Hill International, Inc.
Address: 2005 Market St., Suite 1700
Address: Philadelphia, PA 19103
Email: GregoryHeinz@hillintl.com
Phone Number: (425) 214-0317
Fax Number: N/A

18. EQUAL OPPORTUNITY AGREEMENT

Consultant agrees that Consultant will not discriminate against any employee or job applicants for work under this Agreement for reasons of race, sex, nationality, religious creed, or sexual orientation.

19. SEVERABILITY

If any provision of this Agreement conflicts with applicable law, or its application is found to be invalid by a court of competent jurisdiction, the remainder of this Agreement shall not be affected, and to this end, the terms of this Agreement are declared to be severable.

20. AMENDMENTS

All amendments must be in writing and be approved and signed by both Parties.

21. CHANGE IN LAW

The Parties hereto agree that in the event legislation is enacted or regulations are promulgated, or a decision of court is rendered, or any interpretive policy or opinion of any governmental agency charged with the enforcement of any such law or regulation is published that affects or may affect the legality of this Agreement or any part thereof or that materially and adversely affects the ability of either Party to perform its obligations or receive the benefits intended hereunder ("Adverse Change in Law"), then within fourteen (14) calendar days following written notice by either Party to the other Party of such adverse change in law, the Parties shall meet to negotiate in good faith an amendment which will carry out the original intention of the Parties to the extent possible. If, despite good faith attempts, the Parties cannot reach agreement upon an amendment within sixty (60) calendar days after commencing negotiation, then this Agreement may be terminated by either Party as of the

earlier of: (i) the effective date of the adverse change in law, or (ii) the expiration of a period of sixty (60) days following written notice of termination provided by one Party to the other.

22. CONFIDENTIALITY

In the course of performing under this Agreement, Consultant, including its employees, agents or representatives, may receive, be exposed to, or acquire confidential information. Confidential information may include, but is not limited to, patient information, contract terms, sensitive employee information, or proprietary data in any form, whether written, oral, or contained in any computer database or computer readable form. Consultant shall: i) not disclose or sell confidential information except as permitted by this Agreement; (ii) only permit use of such confidential information by employees, agents and representatives having a need to know in connection with performance under this Agreement; and (iii) advise each of its employees, agents, and representatives of their obligations to keep such information confidential.

23. CHANGES OF WORK

- a. When required to do so, and without any additional compensation, Consultant shall make such changes and revisions in the completed work of this Agreement as necessary to correct or revise any errors, omissions, or other deficiencies in the design, drawings, specifications, reports, and other similar documents which Consultant is responsible for preparing or furnishing under this Agreement.
- b. Should the City find it desirable for its own purposes to have previously satisfactorily completed work or parts thereof changed or revised, Consultant shall make such revisions as directed by the City. This work shall be considered as Extra Work and will be paid for as herein provided under Section 24, Extra Work.

24. EXTRA WORK

The City may desire to have Consultant perform work or render additional services within the general scope of this Agreement. Such work shall be considered as extra work and will be specified in a written supplement to this Agreement which will set forth the nature of the scope, schedule for additional work, additional fees and the method of payment. Work under a supplemental Agreement shall not proceed until authorized in writing by the City.

25. ENTIRE AGREEMENT

This Agreement contains the entire agreement of the Parties hereto and supersedes all previous understandings and agreements, written and oral, with respect to this transaction. Neither Party shall be liable to the other for any representations made by any person regarding the terms of this Agreement, except to the extent that the same are expressed in this Agreement.

26. AUTHORITY TO EXECUTE

Each person executing this Agreement on behalf of another person, corporation, partnership, company, or other organization or entity represents and warrants that he or she is fully authorized to so execute and deliver this Agreement on behalf of the entity or party for which he or she is signing. The Parties hereby warrant to each other that each has full power and authority to enter into this Agreement and to undertake the actions contemplated herein, and that this Agreement is enforceable in accordance with its terms.

27. COUNTERPART ORIGINALS

Execution of this Agreement and any amendment or other document related to this Agreement may be by electronic signature and in any number of counterpart originals, each of which shall be deemed to constitute an original agreement, and all of which shall constitute one whole agreement.

(Signature page to follow)

Draft

IN WITNESS WHEREOF, the Parties hereto have executed this Agreement as of the day and year first above written.

CITY OF RICHLAND

CONSULTANT

Jon Amundson, ICMA-CM
City Manager

Signature

Attest:

Printed Name

Jennifer Rogers, City Clerk

Title

Approved as to form:

Heather Kintzley, City Attorney

Draft

EXHIBIT A: Detailed Scope of Work

See attached scope of work dated August 15, 2022.

Draft



Hill International, Inc.
818 W. Riverside Ave., Ste. 400
Spokane, WA 99201
Tel: 509-953-8813
www.hillintl.com

August 15, 2022

Ruvim Tyutyunnik
Capital Projects Manager
City of Richland
2700 Duportail Street
Bldg. 100
Richland, WA 99352

**Subject: Project Management and Construction Management services
Public Safety Facility 76**

Dear Ruvim:

At the request of the City of Richland, Hill International, Inc. (Hill) is pleased to present our proposal to provide Project management and Construction management Services for your new Public Safety Facility 76.

We understand the scope of services is to provide project management services and construction management services for the duration of the project, including construction oversight, generally serving as an extension of the Owner and assisting in the execution and delivery of the Project. The attached scope of work (Attachment A) includes a summary of the services included in our fee estimate. The attached fee matrix represents a total not-to-exceed value that we will track monthly. The attached fee matrix provides further detail to support our approach, and a list of our associated assumptions is provided below.

Fee Proposal

Hill proposes to bill on a not-to-exceed basis of One Hundred Thirty-Nine Thousand, Five Hundred Seventy Four Dollars (\$139,574). Reimbursable expenses are billed at cost plus a 10% administrative markup and are included in our fee.

Schedule

This proposal assumes an effective date of 06/01/2022. Hill is prepared to continue working immediately upon your written notice to proceed.

**DELIVERING THE
INFRASTRUCTURE
OF CHANGE**

Assumptions, Clarifications and Exclusions

1. The estimated level of effort is based on our knowledge of the project status and tasks completed to date.
2. To the best of our ability, our assumptions take into consideration the current volatility of the construction market, supply chain impacts, and labor shortages.
3. We have included procurement services related to the Design Build contractor selection.
4. Construction Management (CM) services as discussed with the City are minimal due to The City having expertise in house.
5. PM costs for travel are based on the IRS standard mileage rates for 2022.
6. Billing rates for key staff are included in the attached summary, shown with a 5% annual escalation.

We look forward to an opportunity to partner with The City of Richland to assist in the delivery of your new Public Safety Facility 76. If you have any questions or need additional information, please feel free to contact me at ColinAnderson@hillintl.com or at 509-953-8813

Sincerely,

HILL INTERNATIONAL, INC.



Colin Anderson
Program Manager

Cc: D Selzer, Hill International, Inc.
B Blankenship, Hill International, Inc.

Attachments

Attachment A – Scope of Work
Fee Summary & Reimbursables
Fee Proposal
Pay Rates



August 15, 2022

SCOPE OF WORK

City of Richland Public Safety 76 (Project) Project Management and Construction Management Services

The Consultant (hereinafter referred to as "Hill"), shall provide Project Management and Construction Management professional services for the Public Safety 76 Project as described in this Scope of Work. These services include project management, construction management, coordination, facilitation, oversight and monitoring activities during the Pre-construction (GMP) and Construction (Post GMP) phases of the Progressive Design-Build delivery of the Project for The City of Richland (hereinafter referred to as "The City").

PHASE I – PRE-CONSTRUCTION SERVICES (GMP Phase)

Phase I services focus on providing pre-construction activities and alternative delivery subject-matter expertise to The City prior to completion of Phase I design documents while representing their best interests. These activities include but are not limited to project management, PDB team selection and procurement, design oversight and management, constructability reviews, quality assurance and change management.

Project Management: Hill shall be responsible for the organization, management and coordination of consultant services described in this Scope of Work. Hill shall oversee its team in confirming that the needs of The City and the project are met. Project management activities throughout this phase include:

- Client Expectation Survey
- Stakeholder Engagement/Communications Plan
- Progress Meetings
- Owner's Representative Services
- Document/Project Controls – Estimating, scheduling, cost controls, scope management
- Change Management
- Quality Assurance Management

Design-Builder team procurement: Working closely with The City, the Hill team will assist with procuring and contract negotiation with the highest qualified design-build team, including the following activities:

- Develop and confirm initial project budget and project schedule.
 - Project Budget – Include projected costs for consultants, contractors, and subcontractors, permitting, construction costs, testing and inspection fees, furnishings, equipment, commissioning, cost escalation, and other related project costs and contingencies. Update periodically as additional information and/or conditions change.
 - Schedule – Prepare an initial master project schedule, periodically update as information and/or conditions change.

- Assist The City in developing Request for Qualifications (RFQ) and Request for Proposals (RFP) for PDB procurement.
 - Working with The City, develop RFQ and RFP documents that address requirements for function, cost, quality, time, and logistics.
 - Guide and create consensus with all stakeholders with regards to project definition, design, cost, and schedule.
 - Prepare evaluation criteria and selection process that addresses project objectives, expectations and design, construction, and other project challenges
 - Provide recommendation for the stipend to be paid to non-successful proposers.
- Advise The City staff on PDB procurement, contracts, and agreements to include:
 - Guide The City through consensus scoring of the Statements of Qualification, facilitate interactive proprietary meetings between owner and DB finalists, facilitate interviews with shortlisted DB teams, and guide consensus scoring of final written proposals and cost proposals.
 - Assist The City with negotiation and execution of the Phase 1 DBIA Agreement.
 - Courses of Action recommendations to address contract compliance shortfalls.
 - Assist with establishment and implementation of appropriate financial and administrative controls.
 - Lead GMP Amendment negotiations with D-B Team, provide recommendations to The City regarding continuing with Phase 2 portion of work.
- Work with The City on early coordination with Authorities Having Jurisdiction, securing required permits, approvals, and other authorizations necessary for the development, construction, and operation of the Project.

Design Oversight: Upon selection and contracting of preferred Design-Builder (Contractor), provide oversight and subject-matter expertise during the design portion of the project, leading to the successful release of construction documents.

- Work with The City and the Design-Builder to update previously established project budgets and master project schedule; generate cash flow forecast for the project and update periodically as assumptions change and conditions warrant.
- Conduct Kickoff/Partnering meetings to develop team collaboration. Assist/manage Pull Planning and Target Value Design meetings. Manage contingency buy back log, manage back log process.
- Oversee technical design reviews during design development by Design-Builder; provide comments regarding alignment with established goals and objectives, project budget and within established schedule milestones.
- Conduct constructability reviews of D-B design periodically throughout design phase to confirm alignment with established goals and objectives, project budget and schedule milestones.
- Review Design-Builder's monthly invoices and Applications for Payment and provide recommendations to The City for payment.

- Assist The City with Fixtures, Furniture & Equipment (FFE) scope identification and delivery and installation requirements.

PHASE II – CONSTRUCTION PHASE SERVICES (Post GMP)

Phase II services focus on providing project management, construction management and subject-matter expertise to The City during the construction phase and project delivery of its Project. These services include those activities necessary to manage and perform project and construction management services.

Project Management: Hill shall be responsible for the management and coordination of consultant services during this phase as described in this Scope of Work. Hill will review and oversee this work to confirm that it meets the needs of The City and the project. Project management activities throughout this phase include:

- Project Communications/Stakeholder Engagement Updates – periodic communications (written and/or oral) and updates to The City and stakeholders on project status, other on-going operations and/or issues of interest
- Progress Meetings – help facilitate program-level and construction meetings as required with The City and Design-Builder to discuss procedures, progress, problems, scheduling, phasing, and with ongoing operations and other issues relevant to the successful completion of the Project
- Project Controls – Continue estimating, scheduling, cost controls and scope management as needed.

Construction Management Oversight: **Due to the City having expertise in house, we are proposing a reduced Construction Management role (4 hours per week) as highlighted below. See additional services to add scope as needed:**

- Document Controls - Maintain current and orderly records of all project documents including contracts, drawings, specifications, submittals, photographs, samples, schedules, correspondence, meeting minutes, directives, change orders, submittals, Requests for Information (RFI), etc.
- Reporting - Prepare and distribute monthly site observation reports to The City and Design-Build Team on the status of construction progress.
- Change Management – Review, negotiate and make recommendations to The City regarding owner driven changes and contingency management.
- Quality Assurance Management – Provide quality verification and assurance oversight of Design-Builder activities during construction phase of project including: Providing oversight of RFI and submittal approval processes, reviewing inspection reports, identifying and tracking non-conforming work and working with the Design-Builder and consultants as needed for corrective action.

Additional Services if Requested:

- Provide oversight, coordination and direction as needed of any specialty consultants and/or professional services contracted to support this project effort to include commissioning, environmental, special inspections and building air tightness verification, and others as determined.
- Safety: Review and monitor Design-Builder's Safety Program, record any safety violations, and make recommendations for improving safety conditions.
- External Reviews: Manage external agency reviews (zoning, building permits, storm water requirements, etc.). Track and report on review status and provide periodic updates to The City, stakeholders and Design-Builder as required.
- Inspections & Testing: Review design requirements and provide recommendations for special inspections and testing. Coordinate the selection of independent inspection and testing agencies. Review inspection and testing reports and make recommendations regarding the results of inspections and testing activities.
- Punch List: Oversee the development of the creation, tracking and resolution of Design-Builder punch list.
- As-Built Documentation: Review Design-Builder and subcontractor record drawings monthly.
- Change Orders: Prepare change order documentation for signatures on behalf of The City.
- Pay Applications: Review Consultant and Design-Builder's monthly invoices and Applications for Payment, provide recommendations to The City for payment.
- Closeout and post-construction services:
 - Develop Project Close-Out Process in consultation with The City and the Design-Build Team to confirm that all close-out activities are in general compliance with the contract documents including schedule, inspections, testing, start-up procedures, warranty processing, and occupancy.
 - Coordinate, monitor, and document for testing, calibration, and start-up of all equipment and building systems.
 - Provide oversight of the collecting and cataloging of all operating and instruction manuals for equipment and building systems to be submitted to The City.
 - Coordinate and assist in the training of The City's personnel on the operation and maintenance of building systems and equipment.
 - Schedule, coordinate and assist with substantial completion and final inspections.
 - Coordinate close-out activities including the completion of deficiencies, submittal of close-out documents, resolution of change orders, and recommendations for payment of retainage.
 - Submit all project documentation including files, records, drawings, submittals, samples, and other information to The City in an organized and usable electronic format.
 - Coordinate the warranty work by Design-Builder to ensure their obligations are fulfilled in a timely manner.

FS76_Fee Summary_Reimbursables



	Reimbursable Type	Phase 1 [Procurement]	Phase 2 [Pre-GMP]	Phase 3 [Post GMP]	Phase 4 [Enter Name]	TOTAL by Reimbursable	HEADER
1	Air Fare						
2	Car Rental					\$0.00	
3	Car Rental Gas					\$0.00	
4	Lodging	\$400.00	\$0.00	\$0.00		\$400.00	
5	Meals	\$90.00	\$90.00	\$360.00		\$540.00	
6	Mileage	\$600.00	\$600.00	\$2,400.00		\$3,600.00	
7	Parking	\$0.00	\$0.00	\$0.00		\$0.00	
8	Postage / Printing	\$0.00	\$0.00	\$0.00		\$0.00	
9		\$1,090.00	\$690.00	\$2,760.00		\$4,540.00	
10	Hill Markup @ 10% OD	\$109.00	\$69.00	\$276.00		\$454.00	
11							
12		\$1,199.00	\$759.00	\$3,036.00		\$4,994.00	TOTAL REIMBURSABLES
13							
14	LABOR SUMMARY						
15		\$23,250.48	\$22,790.48			\$46,040.96	TOTAL LABOR 2022
16			\$23,930.0	\$49,132.78		\$73,062.78	TOTAL LABOR 2023
17				\$15,476.82		\$15,476.82	TOTAL LABOR 2024
18						\$0.00	TOTAL LABOR 2025
19	TOTAL BY PHASE	\$23,250.48	\$46,720.49	\$64,609.60		\$134,580.57	TOTAL LABOR
20							
21						\$139,574.57	TOTAL Inc. REIMBURSABLES

Richland FS76 Fee Proposal

[illegible]

Richland FS76 Pay Rates



	Employee Name	Billable (2022)	Billable (2023)	Billable (2024)
1		\$0.00		
2		\$0.00		
3	Becky Blankenship	\$243.25	\$255.42	\$268.19
4	Colin Anderson	\$160.75	\$168.79	\$177.23
5	Lorraine Mead	\$151.49	\$159.07	\$167.02
6	Merry Valdez	\$121.18	\$127.23	\$133.60
7				
8				
9				
10				
11				



COUNCIL AGENDA ITEM COVERSHEET

Council Date: 9/6/2022

Agenda Category: Resolutions - Adoption

Core Focus Area 2 - Manage & Maintain Infrastructure & Facilities

Subject:

Resolution No. 2022-116, Authorizing a Progressive Design-Build Agreement with DGR Grant Construction, Inc. for Fire Station No. 76

Department/Office
Parks & Public Facilities

Ordinance/Resolution Number:
2022-116

Document Type:
Resolution

Recommended Motion:

Adopt Resolution No. 2022-116, authorizing the City Manager to sign and execute both a progressive design-build contract with DGR Grant Construction, Inc. and a future administrative amendment establishing the final scope of work and confirming the GMP in an amount not to exceed \$9,000,000.

Summary:

The City of Richland has \$9,000,000 budgeted for the construction of Fire Station No. 76 in the 2022 Budget. The City has obtained approval from the State of Washington Project Review Committee to proceed with a progressive design-build alternative public works contracting process to build Fire Station No. 76. The City has used this contracting process to successfully procure Fire Station Nos. 73, 74 and 75 in addition to Richland City Hall.

Progressive design-build contracts include a first phase to design and develop a scope of work for the project, and a second phase to produce final design documents and construct the project. Between the first and second phases of the progressive design-build process, a final scope of work is developed for the project and a guaranteed maximum price (GMP) is calculated. Once developed and deemed acceptable, the GMP will be confirmed by an administrative amendment to the progressive design-build contract.

DGR Grant Construction, Inc. submitted the highest scoring competitive proposal and was selected as the best-suited design-builder for this project.

Staff recommends adoption of Resolution No. 2022-116.

Fiscal Impact: Construction of Fire Station No. 76 is anticipated to cost \$9,000,000. Adequate funding exists for this expense in the Fire Station No. 76 Capital Project per the City's 2022-2027 Capital Improvement Plan (CIP).

Attachments:

1. Resolution No. 2022-116
2. Fire Station 76 Progressive Design-Build Agreement

RESOLUTION NO. 2022-116

**A RESOLUTION OF THE CITY OF RICHLAND, WASHINGTON,
AUTHORIZING A PROGRESSIVE DESIGN-BUILD AGREEMENT
WITH DGR GRANT CONSTRUCTION, INC FOR THE PUBLIC
SAFETY RESPONSE STATION NO. 76 PROJECT.**

WHEREAS, the adopted 2021-2026 Capital Improvement Plan (CIP) includes a project to construct a new Fire Station No. 76; and

WHEREAS, the Fire Station No. 76 project is budgeted at \$9,000,000; and

WHEREAS, the City has been authorized by the State of Washington to utilize an alternative public works contracting procedure known as progressive design-build under the authority of Chapter 39.10 RCW; and

WHEREAS, the City has successfully utilized progressive design-build contracts to build Fire Station Nos. 73, 74 & 75 and Richland City Hall, thereby saving Richland taxpayers valuable time and money; and

WHEREAS, progressive design-build contracts include a first phase to design and develop a scope of work for the project, and a second phase to produce final design documents and construct the project; and

WHEREAS, between the first and second phases of the progressive design-build process, a final scope of work is developed for the project and a guaranteed maximum price (GMP) is calculated. Once developed and deemed acceptable, the GMP will be confirmed by an administrative amendment to the progressive design-build contract; and

WHEREAS, construction of Fire Station No. 76 will benefit from progressive design-build contracting; and

WHEREAS, a competitive procurement process was utilized meeting the requirements of Chapter 39.10 RCW; and

WHEREAS, DGR Grant Construction, Inc. of Richland was identified by the City's selection team as best-suited to construct Fire Station No. 76 based on the competitive requirements of the procurement.

NOW, THEREFORE, BE IT RESOLVED by the City Council of the City of Richland that the City Manager is authorized to sign and execute both a progressive design-build contract with DGR Grant Construction, Inc. and a future administrative amendment establishing the final scope of work and confirming the GMP in an amount not to exceed \$9,000,000.

BE IT FURTHER RESOLVED that this Resolution shall take effect immediately.

ADOPTED by the City Council of the City of Richland, Washington, at a regular meeting on the 6th day of September, 2022.

Michael Alvarez, Mayor

Attest:

Approved as to Form:

Jennifer Rogers, City Clerk

Heather Kintzley, City Attorney



PROGRESSIVE DESIGN-BUILD AGREEMENT BETWEEN OWNER AND DESIGN-BUILDER - COST PLUS FEE WITH A GUARANTEED MAXIMUM PRICE

Document No. 530

Second Edition 2010

© Design-Build Institute of America

Washington, DC

TABLE OF CONTENTS

Article	Name	Page
----------------	-------------	-------------

<u>Article 1</u>	Scope of Work	6
<u>Article 2</u>	Contract Documents	6
<u>Article 3</u>	Interpretation and Intent	6
<u>Article 4</u>	Ownership of Work Product.....	7
<u>Article 5</u>	Contract Time	8
<u>Article 6</u>	Contract Price	9
<u>Article 7</u>	Procedure for Payment.....	22
<u>Article 8</u>	Termination for Convenience.....	23
<u>Article 9</u>	Representatives of the Parties	23
<u>Article 10</u>	Bonds and Insurance	24
<u>Article 11</u>	Other Provisions.....	24



Progressive Design-Build Agreement Between Owner and Design-Builder – with Cost Plus Fee and a Guaranteed Maximum Price

This document has important legal consequences. Consultation with an attorney is recommended with respect to its completion or modification.

This **AGREEMENT** is made as of the 30th day of August in the year of 2022, by and between the following parties, for services in connection with the Project identified below:

OWNER:

(Name and address)

City of Richland, Washington
625 Swift Boulevard, MS-13
Richland, WA 99352

DESIGN-BUILDER:

(Name and address)

DGR Grant Construction, Inc
502 Stevens Drive
P.O. Box 309
Richland, WA 99352

PROJECT:

(Include Project name and location as it will appear in the Contract Documents)

Public Safety Facility 76

In consideration of the mutual covenants and obligations contained herein, Owner and Design-Builder agree as set forth herein.

Article 1

Scope of Work

1.1 Design-Builder shall perform all design and construction services, and provide all material, equipment, tools and labor, necessary to complete the Work described in and reasonably inferable from the Contract Documents.

Article 2

Contract Documents

2.1 The Contract Documents are comprised of the following:

2.1.1 All written modifications, amendments, minor changes, and Change Orders to this Agreement issued in accordance with DBIA Document No. 535, *Standard Form of General Conditions of Contract Between Owner and Design-Builder* (2010 Edition, as amended) ("General Conditions of Contract"), including but not limited to The GMP Amendment in accordance with Section 6.6 herein, provided such Amendment is executed between the parties.

2.1.2 This Agreement, including all exhibits but excluding the GMP Amendment:

- | | | |
|----|-------------|---|
| .1 | Exhibit A: | Owner's Program Requirements |
| .2 | Exhibit A1: | Site Map |
| .3 | Exhibit B1: | Insurance Exhibit – Design-Builder's Insurance Requirements |
| .3 | Exhibit B2: | Form of Payment Bond |
| .4 | Exhibit B3: | Form of Performance Bond |
| .5 | Exhibit C: | Phase 1 and 2 Scope of Services |
| .6 | Exhibit D: | Not Used |
| .6 | Exhibit E: | Phase 1 Fee and Hourly Rates |
| .7 | Exhibit F: | Form GMP Amendment |
| .8 | Exhibit G: | Form Change Orders |

2.1.3 The General Conditions of Contract; and

2.1.4 Design Submissions, the Design Log, and the Construction Documents prepared and approved in accordance with Section 2.4 of the General Conditions of Contract, the most recent approved documents governing over previously approved documents.

Article 3

Interpretation and Intent

3.1 Design-Builder and Owner, prior to execution of the Agreement, shall carefully review all the Contract Documents, including but not limited to the various documents in the Initial Basis of Design Documents set forth in Exhibit A, and the Phase 1 and 2 Scope of Services set forth in Exhibit C, for any conflicts or ambiguities. Design-Builder and Owner will discuss and resolve any identified conflicts or ambiguities prior to execution of the Agreement.

3.2 The Contract Documents are intended to be complementary and interpreted in harmony so as to avoid conflict, with words and phrases interpreted in a manner consistent with construction and design industry standards. In the event inconsistencies, conflicts, or ambiguities between or among the Contract Documents are discovered after execution of the Agreement or after the parties' execution of the GMP Amendment, Design-Builder and Owner shall attempt to resolve any ambiguity, conflict or inconsistency informally, recognizing that the Contract Documents shall take precedence in the order in which they are listed in Section 2.1 hereof. *(Note, the parties are strongly encouraged to establish in the GMP Exhibit or GMP Proposal (as applicable) the priority of the various documents comprising such exhibit or proposal.)*

3.3 Terms, words and phrases used in the Contract Documents, including this Agreement, shall have the meanings given them in the General Conditions of Contract.

3.4 If the Initial Basis of Design Documents contain design or prescriptive specifications the Design-Builder shall be entitled to reasonably rely on the accuracy of the information represented in such design or prescriptive specifications and their compatibility with other information set forth in Initial Basis of Design Documents, including any performance specifications for the purposes of developing the Scope of Services for Phase 1, the Phase 1 Not to Exceed Amount and the Design-Builder's Fee Percentage. However, during Phase 1, Design-Builder is required to perform an independent evaluation of such design or prescriptive specifications to verify the information provided by the Owner. Further, regardless of the inclusion of design or prescriptive specifications or criteria, Design-Builder shall remain responsible for meeting the performance requirements of the Project, including but not limited to the requirements that the Project meet the Initial and Final Basis of Design Documents as well as all applicable Legal Requirements. Provided Design-Builder complies with other requirements set forth in this Agreement such as those regarding notice of claims to Owner and identification of differing site conditions, Design-Builder shall be entitled to an adjustment in the Scope of Services for Phase 1, the Phase 1 Not to Exceed Amount and/or the Design-Builder's Fee Percentage, but only to the extent Design-Builder's cost and/or time of performance have been adversely impacted by such inaccurate design or prescriptive specifications that are inconsistent with meeting the performance requirements.

3.5 The Contract Documents form the entire agreement between Owner and Design-Builder and by incorporation herein are as fully binding on the parties as if repeated herein. No oral representations or other agreements have been made by the parties except as specifically stated in the Contract Documents.

3.6 Design-Builder was selected based in part on the qualifications of the Key Team Members identified in the Design-Builder's Statement of Qualifications and Proposals. Design-Builder may not substitute the identified Key Team Members without written permission from Owner, such permission shall not be unreasonably withheld. Any substituted Key Team Member must possess the same or better qualifications as the previously approved Key Team Member.

Article 4

Ownership of Work Product

4.1 Work Product. All drawings, specifications and other documents and electronic data, including such documents identified in the General Conditions of Contract, furnished by Design-Builder to Owner under this Agreement ("Work Product") are deemed to be instruments of service and Design-Builder shall retain the ownership and property interests therein, including but not limited to any intellectual property rights, copyrights and/or patents, subject to the provisions set forth in Sections 4.2 through 4.5 below.

4.2 Owner's Limited License upon Project Completion and Payment in Full to Design-Builder. Upon Owner's payment in full for all Work performed under the Contract Documents, Design-Builder shall grant Owner a limited license to use the Work Product in connection with Owner's occupancy of the Project, conditioned on Owner's express understanding that its alteration of the Work Product without the involvement of Design-Builder is at Owner's sole risk and without liability or legal exposure to Design-Builder or anyone working by or through Design-Builder, including Design Consultants of any tier

(collectively the "Indemnified Parties"), and on the Owner's obligation to provide the indemnity set forth in Section 4.5 below.

4.3 Owner's Limited License upon Owner's Termination for Convenience or Design-Builder's Election to Terminate. If Owner terminates this Agreement for its convenience as set forth in Article 8 hereof, or if Design-Builder elects to terminate this Agreement in accordance with Section 11.4 of the General Conditions of Contract, Design-Builder shall, upon Owner's payment in full of the amounts due Design-Builder under the Contract Documents, grant Owner a limited license to use the Work Product to complete the Project and subsequently occupy the Project, and Owner shall thereafter have the same rights as set forth in Section 4.2 above, conditioned on the following:

4.3.1 Use of the Work Product is at Owner's sole risk without liability or legal exposure to any Indemnified Party, and on the Owner's obligation to provide the indemnity set forth in Section 4.5 below, and

4.3.2 Owner shall not be required to pay Design-Builder additional compensation for the right to use the Work Product to complete the Project and subsequently use the Work Product in accordance with Section 4.2 if Owner resumes the Project through its employees, agents, or third parties.

4.4 Owner's Limited License upon Design-Builder's Default. If this Agreement is terminated due to Design-Builder's default pursuant to Section 11.2 of the General Conditions of Contract, then Design-Builder grants Owner a limited license to use the Work Product to complete the Project and subsequently occupy the Project, and Owner shall thereafter have the same rights and obligations as set forth in Section 4.2 above. Notwithstanding the preceding sentence, if it is ultimately determined that Design-Builder was not in default, Owner shall be deemed to have terminated the Agreement for convenience, and Design-Builder shall be entitled to the rights and remedies set forth in Section 4.3 above.

4.5 Owner's Indemnification for Use of Work Product. If Owner is required to indemnify any Indemnified Parties based on the use or alteration of the Work Product under any of the circumstances identified in this Article 4, Owner shall defend, indemnify and hold harmless such Indemnified Parties from and against any and all claims, damages, liabilities, losses and expenses, including attorneys' fees, arising out of or resulting from the use or alteration of the Work Product.

Article 5

Contract Time

5.1 Date of Commencement. The Work shall commence within five (5) days of Design-Builder's receipt of Owner's Notice to Proceed ("Date of Commencement") unless the parties mutually agree otherwise in writing.

5.2 Substantial Completion and Final Completion.

5.2.1 Phase 1 shall be completed no later than April 1, 2023 ("Phase 1 Completion Date"). The parties will establish a date for Substantial Completion of the entire Work ("Scheduled Substantial Completion Date") in the GMP Amendment.

5.2.2 Interim milestones and/or Substantial Completion of identified portions of the Work ("Scheduled Interim Milestone Dates") shall be determined during Phase 1: *(Insert any interim milestones for portions of the Work with different scheduled dates for Substantial Completion)*

5.2.3 Final Completion of the Work or identified portions of the Work shall be achieved as expeditiously as reasonably practicable. Final Completion is the date when all Work is complete pursuant to the definition of Final Completion set forth in Section 1.2.13 of the General Conditions of Contract.

5.2.4 All of the dates set forth in this Article 5 (collectively the "Contract Time(s)") shall be subject to adjustment in accordance with the General Conditions of Contract.

5.3 Time is of the Essence. Owner and Design-Builder mutually agree that time is of the essence with respect to the dates and times set forth in the Contract Documents.

5.4 Liquidated Damages. Design-Builder understands that if Substantial Completion of the Project or any Interim Milestone Date is not attained by the Scheduled Interim Milestone Date or Substantial Completion Date, Owner will suffer damages which are difficult to determine and accurately specify. Therefore, provided the parties enter into the GMP Amendment, Design-Builder and Owner will establish a liquidated damage rate for delay in the GMP Amendment for each day that Substantial Completion extends beyond any Scheduled Interim Milestone Date and/or the Substantial Completion Date, as applicable.

5.5 Any liquidated damages assessed pursuant to this Agreement for delay damages shall be in lieu of all liability for any and all extra costs, losses, expenses, claims, penalties and any other damages, whether special or consequential, and of whatsoever nature, incurred by Owner which are occasioned by any delay in achieving the Contract Time(s).

5.6 In addition, the parties may establish liquidated damages as a remedy for other breaches of contract or failure to achieve performance standards. Such liquidated damages provisions may be added in the GMP Amendment or by written Change Order.

Article 6

Contract Price

6.1 Contract Price.

6.1.1 Owner shall pay Design-Builder in accordance with Article 6 of the General Conditions of Contract a contract price ("Contract Price") as set forth herein.

.1 Subject to the provisions of the Contract Documents, the Owner shall pay Design Builder for each Phase of the Project in accordance with Section 6.6 of the Agreement. Design Builder's Compensation shall be subject to the Phase 1 NTE and the GMP, as applicable. The Phase 1 NTE, and the GMP, as applicable, shall be the maximum amount that the Design Builder may be compensated for the applicable Contract Phase, as amended pursuant to this Contract. The maximum amount that the Design Builder may be compensated pursuant to this Agreement for any given phase shall also be referred to as the Contract Price ("Contract Price"). The elements of the Design Builder's Compensation, subject to the Contract Price are set forth herein. If the sum of the Design-Builder's Compensation is less than the Phase 1 NTE and/or the GMP, as applicable, the savings shall go to the Owner.

.2 The parties acknowledge that the scope of work for this Project is not fully developed. The Design-Builder shall develop the Basis of Design Documents and other deliverables in Exhibit C such that the total Compensation to the Design-Builder shall not exceed the GMP set forth herein, unless the parties agree in writing to increase the GMP

or the Design-Builder is otherwise entitled to an increase to the GMP pursuant to the terms of the Contract Documents.

6.2 Design-Builder's Fee Percentage and Lump Sum Fee.

6.2.1 Design-Builder's Fee Percentage shall be:

Four percent (4%) of the Cost of the Work, as adjusted in accordance with Section 6.2.2 below.

The Fee Percentage and any Lump Sum Fee shall include the following items, which shall not be charged as a Cost of the Work:

- .1 All profit of the Design-Builder for this Project; and
- .2 All regional and home office overhead expenses, including labor and materials, phone, facsimile, postage, internet service, and other incidental office expenses attributed to work on this Project.

6.2.2 Prior to the execution of the GMP Amendment, Design-Builder's Fee Percentage will only be adjusted pursuant to Section 3.4 of this Agreement.

6.2.3 If the Parties enter into the GMP Amendment, Design-Builder shall be paid a lump sum fee (the "Lump Sum Fee") determined by multiplying the Fee Percentage by the estimated Cost of the Work included in the GMP Amendment. The estimated Cost of the Work shall include the Lump Sum General Conditions Amount. The Lump Sum Fee will be earned and paid on a monthly basis following execution of the GMP Amendment on a percentage of completion basis, specifically taking into account payments previously made, including during Phase 1. The following costs shall be excluded from the Cost of the Work when calculating the Lump Sum Fee:

- .1 Owner Directed Allowances, as defined in Section 6.4.1.6; and
- .2 The Design-Builder's Contingency as defined in Section 6.4.4.1.b.

6.2.4 The Lump Sum Fee established in the GMP Amendment shall not be modified unless the GMP varies, either upward or downward, by more than five percent (5%) from the GMP set forth in this Agreement ("Original GMP").

- .1 If the GMP increases by more than five percent (5%) above the Original GMP, the Lump Sum Fee shall be increased by the amount of the Fee Percentage multiplied by that portion of the Cost of the Work that is in excess of one hundred five percent (105%) of the Cost of the Work set forth in the Original GMP.
- .2 If the GMP decreases by more than five percent (5%) below the Original GMP, the Lump Sum Fee shall be decreased by the amount of the Fee Percentage multiplied by that portion of the Cost of the Work that is less than ninety-five percent (95%) of the Cost of the Work set forth in the Original GMP.
- .3 The following costs shall be excluded from the Cost of the Work when calculating adjustments to the Lump Sum Fee:
 - a. Owner Directed Allowances, as defined in Section 6.4.1.6; and
 - b. The Design Builder's Contingency as defined in Section 6.4.4.1.b.

6.3 Cost of the Work. The term Cost of the Work shall mean costs reasonably and necessarily incurred by Design-Builder in the proper performance of the Work. Unless included in the Lump Sum General Conditions, the Cost of the Work shall include only the following:

6.3.1 Wages of direct labor costs of employees of Design-Builder performing the Work at the Site or, with Owner's agreement, at locations off the Site; provided, however, that the costs for those employees of Design-Builder performing design services shall be calculated on the basis of Prevailing market rates for design professionals performing such services or, if applicable, those rates set forth in an exhibit to this Agreement. Wages for those employees performing construction services shall be paid as follows: Basic wages and fringe benefits: The hourly wage (without markup or labor burden) and fringe benefits paid by the Design-Builder as established by the Washington Department of Labor and Industries or contributed to labor trust funds as itemized fringe benefits. Whichever is applicable, not to exceed that specified in the applicable "Intent to Pay Prevailing Wage" for the laborers, apprentices, journeymen, and foremen performing and/or directly supervising the Work on the site. The premium portion of overtime wages is not included unless pre-approved in writing by the Owner. The Design-Builder shall provide to the Owner copies of payroll records, including certified payroll statements for itself and Subcontractors of any tier for the period upon the Owner's request. Direct labor costs also include direct contributions to the State of Washington as industrial insurance, medical aid, and supplemental pension by class and rates established by the Washington Department of Labor and Industries and contributions required by the Federal Insurance Compensation Act (FICA), the Federal Unemployment Tax Act (FUTA) and the State Unemployment Compensation Act (SUCA).

6.3.2 Wages or salaries of Design-Builder's supervisory and administrative personnel engaged in the performance of the Work and who are located at the Site or working off-Site to assist in the production or transportation of material and equipment necessary for the Work.

6.3.3 Wages or salaries of Design-Builder's personnel stationed at Design-Builder's principal or branch offices, but only to the extent said personnel are approved in advance in writing by the Owner.

6.3.4 Unless included in Lump Sum General Conditions, costs incurred by Design-Builder for employee benefits, premiums, taxes, insurance, contributions and assessments required by law, collective bargaining agreements, or which are customarily paid by Design-Builder, to the extent such costs are based on wages and salaries paid to employees of Design-Builder covered under Sections 6.3.1 through 6.3.3 hereof.

6.3.5 The reasonable portion of the cost of travel, accommodations and meals for Design-Builder's personnel necessarily and directly incurred in connection with the performance of the Work. Such costs must be approved in writing by Owner in advance.

6.3.6 Payments properly made by Design-Builder to Subcontractors and Design Consultants for performance of portions of the Work, including any insurance and bond premiums incurred by Subcontractors and Design Consultants. The costs for those employees performing design services shall be calculated on the basis of prevailing market rates for design professionals performing such services or, if applicable, those Hourly Rates set forth in Exhibit E. Contracts to Subcontractors and Design-Consultants that are paid on the basis of a Lump Sum must be approved in advance by the Owner, such approval shall not be unreasonably withheld.

6.3.7 Costs, including transportation, inspection, testing, storage and handling, of materials, equipment and supplies incorporated or reasonably used in completing the Work. The material costs shall be based upon the net cost after all discounts or rebates, freight costs, express charges, or special delivery costs, when applicable. No lump sum costs will be allowed except when approved in writing in advance by the Owner. Discounts and rebates based on prompt payment need not be included, however, if the Design-Builder offered but the Owner declined the opportunity to take advantage of such discount or rebate.

6.3.8 Costs (less salvage value) of materials, supplies, temporary facilities, machinery, equipment and hand tools not customarily owned by the workers that are not fully consumed in the performance of the Work and which remain the property of Design-Builder, including the costs of

transporting, inspecting, testing, handling, installing, maintaining, dismantling and removing such items.

6.3.9 Costs of removal of debris and waste from the Site.

6.3.11 The reasonable costs and expenses incurred in establishing, operating and demobilizing the Site office, including the cost of facsimile transmissions, long-distance telephone calls, postage and express delivery charges, telephone service, photocopying and reasonable petty cash expenses.

6.3.12 Rental charges and the costs of transportation, installation, minor repairs and replacements, dismantling and removal of temporary facilities, machinery, equipment and hand tools not customarily owned by the workers, which are provided by Design-Builder at the Site, whether rented from Design-Builder or others, and incurred in the performance of the Work. The rental charge the applicable rental cost as established by the lower of the local prevailing rate published in the Rental Rate Blue Book by Data Quest. San Jose. California, as modified by the AGC/WSDOT agreement or the actual rate paid to an unrelated third party as evidenced by rental receipts. Rates and quantities of equipment rented that exceed the local fair market rental costs shall be subject to the Owner's prior written approval. Total rental charges for equipment or tools shall not exceed 75% of the fair market purchase value of the equipment or the tool. Actual, reasonable mobilization costs are permitted if the equipment is brought to the site solely for the change in the Work. The rental rates are the maximum rates allowable for equipment of modern design and in good working condition and include full compensation for furnishing all fuel, oil, lubrication, repairs, maintenance, and insurance. When rental rates payable do not include fuel, lubrication, maintenance, and servicing, as defined as operating costs in the Blue Book, such operating costs shall be reimbursed based on actual costs. Equipment not of modern design and/or not in good working condition will have lower rates. Hourly, weekly, and/or monthly rates, as appropriate, will be applied to yield the lowest total cost. The rate for equipment necessarily standing by for future use (and standing by for no longer than two (2) weeks) on the changed Work shall be 50% of the rate established above. The total cost of rental allowed shall not exceed the cost of purchasing the equipment outright. If equipment is required for which a rental rate is not established by The Rental Rate Blue Book, an agreed rental rate shall be established for the equipment, which rate and use must be approved by the Owner prior to performing the Work.

6.3.12 Premiums for insurance and bonds required by this Agreement or the performance of the Work.

6.3.13 All fuel and utility costs incurred in the performance of the Work.

6.3.14 Sales, use or similar taxes, tariffs or duties incurred in the performance of the Work, with the exception of Washington State Sales Tax, which shall be paid outside the Phase 1 NTE or GMP.

6.3.15 Costs for permits, royalties, licenses, tests and inspections incurred by Design-Builder as a requirement of the Contract Documents.

6.3.16 The cost of defending suits or claims for infringement of patent rights arising from the use of a particular design, process, or product required by Owner, paying legal judgments against Design-Builder resulting from such suits or claims, and paying settlements made with Owner's consent.

6.3.17 Costs incurred in preventing damage, injury or loss in case of an emergency affecting the safety of persons and property.

6.3.19 Accounting and data processing costs related to the Work.

6.3.20 Fees paid by the Design-Builder for the approval of Statements of Intent to Pay Prevailing Wages and certification of Affidavits of Wages Paid by the industrial statistician of the State Department of Labor and Industries. The Design-Builder will remain responsible for the actual submittal of the documents to the industrial statistician. In order to receive this reimbursement the Design-Builder will be required to submit to Owner, a list of its subcontractors at all tiers and have their Statements of Intent to Pay Prevailing Wages on file with the Owner.

6.3.21 Unit Prices established by the parties in Exhibit E.

6.3.22 Other costs reasonably and properly incurred in the performance of the Work to the extent approved in writing by Owner and not included in the Design-Builder's Contingency, Design Builder's Fee Percentage, the Lump Sum Fee, or the Lump Sum General Conditions.

6.4 Other Methods of Compensation

Within the Phase 1 NTE or the GMP, the parties may agree to the following methods of pricing Design-Builder's Compensation

6.4.1 Allowance Items and Allowance Values.

- .1** Any and all Allowance Items, as well as their corresponding Allowance Values, are set forth in Exhibit E or the GMP Amendment and are included within any established NTE and the GMP, as applicable.
- .2** Design-Builder and Owner have worked together to review the Allowance Items and Allowance Values based on design information then available to determine that the Allowance Values constitute reasonable estimates for the Allowance Items. Design-Builder and Owner will continue working closely together during the preparation of the design to develop Construction Documents consistent with the Allowance Values. Nothing herein is intended in any way to constitute a guarantee by Design-Builder that the Allowance Item in question can be performed for the Allowance Value.
- .3** No work shall be performed on any Allowance Item without Design-Builder first obtaining in writing advanced authorization to proceed from Owner. Owner agrees that if Design-Builder is not provided written authorization to proceed on an Allowance Item by the date set forth in the Project schedule, due to no fault of Design-Builder, Design-Builder may be entitled to an adjustment of the Contract Time(s) and Contract Price.
- .4** The Allowance Value for an Allowance Item includes the direct cost of labor, materials, equipment, transportation, taxes and insurance directly associated with the applicable Allowance Item. With the exception of Owner Directed Allowances, all other costs, including design fees, Design-Builder's overall project management and fixed general conditions costs, overhead and fee, are deemed to be included in the original Contract Price, and are not subject to adjustment, regardless of the actual amount of the Allowance Item.
- .5** Whenever the actual costs for an Allowance Item is more than or less than the stated Allowance Value, the Contract Price shall be adjusted accordingly by Change Order, subject to Section 6.4.1.4; however, Design-Builder must provide written notice of the difference between the actual cost and the Allowance Value pursuant to the Changes provisions in the General Conditions. The amount of the Change Order shall reflect the difference between actual costs incurred by Design-Builder for the particular Allowance Item and the Allowance Value.

- .6 The Owner and the Design Builder may designate certain Allowances as “Owner Directed Allowances.” Design Builder shall be compensated for Owner Directed Allowances for the Cost of the Work associated with such allowances plus the Fee Percentage. Items designated as “Owner Directed Allowances” shall not be included in the calculation to determine the Lump Sum Fee.

6.4.2 Not To Exceed Sums

- .1 The Owner and Design Builder may establish Not to Exceed (“NTE”) Sums for specific scopes of the Work. Any such NTE Sum will be negotiated between the Owner and Design-Builder. The NTE Sum agreed upon by the Parties shall be incorporated into the GMP Amendment or a Change Order, and the parties shall include the following information:
- a. A specific description of the Scope of the Work that is subject to the NTE Sum;
 - b. An updated Schedule of Values that incorporates the NTE Sum; and
 - c. Any milestone dates associated with the scope of the Work associated with the NTE Sum.
- .2 For each scope of work for which a NTE Sum has been established, the Design-Builder shall be reimbursed for the scope of the Work as a Cost of the Work; however, Design-Builder’s compensation shall not exceed the NTE Sum without a written Change Order.
- .3 Design-Builder shall not request reimbursement for costs that are within the scope of the NTE Sum unless those costs are identified in the Payment Application as subject to the NTE Sum. Except as allowed in Section 6.4.4.1.b, costs that are within the scope of the NTE Sum that are in excess of the NTE Sum shall be the sole responsibility of the Design-Builder.
- .4 NTE Sums may only be modified by Change Order pursuant to the General Conditions.

6.4.3 Lump Sums

- .1 The Owner and Design-Builder may establish Lump Sums for specific scopes of the Work. Any such Lump Sum will be negotiated between the Owner and Design-Builder. The Lump Sum agreed upon by the Parties shall be incorporated into the GMP Amendment or a Change Order, and the parties shall include the following information:
- a. A specific description of the Scope of the Work that is subject to the Lump Sum;
 - b. An updated Schedule of Values that incorporates the Lump Sum; and
 - c. Any milestone dates associated with the scope of the Work associated with the Lump Sum.
- .2 For each scope of work for which a Lump Sum has been established, the Design-Builder shall be compensated pursuant to the Schedule of Values set forth above

based on the percentage of the Scope of the Work subject to the Lump Sum that has been completed.

- .3 Design-Builder shall not request reimbursement for costs that are within the scope of the Lump Sum unless those costs are identified in the Payment Application as subject to the Lump Sum. Except as allowed in Section 6.4.4.1.b, costs that are within the scope of the Lump Sum that are in excess of the Lump Sum shall be the sole responsibility of the Design-Builder.
- .4 Lump Sums may only be modified via Change Order pursuant to the General Conditions

6.4.4 Contingencies

- .1 The Parties shall establish, as part of any NTE and the GMP, the following Contingencies which are available for Design-Builder's exclusive use for the below described unanticipated costs it has incurred that are not the basis for a Change Order under the Contract Documents (collectively "Contingency Items"). Contingency Items include the costs described below, which are subject to written approval by the Owner. The Owner may, in its discretion, approve other costs that may be reimbursed under a Contingency; however, in no case shall the Design-Builder be entitled to use the Contingency for payment of Liquidated Damages that it may be assessed pursuant to this Agreement.
 - (a) Cost of the Work Contingency. The Cost of the Work Contingency is reimbursed as a Cost of the Work. The Cost of the Work Contingency is available to the Design-Builder for the following items:
 - (i) Trade buy-out differentials;
 - (ii) Escalation of materials; and
 - (iii) Other direct Costs of the Work that are not included in the Design-Builder's Contingency, but only with the prior written consent of the Owner.
 - (b) Design-Builder's Contingency. The Design-Builder's Contingency is available to the Design-Builder for items that are not excluded by Section 6.5 hereof and include but are not limited to the following items:
 - (i) Overtime or acceleration;
 - (ii) Costs incurred by Design-Builder in repairing or correcting defective, damaged or nonconforming Work (excluding any warranty or corrective Work performed after Substantial Completion), provided that such Work was beyond the reasonable control of Design-Builder, or caused by the ordinary mistakes or inadvertence, and not the negligence, of Design-Builder or those working by or through Design-Builder. If the costs associated with such Work are recoverable from insurance, Subcontractors or Design Consultants, Design-Builder shall exercise its best efforts to obtain recovery from the appropriate source and provide a credit to Owner if recovery is obtained;
 - (iii) Legal costs, court costs and costs of mediation and arbitration reasonably arising from Design-Builder's performance of the Work,

provided such costs do not arise from disputes between Owner and Design-Builder;

(iv) Subcontractor or other tier defaults to the extent not compensated by any surety or bond; or

(v) Costs that are in excess of an NTE Sum or Lump Sum.

- .2 The Design-Builder shall be reimbursed for Contingency Items in the same manner as set forth in Section 6.3 of the Agreement; however, Design-Builder's compensation for Contingency Items shall not cumulatively exceed the amount set forth as the Design-Builder's Contingency in the applicable NTE or GMP without a written Change Order. Design-Builder shall not be entitled to any Fee Percentage for items reimbursed under Section 6.4.4.1.b, the Design-Builder's Contingency. Further, the amounts included in the Design-Builder's Contingency set forth in Section 6.4.4.1.b shall be excluded from the calculation set forth in Section 6.2.3 to establish the Lump Sum Fee and the calculation set forth in Section 6.2.4 to determine whether the GMP has changed.
- .3 Prior to the final accounting, the Contingencies are not available to Owner for any reason, including, but not limited to changes in scope or any other item which would enable Design-Builder to increase an NTE or GMP under the Contract Documents.
- .4 Design-Builder shall provide Owner notice of all anticipated charges against the Contingencies and shall provide Owner as part of the monthly status report required by the General Conditions of Contract an accounting of the Contingency, including all reasonably foreseen uses or potential uses of the Contingency in the upcoming three (3) months. Design-Builder agrees that with respect to any expenditure from a Contingency relating to a Subcontractor default or an event for which insurance or bond may provide reimbursement, Design-Builder will in good faith exercise reasonable steps to obtain performance from the Subcontractor and/or recovery from any surety or insurance company. Design-Builder agrees that if Design-Builder is subsequently reimbursed for said costs, then said recovery will be credited back to the Contingency.

6.4.5 Lump Sum General Conditions Costs

- .1 If the Parties enter into the GMP Amendment, the Parties shall establish an amount for the Lump Sum General Conditions Costs. The parties shall determine the portions of the Cost of the Work set forth in Section 6.3 that are included in the Lump Sum General Conditions Costs, and the parties shall include a description of such costs in the GMP Amendment. Unless the parties agree in writing otherwise, the costs that will be included in the Lump Sum General Conditions Costs are as follows:
 - a. Wages or salaries of Design-Builder's supervisory and administrative personnel engaged in the performance of the Work and who are located at the Site or working off-Site to assist in the production or transportation of material and equipment necessary for the Work. Specifically, the following personnel are included in the Lump Sum General Conditions Amount:
 - i. Project Executive
 - ii. Project Manager
 - iii. Superintendent and/or Construction Manager

- iv. Quality Control Manager
 - v. Project Field Engineer and/or Design Manager
 - vi. Project Controls
 - vii. Project Scheduler
 - viii. Safety Manager
- b. Wages or salaries of Design Builder's personnel stationed at Design Builder's principal or branch offices, but only to the extent said personnel are approved in advance of the performance of the Work in writing by the Owner.
- c. Costs incurred by Design-Builder for employee benefits, premiums, taxes, insurance, contributions and assessments required by law, collective bargaining agreements, or which are customarily paid by Design-Builder, to the extent such costs are based on wages and salaries paid to employees of Design-Builder covered under this Section.
- d. The reasonable portion of the cost of travel, accommodations and meals for Design-Builder's personnel necessarily and directly incurred in connection with the performance of the Work and with the written consent of the Owner as set forth below:
- i. Meals and Incidental Expenses: Meals and incidental expenses will be limited to the Federal Per Diem rate for meals and incidentals established for the location where lodging is obtained. Federal Per Diem guidelines which includes the meal breakdown and Federal Per Diem rates for other locations can be found at www.gsa.gov.
 - ii. Lodging: Lodging will be billed at cost, including applicable taxes, not to exceed the Federal Per Diem maximum lodging rate for the location where the work is being performed.
 - iii. Travel: Air travel (at coach class or equivalent), airport shuttles, etc. billed at cost. Ground transportation by privately owned vehicle, if utilized, billed at the Internal Revenue Service mileage rate for privately owned vehicles in effect at the time of travel. Expenses for a rental car (including fuel), at cost, in the ratio of one mid-size class rental car for each three Contractor's personnel directly engaged in performance of the work at the prevailing rental rates then in effect. Rental car options such as refueling fees, GPS, collision & liability insurance, etc. will not be reimbursed by the Owner unless such options are approved in advance by the Owner's Representative. Appropriate insurance coverage should be included in the Contractor's insurance policies.
- e. The reasonable costs and expenses incurred in establishing, operating and demobilizing the Site office, including the cost of facsimile transmissions, long-distance telephone calls, postage and express delivery charges, telephone service, photocopying and reasonable petty cash expenses.
- f. Premiums for insurance and bonds required specifically by this Agreement or the performance of the Work by the Design Builder.
- g. Accounting and data processing costs related to the Work.
- h. Fees paid by the Design-Builder for the approval of Statements of Intent to Pay Prevailing Wages and certification of Affidavits of Wages Paid by the industrial statistician of the State Department of Labor and Industries. The Design-Builder will remain responsible for the actual submittal of the documents to the industrial statistician and the determination of the locality of

the work to confirm the appropriate classification of work. In order to receive this reimbursement, the Design-Builder will be required to submit to Owner a list of its subcontractors at all tiers and have their Statements of Intent to Pay Prevailing Wages on file with the Owner.

i. General administrative costs not specifically listed in this subsection, including but not limited to the following:

- i. Shop Drawing Reproduction
- ii. Construction Schedule & Updates
- iii. Safety/Security
- iv. Field Office Set-up (mobilization/demobilization)
- v. Office Supplies
- vi. Telephone System
- vii. Telephone Service Charge
- viii. Computer Network/System Set-up
- ix. Courier Service
- x. Postage (Fed-X, USPS)
- xi. Furniture/Equipment
- xii. Office Cleaning
- xiii. Project Superintendent Vehicle
- xiv. Computers
- xv. Copy Machine
- xvi. Temporary Electric Hook-up/Removal
- xvii. Temporary Electric Material
- xviii. Project Signage
- xix. Temporary Water Hook-up/Removal
- xx. Drinking Water & Supplies
- xxi. Chemical Toilets
- xxii. O&M Manuals
- xxiii. Project Record Documents
- xxiv. Field Engineering/Layout Survey

- .2 For the Costs of the Work that are included in the Lump Sum General Conditions Costs, the Design-Builder shall no longer be entitled to be reimbursed for such costs as part of the Cost of the Work, and the Design Builder's sole compensation for the costs set forth in the identified General Conditions shall be through the Lump Sum General Conditions Costs.
- .3 The Owner shall have the right to examine the back-up documentation establishing the Lump Sum General Conditions Costs, including but not limited to all estimates, proposals, contracts and other financial documentation on a transparent basis.
- .4 The Lump Sum General Conditions Costs shall only be modified if the Design-Builder is entitled to compensation for a delay pursuant to Section 8.2 of the

General Conditions. Any modification to the Lump Sum General Conditions Costs shall be calculated as follows:

- a. The Design Builder shall be entitled to receive a liquidated daily rate for extended General Conditions Costs ("Design-Builder's Delay Rate") for each day that the Contract Time is extended pursuant to Section 8.2 of the General Conditions.
 - i. The Design-Builder's Delay Rate shall be calculated by dividing the Lump Sum General Conditions Costs by the number of days in the Contract Time set forth in the GMP Amendment for Phase 2.
 - ii. Then, the Design-Builder's Delay Rate is multiplied by the number of days that the Contract Time is extended for Design-Builder's Delay, subject to a determination of entitlement pursuant to Article 8 of the General Conditions.
 - iii. The result from the Design-Builder's Delay Rate multiplied by the number of days is the Extended General Conditions Costs which shall be added to the Lump Sum General Conditions Costs by Change Order and paid to the Design Builder pursuant to the Schedule of Values, subject to a determination of entitlement pursuant to Article 8 of the General Conditions.
- b. The Design-Builder's Delay Rate shall not apply to delays occurring after Substantial Completion is achieved.
- c. The Parties agree that determining the Design Builder's damages for delay in Phase 2 would be extremely difficult or impracticable to determine and that the Design-Builder's Delay Rate, as calculated in this Section 6.4.5.4, is a reasonable estimate of and reasonable sum for such damages; therefore, the Design-Builder's Delay Rate shall be payable to the Design Builder as liquidated damages and not as a penalty.

6.4.6 Unit Prices and Hourly Rates

- .1 Any Unit Prices and Hourly Rates shall be agreed upon in writing and set forth in Exhibit E to the Agreement. Design-Builder shall not charge more than a specified Unit Price or Hourly Rate than the amount set forth in Exhibit E, as modified through the Contract Documents.
- .2 Once established, Unit Prices and Hourly Rates shall not be subject to audit and may only be changed by Change Order.
- .3 Design-Builder must maintain a record of the number of Unit Prices and Hours billed using Hourly Rates for review by Owner.

6.5 Non-Reimbursable Costs.

6.5.1 The following shall not be deemed as costs of the Work:

- .1 Compensation for Design-Builder's personnel stationed at Design-Builder's principal or branch offices, except as expressly provided for in Section 6.3 hereof.
- .2 Overhead and general expenses, except as provided for in Section 6.3 hereof.
- .3 The cost of Design-Builder's capital used in the performance of the Work.

- .4 Costs that would cause the Phase 1 NTE, the GMP, the Cost of the Work Contingency, or the Design Builder's Contingency as adjusted in accordance with the Contract Documents, to be exceeded.

6.6 Project Phases.

6.6.1 Phase 1

.1 **Compensation.** During Phase 1, the Design Builder shall be compensated for the following:

- a. The Cost of the Work set forth in Section 6.3;
- b. Design-Builder's Fee Percentage set forth in Section 6.2.1 multiplied by the Cost of the Work; and
- d. Contingency Items charged under Section 6.4.4.1.b.

.2 **Phase 1 Not to Exceed Amount.** Design-Builder guarantees that its Compensation during Phase 1 shall not exceed the Phase 1 Not to Exceed Amount ("Phase 1 NTE") of Five Hundred Sixty-Nine Thousand Fifty Seven Dollars (\$569,057). Documents used as a basis for the Phase 1 NTE shall be identified in Exhibit D to this Agreement. Design-Builder agrees that it will be responsible for paying all costs of completing the Work which exceed the Phase 1 NTE, as adjusted in accordance with the Contract Documents.

.3 The Phase 1 NTE includes the Cost of the Work Contingency in the amount of Two Thousand Nine Hundred Eighty Dollars (\$2,980) and the Design-Builder's Contingency in the amount of Twenty Four Thousand One Hundred Seventeen Dollars (\$24,117).

.4 The Phase 1 Target Completion Date is April 1, 2023.

.5 **GMP Proposal.** At the conclusion of Phase 1, Design-Builder shall submit a GMP Proposal to Owner which shall include the deliverables set forth in Exhibit C, unless the parties mutually agree otherwise.

.6 **Submission of the GMP Proposal.** Submission of the GMP Proposal constitutes Design-Builder's representation and agreement that it has adequately investigated the site and the project parameters, the Project is adequately defined, the Final Basis of Design Documents are sufficiently defined to provide an accurate GMP and Project Schedule, and subject to the assumptions and clarifications in the GMP Proposal, the Project is sufficiently clear and understandable for the Design-Builder to perform the Work in accordance with the Contract Documents for an amount that will not exceed the Original GMP.

.7 **Review and Adjustment to GMP Proposal.** After submission of the GMP Proposal, Design-Builder and Owner shall meet to discuss and review the GMP Proposal. If Owner has any comments regarding the GMP Proposal or finds any inconsistencies or inaccuracies in the information presented, it shall promptly give written notice to Design-Builder of such comments or findings. If appropriate, Design-Builder shall, upon receipt of Owner's notice, make appropriate adjustments to the GMP Proposal. To assist in the Owner's review of the GMP Proposal, the Design Builder shall, upon the Owner's Request, provide all information, including but not limited to all data, reports, cost analysis, pricing, designs and specifications on which the Design Builder relied or used as a basis for the GMP Proposal. The Owner shall make its best efforts to

review any revised GMP Proposal within thirty (30) days of receipt of the revised GMP Proposal.

.8 Acceptance of GMP Proposal. If Owner accepts the GMP Proposal, as may be amended by Design-Builder, the terms of the GMP Proposal shall be set forth in the GMP Amendment. At the Owner's option, the GMP may be converted into a Lump Sum.

.9 Failure to Accept the GMP Proposal. If Owner rejects the GMP Proposal, the GMP Proposal shall be deemed withdrawn and of no effect. In such event, Owner and Design-Builder shall meet and confer as to how the Project will proceed, with Owner having the following options:

- a. Owner may suggest modifications to the GMP Proposal, whereupon, if such modifications are accepted in writing by Design-Builder, the GMP Proposal shall be deemed accepted and the parties shall proceed in accordance with Section 6.6.1.5 above;
- b. Owner may terminate this Agreement for convenience in accordance with Article 8 hereof.

.10 Performance of Work After Submission of GMP Proposal. The Design-Builder shall not perform any Work after the submission of the GMP Proposal until the Owner has approved and signed the GMP Amendment unless the Design-Builder obtains the Owner's prior, written consent to perform such Work and only to the extent that such Work is expressly described in writing in such written consent. If Design-Builder performs such Work, Design-Builder shall be compensated pursuant to the written approval.

6.6.2 Phase 2 Post GMP Period.

.1 Compensation. During Phase 2, the Design Builder shall be compensated for the following, all subject to the GMP:

- a. The Cost of the Work set forth in Section 6.3;
- b. Design-Builder's Lump Sum Fee established pursuant to Section 6.2.3;
- c. Any Lump Sums established pursuant to Section 6.4.3;
- d. Contingency Items charged under Section 6.4.4.1.b; and
- e. Design-Builder's Lump Sum General Conditions Costs established pursuant to Section 6.4.5.

.2 GMP The total compensation paid to Design-Builder for this Project shall not exceed the GMP, as amended pursuant to this Contract. By agreeing to the GMP Amendment, the Design-Builder understands that if the Work cannot be completed for the agreed GMP, any additional costs shall be the responsibility of the Design-Builder, and Design-Builder hereby assumes liability for such costs without reimbursement by the Owner.

.3 If the parties decide to convert the GMP into a Lump Sum, Design-Builder shall be compensated pursuant to Section 6.4.3 of the Agreement.

6.6.3 Savings.

.1 If the sum of the actual Cost of the Work and Design-Builder's Fee (and, if applicable, any prices established under Section 6.1.2 hereof) is less than the

GMP, as such GMP may have been adjusted over the course of the Project, the difference ("Savings") shall go to 100% to the Owner.

Article 7

Procedure for Payment

7.1 Progress Payments.

7.1.1 Design-Builder shall submit to Owner on the twenty fifth (25th) day of each month, beginning with the first month after the Date of Commencement, Design-Builder's Application for Payment in accordance with Article 6 of the General Conditions of Contract.

7.1.2 Owner shall make payment within thirty (30) days after Owner's receipt of each properly submitted and accurate Application for Payment in accordance with Article 6 of the General Conditions of Contract, but in each case less the total of payments previously made, and less amounts properly withheld under Section 6.3 of the General Conditions of Contract.

7.1.3 If Design-Builder's Fee under Section 6.2 hereof is a lump sum amount, the amount of Design-Builder's Fee to be included in Design-Builder's monthly Application for Payment and paid by Owner shall be proportional to the percentage of the Work completed, less payments previously made on account of Design-Builder's Fee.

7.2 Retainage on Progress Payments.

7.2.1 The Owner will withhold retainage pursuant to RCW Chapter 60.28, and Owner shall release such retainage pursuant to state law. Pursuant to RCW Chapter 60.28, the Design-Builder may submit a bond in lieu of the retainage that the Owner would otherwise keep under the terms of this Contract and pursuant to applicable law. Any such bond submitted in lieu of retainage must be on the form approved by the Owner. In the event the Design-Builder fails at any time to pay persons protected under RCW Chapter 60.28 or the Owner has reason to believe that the Owner or other obligee under the bond has a claim against the retainage or for other good cause, the Owner may, at its option, resume retaining from monies earned by the Design-Builder in such amount as it would otherwise be entitled to retain had the bond not been accepted. Notwithstanding the Owner's resuming such retainage, said bond shall remain in full force and effect to the extent of its penal sum, limited to the amount of retainage released to the Design-Builder. After the Design-Builder has paid protected persons or otherwise cured any default, the Owner may, at its option, again release retainage pursuant to the terms of the bond.

7.3 Final Payment. Design-Builder shall submit its Final Application for Payment to Owner in accordance with Section 6.7 of the General Conditions of Contract. Owner shall make payment on Design-Builder's properly submitted and accurate Final Application for Payment pursuant and subject to RCW Chapter 60.28 and RCW Chapter 39.08 and all applicable laws and regulations, provided that Design-Builder has satisfied the requirements for final payment set forth in Section 6.7.2 of the General Conditions of Contract.

7.4 Interest. Payments due and unpaid by Owner to Design-Builder, whether progress payments or final payment, shall bear interest commencing five (5) days after payment is due at the statutory rate of interest per month until paid.

7.5 Record Keeping and Finance Controls. Design-Builder acknowledges that this Agreement is to be administered on an "open book" arrangement relative to Costs of the Work. Design-Builder shall keep full and detailed accounts and exercise such controls as may be necessary for proper financial management, using accounting and control systems in accordance with generally accepted accounting

principles and as may be provided in the Contract Documents. During the performance of the Work and for a period of six (6) years after Final Payment, Owner, Owner's accountants, the Washington State Department of Commerce and the Washington State Auditor shall be afforded access to, and the right to audit from time-to-time, upon reasonable notice, Design-Builder's records, books, correspondence, receipts, subcontracts, purchase orders, vouchers, memoranda and other data relating to the Work, all of which Design-Builder shall preserve for a period of six (6) years after Final Payment. Such inspection shall take place at Design-Builder's offices during normal business hours unless another location and time is agreed to by the parties. Any multipliers or markups agreed to by the Owner and Design-Builder as part of this Agreement are only subject to audit to confirm that such multiplier or markup has been charged in accordance with this Agreement, with the composition of such multiplier or markup not being subject to audit.

Article 8

Termination for Convenience

8.1 Upon ten (10) days' written notice to Design-Builder, Owner may, for its convenience and without cause, elect to terminate all or a portion of this Agreement. In such event, Owner shall pay Design-Builder for allowable costs and subject to any established Not to Exceed Amount or GMP:

8.1.1 All Work executed and for proven loss, cost or expense in connection with the Work;

8.1.2 The reasonable costs and expenses attributable to such termination, including demobilization costs and amounts due in settlement of terminated contracts with Subcontractors and Design Consultants; and

8.1.3 The fair and reasonable sums for overhead and profit on the sum of items 8.1.1 and 8.1.2 above based on Design-Builder's Fee Percentage, provided, however, if a Lump Sum Fee has been established, then the Lump Sum Fee shall only be modified pursuant to Section 6.2.4 above.

8.2 If Owner terminates this Agreement pursuant to Section 8.1 above and proceeds to design and construct the Project through its employees, agents or third parties, Owner's rights to use the Work Product shall be as set forth in Section 4.3 hereof. Such rights may not be transferred or assigned to others without Design-Builder's express written consent and such third parties' agreement to the terms of Article 4.

Article 9

Representatives of the Parties

9.1 Owner's Representatives.

9.1.1 Owner designates the individual listed below as its Senior Representative ("Owner Senior Representative"), which individual has the authority and responsibility for avoiding and resolving disputes under Section 10.2.3 of the General Conditions of Contract: *(Identify individual's name, title, address and telephone numbers)*

Joe Schiessl
City of Richland
Deputy City Manager
2700 Duportail Road
Richland, WA 99352
(509) 942-7578
jschiessl@ci.richland.wa.us

9.1.2 Owner designates the individual listed below as its Owner's Representative, which individual has the authority and responsibility set forth in Section 3.4 of the General Conditions of Contract: *(Identify individual's name, title, address and telephone numbers)*

Ruvim Tyutyunnik
City of Richland
Project Manager
2700 Duportail Road
Richland, WA 99352
(509) 578-9337
rtutyunnik@ci.richland.wa.us

9.2 Design-Builder's Representatives.

9.2.1 Design-Builder designates the individual listed below as its Senior Representative ("Design-Builder's Senior Representative"), which individual has the authority and responsibility for avoiding and resolving disputes under Section 10.2.3 of the General Conditions of Contract: *(Identify individual's name, title, address and telephone numbers)*

Tim Doyea
DGR Grant Construction, Inc.
President
1333 Gillespie St.
Richland, WA 99352
(509) 946-6188
todyea@dgrgrantinc.com

9.2.2 Design-Builder designates the individual listed below as its Design-Builder's Representative, which individual has the authority and responsibility set forth in Section 2.1.1 of the General Conditions of Contract: *(Identify individual's name, title, address and telephone numbers)*

Matt Frederickson
Project Manager
DGR Grant Construction, Inc.
1333 Gillespie Street
Richland, WA 99352
(509) 946-6188

Article 10

Bonds and Insurance

10.1 Insurance. Design-Builder and Owner shall procure the insurance coverages set forth in the Insurance Exhibit attached hereto and in accordance with Article 5 of the General Conditions of Contract.

10.2 Bonds and Other Performance Security. Upon execution of this Agreement, Design-Builder shall provide a performance and a labor and material bond, pursuant to RCW Chapter 39.08, equal to one hundred percent (100%) of the Phase 1 NTE in the form set forth as Exhibit B. Upon execution of the GMP Amendment, Design-Builder shall provide a performance and labor and material bond, pursuant to RCW Chapter 39.08, equal to one hundred percent (100%) of the GMP in the form set forth as Exhibit B.

10.3 All bonds furnished by Design-Builder shall be from a surety that is qualified and registered to conduct business in the state of Washington.

Article 11

Other Provisions

11.1 Other provisions, if any, are as follows: *(Insert any additional provisions)*

11.2 Wages.

11.2.1 The Design-Builder and its Subcontractors, Consultants and Sub-Consultants shall pay all laborers, workmen, or mechanics employed by it or them in the performance of this Contract the applicable state prevailing wage rate required by (RCW Chapter 39.12). The schedule of prevailing wage rates for the locality or localities of the Work is determined by the Industrial Statistician of the Department of Labor and Industries. It is the Design-Builder's responsibility to verify the applicable prevailing wage rate.

11.2.2 Before payment is made by the Owner to the Design-Builder for any Work performed by Design-Builder or any Subcontractor, Consultant or Sub-Consultant whose work is included in the application for payment, the Design-Builder shall submit, or shall have previously submitted, to the Owner a Statement of Intent to Pay Prevailing Wages, approved by the Department of Labor and Industries, certifying the rate of hourly wage paid and to be paid each classification of employees, laborers, workers, or mechanics employed for the Work by Design-Builder, Consultants, Subcontractors and Sub-Consultants. The "Statement of Intent to Pay Prevailing Wages" shall include: (1) the Design-Builder's registration number; and (2) the prevailing wages under RCW 39.12.020 and the number of workers in each classification. Each voucher claim submitted by the Design-Builder for payment on a project estimate shall state that the prevailing wages have been paid in accordance with the prefilled statement or statements of intent to pay prevailing wages on file with the Owner.

11.2.3 Design-Builder and each Subcontractor required to pay the prevailing rate of wages shall post in a location readily visible at the job site: (1) a copy of a "Statement of Intent to Pay Prevailing Wages" approved by the industrial statistician of the Department of Labor and Industries; and (2) the address and telephone number of the industrial statistician of the Department of Labor and Industries where a complaint or inquiry concerning prevailing wages may be made.

11.2.4 Prior to release of the retainage, the Design-Builder shall submit to the Owner an Affidavit of Wages Paid, approved by the Department of Labor and Industries, for the Design-Builder and every Consultant, Sub-Consultant, and Subcontractor of any tier that performed work on the Project.

11.2.5 Disputes regarding prevailing wage rates shall be referred for arbitration to the Director of the Department of Labor and Industries. The arbitration decision shall be final and conclusive and binding on all parties involved in the dispute as provided for by RCW 39.12.060.

11.2.6 Each Application for Payment submitted by Design-Builder shall state that prevailing wages have been paid in accordance with the prefilled statement(s) of intent, as approved. Copied of the approved intent statements(s) shall be posted on the job site with the address and telephone

number of the Industrial Statistician of the Department of Labor and Industries where a complaint or inquiry concerning prevailing wages may be made.

11.2.7 In compliance with WAC Chapter 296-127, Design-Builder shall pay to the Department of Labor and Industries the currently established fee(s) for each statement of intent and/or affidavit of wages paid submitted to the Department of Labor and Industries for certification.

11.2.8 Consistent with WAC 296-127-320, the Design-Builder and all Consultants, Sub-Consultants and Subcontractors shall submit a certified copy of payroll records if requested.

11.3 Hours of Labor

11.3.1 Design-Builder shall comply with applicable provisions of RCW Chapter 49.28, and such provisions are incorporated herein by reference.

11.3.2 RCW 49.28 permits entities performing public works contracts to enter into an agreement where employees work up to ten hours in a calendar day, subject to the provisions of the statute. No such agreement may provide that employees work ten-hour days for more than four calendar days a week. Any such agreement is subject to approval by the employees.

11.4 Off Site Prefabricated Items.

11.4.1 In accordance with RCW 39.04.370, Design-Builder shall submit certain information about off-site, prefabricated, nonstandard, project specific items produced under the terms of the contract and produced outside Washington as a part of the Affidavit of Wages Paid form filed with the Washington State Department of Labor and Industries.

11.5 Nondiscrimination.

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

11.6 Business Registration Requirement.

11.6.1 Design-Builder represents and warrants that it and all of its subconsultants, subcontractors and suppliers of every tier are properly licensed to perform the work for which they are contracted and have all applicable business licenses, including but not limited to any licenses or registrations required by the State of Washington and any other regulatory authority. Design-Builder shall be solely responsible for contacting the State of Washington Business License Services at <http://bls.dor.wa.gov> or 1-800-451-7985 to obtain a business registration.

11.7 Contractor's Registration Requirement.

11.7.1 Design-Builder represents and warrants that it and all of its subconsultants, subcontractors and suppliers performing construction work are properly licensed pursuant to RCW 39.06.010.

11.8 Apprenticeship Program

11.8.1 Design-Builder shall comply with the apprenticeship program set forth in RCW 39.04.320, as applicable.

11.9 Submission of Information to CPARB

Design-Builder and its subcontractors and designers shall submit to Owner project information required by the Washington State Capital Projects Advisory Board pursuant to RCW 39.10. Specifically, and without limitation, Design-Builder must report to Owner its utilization of businesses certified by the Office of Minority and Women Business Enterprises ("OMWBE") and veteran certified businesses.

11.10 Inclusion Plans

Design-Builder shall submit to Owner inclusion plans for underutilized firms as subcontractors and suppliers including, but not limited to, OMWBE certified businesses, veteran certified businesses, and small businesses as required in Exhibit C.

11.11 No Party is Drafter

Each party has had an opportunity to negotiate the provisions of this Agreement and its Exhibits and attachments, and neither party shall be construed as the drafter.

Draft

In executing this Agreement, Owner and Design-Builder each individually represents that it has the necessary financial resources to fulfill its obligations under this Agreement, and each has the necessary corporate approvals to execute this Agreement, and perform the services described herein.

OWNER:

DESIGN-BUILDER:

City of Richland, Washington

DGR Grant, Inc.

(Signature)

(Signature)

(Printed Name)

(Printed Name)

(Title)

(Title)

Date: _____

Date: _____

Caution: An original DBIA document has this caution printed in blue. This is a printable copy and an original assures that changes will not be obscured as may occur when documents are reproduced.

1. INTRODUCTION

The City of Richland (City) is seeking to work collaboratively with the selected Design-Builder to achieve the most cost effective, creative, operationally efficient and programmatically-balanced project possible. The goal is to construct Station 76 and surrounding improvements with the best value to the City within, or below, the stated GMP budget and maximize the creative development of both sites.

The Project scope includes design and construction of the station, including coordination and collaboration with multiple parties affected by the project.

2. FUNDING/AUTHORITY

This procurement is being conducted pursuant to RCW 39.10.330 after approval from the Capital Projects Advisory Review Board Project Review Committee, obtained on July 22nd, 2021. Station 76 has been approved by the Richland City Council and is fully funded.

3. PUBLIC SAFETY 76

COR intends to design and construct the Station 76 project and related work for no more than \$9M. As stated in the RFP, if a Library Grant is awarded to the City of Richland the budget will be increased up to \$10.5M. The proposed project includes the new construction of a fire station with associated site improvements in the City of Richland. If the library grant is awarded, the new construction will include a library/community portion with associated improvements as well. The overall footprint will be finalized through the design/build process in which we will build to the maximum value allowed within our project budget. The station will include a kitchen/dining area, fitness room, day room and other support spaces. The apparatus bays will hold up to three fire/emergency vehicles per station, bunker gear, storage and apparatus support space. If funded, the library component will include a learning/gathering area, as well as some sort of technology/computer space.

4. SITE DEVELOPMENT

Station 76 will be located on the north end of a thirty acre parcel located between Trowbridge Blvd & Bella Coola Ln in the Badger South Area of Richland. This facility will address current and anticipated growth in South Richland and improve response times to homes and businesses in the area of the City which is outside of the current standards of cover for EMS & Fire/Rescue.

Together with the City, the DB team will need to work together to collaborate and manage the unique challenges for each site. For Station 76, the DB team will need to work with Richland Energy Services to coordinate fiber infrastructure installation to the site; SPVV Landscape & their consultants working on designing the West Village park that will be directly adjacent to the fire station; and the Richland School District to coordinate design of site entry/exit that would complement a middle & elementary school to be built just east of the fire station site. The City of Richland has developed early relationships with all of these parties, and will work together with the DB team to facilitate the project needs.

5. MAINTAIN PARKING AND BUILDING ACCESS

It is critical to maintain adjacent property owner's driveways and parking lots with minimal disruption and direct, unhindered, access to all adjacent buildings during the course of the construction of Station 76 and associated work. The Design-Builder is responsible for working with the COR and neighboring properties to phase and manage site improvements to maintain access. There will be concurrent construction happening in phases for the West Village Park adjacent to the Fire Station. It will be crucial to coordinate site access with the contractor awarded the park project during the Fire Station Build.

6. GEOTECHNICAL DATA

The City is procuring a geotechnical evaluation for the project, and the report is expected to be completed shortly after the Design-Builder receives Notice to Proceed.

7. SUSTAINABILITY

In addition to other requirements, provide design and construction that minimizes adverse effects on the exterior environment, enhances the quality of the indoor environment and minimizes consumption of energy, water, construction materials, and other resources. The COR will not be pursuing certification with the U.S. Green Buildings Council LEED Green Building Rating System for the fire station build itself, but if the library grant is secured, the library portion of the project will be designed to LEED standards.

Exhibit A1 – Site



[Type here]

[Type here]

[Type here]

**EXHIBIT B1
INSURANCE REQUIREMENTS
CITY OF RICHLAND
STATION 76**

Insurance Exhibit

1.1 Insurance Types and Limits.

1.1.1 Design-Builder shall purchase and maintain insurance of the types, with limits of liability, containing such endorsements and subject to such terms and conditions as follows, as well as Article 5 of DBIA Document No. 535, *Standard Form of General Conditions of Contract Between Owner and Design-Builder* (2010 Edition):

(Specify each type of insurance as applicable, minimum ratings of the carriers, applicable limits and deductible amounts, required endorsements, and other terms and conditions, as applicable.)

Type of Insurance [Insert Rating of Carrier]	Minimum Limits Required Per Claim/Occurrence	Minimum Limits Required Aggregate Policy Limits	Maximum Deductible
1. Worker's Compensation	Statutory Limits	Statutory Limits	All deductibles shall be commercially reasonable and acceptable to the Owner
2. Employer's Liability (Bodily Injury by Accident)	\$1,000,000	\$1,000,000	See above
3. Commercial General Liability	\$2,000,000	\$2,000,000	See above
4. Contractor's Protective Liability (if applicable)	\$1,000,000	\$1,000,000	See above
5. Commercial Automobile Liability	\$1,000,000	\$1,000,000	See above
6. Professional Errors and Omissions pursuant to Section 1.3 (A) and 1.3 (B) below (per claim/aggregate) providing coverage for services performed by the named insured and any person or entity for whom the named insured is responsible	\$2,000,000	\$2,000,000	See above
7. Contractor's Pollution Liability including coverage for microbial matter (if applicable)	\$1,000,000	\$1,000,000	See above
8. Umbrella Excess Liability Insurance	\$3,000,000	\$3,000,000	See above
Builder's Risk	Full amount of contract		\$50,000

1.1.2 The insurance required by this Section 1.1.1 shall be written for not less than limits of liability specified in the table above or required by law, whichever coverage is greater. Coverages, whether written on an occurrence or claims-made basis, shall be maintained without interruption from date of commencement of the Work until date of Final Payment.

1.1.3 PROFESSIONAL LIABILITY INSURANCE.

1.1.3(A) Professional Liability Insurance To Be Provided By Design Consultant. Such policies must provide coverage for the scope of professional services to be provided by or on behalf of the Design Consultant. *[Note: Even if this coverage part is selected, the Design-Builder should consider obtaining its own professional liability coverage.]*

- ☒ The requirement for professional liability coverage on this Project shall be the standard form practice policy provided by Design Consultant.

Design-Builder shall provide Owner with prior written notice of any cancellation or non-renewal of the Design Consultant's practice policy and shall include in the Design Consultant Agreement a provision requiring the Design Consultant to give the Design-Builder 30 Days written notice of any cancellation or non-renewal.

1.1.3(A).1 The only permissible exclusion, limitation or restriction with respect to construction means, methods and techniques is one that applies to the implementation of such construction means, methods, techniques, sequences, or procedures by the Design Consultant or any person or entity providing design or other professional services as its Sub-Consultant. This exclusion is permissible only if such entities are not performing any construction activities. Notwithstanding the above, a Design Consultant's professional liability policy also cannot contain any restriction, limitation or exclusion pertaining to the design of construction means, methods, techniques, sequences or procedures.

1.1.3(A).2 Any exclusion, limitation or restriction related to Products or Product Design must be modified so as to provide coverage for goods or products installed.

1.1.3(A).3 Faulty Work exclusion, limitation or restriction can only be applicable to the work self-performed by the Design Consultant.

1.1.3(A).4 The policy must provide coverage for damages resulting from delays, including delays in project completion and cost overruns that result from the rendering or failure to render professional services.

1.1.3(A).5 If any portion of the design or other professional service is to be performed by any person or entity other than Design Consultant then it is the responsibility of Design Consultant to ensure that such person or entity provide Design-Builder and Design Consultant with evidence of insurance to comport with this Exhibit.

1.1.3(A).6 Waiver of subrogation is to be provided in favor of Design-Builder and its officers, directors and employees, and (if commercially available) Owner and its officers, directors and employees.

1.1.3(B) Professional Liability Insurance To Be Provided By Design-Builder. Such policies must provide coverage for the scope of professional services to be provided by or on behalf of the Design-Builder.

- ☒ The requirement for professional liability coverage on this Project shall be the standard form practice policy provided by Design-Builder.

Design-Builder shall provide Owner with prior written notice of any cancellation or non-renewal of the Design-Builder's practice policy.

1.1.3(B).1 The Design-Builder's policy cannot contain any restriction, limitation or exclusion pertaining to construction means, methods, techniques, sequences or procedures except that the professional liability policy can exclude, limit or restrict coverage for claims, but only to the same extent that such coverage is provided by the Design-Builder's valid and collectible commercial general liability/umbrella excess liability policies. Notwithstanding the above, a Design-Builder's professional liability policy also cannot contain any restriction, limitation or exclusion pertaining to the design of construction means, methods, techniques, sequences, or procedures.

1.1.3(B).2 Any exclusion, limitation or restriction related to Products or Product Design must be modified so as to provide coverage for goods or products installed.

1.1.3(B).3 Faulty Work exclusion, limitation or restriction can only be applicable to the work self-performed by the Design-Builder.

1.1.3(B).4 The policy must provide coverage for damages resulting from delays, including delays in project completion, and cost overruns that result from the rendering or failure to render professional services.

1.1.3(B).5 If any portion of the design or other professional service is to be performed by any person or entity other than Design-Builder then it is the responsibility of Design-Builder to ensure that person or entity provide Design-Builder with evidence of insurance to comport with this Exhibit.

1.1.3(B).6 Waiver of subrogation is to be provided in favor of Design-Builder and Owner (if commercially available) and their respective officers, directors and employees.

1.1.4 Any coverage required to be maintained after Final Payment shall be identified below. *(List here any coverages required to be maintained after Final Payment is made)*

General Liability, including completed operations coverage
Worker's Compensation
Professional Liability, including Contractor's Protective Liability, if applicable.
Umbrella Coverage

Such coverage shall remain in place for six (6) years after Substantial Completion.

2.1 Coverage Parameters and Endorsements.

2.1.1 Commercial General Liability Insurance shall be written on an occurrence basis, utilizing standard ISO unmodified coverage form (December 2004 Edition) or equivalent. Endorsements excluding, restricting, or limiting coverage may be acceptable under certain circumstances provided the same are agreed upon by Owner and Design-Builder.

2.1.1.1 Acceptable professional liability exclusions to the Design-Builder's commercial general liability insurance are limited to ISO endorsements CG 2280 or CG 2279 or their equivalent.

2.1.2 General Liability, Automobile Liability, Worker's Compensation/Employers Liability and Umbrella Excess Liability policies shall each include the following endorsements:

2.1.2.1 Unintentional Errors and Omissions Endorsement

2.1.2.2 Notice of Occurrence Endorsement

2.1.2.3 Knowledge of Occurrence Endorsement

2.1.3 Commercial Automobile Liability coverage shall be provided by standard ISO Commercial Automobile or Truckers Policy covering all Owned, Non-Owned and Hired Vehicles.

2.1.4 Umbrella/Excess Liability must schedule Commercial General Liability, Automobile/Truckers Liability and Employers Liability as underlying policies. The Umbrella/Excess Liability policies shall be written in accordance with the scheduled underlying policies and must be as broad as the underlying policies.

2.1.5 Contractors Pollution Liability shall either be written on an occurrence or claims-made basis. If written on a claims-made basis, the policy must comport to Section 4.1.5.

2.1.5.1 The policy is to provide coverage for off-site transportation by all applicable modes of conveyance. When required, coverage is also to be provided for claims involving materials removed from the site and brought to off-site disposal, treatment and storage facilities.

2.1.5.2 Any restriction, limitation, or exclusion related to Naturally Occurring Substances must be modified so as not to apply to microbial matter and the release of such Naturally Occurring Substances as a result of the performance of Operations.

3.1 Additional Insureds

3.1.1 Owner and Owner's officers, directors and employees shall be included as an additional insured on general liability, umbrella and automobile liability policies of insurance of the Design-Builder and its Subcontractors and Design Consultants at any tier. If required, as set forth above, Owner shall also be included as an additional insured on the Design-Builder's Contractor's Pollution Liability policy of insurance. No person shall be named as an additional insured on any professional liability policy. Any coverage granted to an additional insured shall be primary and that coverage independently carried by an additional insured shall not contribute. Design-Builder shall furnish to Owner a copy of all Certificates of Insurance showing the Owner as additional insured as set forth above. Design-Builder shall require Subcontractors and Design Consultants of any tier to furnish such certificates, and upon request of the same will furnish them to the Owner. Owner shall not be an additional insured on any other of Design-Builder's policies except for those which are specifically listed below: *(List here any other policies for which the Owner will be an additional insured, as well as other entities who are to be named an additional insured.)*

3.1.2 Each of the policies designated in section 3.1 is to provide a waiver of subrogation in favor of those persons or entities included as additional insureds. A waiver of subrogation is also to be provided to such entities under Worker's Compensation/Employer's Liability policies.

3.1.3 Additional Insured coverage provided under the Commercial General Liability/Umbrella/Excess and, if applicable, Design-Builder's Contractor's Pollution Liability policies, shall cover both the premises/operations and completed operations hazards.

4.1 Terms and Effective Dates.

4.1.1 If the General Liability coverages are provided by a Commercial General Liability Policy on a claims-made basis, the policy date or Retroactive Date shall predate the Agreement. The termination date of the policy or applicable extended reporting period shall be no earlier than the termination date of coverages required to be maintained after Final Payment is made.

4.1.2 If the Contractor's Pollution Policy is made on a claims-made basis, the policy date or Retroactive Date shall predate the Agreement. The termination date of the policy or applicable extended reporting period shall be no earlier than the termination date of coverages required to be maintained after Final Payment is made.

4.1.3 Professional Liability coverage shall be retroactive to the date that professional services first commenced.

4.1.4 RESERVED

4.1.5 All Claims-Made Policies must: (a) permit reporting of circumstances that could give rise to a claim; and (b) provide coverage for post-expiration claims resulting from such circumstances.

4.1.6 List here any coverage required to be maintained after Final Payment:

General Liability, including completed operations coverage
Worker's Compensation
Professional Liability, including Contractor's Protective Liability, if applicable.
Umbrella Coverage

Such coverage shall remain in place for six (6) years after Substantial Completion.

Draft

EXHIBIT B2
PAYMENT BOND FORM
CITY OF RICHLAND
STATION 76



PAYMENT BOND FOR DESIGN-BUILD PROJECTS

*This bond form has been endorsed by The National Association of Surety Bond Producers and
The Surety & Fidelity Association of America*

DESIGN-BUILDER/PRINCIPAL: <i>(Name and address)</i>	SURETY: <i>(Name and address)</i>
OWNER/OBLIGEE: <i>(Name and address)</i> City of Richland, Washington 625 Swift Boulevard, MS-13 Richland, WA 99352	PROJECT: <i>(Name and location)</i> Public Safety Facility 76
DESIGN-BUILD AGREEMENT: Dated: Amount:	BOND DATE: <i>(Not earlier than date of Design-Build Agreement)</i> BOND AMOUNT:

MODIFICATIONS TO THIS BOND:

(List modifications to this Bond below. If none, write "None")

BOND TERMS AND CONDITIONS

1 Binding Effect. The Design-Builder and Surety, jointly and severally, bind themselves, their heirs, executors, administrators, successors and assigns to pay for labor, services, materials and equipment furnished by Claimants for use in the performance of the Design-Build Agreement, which is incorporated herein by reference.

2 Intent of Bond. If the Design-Builder promptly makes payment of all sums for all labor, services, materials, and equipment furnished for use in the performance of the Design-Build Agreement, then the Surety's obligations under this Bond are null and void. Otherwise the Surety's obligations shall remain in full force and effect.

3 Notice of Claim. Every Claimant who has not been paid in full before the expiration of a period of ninety (90) days after such Claimant provided or performed the last of the work, services or labor, or furnished the last of the materials or equipment for which said claim is made, may have a right of action on this Bond.

3.1 Claimants shall provide written notice to the Surety and send a copy, or notice thereof, to Owner and Design-Builder, stating that a claim is being made under this Bond and, with substantial accuracy, the amount of the claim, and the last date such work, services or labor were performed, or the last materials or equipment were furnished in furtherance of the Design-Build Agreement.

3.2 If Claimant does not have a direct contract with Design-Builder, the notice shall identify the person or entity with whom Claimant contracted and who has not made payment to Claimant.

4 Surety's Obligations. When a Claimant has satisfied the conditions of Section 3, the Surety shall promptly take the following actions at the Surety's expense:

4.1 Send an answer to that Claimant, with a copy to the Owner and Design-Builder, within sixty (60) days after receipt of the claim, stating the amounts that are undisputed and the basis for challenging any disputed portions or amounts.

4.2 Pay or arrange for payment of any undisputed amounts.

5 Bond Liability. If the Surety fails to discharge its obligations under Sections 4.1 or 4.2, the Surety shall indemnify the Claimant for the reasonable attorney's fees the Claimant incurs thereafter to successfully recover any sums found to be due and owing to the Claimant. If Claimant does not recover the entire amount claimed in its notice under Section 3, then such attorney's fees shall be reduced in proportion to the amount actually recovered.

5.1 The Surety shall not be liable to the Owner, Claimants or others for obligations of the Design-Builder that are unrelated to the Design-Build Agreement, and the Contract Balance shall not be reduced or set off on account of any such unrelated obligations.

6 Waiver of Notice. The Surety hereby waives notice of changes to the Design-Build Agreement, including changes within the general scope, or of time or price, or to related subcontracts or purchase orders.

7 Dispute Resolution. No suit or action shall be commenced by a Claimant under this Bond other than in a court of competent jurisdiction in the State in which the Project is located. Such suit or action must be filed within one (1) year from the date: a) on which the Claimant sent a claim to the Surety pursuant to Section 3.1; or, b) on which the Claimant last performed labor or services or furnished materials or equipment on the Project, whichever occurs first. If the provisions of this Section 7 are prohibited by law, the minimum period of limitation available to sureties in the jurisdiction in which the Project is located shall be applicable.

7.1 In the event of bankruptcy of the Design-Builder, the Surety agrees that the Design-

Builder is not a necessary or indispensable party to any legal action by any party against the Surety to enforce the Surety's obligations under this Bond.

8 Statutory Compliance. If this Bond has been furnished to comply with a statutory requirement in the location where the Project is located, then any provision herein that conflicts with a statutory requirement shall be deemed deleted and replaced by provisions conforming to such statutory requirement. The intent is that this Bond shall be construed as a statutory bond conforming to the applicable statutes.

9 Copy To Be Furnished. Upon written request of any person or entity appearing to be a potential Claimant on this Bond, Design-Builder shall promptly furnish a copy of this Bond or shall permit a copy to be made.

10 Claimant Defined. A Claimant is any individual or entity having a direct contract with the Design-Builder or having a contract with a subcontractor that has a direct contract with the Design-Builder to furnish services, labor, materials or equipment for use in the performance of the Design-Build Agreement.

10.1 A Claimant may include amounts owed by the Design-Builder for design and other professional services furnished or performed by Claimant regardless of whether such services might form the basis for a mechanic's lien under applicable State law.

11 Notice. Unless otherwise noted below, written notice under this Bond to Surety, Owner or Design-Builder shall be mailed or delivered electronically or by hard mail to the contact information shown on page 1.

(List any alternate contact information below for notice to the Surety of any claim on this Bond. If none, then use the contact information on page 1)

For Claims on this Bond:

(check appropriate box)

☐ Use the contact information shown on page 1; or

☐ Use the following alternate contact information:

(fill in Surety claims administrator contact information below)

12 Subcontractor Bonds. If this Bond is issued for an agreement between the Design-Builder and a subcontractor, the term Design-Builder in this Bond shall be deemed to be the bonded subcontractor and the term Owner shall be deemed to be Design-Builder.

13 Authorization. The Surety represents that it is admitted to act as an authorized corporate surety in the state in which the Project is located. Surety and Design-Builder, intending to be legally bound hereby, subject to the terms set out above, do each cause this Payment Bond to be duly executed on its behalf by its authorized officer, agent, or representative.

DESIGN-BUILDER (AS PRINCIPAL) Company:	SURETY Company:
Signature:	Signature:
Name and Title:	Name and Title:
	Corporate Seal
	(Attach Power of Attorney)

(Space is provided below for signatures of additional parties, if required.)

Attest:

Signature and Title

**EXHIBIT B3
PERFORMANCE BOND FORM
CITY OF RICHLAND
STATION 76**



PERFORMANCE BOND FOR DESIGN-BUILD PROJECTS

*This bond form has been endorsed by The National Association of Surety Bond Producers and
The Surety & Fidelity Association of America*

DESIGN-BUILDER/PRINCIPAL: <i>(Name and address)</i>	SURETY: <i>(Name and contact information)</i>
OWNER/OBLIGEE: <i>(Name and address)</i> City of Richland, Washington 625 Swift Boulevard, MS-13 Richland, WA 99352	PROJECT: <i>(Name and location)</i> Public Safety Station 76 Project
DESIGN-BUILD AGREEMENT: Dated: Amount:	BOND DATE: <i>(Not earlier than date of Design-Build Agreement)</i> BOND AMOUNT:

MODIFICATIONS TO THIS BOND:

(List modifications to this Bond below. If none, write "None")

BOND TERMS AND CONDITIONS

1 Binding Effect. The Design-Builder and Surety, jointly and severally, bind themselves, their heirs, executors, administrators, successors and assigns to the Owner for the performance of the Design-Build Agreement, which is incorporated herein by reference.

2 Intent of Bond. If the Design-Builder performs its obligations under the Design-Build Agreement, then the Surety's obligations under this Bond are null and void, except to participate in meetings as provided in Section 5.

3 Waiver of Notice. The Surety hereby waives notice of changes to the Design-Build Agreement, including changes within the general scope, or of time or price, or to related subcontracts or purchase orders.

4 Owner's Obligations. If there is no default in Owner's obligations under the Design-Build Agreement, then the Surety's obligation under this Bond shall arise after the following steps have been taken by Owner, as a condition precedent to a Bond claim:

4.1 The Owner has first provided written notice to the Design-Builder and Surety at the addresses listed on page 1 of this Bond, that Owner is considering declaring the Design-Builder in default and has requested and attempted to arrange a meeting with the Design-Builder and Surety, to be held not later than fourteen (14) days after receipt of Owner's notice, to discuss methods of performing the Design-Builder's obligations under the Design-Build Agreement. If the Owner, Design-Builder and Surety agree, the Design-Builder shall be allowed a reasonable time to perform its obligations under the Design-Build Agreement, but such an agreement shall not waive the Owner's right, if any, subsequently to declare the Design-Builder in default;

4.2 The Owner declares the Design-Builder to be in default, terminates the Design-Build Agreement and notifies the Surety in writing; and

4.3 The Owner has agreed to pay the balance remaining under the Design-Build Agreement (i.e., the total amount payable by the Owner to the Design-Builder thereunder less amounts properly paid by the Owner to the Design-Builder, the "Contract Balance") to:

.1 The Surety, in accordance with the terms of the Design-Build Agreement; or

.2 Another design-builder selected pursuant to Section 5.3 to perform the remaining obligations under the Design-Build Agreement.

5 Surety's Obligations. When Owner has satisfied the conditions of Section 4, the Surety shall promptly take one of the following actions, at the Surety's expense:

5.1 Arrange for the Design-Builder to perform and complete the remaining obligations under the Design-Build Agreement, with consent of Owner;

5.2 Undertake to perform and complete the remaining obligations under the Design-Build Agreement itself, through its agents or through independent contractors;

5.3 Obtain bids or negotiated proposals from qualified design-builders acceptable to Owner for a contract for performance and completion of the Design-Build Agreement, arrange for a contract to be prepared for execution by Owner and a design-builder selected with Owner's concurrence, to be secured by performance and payment bonds equivalent to those for the Design-Build Agreement, issued by a qualified surety. The Surety shall: a. make available as Work progresses sufficient funds to pay the cost of completion of the Design-Build Agreement; and, b. pay to Owner the amount of damages as described in Section 7;

5.4 Waive its right to complete the Work under Sections 5.2 or 5.3, and reimburse the Owner the amount of its reasonable costs to complete the Work; or

5.5 Deny liability, in whole or in part, and notify the Owner in writing, citing reasons therefor.

6 Owner's Rights. If the Surety does not proceed as provided in Section 5 with reasonable promptness, the Surety shall be deemed to be in default on this Bond seven (7) days after receipt of an additional written notice from the Owner to the Surety demanding that the Surety perform its obligations under this Bond and stating that the Owner shall be entitled to enforce any remedy available to the Owner. If the Surety proceeds as provided in Section 5.4, and the Owner refuses the payment, or the Surety has denied liability, in whole or in part, under Section 5.5, the Owner shall be entitled without further notice to enforce any remedy available to it.

7 Damages Covered. In any event, the Surety's obligations to the Owner, and the Owner's obligations to the Surety, shall not be greater than those of the Owner and Design-Builder to each other, respectively, under the Design-Build Agreement. Subject to commitment by Owner to payment of the Contract Balance, the Surety is obligated without duplication for:

7.1 The responsibilities of Design-Builder for correction of defective Work and completion of the Project;

7.2 Additional legal, design professional and delay costs resulting from Design-Builder's default, and resulting from the actions or failure to act of Surety under Paragraph 5; and

7.3 Liquidated damages, or if no liquidated damages are specified in the Design-Build Agreement, actual damages caused by delayed performance or non-performance of Design-Builder.

8 Bond Liability. The Surety shall not be liable to the Owner or others for obligations of the Design-Builder that are unrelated to the Design-Build Agreement, and the Contract Balance shall not be reduced or set off on account of any such unrelated obligations.

9 Beneficiaries. No right of action shall accrue on this Bond to any person or entity other than Owner or its heirs, executors, administrators, or successors, unless some other party is named in this Bond as a dual obligee.

10 Dispute Resolution. All disputes related to this Bond shall be instituted in any court of competent jurisdiction in the location in which the Project is located and shall be commenced within two (2) years after: a. the Owner declares the Design-Builder in default under Section 4.2; or, b. Substantial Completion of the Project, whichever occurs first. If the provisions of this Section 10 are prohibited by law, the minimum period of limitation available to sureties in the jurisdiction in which the Project is located shall be applicable.

10.1 In the event of bankruptcy of the Design-Builder, the Surety agrees that the Design-Builder is not a necessary or indispensable party to any legal action by Owner against Surety to enforce the Surety's obligations under this Bond.

11 Notice. Unless otherwise noted below, written notice under this Bond to Surety, Owner or Design-Builder shall be mailed or delivered electronically or by hard mail to the contact information shown on page 1.

(List any alternate contact information below for notice to the Surety of any claim on this Bond. If none, then use the contact information on page 1)

For Claims on this Bond:

(check appropriate box)

☐ Use the contact information shown on page 1; or

☐ Use the following alternate contact information:

(fill in Surety claims administrator contact information below)

12 Statutory Compliance. If this Bond has been furnished to comply with a statutory requirement in the location where the Project is located, then any provision herein that conflicts with a statutory requirement shall be deemed deleted and replaced by provisions conforming to such statutory requirement. The intent is that this Bond shall be construed as a statutory bond conforming to the applicable statutes.

13 Warranty Obligation. The Surety's obligations to the Owner for warranties of the Design-Builder shall be the same as those required of the Design-Builder under the Design-Build Agreement, subject to the time limitation in Section 10. Unless otherwise stated below, the Surety's obligation for such warranties excludes: a) products, materials or equipment covered by a manufacturer's separate warranty; and b) claims by the Owner first noticed to Surety in writing more than one year after the effective date of such warranty as specified under the Design-Build Agreement.

(List below any exceptions to the above limitations on Surety's warranty obligation, if any)

14 Authorization. The Surety represents that it is admitted to act as an authorized corporate surety in the state in which the Project is located. Surety and Design-Builder, intending to be legally bound hereby, subject to the terms set out above, do each cause this Performance Bond to be duly executed on its behalf by its authorized officer, agent, or representative.

DESIGN-BUILDER (AS PRINCIPAL) Company:	SURETY Company:
Signature:	Signature:
Name and Title:	Name and Title:
	Corporate Seal
	(Attach Power of Attorney)

(Space is provided below for signatures of additional parties, if required.)

Attest:

Signature and Title

PART 1 PHASE 1 PROGRAM VALIDATION PERIOD SCOPE OF SERVICES

1.01 SUMMARY OF WORK

- A. This Section sets forth the Scope of Work, the Deliverables, and the execution activities for Phase 1.

1.02 OWNER'S PROJECT GOALS

The Owner has established the following Project Goals for the Project. The Parties agree to work in good faith to meet and/or exceed the Project Goals:

- A. Efficient and Effective Design. The Design-Build Team will provide designs that maximize the square footage available to meet the needs of the Richland Fire Department, so the station can effectively serve the community, including:
- a. Include the functions and amenities in an efficient workspace including administration spaces within the limited footprint of the building and incorporate as many additional amenities as the budget allows.
 - b. Provide comfortable spaces for staff that are both livable, provide health benefits such as exercise facilities, and incorporate best practices from the "Healthy In/Healthy Out" guide produced by the Washington State Council of Fire Fighters
<https://www.wscff.org/health-wellness/healthy-in-healthy-out/>;
 - c. Create functional and comfortable public spaces and buildings that fit into and enhance the adjacent public safety building as well as the successful future development of the surrounding community.
 - d. Design for easy long- and short-term maintenance and upkeep, considering the life cycle of the building.
 - e. Siting the building in an optimal location while minimizing the need for extensive permitting; and
 - f. Creating a design that considers the anticipated future use of the building.
- B. Exceed Schedule Expectations. The Design-Build Team will develop a design and construction phasing plan and schedule that will achieve completion as soon as practicable within the budget.
- C. Efficient Pricing. The Design-Build Team will provide transparent pricing that takes advantage of the efficiency of progressive design-build, including the following:
- a. Fast track design and construction to maximize the Owner's

budget and minimize the schedule; and

- b. Utilize materials and equipment that are easily maintained from reliable suppliers with excellent warranty service.

D. High Functioning Team. The Design-Build Team will develop and promote a high functioning, collaborative relationship between itself, the Owner, and the Stakeholders to exceed the Project Goals within the Owner's budget and schedule and demonstrate exemplary project management.

E. Design for Safety. The Design-Build Team will create designs that enhance the safety of the project(s) in both construction and in the operation of the facility. The design and construction process will reduce re-work and interference with operations with a goal of no recordable incidents.

1.03 PHASE 1 SCOPE

- A. Design Builder shall review, analyze, and validate the Initial Basis of Design Documents, the project budget, the Project Schedule, the Commercial Terms and any other information provided by the Owner, collectively referred to as "Owner Provided Information".
- B. Design Builder shall conduct such site investigations, environmental assessments, review of regulatory and legal authority and restrictions, and assess other information as reasonably necessary to verify and validate the Owner Provided Information.
- C. Design Builder shall review, analyze and validate the concepts for the Project elements as shown in the Initial Basis of Design Documents. In addition, Design Builder shall work collaboratively with the Owner and the Stakeholders to examine whether new concepts will better maximize the Owner's Project Goals, and if approved by the Owner, further develop such new concepts and incorporate them into the Project.
- D. Design Builder shall engage and work collaboratively with the Owner and the Project Stakeholders to obtain input regarding the Project design and functionality, as well as other major Project elements and to develop the Final Basis of Design Documents.
- E. Design Builder shall engage and work collaboratively with the Owner and the Project Stakeholders to progress the design to a sufficient state to develop the Final Basis of Design Documents, the Project Schedule, and the Guaranteed Maximum Price within the project budget. The timing of the GMP Proposal and the percentage complete of the designs and specifications will be jointly determined by the Owner and the Design-Builder.

- F. Design Builder shall provide the Deliverables during Phase 1 as set forth in Sections 2.01.A. and B. herein. Deliverables shall be provided in a format acceptable to the Owner.
- G. At the conclusion of Phase 1, Design Builder shall prepare a GMP Proposal, including any modifications and/or clarifications to the Initial Basis of Design Documents as set forth in Section 2.01.B herein.

1.04 VALIDATION OF INFORMATION.

- A. During Phase 1, Design Builder shall perform such assessments, reviews and investigations of the Owner Provided Information, as determined by Design Builder to be reasonably necessary to validate the Owner Provided Information as well as investigate any other information required to accomplish the Project, including but not limited to the information below. Additional reviews, assessments and investigations of Owner Provided Information shall include, if reasonably necessary, the following:
 - 1. Verification that the As-Built drawings (if applicable) and other architectural and engineering drawings, plans and specifications are correct,
 - 2. Constructability, including proposed methods of construction, of the proposed structures in the Initial Basis of Design Documents,
 - 3. Verification of the architectural, engineering and other assumptions and calculations (if any) in any Owner Provided Information,
 - 4. Examination and verification of actual site conditions as set forth below,
 - 5. Verification of any surveys,
 - 6. Review and assessment of all applicable legal and regulatory rules and restrictions on the Project, including consultation with permit authorities regarding their requirements,
 - 7. Verification and validation of assumptions regarding the establishment of the Commercial Terms, including but not limited to the GMP, the Project Schedule, and the Initial and Final Basis of Design Documents.
- B. Design Builder shall perform site investigations as necessary for Design Builder to verify the Owner Provided Information and to validate the Commercial Terms and the Initial Basis of Design Documents. Design Builder shall visit the Site and examine thoroughly and understand the nature and extent of the Work, site, locality, actual conditions, as-built conditions, and all local conditions and federal, state, and local laws and regulations that in any manner may affect cost, time, progress, performance or furnishing of the Work or which relate to any aspect of the design and the means, methods, techniques, sequences or procedures of construction to be employed by Design Builder and safety precautions and

programs incident thereto. Such additional investigations shall be conducted to sufficiently identify or characterize utility locations (underground and overhead), site conditions, contaminated materials, and observable or concealed conditions in the existing facilities, including but not limited to the following:

1. Undertake surveys, investigations and analysis to provide necessary data and information for project design including sufficient information to evaluate design alternatives.
 2. Complete a comprehensive archaeological site survey and conduct a literature and data search to determine potentially archaeologically significant sites and conditions.
 3. Perform Geotechnical soils sampling, testing, and analysis to provide necessary data and information for Project design and provide a final Geotechnical Report. At a minimum, test for contamination and soil percolation rates during this process.
 4. Subsurface investigation work, including the disturbance of existing vegetation, cannot proceed until all required permits have been obtained.
- C. Design Builder will conduct or obtain and understand all such examinations, investigations, explorations, tests, reports and studies, in addition to or to supplement those referred to above, that pertain to the subsurface conditions, as-built conditions, underground facilities and all other physical conditions at or contiguous to the Site or otherwise that may affect the cost, time, progress, performance or furnishing of Work, as Design Builder considers necessary for the performance or furnishing of Work for the Commercial Terms and in accordance with the Initial Basis of Design Documents as well as other terms and conditions of the Contract Documents, and no additional examinations, investigations, explorations, tests, reports, studies or similar information or data are or will be required from the Owner by Design Builder for such purposes.
- D. All reports or analyses generated by Design Builder's research, testing, inspections, and investigations, including but not limited to geotechnical evaluations and hazardous materials studies, archaeological site surveys, hazardous materials investigations, etc., shall be provided to the Owner promptly, within seven (7) business days, after such reports are analyzed and generated.
- E. Design Builder shall be responsible for ensuring that its design documents and construction work accurately conforms to, and interfaces with, the existing conditions and shall not request a change or claim for unforeseen or concealed conditions except as provided under the provisions of the Contract Documents.
- F. The Design Builder shall work with the Owner to determine if additional examinations, investigations, explorations, tests, reports, studies or similar

may be required after partial or complete demolition of the existing stations. This work shall be completed by the Design Builder and included in the GMP.

1.05 DEVELOPMENT OF FINAL BASIS OF DESIGN DOCUMENTS

- A. Design Builder shall manage the design process in a collaborative, efficient, transparent and coordinated manner and conduct design workshops as required by the Contract Documents. The Final Basis of Design Documents will establish the scope of the Work and provide the basis for the GMP. The Final Basis of Design Documents must be consistent with the Initial Basis of Design Documents, unless the Owner has consented to modify its requirements in writing through a Change Order, Field Directive, or other written means allowed by the Contract Documents.
- B. Design Builder shall provide for an orderly and timely approval process by the Owner and third parties, document review comments from the Owner and third parties, and take appropriate action.
- C. The Owner will review and comment on the Design Submissions in a timely fashion. The Design-Builder will allow adequate time for the Owner to review the Design Submissions, which shall not be less than 10 business days.
- D. Design Builder shall submit a written response to the Owner's design review comments, describing the action taken for each comment. Design Builder shall, in a timely fashion, bring to the attention of the Owner areas where new technologies, such as BIM or Design-Build processes, may require modifications to these requirements.
- E. By submitting Design Submissions, Design Builder represents to the Owner that the Design Submissions may be designed and constructed for the then current Commercial Terms and in accordance with the Initial Basis of Design Documents, the Design Log, and any changes made thereto. Notwithstanding the above, Design Builder may propose Designs, Plans or other Submissions that may alter a Commercial Term or the Initial Basis of Design Documents; however, with any such Design Submissions, Design Builder must provide notice pursuant to Article 10 of the General Conditions.

1.06 DEVELOPMENT OF GMP PRICING

- A. The forecasting and development of accurate project cost estimates throughout each phase of the Project is vital to the Owner's financial management strategy. The Owner relies on the Design Builder to provide and validate current and detailed cost estimates and forecasts that will be incorporated into the overall cost controls for the Owner.
- B. Throughout the Project, Design Builder will update estimates and forecasts and provide data to the Owner to reflect real time information. Design Builder will provide all pricing, estimates and other data used to develop

the Commercial Terms on an open and transparent basis. The project controls system used by the Design Builder shall be acceptable to the Owner and will be capable of being broken down and reported in a number of different work breakdown structures, including but not limited to organizing the financial data by cost element codes, subcontracts, vendors, Construction Document packages, etc.

- C. The Design Builder will coordinate the development of the GMP pricing with the development of the Final Basis of Design Documents as well as the Project Schedule so that the Owner may obtain an accurate understanding of the GMP. The GMP set forth in the Agreement shall not be exceeded without a written Change Order.

1.07 DEVELOPMENT OF PROJECT SCHEDULE

- A. The forecasting and development of the Project Schedule, including but not limited to the project phasing and Schedule of Values, is a vital element of the Design Builder's ability to deliver this Project in a timely fashion. The Owner will rely on the Design Builder's scheduling information to coordinate with its Stakeholders, schedule activities in and around the Project, and manage its campus.
- B. Design Builder shall provide the Owner with frequent updates to the project schedule in a format acceptable to the Owner.

PART 2 PHASE 1 DELIVERABLES

2.01 SUBMITTALS

- A. *Submittals After Phase 1 Notice to Proceed:* Design Builder shall provide the following Submittals within 30 days after the Notice to Proceed with Phase 1, unless otherwise noted in Phase 1 Schedule.
 - 1. Phase 1 Schedule pursuant to Section 2.02.A.
 - 2. Preliminary Schedule of Values for the GMP pursuant to Section 2.04.A.1
 - 3. Preliminary Cost Model pursuant to Section 2.04.B.5
 - 4. Subcontractor Procurement Procedure pursuant to Section 2.05.A
 - 5. Project Safety and Job Hazard Analysis pursuant to Section 2.06.A.
- B. *Submittals During Phase 1:* Design Builder shall provide the following submittals during Phase 1.
 - 1. Within 30 days of the Notice to Proceed for Phase 1:
 - a. Preliminary Project Schedule pursuant to Section 2.02.B
 - 2. On a monthly basis:
 - a. Updates to the Phase 1 Schedule, Schedule of Values, Project Schedule pursuant to Section 2.02. A and B

- b. Design Submissions Packages pursuant to Section 2.03.A.
 - c. Preliminary estimating information pursuant to Section 2.04.A and updates to the Cost Model Pursuant to Section 2.04.B.
- C. GMP Proposal: At the conclusion of Phase 1, Design Builder shall provide a GMP Proposal that includes the following Deliverables.
 - 1. GMP Pricing and Verification of GMP pursuant to Section 2.04.C.
 - 2. Final Basis of Design Documents pursuant to Section 2.03.B.
 - 3. Project Schedule pursuant to Section 2.02.D.
 - 4. Schedule of Values and Cost Model pursuant to Section 2.04.B.
 - 5. A list of the assumptions and clarifications made by the Design-Builder in preparation of the GMP Proposal.
 - 6. Project Safety and Job Site Hazard Analysis pursuant to Section 2.06.B.
 - 7. Project Phasing/Staging Analysis pursuant to 2.07.
 - 8. Permitting Strategy Plan pursuant to Section 2.08.
 - 9. QA/QC Plans pursuant to 2.9.
 - 10. Contract Close-Out Plan pursuant to Section 2.10.
 - 11. Differing Site Conditions Report pursuant to Section 2.11.
 - 12. Inclusion Plan for Disadvantaged Businesses and Small Businesses pursuant to 2.12.

2.02 SCHEDULES

- A. Phase 1 Schedule. By the date set forth in Section 2.01A herein, Design Builder shall provide a Phase 1 Schedule.
 - 1. Phase 1 Schedule shall show the activities of the Owner and Design Builder necessary to meet Phase 1 requirements.
 - 2. Phase 1 Schedule shall be updated periodically with the level of detail for each schedule update reflecting the information then available.
 - 3. If an update to Phase 1 Schedule indicates that a previously approved milestone will not be met, Design Builder shall submit a corrective action plan and recovery schedule to the Owner pursuant to the Contract Documents.
- B. Preliminary Project Schedule. By the date set forth in Section 2.01.B, Design Builder shall submit a Preliminary Project Schedule that reflects Design Builder's sequence of design, procurement and construction

activities including the interrelationships of the Demolition and Construction Packages.

1. The Preliminary Schedule shall show the activities of the Owner and Design Builder necessary to meet the Project completion requirements.
 2. The Preliminary Schedule shall be updated periodically monthly with the level of detail for each schedule update reflecting the information then available.
 3. If an update to the Preliminary Schedule indicates that a previously approved milestone will not be met, Design Builder shall submit a corrective action plan and recovery schedule to the Owner pursuant to the Contract Documents.
- C. Design Builder shall meet with the Owner to review the Preliminary Schedule and updates. In the event that the Owner has any comments relative to the Preliminary Schedule or Schedule Updates or finds any inconsistencies or inaccuracies in the information presented, it shall give prompt written notice of such comments or findings to Design Builder, who shall make appropriate adjustments to the Preliminary Schedule, its basis, or both. The parties will work collaboratively to make adjustments in the Final Basis of Design Document, the Project Schedule, or GMP to fit within the Owner's objectives.
- D. With the GMP Proposal, Design Builder shall provide a Project Schedule that will incorporate the Preliminary Schedule developed collaboratively during Phase 1 along with any updates to the schedule.
- E. All schedules must be in the format of a Critical Path Method (CPM) Resource loaded schedule as set forth below.
- F. Critical Path Method (CPM) Resource loaded schedule
1. The CPM Schedule will contain the following
 - a. All tasks required to complete the scope of work for the project.
 - b. Durations for all tasks in the project schedule.
 - c. Logical ties and sequence of work for every task in the schedule.
 - d. Resources for project hours and major material quantities for site construction.
 2. Project Schedule shall be detailed and organized according to pre-defined Design-Builder's WBS that is developed in the Scope Management Plan. The project schedule will include all activities and relationships identified in the Design-Builder's Scope of Work Narrative. Each major area of work within Design-Builder's scope shall be represented by activities in the schedule.

3. Design-Builder shall prepare a detailed resource loaded CPM Project Schedule in accordance with this specification. The schedule shall be submitted to the Owner for their review. The detailed schedule shall reflect, at a minimum, engineering, procurement, construction, fabrication, and delivery activities for each piece of procured equipment, key drawing release dates by discipline, and logic and interrelationships between activities so that a logical progression of the work is depicted. Project Milestones shall also be included in schedule.
4. Design-Builder and subcontractors shall meet with the Owner to review and approve the detailed CPM baseline Project Schedule.
5. Once the detailed project schedule has been approved by the Owner, Design-Builder will establish a baseline schedule. Thereafter Design-Builder shall advise the Owner of any proposed Critical Path Schedule changes and promptly provide the Owner with any revisions thereto and recovery plans as required to meet the contractual dates.
6. Schedule Validity and Content
 - a. Prepare schedules in a format acceptable to the Owner.
 - b. Contain Work Breakdown Structure coding matching deliverables and work packages.
 - c. Schedule will reflect all deliverables and tasks mention in the Scope of Work narrative.
 - d. Schedules shall be coded for grouping by engineering, procurement, construction, and commissioning
 - e. Project schedule activities that Design-Builder is responsible for performing shall be resource loaded with engineering and procurement activities. Construction activities shall be resourced loaded 60 days prior to site mobilization.
 - f. Resource loading for project hours and major material quantities for site construction.
 - g. Engineering, procurement and construction activities shall be included, such that Project staffing requirements can be determined or verified with schedule. The original resource-loaded construction schedule shall form basis for progress reporting, and payment.
 - h. Critical path for Design-Builder's schedule activities.

2.03 DESIGN DOCUMENTS

- A. Preliminary Design Submissions. As Design Builder develops the Final Basis of Design Documents, Design Builder shall collaborate with the

Owner to submit and review the Preliminary Design Submissions that will be incorporated into the Final Basis of Design Documents. The Preliminary Design Submissions will be submitted pursuant to the Schedule provided by the Design-Builder and approved by the Owner.

1. Design Builder shall coordinate with the Owner to determine the schedule for submission of preliminary Design Submissions Packages to review collaboratively with the Owner. Design Builder shall schedule the review of the Design Submissions Packages such that the review of each package submitted is of reasonable scope for prompt and thorough review by the Owner.
 2. The parties will work collaboratively to make adjustments in the Design Submissions and in the proposed Final Basis of Design Documents to fit within the Owner's Project Goals.
- B. The Owner and Design Builder shall work collaboratively to develop the Final Basis of Design Documents provided as part of the GMP Proposal. The Final Basis of Design Documents submitted with the GMP Proposal shall include at a minimum the following documents and set forth the assumptions and clarifications on which the GMP and Project Schedule are based.
1. Project Manual, which shall set forth both the general objectives for the Owner, as well as specific uses for each of the project elements set forth in the Initial Basis of Design Documents.
 2. Unless the parties agree in writing otherwise, Design Builder will provide the following Milestone Design Deliverables to the Owner:
 - a. 50% Schematic Design
 - b. 100% Schematic Design
 - c. 60% Design Development
 - d. 100% Design Development (With GMP Proposal)
 3. The Milestone Deliverables shall include major building elements and components, such as curtain walls, and finishes and shall include, but not be limited to the following.
 - a. Regional Plan
 - b. Concept, Character, and Principals
 - c. Landscape Plan
 - d. Existing Site Photos
 - e. Site Plan and Access;
 - f. Massing Plan
 - g. Exterior Elevations

- h. Floor Plate Stacking
 - i. Building Sections
 - j. Build Entries and Circulation
 - k. Solar Orientation
 - l. Floor Plans
 - m. Proposed Materials and Color Palette
 - n. Parking Concept
 - o. Narrative
 - p. Renderings (Exterior/Interior)
 - q. Vehicular turning templates for the fire trucks/ladder to ensure that the movements work within the site as well as getting out of the site
- 4. Design-Builder must have written approval from the Owner to proceed with the project after submission of each of the Milestone Design Deliverables set forth above.
 - 5. Design Builder shall schedule the review of the Construction Packages such that the review of each package submitted is of reasonable scope for prompt and thorough review by the Owner.
 - 6. Design Builder shall highlight any material differences and developments between the Initial Basis of Design Documents, any Design Submissions, and the Final Basis of Design Documents as the Final Basis of Design Documents are being developed.
 - 7. In the event that the Owner has any comments relative to the Design Submissions or finds any inconsistencies from the Initial Basis of Design Documents or discovers inaccuracies in the Design Submissions, the Owner shall give prompt written notice of such comments or findings to Design Builder, who shall make appropriate adjustments to the proposed Final Basis of Design Documents.
 - 8. The parties will work collaboratively to make adjustments in the Design Submissions and in the proposed Final Basis of Design Documents to fit within the Owner's Project Goals as well as the GMP.
 - 9. Performance Specifications, which shall set forth the specific requirements for the project and identification of each major system, including but not limited to the following:
 - a. Mechanical, electrical (Power, Emergency Power, Lighting, Low Voltage, Communications, Fire Alarm, Security, etc) and plumbing systems

- b. Structural capacities and requirements
- c. Warranty obligations
- d. Operations and maintenance requirements

2.04 GMP PRICING

A. Preliminary Schedule of Values

1. Preliminary Schedule of Values. Within the date set forth in Section 2.01.A, Design Builder shall submit a preliminary Schedule of Values for the Project in such a form and supported by such data to substantiate its accuracy in reflecting the breakdown for administrative and payment purposes as the Owner may require. The Schedule of Values shall be further organized to conform to the Construction Specifications Institute (CSI) standard format for divisions and sections.
2. With the submission of Design Submissions Packages, Design Builder shall provide preliminary estimates of costs associated with the Design Submissions in a format acceptable to the Owner that will be incorporated into the GMP.
3. The preliminary estimates shall be provided on a bi-weekly basis and shall be updated with new information as Design Builder develops and finalizes the GMP.

B. Schedule of Values and Cost Model

1. Schedule of Values. On the schedule established in Section 2.01.B and with the GMP Proposal, Design Builder shall provide an updated Schedule of Values for the Work with actual start and/or finish dates and percentages complete. Updates shall compare the planned progress from baseline schedule with actual progress from the current schedule. The Schedule of Values shall be in conformance with the requirements below and in such a form and supported by such data to substantiate its accuracy in reflecting the breakdown for administrative and payment purposes as the Owner may reasonably require. The Schedule of Values shall be further organized to conform to the Construction Specifications Institute (CSI) standard format for divisions and sections.
2. The sum of all values listed in schedule shall equal the project budget and, when established, the GMP.
3. Each item shall include directly proportional amount of the Design-Builder's Fee Percentage or Lump Sum Fee, as applicable.
4. Schedule of Values Form and Content
 - a. Schedule of Values will be in a form acceptable to the Owner.

- b. Title of Project and location.
 - c. Project number.
 - d. Name and Address of Design-Builder.
 - e. Date of submission.
 - f. Schedule of Values columns will contain at a minimum the following information
 - (1) Line Item # - Corresponding back to the WBS and CPM Schedule
 - (2) Line Item Description
 - (3) Budgetary Cost
 - (4) Current Period % Complete
 - (5) Current Period Cost
 - (6) JTD % Complete
 - (7) JTD Cost
 - (8) Variance Column Representing Budgetary Cost Minus JTD Cost
5. Cost Model. Within the time frame set forth in Section 2.01.A.3, Design Builder shall provide a Cost Model, for the Owner's review and acceptance.
- a. The Cost Model shall, at a minimum, provide the following information:
 - (1) List for all Design and Construction Packages, organized by CSI;
 - (2) Estimated base bid amounts for all Construction Packages;
 - (3) Construction Package Allowances.
 - b. Design Builder shall utilize a project controls management system (PCMS) that will be reviewed for acceptance to the Owner.
 - c. Estimates and forecasts within the Cost Model will need to have the capability to be broken down and reported on in many different formats. These formats may include organizing the estimate by different projects, project funding types, Owner cost element codes, contracts, vendors, Construction Package Sets, Construction Packages, etc. Design-Builder shall collaborate with the Owner to determine the appropriate Work Breakdown

Structure that will be used for the development of the Cost Model and all Project cost estimates.

- d. In developing its Construction Package Plan, Design-Builder shall coordinate with the Owner to determine a packaging strategy deemed advantageous to all parties. The agreed-upon packaging strategy will be incorporated into the Cost Model and Project schedule.
- e. On the schedule set forth in Section 2.01.B.2 and with the GMP Proposal, Design-Builder shall update estimates and forecasts as data becomes available to reflect real time information. The Owner will rely on this real-time information for accuracy of overall Owner cost forecasts across all Owner projects.

6. Work Breakdown Structure (WBS)

- a. The Work Breakdown Structure (WBS) is a task-oriented division of work necessary to engineer, procure, and construct the Project. It categorizes successively smaller tasks, in order to achieve scope, schedule, and budget control at the most practical level.
- b. Design-Builder will develop a WBS structure at the completion of Phase 1. Design-Builder will work with the Owner to develop a mutual compatible WBS system to satisfy the intent of the project. The WBS structure will represent the Design-Builder's entire scope for the project, broken down into manageable deliverables or work packages.

7. Scope of Work Narrative

- a. Design-Builder will develop, from the Work Breakdown Structure, a Scope of Work Narrative for the project before Phase 2 is approved. This document will provide a description of the work to be done for each WBS work package. This document will identify the Design-Builder's general understanding of the project, as well as, provide a description of the work that will be done, and deliverables that will be produced for work packages in the WBS. A narrative for each work package will include, but is not limited to the following:
- b. Narrative of work to be performed
- c. List of major deliverables

C. GMP.

- 1. With the GMP Proposal, Design Builder shall prepare and submit the GMP Pricing to the Owner, in a format acceptable to the Owner,

reflecting Design Builder's total cost for the Project on an open book basis. The GMP in the GMP Proposal shall include:

- a. Design Builder's Lump Sum Fee as defined in Section 6.2.3 of the Agreement.
- b. The Cost of the Work as defined in Section 6.3 of the Agreement
- c. The Lump Sum General Conditions Costs as defined in Section 6.4.5 of the Agreement.
- d. If applicable, any Allowance established by the Parties pursuant to Section 6.4.1 of the Agreement
- e. Design Builder's Contingencies established pursuant to Section 6.4.4 of the Agreement.

2. In support of the proposed GMP, Design Builder shall provide:

- a. A list of Not to Exceed Amounts and the information required in Section 6.4.2 of the Agreement
- b. A list of Lump Sums and the information required in Section 6.4.3 of the Agreement
- c. A list of the assumptions and clarifications made by Design Builder in the preparation of the GMP to supplement the information contained in the Final Basis of Design Documents.
- d. All material changes from the Initial Basis of Design Documents and Design Builder's Proposal and the costs associated with such changes.

D. Design Builder shall meet with the Owner to review the GMP Proposal. In the event that the Owner has any comments relative to the GMP Proposal or finds any inconsistencies or inaccuracies in the information presented, it shall give prompt written notice of such comments or findings to Design Builder, who shall make appropriate adjustments to the GMP Proposal, its basis, or both. The parties will work collaboratively to make adjustments in the Final Basis of Design Documents, Project Schedule, or GMP to meet the Owner's objectives.

2.05 SUBCONTRACTOR PROCUREMENT PROCEDURE

A. By the date set forth in Section 2.01.A herein, Design Builder shall submit for approval the Subcontractor Procurement Procedure as required in Section 2.8 of the General Conditions.

2.06 PROJECT SAFETY AND JOB SITE HAZARD ANALYSIS

A. By the date set forth in Section 2.01A herein, Design Builder shall submit a Project Safety and Job Site Hazard Analysis for the activities associated with Phase 1.

- B. With GMP Proposal, Design Builder shall submit a Project Safety Plan with Job Site Hazard Analyses addressing all phases of the project after Phase 1.
- C. No field investigation or construction activities will be authorized without acceptance of safety plans as required for the Work.

2.07 PROJECT PHASING /STAGING ANALYSIS

- A. With the GMP Proposal, Design Builder shall provide a Project Phasing/Staging analysis for all Demolition and Construction Packages that includes detailed plans for the phasing of the following elements of the Project, including but not limited to all modifications and all other construction activities including the staging of construction materials and facilities.

2.08 PERMITTING STRATEGY PLAN:

- A. With the GMP Proposal, Design Builder shall provide a Permitting Strategy Plan detailing the process for obtaining the building and site development permits for various phases of the project.
- B. During Phase 1, Design Builder must meet with the applicable building officials and develop processes and time lines for plan check approvals.
- C. Design Builder shall coordinate with all authorities with jurisdiction over the Project for the approval of environmental mitigation measures.

2.09 QA/QC PLANS

- A. Prepare a Quality Management Plan (QMP) in accordance with the Contract requirements and submit it with the GMP Proposal.
- B. Design Quality Management Plan.
 - 1. Design Quality Management Plan (DQMP): shall be developed in accordance with the requirements outlined in the Contract.
 - 2. Design Quality Audits: Design Quality Assurance Manager shall audit all design packages for compliance with the requirements outlined in the DQMP.
 - 3. Independent Technical Reviews: The Design Quality Assurance Manager will appoint appropriate technical staff to conduct Independent Technical Reviews of each design package. These reviews will occur concurrently with the Inter- Disciplinary Reviews and Constructability Reviews.
- C. Construction Quality Management Plan.
 - 1. Construction Quality Management Plan (CQMP): shall be developed in accordance with the requirements outlined in the Contract.

2.10 CONTRACT CLOSEOUT PLAN

- A. With the GMP Proposal, Design Builder shall provide a Project Closeout Plan that integrates all aspects of project closeout proactively over the life of the project. The Closeout Plan will be a living document that will grow and expand as the design and construction progress. The Project Closeout Plan should include, but not be limited to mechanisms and procedures for:
 - 1. Closeout provisions included in subcontract procurement documents
 - 2. Phased completions and early subcontract closeouts
 - 3. Commissioning
 - 4. Warranties
 - 5. Training
 - 6. O&M Documentation
 - 7. Record Documents
 - 8. Cost Reconciliations
 - 9. Permit and Regulatory Requirements

2.11 DIFFERING SITE CONDITIONS REPORT

- A. With the GMP Proposal, Design Builder shall provide a report of all Differing Site Conditions as defined in Section 4.2 of the General Conditions of the Contract that are discovered during Phase 1.
- B. The Differing Site Conditions Report shall include the following information for each of the identified Differing Site Conditions identified in the Report.
 - 1. The location of the Differing Site Condition;
 - 2. A description of the Differing Site Condition that explains why it qualifies as a Differing Site Condition pursuant to Section 4.2 of the General Conditions;
 - 3. The date the Differing Site Condition was discovered;
 - 4. The impact of the Differing Site Condition on the Initial Basis of Design Documents, the Final Basis of Design Documents, and/or any Commercial Term, as applicable.

2.12 INCLUSION PLAN FOR DISADVANTAGED BUSINESSES AND SMALL BUSINESSES

- A. Disadvantaged Businesses means any business entity certified with the office of minority and women's business enterprises under RCW Chapter 39.19.
- B. Small Business means a small business as defined in RCW 39.26.010.

- C. With the GMP Proposal, Design Builder shall analyze the capabilities of Disadvantaged Businesses and Small Businesses and the projected manpower availability to determine and report on the percentage of the Work that such firms could reasonably be expected to perform during the Design, Preconstruction and Construction Phases of the Project.
- D. Based on this analysis, Design Builder shall prepare an Inclusion Plan, subject to the review and approval of the Owner.
- E. As a minimum, the Inclusion Plan shall include:
 - 1. A complete definition of the efforts to be taken on the part of Design Builder to tailor design, preconstruction services and Construction Packages so as to be capable of being performed by small, local and/or regional consultants, designers, and/or subcontractors.
 - 2. A description of the formal outreach process to be used to communicate the requirements of the Work with the small, local and/or regional consultants, designers and/or subcontractors.
 - 3. The approach to procure consultants and subcontractors (e.g., open bid, prequalification, best-value, etc.) to maximize participation by Disadvantaged and Small Businesses.

Phase 2 Scope of Services

PART 3 PHASE 2

Unless the parties agree otherwise in writing, this Section sets forth the Scope of Work, the Deliverables, and the execution activities for Phase 2.

3.01 PHASE 2 SCOPE

- A. Design Builder shall complete the design and construction services as set forth in the GMP Amendment.
- B. Design Builder shall provide the deliverables set forth in this Attachment during the course of Phase 2. Deliverables shall be provided in a format acceptable to the Owner and consistent with the requirements for Phase 1.

3.02 COMPLETION OF DESIGN

- A. Design Builder shall provide for an orderly and timely approval process by the Owner and third parties, document review comments from the Owner and third parties, and take appropriate action.
- B. The Owner will review and comment on the Construction Documents and other Design Submissions in a timely fashion.
- C. Design Builder shall submit a written response to the Owner's design review comments, describing the action taken for each comment. Design Builder shall, in a timely fashion, bring to the attention of the Owner areas where new technologies, such as BIM or Design-Build processes, may require modifications to these requirements.
- D. By submitting Design Submissions, including but not limited to the Construction Documents, Design Builder represents to the Owner that the Construction Documents may be constructed for the then current Commercial Terms and in accordance with the Initial Basis of Design Documents and the Final Basis of Design Documents. Notwithstanding the above, Design Builder may propose Designs, Plans or other Submissions that may alter a Commercial Term or the Initial Basis of Design Documents; however, with any such Design Submissions, Design Builder must provide notice pursuant to Article 10 of the General Conditions. The Construction Documents must be consistent with the Final Basis of Design Documents, approved Design Submissions and the Design Log, unless the Owner has consented to modify its Requirements in writing through a Change Order, Field Directive, or other written means allowed by the Contract Documents.

3.03 SCHEDULE OF VALUES AND COST MODEL

- A. The forecasting and development of accurate project cost estimates throughout each phase of the Project is vital to the Owner's financial management strategy. The Owner relies on the Design Builder to provide

and validate current and detailed cost estimates and forecasts that will be incorporated into the overall cost controls for the Owner.

- B. Unless modified by the parties in writing, on the schedule set forth in Section 2.01.B, Design Builder will continue to update estimates and forecasts in the format required above and provide data to the Owner to reflect real time information. Design Builder will provide all pricing, estimates and other data used to develop the Commercial Terms on an open and transparent basis.
- C. The Schedule of Values and Cost Model must be consistent with the GMP Amendment and the format required above, unless the parties have agreed on a Change to the terms set forth in the GMP Amendment pursuant to Article 10 of the General Conditions.

3.04 PROJECT SCHEDULE

- A. The forecasting and development of the project schedule, including but not limited to the project phasing and Schedule of Values, is a vital element of the Design Builder's ability to deliver this Project in a timely fashion. The Owner will rely on the Design Builder's scheduling information to coordinate with its Stakeholders, schedule activities in and around the Project, and manage its campus.
- B. Design Builder shall provide the Owner with updates to the project schedule on the schedule set forth in Section 2.01.B and in the format required above for a scheduled completion within the GMP established in the GMP Amendment.

3.05 CONSTRUCTION SERVICES

- A. Design-Builder shall provide Construction Services and complete the construction of the Project pursuant to the Contract Documents.

3.06 COMMISSIONING, TESTING AND CLOSEOUT

- A. Design Builder shall provide commissioning, testing, and closeout of the Project pursuant to the Contract Documents.

PHASE 2 DELIVERABLES

3.07 DELIVERABLES

- A. Design Builder shall provide the following Milestone Design Deliverable pursuant to the Project Schedule:
 - 1. 100% Construction Documents for review and approval by the Owner.
 - 2. Design Builder shall not proceed with the project after submission of the 100% Construction Documents until it receives the Owner's written approval.
- B. Design Builder shall provide such other deliverables as set forth in the Contract Documents to successfully complete the Project.

EXHIBIT E
 PHASE 1 FEE AND HOURLY RATES SCHEDULE
 RICHLAND PUBLIC SAFETY 76

To: Ruvim
 City Of Richland



Date: August 16, 2022
 Project City of Richland Fire Station #76

To Validation/GMP

Item	Description	Labor	Material	Equipment	Sub	Total
1	Costs - See attached sheets	25,500.00	-	-	\$447,232.00	472,732.00
	Use Tax on Materials		-	-		-
						-
	Subtotal - Direct Costs	25,500.00	-	-	447,232.00	472,732.00
	FEE	\$1,020.00	\$0.00	\$0.00	\$17,889.28	\$ 18,909.28
	B&O Tax	\$397.80	\$0.00	\$0.00	\$6,976.82	\$7,374.62
	Subtotal	26,917.80	-	-	472,098.10	499,015.90
	WSST 8.7%	2,341.85	-	-	40,600.44	42,942.29
	Subtotal WSST	29,657.45	-	-	519,675.35	541,958.18
	Bond	198.70	-	-	3,481.82	3,680.53
	Total without contingency	29,259.65	-	-	512,698.54	541,958
	Total Contingency	5%				27,097.91
	Allocated Design Contingency	5%				24,117.14
	Allocated Construction Contingency	5%				2,980.77
	Total					569,056.09

EXHIBIT E
 PHASE 1 FEE AND HOURLY RATES SCHEDULE
 RICHLAND PUBLIC SAFETY 76



August 16, 2022
 City of Richland Fire Station #76
To Validation/GMP

<i>description</i>	<i>quantity</i>	<i>unit</i>	<i>labor</i>		<i>material</i>	<i>equipment</i>	<i>subcontracts</i>
			unit cost	cost	cost	cost	cost
Architects West Validation	1	LS		\$0.00			\$130,240.00
Architect West 80% CD GMP	1.0	LS		\$0.00	\$0.00		\$281,792.00
Architects West Remibursables				\$0.00	\$0.00		\$6,000.00
Ground Scan	1.0	LS		\$0.00	\$0.00		\$1,200.00
Preliminary Cost Model	40.0	HRS	\$ 85.00	\$3,400.00	\$0.00		
Budgeting/Meetings	160	HRS	\$ 85.00	\$13,600.00	\$0.00		
Project Management/Meetings	100	HRS	\$ 85.00	\$8,500.00	\$0.00		
2 year term professional liability	1.0	LS		\$0.00	\$0.00		\$28,000.00
				\$0.00	\$0.00		
Total this work sheet		#REF!		\$25,500.00	\$0.00	0.00	\$447,232.00

Total to Summary Sheet \$472,732.00

EXHIBIT E
PHASE 1 FEE AND HOURLY RATES SCHEDULE
RICHLAND PUBLIC SAFETY 76

ARCHITECTS WEST, INC.
HOURLY RATE SCHEDULE
October 22, 2021

Principal I	\$180.00
Senior Architect	\$150.00
Architect I	\$140.00
Architect II	\$120.00
Architect III	\$110.00
Architect Intern I	\$100.00
Architect Intern II	\$95.00
Interior Designer	\$150.00
Senior Landscape Architect I	\$140.00
Senior Landscape Architect II	\$130.00
Landscape Architect I	\$110.00
Landscape Architect II	\$85.00
Intern Landscape Architect	\$75.00
Draftsperson I	\$110.00
Draftsperson II	\$85.00
Draftsperson III	\$70.00
Draftsperson IV	\$60.00
Administrative I	\$100.00
Administrative II	\$65.00
Administrative III	\$45.00
WEB/Graphics/Drafting	\$100.00
DGR GRANT HOURLY RATES SCHEDULE	
Project Manager	\$85.00
Estimator	\$85.00

EXHIBIT F
FORM OF GMP AMENDMENT
City of Richland
Station 76

Unless the parties agree in writing otherwise, the GMP Amendment shall be in a substantially similar form as follows:

1. Pursuant to Section 6.6.1 of the Agreement, this GMP Amendment incorporates the following terms into the Agreement. To the extent any terms set forth in this GMP Amendment conflict with the Agreement, the terms in this GMP Amendment shall govern.
2. The Design-Builder has submitted to Owner the GMP Proposal pursuant to Section 6.6.1.9 of the Agreement.
3. The Owner has reviewed the GMP Proposal, the parties have reconciled the Owner's Comments pursuant to Section 6.6.1.7 of the Agreement, and the Owner has accepted the GMP Proposal as reconciled. The conformed, reconciled GMP Proposal is attached to this GMP Amendment at Exhibit A and is incorporated as if fully set forth herein.
4. The Owner has decided to exercise its option to enter into Phase 2 of the Agreement pursuant to Section 6.6.1.9.b of the Agreement.
5. Consistent with the GMP Proposal, the parties hereby establish the following Commercial Terms:

Guaranteed Maximum Price	\$
Cost of the Work	\$
Design-Builder's Lump Sum Fee	\$
Lump Sum General Conditions Costs	\$
Cost of the Work Contingency (Section 6.4.4.1.a)	\$
Design-Builder's Contingency (Section 6.4.4.1.b)	\$
Substantial Completion Date	
Final Completion Date	

6. Other Commercial Terms are set forth pursuant to the following Exhibits:
 - a. Allowances as set forth in Section 6.4.1 of the Agreement are set forth and described in Exhibit B to the GMP Amendment.
 - b. Not to Exceed Sums as set forth in Section 6.4.2 of the Agreement are set forth and described in Exhibit C to the GMP Amendment.
 - c. Lump Sums as set forth in Section 6.4.3 of the Agreement (with the exception of the Design-Builder's Lump Sum Fee set forth above) are set forth and described in Exhibit D to the GMP Amendment.
 - d. Contingencies as set forth in Section 6.4.4 of the Agreement are set forth above and described in Exhibit E to the GMP Amendment.
 - e. Design-Builder's Lump Sum General Conditions Costs as set forth in Section 6.4.5 of the Agreement are set forth above and described in Exhibit F to the GMP Amendment.
 - f. Unit Prices and Hourly Rates as set forth in Section 6.5.6 of the Agreement are described in Exhibit G to the GMP Amendment.

- g. Liquidated Damages as provided in Section 5.4 – 5.6 of the Agreement are
\$_____ per calendar day.

7. Pursuant to Section 10.2 of the Agreement, Design-Builder shall provide a Payment and Performance Bond pursuant to RCW Chapter 39.08 equal to one hundred percent (100%) of the amount of the Guaranteed Maximum Price set forth above.

In executing this Amendment, Owner and Design-Builder each individually represents that it has the necessary financial resources to fulfill its obligations under this Amendment, and each has the necessary corporate approvals to execute this Amendment, and perform the services described herein.

IN WITNESS WHEREOF, the parties hereto have caused this Amendment to be executed on the date set forth below.

CITY OF RICHLAND

DESIGN-BUILDER

By _____

Name of Design-Builder

Its City Manager _____

By _____

Date: _____

Its _____

Date: _____

DESIGN-BUILDER'S ADDRESS AND
PHONE:

EXHIBIT G
FORM PHASE 1 CHANGE ORDER

Phase 1 Contract Change Order

City of Richland	Design-Builder
------------------	----------------

Project Name: Station 76

Change Order#: _____

COR#	Description of Change	Change in Contract Time	Change in Phase 1 NTE

Original Phase 1 Not to Exceed Amount	\$
Net change by previous authorized Change Orders	\$
Total net <i>[check one]</i> ☐ ☐ Increase / ☐ ☐ Decrease in the Phase 1 NTE by this Change Order	\$
New Phase 1 NTE including this Change Order	\$

The new Contract Time including this Change Order is:

New Phase 1 Completion Date	
New Interim Milestone Dates:	

The changes in the Phase 1 Not to Exceed Amount and Contract Time identified in this Change Order include all costs and time extensions associated with performing the changes set forth herein.

City of Richland By: _____ Signature _____ Printed Name Title: _____ Date: _____	Design-Builder By: _____ Signature _____ Printed Name Title: _____ Date: _____
---	---

EXHIBIT G
FORM PHASE 2 CHANGE ORDER

Phase 2 Contract Change Order

City of Richland	Design-Builder
------------------	----------------

Project Name: Station 76

Change Order#: _____

COR#	Description of Change	Change in Contract Time	Change in GMP

Original Guaranteed Maximum Price	\$
Net change by previous authorized Change Orders	\$
Total net <i>[check one]</i> ☐ Increase / ☐ Decrease in the GMP by this Change Order	\$
New Guaranteed Maximum Price including this Change Order	\$

The new Contract Time including this Change Order is:

New Scheduled Substantial Completion Date	
New Scheduled Interim Milestone Dates:	
New Final Completion Date	

The changes in the GMP and Contract Time identified in this Change Order include all costs and time extensions associated with performing the changes set forth herein.

City of Richland By: _____ Signature _____ Printed Name Title: _____ Date: _____	Design-Builder By: _____ Signature _____ Printed Name Title: _____ Date: _____
--	--



GENERAL CONDITIONS OF PROGRESSIVE DESIGN-BUILD CONTRACT BETWEEN OWNER AND DESIGN-BUILDER

Note: This document has been modified from the DBIA Form. A redlined version will be provided upon request.

Document No. 535

Second Edition, 2010

Article 1

General

1.1 Mutual Obligations

1.1.1 *Owner and Design-Builder* commit at all times to cooperate fully with each other and proceed on the basis of trust and good faith, to permit each party to realize the benefits afforded under the Contract Documents.

1.1.2 Integrated Delivery: The Parties wish to fully embrace the principles of collaboration and integrated delivery in the performance of the Work of this Project. Integrated delivery emphasizes a cooperative approach to problem solving involving all key parties to the Project: the Owner, Design-Builder, Designer and principal Subcontractors (electrical, mechanical and others as the Design-Builder and the Owner jointly agree are appropriate). Toward that end, the Parties agree to employ the following techniques to maximize efficiency and minimize waste:

- .1 Create a culture of open and honest communication throughout the course of the Project;
- .2 Resolve disputes quickly and at the lowest possible level;
- .3 Integrate the design and construction team (including key specialty contractors and trade partners) as early as possible into the design process;
- .4 Utilize lean construction methods efficiently and effectively;
- .5 Establish a collaborative environment where all parties have the opportunity to contribute their best efforts for the benefit of the Project as a whole rather than to the benefit of individual parties; and
- .6 Establish equitable business terms for the parties who are members of the Design-Build Team.

1.2 Basic Definitions

1.2.1 *Agreement* refers to the executed contract between Owner and Design-Builder under DBIA Document No. 530, *Progressive Design-Build Agreement Between Owner and Design-Builder – with Cost Plus Fee and a Guaranteed Maximum Price* (2010 Edition, as revised).

1.2.2 *Initial Basis of Design Documents* are those documents developed as a Phase 1 deliverable that outline the scope of the Project and include the DBIA 530 Revised Form of Progressive Design-Build Agreement Between Owner and Design-Builder Cost plus Fee with a Guaranteed Maximum Price (as revised); the DBIA 535 Form of General Conditions of Progressive Design-Build Contract (as revised), and the other documents required as a Phase 1 deliverable.

1.2.3 *Commercial Terms* are any terms that establish a GMP, Not to Exceed, Lump Sum, Hourly Rate or Contract Time.

1.2.4 *Construction Documents* are the documents, consisting of Drawings and Specifications, to be prepared or assembled by the Design-Builder consistent with the Initial and Final Basis of Design Documents unless a deviation from the Initial or Final Basis of Design Documents (as applicable) is specifically set forth in a Change Order executed by both the Owner and Design-Builder, as part of the design review process contemplated by Section 2.4 of these General Conditions of Contract.

1.2.5 *Contingencies* are the amounts available for Design-Builder's use and are defined in Section 6.4.4 of the Agreement. The Cost of the Work Contingency is defined in Section 6.4.4.1.a. The Design-Builder's Contingency is defined in Section 6.4.4.1.b.

1.2.6 *Contract Time* consists of the dates set forth in Article 5 of the Agreement.

1.2.7 *Day or Days* shall mean calendar days unless otherwise specifically noted in the Contract Documents.

1.2.8 *Design-Build Team* is comprised of the Design-Builder, the Design Consultant, and key Subcontractors identified by the Design-Builder.

1.2.9 *Design Consultant* is a qualified, design professional licensed in the State of Washington who is not an employee of Design-Builder, but is retained by Design-Builder, or employed or retained by anyone under contract with Design-Builder, to furnish design services required under the Contract Documents. A Design Sub-Consultant is a qualified, licensed design professional who is not an employee of the Design Consultant but is retained by the Design Consultant or employed or retained by anyone under contract to Design Consultant, to furnish design services required under the Contract Documents.

1.2.10 *Design Log* is a log of Reliable Design Decisions agreed upon by the parties. The Design Log supplements the Initial and Final Basis of Design Documents, as applicable.

1.2.11 *Design Submission* means any and all documents, shop drawings, electronic information, including computer programs and computer generated materials, data, plans, drawings, sketches, illustrations, specifications, descriptions, models and other information developed, prepared, furnished, delivered or required to be delivered by, or for, the Design-Builder: (1) to the Owner under the Contract Documents; or (2) developed or prepared by or for the Design-Builder specifically to discharge its duties under the Contract Documents.

1.2.12 *Final Basis of Design Documents* are the documents agreed upon in the GMP Amendment by the Owner and Design-Builder at the conclusion of Phase 1 that comprise the performance and other requirements of the Project.

1.2.13 *Final Completion* is the date on which all Work is complete in accordance with the Contract Documents, including but not limited to, any items identified in the punch list prepared under Section 6.6.1 and the submission and receipt of all documents set forth in Section 6.7.2.

1.2.14 *Force Majeure Events* are those events that are beyond the control of both Design-Builder and Owner, including the events of war, floods, labor disputes, earthquakes, epidemics, adverse weather conditions not reasonably anticipated, and other acts of God.

1.2.15 *General Conditions of Contract* refer to this DBIA Document No. 535, *General Conditions of Contract Between Owner and Design-Builder* (2010 Edition, as revised).

1.2.16 *GMP Amendment* means an amendment to the Agreement entered into by the parties at the conclusion of Phase 1 that establishes the Final Basis of Design Documents, the GMP, the Project Schedule and other terms agreed to by the parties.

1.2.17 *Phase 1* is the first phase of the Contract when the Design-Builder engages in consultation with the Owner and other stakeholders to develop the design, budget and schedule to a sufficient extent to allow the Design-Builder to submit a GMP Proposal. At the conclusion of Phase 1, the Design-Builder shall submit the deliverables set forth in the Contract Documents.

1.2.18 *GMP Proposal* means that proposal developed by Design-Builder in accordance with Section 6.6 of the Agreement.

1.2.19 *Hazardous Conditions* are any materials, wastes, substances and chemicals deemed to be hazardous under applicable Legal Requirements, or the handling, storage, remediation, or disposal of which are regulated by applicable Legal Requirements.

1.2.20 *Key Team Members* are those individuals who were identified as part of the Design-Builder's Statement of Qualifications and Proposal submitted pursuant to the procurement of this

Project.

1.2.21 *Legal Requirements* are all applicable federal, state and local laws, codes, ordinances, rules, regulations, orders and decrees of any government or quasi-government entity having jurisdiction over the Project or Site, the practices involved in the Project or Site, or any Work.

1.2.22 *Original GMP* is the GMP set forth in the GMP Amendment.

1.2.23 *Owner Directed Allowances* are the amounts defined in Section 6.4.1.6 of the Agreement.

1.2.24 *Owner Provided Information* is all information provided by the Owner to the Design-Builder during the course of the Project.

1.2.25 *Phase 2* is the second phase of the Project that commences after the parties enter into the GMP Amendment. The scope of Phase 2 shall be set forth in the GMP Amendment.

1.2.26 *Project Schedule* is the schedule provided by the Design-Builder and approved by the Owner pursuant to Section 2.1.3 of the General Conditions and Exhibit C.

1.2.27 *Reliable Design Decision* is a decision, development, or election that refines the Initial Basis of Design Documents or Final Basis of Design Documents, that is approved by the Owner and that is set forth in the Design Log. A Reliable Design Decision cannot change the Initial Basis of Design Documents or Final Basis of Design Documents but shall instead constitute a further development or refinement of the design for the Project with which all subsequent design, development and Construction Documents shall be consistent.

1.2.28 *Site* is the land or premises on which the Project is located.

1.2.29 *Subcontractor* is any person or entity retained by Design-Builder as an independent contractor to perform a portion of the Work and shall include Design Consultants, materialmen, and suppliers.

1.2.30 *Sub-Subcontractor* is any person or entity retained by a Subcontractor as an independent contractor to perform any portion of a Subcontractor's Work and shall include Design Sub-Consultants, materialmen, and suppliers.

1.2.31 *Substantial Completion* or *Substantially Complete* means the date on which the Work, or an Interim Milestone Date, is sufficiently complete in accordance with the Contract Documents so that Owner can occupy and use the Project or a portion thereof for its intended purposes without compromising the building operation (including materially increasing operating expenses) or the user's ability to reasonably use all parts of the Project.

1.2.32 *Trend* is an issue identified in the Trend Log.

1.2.33 *Trend Log* is a log of issues that have been identified by the Design-Builder or the Owner during the design process that may cause any Commercial Term to be modified or cause the Contract Time to be exceeded.

1.2.34 *Work* shall mean the services, design and construction to be completed by the Design-Builder under the terms of this Contract. Work specifically includes the furnishing of all services, labor, materials, equipment, and all incidentals necessary to the successful completion of the services, design and construction, whether expressly required by or reasonably inferable from the Contract Documents, whether they are temporary or permanent, and whether they are incorporated into the finished Work or not. Work also includes all other obligations imposed on the Design-Builder by the Contract. The Work is sometimes generally referred to as the "Project."

Article 2

Design-Builder's Services and Responsibilities

2.1 General Services.

2.1.1 Design-Builder's Representative shall be reasonably available to Owner and shall have the necessary expertise and experience required to supervise the Work. Design-Builder's Representative shall communicate regularly with Owner and shall be vested with the authority to act on behalf of Design-Builder. Design-Builder's Representative may be replaced only with the mutual agreement of Owner and Design-Builder.

2.1.2 Design-Builder shall provide Owner status reports detailing the progress of the Work as set forth in Exhibit C, including but not limited to (i) whether the Work is proceeding according to schedule, (ii) whether discrepancies, conflicts, or ambiguities exist in the Contract Documents that require resolution, (iii) whether health and safety issues exist in connection with the Work; (iv) status of the contingency accounts; and (v) other items that require resolution so as not to jeopardize Design-Builder's ability to complete the Work for the Contract Price and within the Contract Time(s). In addition to the frequency set forth in Exhibit C, status reports shall be submitted with the Design-Builder's draft Payment Applications as a pre-requisite to payment.

2.1.3 Design-Builder shall prepare and submit the schedules and deliverables set forth in Exhibit C, including but not limited to the Project Schedule for the execution of Work for Owner's review and response. The Project Schedule shall indicate the dates for the start and completion of the various stages of Work, including the dates when Owner information and approvals are required to enable Design-Builder to achieve the Contract Time(s). The Project Schedule shall be revised as required by Exhibit C and the conditions and progress of the Work, but such revisions shall not relieve Design-Builder of its obligations to complete the Work within the Contract Time(s), as such dates may be adjusted in accordance with the Contract Documents. Owner's review of, and response to, the Project Schedule and other deliverables provided by Design-Builder shall not be construed as relieving Design-Builder of its complete and exclusive control over the means, methods, sequences and techniques for executing the Work.

2.1.4 The parties will meet within seven (7) days after execution of the Agreement to discuss issues affecting the administration of the Work and to implement any procedures additional to Exhibit C, including those relating to submittals and payment, to facilitate the ability of the parties to perform their obligations under the Contract Documents.

2.1.5 The Design-Build Team, which at a minimum shall consist of the Design-Builder's Representative and a representative from the lead designer and lead constructor, shall meet with the Owner at least on a weekly basis and shall provide to the Owner a written update regarding the status of the Project, including but not limited to the information required in Exhibit C and any issues that may have a material effect on the Project. The Design-Build Team shall issue meeting minutes within three days of meeting.

2.1.6 Design Builder hereby assigns to Owner all its interest in first-tier subcontracts now or hereafter entered into by Design Builder for performance of any part of the Work. The assignment will be effective upon acceptance by Owner in writing and only as to those subcontracts which the Owner designates in writing. The Owner may accept said assignment at any time during the course of the Work and prior to Final Completion in the event of a suspension or termination of Design Builder's rights under the Contract Documents. Such assignment is part of the consideration to the Owner for entering into the Contract with Design Builder and may not be withdrawn prior to Final Completion.

2.2 Design Professional Services.

2.2.1 Design-Builder shall, consistent with applicable state licensing laws, provide through qualified, licensed design professionals employed by Design-Builder, or procured from qualified, independent licensed Design Consultants, the necessary design services, including architectural, engineering and other design professional services, for the preparation of the required drawings, specifications and other design submittals to permit Design-Builder to complete the Work consistent with the Contract Documents. Nothing in the Contract Documents is intended or deemed to create any legal or contractual relationship between Owner and any Design Consultant. Design-Builder shall provide to Owner a list of all Design Consultants and Design Sub-Consultants who will perform material portions of the Work. "Material portions of the Work" shall, at a minimum, include the civil, landscape, architectural, structural, mechanical, electrical, and plumbing design. Design-Builder shall not substitute a listed Design Consultant or Sub-Consultant without obtaining Owner's prior written consent, such consent shall not be unreasonably withheld. The Contract Documents shall not be construed to create a contractual relationship of any kind between Owner and any Design Consultant or Subconsultant of any tier including but not limited to any third-party beneficiary rights. Design-Builder assumes responsibility to Owner for the proper performance of the Work of the Design Consultants and any Sub-Consultant and any acts and omissions in connection with such performance.

2.3 Standard of Performance for Professional Services.

2.3.1 The standard of care for all professional services performed to execute the Work shall be the care and skill ordinarily used by members of the applicable profession practicing under similar conditions at the same time and locality of the Project. The Design-Builder shall also perform the design and construction so that the Work meets or exceeds the performance requirements set forth in the Initial and/or Final Basis of Design Documents.

2.3.2 Design Builder shall perform all activities efficiently and with the requisite expertise, skill and competence to satisfy the requirements of the Contract Documents.

2.4 Design Development Services.

2.4.1 Design-Builder shall provide the Design Submissions set forth in the Contract Documents. Design-Builder and Owner shall, consistent with any applicable provision of the Contract Documents, agree upon any additional interim Design Submissions that Owner may wish to review, which interim Design Submissions may include design criteria, drawings, diagrams and specifications setting forth the Project requirements.

- .1** Interim and final Design Submissions shall be consistent with the Initial and Final Basis of Design Documents, as the Basis of Design Documents may have been changed through the design process set forth in this Section 2.4.1, as well as the Commercial Terms. By submitting a Design Submission, the Design-Builder represents to the Owner that the Work depicted and otherwise, shown, contained, or reflected in the Design Submission may be constructed for the then current Initial or Final Basis of Design Documents (as applicable) and the Commercial Terms. Notwithstanding the above, Design-Builder may propose designs that may alter the Initial or Final Basis of Design Documents, the Commercial Terms; however, Design-Builder must provide notice thereof in accordance with Article 10 and obtain a Change Order before such proposed designs are incorporated into an approved Design Submission or Construction Documents.
- .2** Design-Builder shall provide the Design Submissions set forth in Exhibit C. On or about the time of the scheduled submissions, Design-Builder and Owner shall meet and confer about the submissions, with Design-Builder identifying during such meetings, among other things, the evolution of the design and any changes to the Initial or Final Basis of Design Documents, or, if applicable, previously submitted Design Submissions.
- .3** The Owner shall review and comment on such Design Submissions, providing any comments and/or concerns about such Design Submissions. The Owner shall provide all

comments on the Design Submissions within the time provided by the Schedule. The Design-Builder shall revise the Design Submissions (and any other deliverables) in response to the Owner's comments and incorporate said responses into the next Design Submission.

- .4 If incorporation of the Owner's comments result in a design that is inconsistent with the Initial or Final Basis of Design Documents or otherwise give rise to a change in the Initial or Final Basis of Design Documents or the Commercial Terms, the Design-Builder shall provide notice thereof in accordance with Article 10. Changes to the Initial or Final Basis of Design Documents, including those that are deemed minor changes under Section 9.3.1, shall be processed in accordance with Article 9.
- .5 The Design-Builder shall provide an updated cost model for the Project periodically as required in Exhibit C. The Design-Builder shall also schedule and facilitate a one-day review meeting with the Owner to present and summarize changes in the Design Submission, changes to the scheduled Milestone dates and present an overview of cost model.
- .6 Design Log. A Design Log, including a full listing of Reliable Design Decisions and all changes to the Initial and Final Basis of Design Documents, will be maintained by the Design-Builder and provided to all attendees for review.
 - a. Both parties must agree to include a Reliable Design Decision in the Design Log.
 - b. The Design Log shall be updated after every Design Review Meeting, and in any case, on a weekly basis.
 - c. Once a Reliable Design Decision in the Design Log is approved in writing by the Owner, it shall be binding on the Design-Builder as if set forth in the Interim or Final Basis of Design Documents.
 - d. The Design Log is for the sole purpose of tracking the development of the Design Submissions. If a Reliable Design Decision will cause a change in the Interim or Final Basis of Design Decisions, or any of the Commercial Terms, such changes must be processed pursuant to Articles 9 and 10.
- .7 Trend Log. If either party does not know the extent to which a Design Submission or other potential change will alter a Commercial Term, either party may request in writing to identify a Trend in the Trend Log.
 - a. The request to include a Trend in the Trend Log must include the following information:
 - i. Identification of the portion of the Design Submission for which the costs are uncertain and may cause any Commercial Term to be exceeded;
 - ii. The estimated change in the applicable Commercial Term; and
 - iii. Potential impacts or changes to the Initial or Final Basis of Design Documents as a result of the Trend.
 - b. Both parties must consent in writing to include the Trend in the Trend Log. The Design-Builder will track the Trend on the Trend Log, and the Trend Log shall be updated with the most recent information on a weekly basis.
 - c. The parties will work collaboratively to resolve Trends in the Trend Log as quickly as possible. When a Trend in the Log is resolved and the resolution changes the Initial or Final Basis of Design Documents and/or any Commercial Term, the resolution shall be memorialized in a Change Order. If the resolution does not change the Initial or Final Basis of Design Documents and/or any Commercial Term, it shall be removed from the Trend Log.

2.4.2 Design-Builder shall submit to Owner Construction Documents setting forth in detail drawings and specifications describing the requirements for construction of the Work. The Construction Documents shall be consistent with the latest set of interim Design Submissions, as such submissions may have been modified by the parties and recorded as set forth in the Contract Documents. The parties shall have a design review meeting to discuss, and Owner shall review and approve, the Construction Documents in accordance with the procedures set forth in Section 2.4.1 above and Exhibit C. Design-Builder shall proceed with construction in accordance with the approved Construction Documents and shall submit one set of approved Construction Documents to Owner prior to commencement of construction.

2.4.3 Owner's review and approval of Design Submissions, meeting minutes, the Design Log, the Trend Log, and the Construction Documents is for the purpose of mutually establishing a conformed set of Contract Documents compatible with the requirements of the Work. Neither Owner's review nor approval of any Design Submissions, meeting minutes, the Design Log, the Trend Log and Construction Documents shall be deemed to transfer any design liability from Design-Builder to Owner. Design-Builder shall provide Owner with sufficient time in the Project Schedule to review and approve the Design Submissions, such time period shall not be less than ten business days.

2.4.4 To the extent not prohibited by the Contract Documents or Legal Requirements, Design-Builder may prepare Design Submissions and Construction Documents for a portion of the Work to permit construction to proceed on that portion of the Work prior to completion of the Construction Documents for the entire Work.

2.5 Legal Requirements.

2.5.1 Design-Builder shall perform the Work in accordance with all Legal Requirements and shall provide all notices applicable to the Work as required by the Legal Requirements.

2.5.2 The Commercial Terms shall be adjusted to compensate Design-Builder for the effects of any changes in the Legal Requirements enacted after the date the parties agree upon the Commercial Term. Such effects may include, without limitation, revisions Design-Builder is required to make to the Construction Documents because of changes in Legal Requirements.

2.6 Government Approvals and Permits.

2.6.1 Unless the parties have identified permits in an Owner's Permit List attached as either an exhibit to the Agreement or as part of the Initial or Final Basis of Design Documents, Design-Builder shall obtain and pay for all necessary permits, approvals, licenses, government charges and inspection fees required for the prosecution of the Work by any government or quasi-government entity having jurisdiction over the Project.

2.6.2 Design-Builder shall provide reasonable assistance to Owner in obtaining those permits, approvals and licenses that are Owner's responsibility.

2.7 Design-Builder's Construction Phase Services.

2.7.1 Unless otherwise provided in the Contract Documents to be the responsibility of Owner or a separate contractor, Design-Builder shall provide through itself or Subcontractors the necessary supervision, labor, inspection, testing, start-up, material, equipment, machinery, temporary utilities and other temporary facilities to permit Design-Builder to complete construction of the Project consistent with the Contract Documents.

2.7.2 Design-Builder shall perform all construction activities efficiently and with the requisite expertise, skill and competence to satisfy the requirements of the Contract Documents. Design-Builder shall at all times exercise complete and exclusive control over the means, methods, sequences and techniques of construction.

2.7.3 The Design-Builder shall assemble and install all equipment according to the applicable manufacturer's installation instructions. Work that does not conform to the applicable instructions and/or any resulting errors in assembly or installation shall be corrected by the Design-Builder. If the Owner determines that the Design-Builder has incorrectly assembled, installed and/or damaged any such equipment, the Design-Builder shall, at its own expense, furnish a competent manufacturer's representative to assist, instruct and approve the Design-Builder's corrected work.

2.7.4 If any materials or equipment are stored by Design-Builder, they shall be stored so as to ensure the preservation of their quality and fitness. Materials and equipment shall be placed on platforms or other hard, clean surfaces, and not on the ground, and shall be placed under cover and heated adequately to prevent condensation, oxidation or freezing. Stored materials and equipment shall be located so as to facilitate observation. The Design-Builder shall be responsible for all damage or loss that occurs as a result of its fault or negligence in connection with the care and protection of all materials and equipment until acceptance by the Owner.

2.7.5 Design-Builder is responsible for verifying that any equipment supplied by the Owner is in working order and sufficient for the purposes for which it was intended in the Project. If equipment furnished by Owner is not in working order or is not sufficient for the Project, Design-Builder shall notify Owner immediately, and Owner shall either repair or replace the equipment, at Owner's sole discretion. Design-Builder is responsible for the proper installation of the equipment furnished by Owner.

2.7.6 Design-Builder shall keep the Site reasonably free from debris, trash and construction wastes to permit Design-Builder to perform its construction services efficiently, safely and without interfering with the use of adjacent land areas. Upon Substantial Completion of the Work, or a portion of the Work, Design-Builder shall remove all debris, trash, construction wastes, materials, equipment, machinery and tools arising from the Work or applicable portions thereof to permit Owner to occupy the Project or a portion of the Project for its intended use.

2.8 Subcontracts

2.8.1 Design-Builder shall employ only Subcontractors who are duly licensed and qualified to perform the Work consistent with the Contract Documents. Design-Builder shall, prior to the start of the Work applicable to each Subcontractor, provide Owner with a list of all Subcontractors performing the work to Owner. To the extent that the Design-Builder has not selected a Subcontractor prior to performing the applicable work, Design-Builder shall inform Owner in writing of the scope of work that has not been subcontracted and provide Owner a list of any subsequently added Subcontractors prior to the Subcontractor performing Work on the Project. Owner may reasonably object to Design-Builder's selection of any Subcontractor, provided that the Contract Price and/or Contract Time(s) shall be adjusted to the extent that Owner's decision impacts Design-Builder's cost and/or time of performance. Design-Builder may not substitute listed Subcontractors without Owner's prior consent; such consent shall not be unreasonably withheld. The Contract Documents shall not be construed to create a contractual relationship of any kind between Owner and any Subcontractor of any tier.

2.8.2 Design-Builder shall submit a Subcontracting Procurement Procedure during Phase 1 as required in Exhibit C, subject to the approval of the Owner. After approval by the Owner, Design-Builder may only modify the Subcontracting Plan upon obtaining written approval from the Owner. Design-Builder may not award any Subcontract on the basis of a lump sum price without obtaining prior written permission from the Owner, such permission shall not be unreasonably withheld.

2.8.3 All subcontracted Work associated with the performance of the construction shall be awarded by Design-Builder in accordance with a Subcontractor Procurement Procedure established during Phase 1. Design-Builder shall identify the scope of subcontracted Work ("Subcontract Package") and shall identify qualified Subcontractors for each Subcontract Package. Unless approved in writing by the Owner, the Subcontractor Procurement Procedure shall comply with the following:

- .1 All subcontracted work associated with performance of Construction Packages shall be award by the Design-Builder to Subcontractors in accordance with a best value selection process established between the parties. Unless otherwise agreed in writing by the parties, the best value selection process shall contain mutually acceptable evaluation criteria for the proposal and selection process that is clear and consistent and includes both qualifications and price.
- .2 The Design-Builder may only modify the Subcontractor Procurement Procedure after obtaining written approval from the Owner. Any such modification shall be at the sole risk and responsibility of the Design-Builder and without any modification to any applicable Commercial Terms.
- .3 The Design-Builder's selection of Subcontractors shall comply with the following requirements, unless modified by the Subcontractor Procurement Procedure approved in writing by the Owner:
 - a. The Design-Builder shall identify the scope of the Work to be subcontracted and shall identify at least three pre-qualified Subcontractors for such scope for written approval by the Owner.
 - b. After approval of the pre-qualified Subcontractors by the Owner, the Design-Builder shall select from the three pre-approved Subcontractors for the identified scope of the Work, unless it obtains prior written approval from the Owner to select a different Subcontractor.
 - c. If the Design-Builder cannot reasonably identify three pre-qualified Subcontractors, it shall inform the Owner in writing as to the reason for the inability to identify the Subcontractors and shall not proceed with the selection of a Subcontractor without the prior written approval of the Owner.
 - d. The Design-Builder shall select Subcontractors on the basis of the best value to the Project. If in the Design-Builder's determination, the Subcontractor who proposes the best value did not propose the lowest cost, the Design-Builder shall i) provide a written justification for the selection of the Subcontractor, and ii) obtain the Owner's written approval prior to Design-Builder entering into the Subcontract.

2.8.4 Design-Builder must obtain prior, written approval from the Owner for the Design-Builder or the lead Constructor (if the lead Constructor is not also the Design-Builder) to self-perform construction Work.

1. For each scope of Work for which Design-Builder proposes self-performance, Design-Builder must submit to the Owner a proposal that contains the following minimum information as well as any other information reasonably requested by the Owner:
 - a. A detailed description of the scope of Work; and
 - b. A detailed explanation of the effect of the self-performed construction Work on the Project, including but not limited to cost savings, benefits to the Project, and risks to the Project.
2. Design-Builder will provide the Owner with an estimate of the costs for all self-performed construction Work on an open book basis. In calculating the costs for self-performed construction Work, the following shall apply:
 - a. The costs for self-performed construction Work shall not include costs that are also included in the Lump Sum General Conditions Costs.
 - b. Notwithstanding the above, Design-Builder may include in the costs for self-performed construction Work additional general conditions costs that are directly associated with the self-performed construction Work that Design-Builder would not have incurred but for the self-performed construction Work.

2.8.5 Design-Builder assumes responsibility to Owner for the proper performance of the Work of Subcontractors and any acts and omissions in connection with such performance. Nothing in the

Contract Documents is intended or deemed to create any legal or contractual relationship between Owner and any Subcontractor or Sub-Subcontractor, including but not limited to any third-party beneficiary rights.

2.8.6 Design-Builder shall coordinate the activities of all Subcontractors. If Owner performs other work on the Project or at the Site with separate contractors under Owner's control, Design-Builder agrees to reasonably cooperate and coordinate its activities with those of such separate contractors so that the Project can be completed in an orderly and coordinated manner without unreasonable disruption.

2.9 Design-Builder's Responsibility for Project Safety.

2.9.1 Design-Builder recognizes the importance of performing the Work in a safe manner so as to prevent damage, injury or loss to (i) all individuals at the Site, whether working or visiting, (ii) the Work, including materials and equipment incorporated into the Work or stored on-Site or off-Site, and (iii) all other property at the Site or adjacent thereto. Design-Builder assumes responsibility for implementing and monitoring all safety precautions and programs related to the performance of the Work. Design-Builder shall, prior to commencing construction, designate a Safety Representative with the necessary qualifications and experience to supervise the implementation and monitoring of all safety precautions and programs related to the Work. Unless otherwise required by the Contract Documents, Design-Builder's Safety Representative shall be an individual stationed at the Site who may have responsibilities on the Project in addition to safety. The Safety Representative shall make routine daily inspections of the Site and shall hold weekly safety meetings with Design-Builder's personnel, Subcontractors and others as applicable.

2.9.2 Design-Builder and Subcontractors shall comply with all Legal Requirements relating to safety, as well as any Owner-specific safety requirements set forth in the Contract Documents, provided that such Owner-specific requirements do not violate any applicable Legal Requirement. Design-Builder will immediately report in writing any safety-related injury, loss, damage or accident arising from the Work to Owner's Representative and, to the extent mandated by Legal Requirements, to all government or quasi-government authorities having jurisdiction over safety-related matters involving the Project or the Work.

2.9.3 Design-Builder's responsibility for safety under this Section 2.9 is not intended in any way to relieve Subcontractors and Sub-Subcontractors of their own contractual and legal obligations and responsibility for (i) complying with all Legal Requirements, including those related to health and safety matters, and (ii) taking all necessary measures to implement and monitor all safety precautions and programs to guard against injuries, losses, damages or accidents resulting from their performance of the Work.

2.10 Design-Builder's Warranty.

2.10.1 Design-Builder warrants to Owner that the construction, including all materials and equipment furnished as part of the construction, shall be new unless otherwise specified in the Contract Documents, of good quality, in conformance with the Contract Documents and free of defects in materials and workmanship. Design-Builder's warranty obligation excludes defects caused by abuse, alterations, or failure to maintain the Work in a commercially reasonable manner. Nothing in this warranty is intended to limit any manufacturer's warranty which provides Owner with greater warranty rights than set forth in this Section 2.10 or the Contract Documents. Design-Builder will provide Owner with all manufacturers' warranties upon Substantial Completion.

2.11 Correction of Defective Work.

2.11.1 Design-Builder agrees to correct any Work that is found to not be in conformance with the Contract Documents, including that part of the Work subject to Section 2.10 hereof, within a period of one year from the date of Substantial Completion of the Work or any portion of the Work, or within such longer period to the extent required by any specific warranty included in the Contract

Documents.

2.11.2 Design-Builder shall, within seven (7) days of receipt of written notice from Owner that the Work is not in conformance with the Contract Documents, take meaningful steps to commence correction of such nonconforming Work, including the correction, removal or replacement of the nonconforming Work and any damage caused to other parts of the Work affected by the nonconforming Work. If Design-Builder fails to commence the necessary steps within such seven (7) day period, Owner, in addition to any other remedies provided under the Contract Documents, may provide Design-Builder with written notice that Owner will commence correction of such nonconforming Work with its own forces. If Owner does perform such corrective Work, Design-Builder shall be responsible for all reasonable costs incurred by Owner in performing such correction. If the nonconforming Work creates an emergency requiring an immediate response, the seven (7) day period identified herein shall be deemed inapplicable.

2.11.3 The one-year period referenced in Section 2.11.1 above applies only to Design-Builder's obligation to correct nonconforming Work and is not intended to constitute a period of limitations for any other rights or remedies Owner may have regarding Design-Builder's other obligations under the Contract Documents.

2.12 Contract Phases

2.12.1 Phase 1. Phase 1 shall commence upon Notice to Proceed from the Owner and shall end on the Phase 1 Completion Date as set forth in DBIA Document 530, Section 5.2. The services provided by the Design-Builder during Phase 1 shall be established in Exhibit C.

.1 In Phase 1, the Design-Builder shall carefully and thoroughly examine the information set forth in Exhibit C, the existing site conditions, and any other information provided by the Owner with respect to the Project. Such information includes, but is not limited to, as-built drawings of the existing facilities; necessary testing of existing facilities; geotechnical and other site conditions; and legal, permitting and regulatory requirements and restrictions

.2 The Design-Builder may not rely on information provided by the Owner and must validate all information provided by the Owner during Phase 1 as set forth in Exhibit C. Notwithstanding the above, the parties recognize that the Design-Builder relied on the information set forth in the Request for Proposals to establish the Phase 1 NTE, and if the actual conditions differ materially from the information set forth in the RFP, then the Design-Builder shall provide Notice thereof and may be entitled to an equitable adjustment in the Phase 1 NTE, provided that the Design-Builder meets the requirements in Section 4.2.1 of the General Conditions.

.3 The Design-Builder shall provide the submissions set forth in Exhibit C. In addition, the Design-Builder and the Owner shall, consistent with any applicable provision of the Contract Documents, agree upon the quantity and level of development for Design Submissions that the Owner may wish to review, which Design Submissions may include Milestone Design Submissions, design criteria, drawings, diagrams and specifications setting forth the Project requirements. Design Submissions shall be consistent with the GMP and the information set forth in the RFP, as they may develop through the design process set forth in the Contract Documents.

.4 Design-Builder must verify the information set forth in Exhibit C by the conclusion of Phase 1. The extent to which such verification will occur in Phase 1 shall be set forth in Exhibit C. If the Design-Builder discovers or should have discovered with reasonable diligence material differences from the actual conditions and the information provided in Exhibit C, Design-Builder shall, at the conclusion of Phase 1, provide Owner with written notice of any such material differences in the GMP Proposal. A "Material Difference" is defined as one that would either a) impact the Initial Basis of Design Documents or Design-

Builder's Fee Percentage or b) be considered a Differing Site Condition pursuant to Section 4.2.1 of the General Conditions. Design-Builder shall not be entitled to a Change Order for Differing Site Conditions pursuant to Section 4.2.1(i) of the General Conditions if the Differing Site Condition could have been discovered, with reasonable diligence, during Phase 1.

.5 At the conclusion of Phase 1, the Design-Builder will submit a GMP Proposal pursuant to Exhibit C and Section 6.6.2 of the Agreement. The parties will negotiate the Final terms of the GMP Proposal, and if the parties agree, they will enter into the GMP Amendment. Upon execution of the GMP Amendment, the Design-Builder shall provide a payment and performance bond for the amount of the GMP.

.6 If the Design-Builder performs Work after the submission of the GMP Proposal but before the parties enter into the GMP Amendment pursuant to Section 6.6.2 of the Agreement, the Design-Builder shall be entitled to be paid in the same manner as it was paid during Phase 1; however, in no case shall the Design-Builder be entitled to be paid in excess of the Phase 1 NTE.

2.12.2 Phase 2. Phase 2 is the final phase of the Contract where the Design-Builder: (i) completes the design services and develops Construction Documents for the Project, (ii) performs the construction, start-up, testing and commissioning and closeout of the Project, (iii) undertakes any necessary warranty services for the Project, and (iv) performs other services as set forth in Exhibit C and the GMP Amendment.

Article 3

Owner's Services and Responsibilities

3.1 Duty to Cooperate.

3.1.1 Owner shall, throughout the performance of the Work, cooperate with Design-Builder and perform its responsibilities, obligations and services in a timely manner to facilitate Design-Builder's timely and efficient performance of the Work and so as not to delay or interfere with Design-Builder's performance of its obligations under the Contract Documents.

3.1.2 Owner shall provide timely reviews and approvals of Design Submissions and Construction Documents consistent with the turnaround times set forth in Design-Builder's schedule.

3.1.3 Owner shall give Design-Builder timely notice of any Work that Owner notices to be defective or not in compliance with the Contract Documents.

3.2 Furnishing of Services and Information.

3.2.1 The Initial Basis of Design Documents sets forth the information provided by the Owner.

3.2.2 Owner is responsible for securing and executing all necessary agreements with adjacent land or property owners that are necessary to enable Design-Builder to perform the Work. Owner is further responsible for all costs, including attorneys' fees, incurred in securing these necessary agreements.

3.3 Financial Information.

3.3.1 If Design-Builder has reasonable belief that Owner will not have sufficient funds to

complete the Project, at Design-Builder's written request, Owner shall promptly furnish reasonable evidence satisfactory to Design-Builder that Owner has adequate funds available and committed to fulfill all of Owner's contractual obligations under the Contract Documents. If Owner fails to furnish such financial information in a timely manner, Design-Builder may stop Work under Section 11.3 hereof or exercise any other right permitted under the Contract Documents.

3.3.2 Design-Builder shall cooperate with the reasonable requirements of Owner's lenders or other financial sources. Notwithstanding the preceding sentence, after execution of the Agreement Design-Builder shall have no obligation to execute for Owner or Owner's lenders or other financial sources any documents or agreements that require Design-Builder to assume obligations or responsibilities greater than those existing obligations Design-Builder has under the Contract Documents.

3.4 Owner's Representative.

3.4.1 Owner's Representative shall be responsible for providing Owner-supplied information and approvals in a timely manner to permit Design-Builder to fulfill its obligations under the Contract Documents. Owner's Representative shall also provide Design-Builder with prompt notice if it observes any failure on the part of Design-Builder to fulfill its contractual obligations, including any errors, omissions or defects in the performance of the Work. Owner's Representative shall communicate regularly with Design-Builder and shall be vested with the authority to act on behalf of Owner.

3.5 Government Approvals and Permits.

3.5.1 Owner shall obtain and pay for all necessary permits, approvals, licenses, government charges and inspection fees set forth in Section 2.6.1.

3.5.2 Owner shall provide reasonable assistance to Design-Builder in obtaining those permits, approvals and licenses that are Design-Builder's responsibility.

3.6 Owner's Separate Contractors.

3.6.1 Owner is responsible for all work performed on the Project or at the Site by separate contractors under Owner's control. Owner shall contractually require its separate contractors to cooperate with, and coordinate their activities so as not to interfere with, Design-Builder in order to enable Design-Builder to timely complete the Work consistent with the Contract Documents.

Article 4

Hazardous Conditions and Differing Site Conditions

4.1 Hazardous Conditions.

4.1.1 Unless otherwise expressly provided in the Contract Documents to be part of the Work, Design-Builder is not responsible for any Hazardous Conditions encountered at the Site that could have been reasonably discovered during Phase 1. Unless working with Hazardous Condition is part of the scope of the Work, upon encountering any Hazardous Conditions, Design-Builder will stop Work immediately in the affected area and duly notify Owner and, if required by Legal Requirements, all government or quasi-government entities with jurisdiction over the Project or Site.

4.1.2 Upon receiving notice of the presence of suspected Hazardous Conditions that are not set forth as part of the Work or that could not have been reasonably discovered during Phase 1, Owner

shall take the necessary measures required to ensure that the Hazardous Conditions are remediated or rendered harmless. Such necessary measures shall include Owner retaining qualified independent experts to (i) ascertain whether Hazardous Conditions have actually been encountered, and, if they have been encountered, (ii) prescribe the remedial measures that Owner must take either to remove the Hazardous Conditions or render the Hazardous Conditions harmless.

4.1.3 Design-Builder shall be obligated to resume Work at the affected area of the Project only after Owner's expert provides it with written certification that (i) the Hazardous Conditions have been removed or rendered harmless and (ii) all necessary approvals have been obtained from all government and quasi-government entities having jurisdiction over the Project or Site.

4.1.4 Unless expressly provided in the Contract Documents to be part of the Work, Design-Builder will be entitled, in accordance with these General Conditions of Contract, to an adjustment in its Contract Price and/or Contract Time(s) to the extent Design-Builder's cost and/or time of performance have been adversely impacted by the presence of Hazardous Conditions.

4.1.5 To the fullest extent permitted by law, Owner shall indemnify, defend and hold harmless Design-Builder, Design Consultants, Subcontractors, anyone employed directly or indirectly by any of them, and their officers, directors, employees and agents, from and against any and all claims, losses, damages, liabilities and expenses, including reasonable attorneys' fees and expenses, arising out of or resulting from the presence, removal or remediation of Hazardous Conditions at the Site pursuant to this Section.

4.1.6 Notwithstanding the preceding provisions of this Section 4.1, Owner is not responsible for Hazardous Conditions introduced to the Site by Design-Builder, Subcontractors or anyone for whose acts they may be liable. To the fullest extent permitted by law, Design-Builder shall indemnify, defend and hold harmless Owner and Owner's officers, directors, employees and agents from and against all claims, losses, damages, liabilities and expenses, including attorneys' fees and expenses, arising out of or resulting from those Hazardous Conditions introduced to the Site by Design-Builder, Subcontractors or anyone for whose acts they may be liable.

4.1.7 With respect to Hazardous Conditions that are part of the Work, Design-Builder agrees to comply with all applicable regulatory authorities, including but not limited to any statute, regulation, or regulatory agency regarding such Hazardous Conditions. Design-Builder agrees to work cooperatively with Owner and regulatory agencies with jurisdiction over the Project to properly handle, dispose of, and/or remediate any Hazardous Conditions.

4.2 Differing Site Conditions.

4.2.1 Concealed or latent physical conditions or subsurface conditions at the Site that (i) materially differ from the conditions indicated in the Contract Documents or (ii) are of an unusual nature, differing materially from the conditions ordinarily encountered and generally recognized as inherent in the Work are collectively referred to herein as "Differing Site Conditions." If Design-Builder encounters a Differing Site Condition, Design-Builder will be entitled to an adjustment in the applicable Commercial Term to the extent Design-Builder's cost and/or time of performance are adversely impacted by the Differing Site Condition. Notwithstanding the above, provided the parties sign the GMP Amendment, Design-Builder shall not be entitled to a Change Order for Differing Site Conditions pursuant to Section 4.2.1(i) of the General Conditions if the Differing Site Condition could have been discovered, with reasonable diligence, during Phase 1.

4.2.2 Upon encountering a Differing Site Condition, Design-Builder shall provide prompt written notice to Owner of such condition, which notice shall not be later than fourteen (14) days after such condition has been encountered. Design-Builder shall, to the extent reasonably possible, provide such notice before the Differing Site Condition has been substantially disturbed or altered. Design-Builder and Owner shall work together cooperatively to determine the appropriate course of action regarding any Differing Site Condition.

4.3 Archaeological Resources

4.3.1 In the event the Design-Builder or any of its Subcontractors inadvertently discover archaeological resources at any time during the project, Design-Builder shall immediately notify the Owner and suspend all excavation activities at the site.

4.3.2 "Archaeological Resource" shall mean any material remains of human life or activities which are of interest. This shall include all sites, objects, structures, artifacts, implements, and locations of prehistoric or archaeological interest, whether previously recorded or still unrecognized, including, but not limited to objects pertaining to prehistoric and historic American Indian or aboriginal burials, campsites, dwellings, and their habitation sites, including rock shelters and caves, their artifacts and implements of culture such as projectile points, arrowheads, skeletal remains, grave goods, basketry, pestles, mauls and grinding stones, knives scrapers, rock carvings and paintings, and other implements and artifacts of any material or form.

4.3.3 The disturbance of any cairn or Native Indian grave is prohibited by the Indian Graves and Records Act (RCW 27.44).

Article 5

Insurance and Bonds

5.1 Design-Builder's Insurance Requirements.

5.1.1 Design-Builder is responsible for procuring and maintaining the insurance for the coverage amounts all as set forth in the Insurance Exhibit to the Agreement. Coverage shall be secured from insurance companies authorized to do business in the state in which the Project is located, and with a minimum rating set forth in the Agreement.

5.1.2 Design-Builder's insurance shall specifically delete any design-build or similar exclusions that could compromise coverages because of the design-build delivery of the Project.

5.1.3 Upon signing and returning the signed Agreement to the Owner, and in any event, prior to performing any Work under this Agreement, Design-Builder shall provide Owner with certificates evidencing that (i) all insurance obligations required by the Contract Documents are in full force and in effect and will remain in effect for the duration required by the Contract Documents and (ii) no insurance coverage will be canceled, renewal refused, or materially changed unless at least thirty (30) days prior written notice is given to Owner. If any of the foregoing insurance coverages are required to remain in force after final payment are reasonably available, an additional certificate evidencing continuation of such coverage shall be submitted with the Final Application for Payment. If any information concerning reduction of coverage is not furnished by the insurer, it shall be furnished by the Design-Builder with reasonable promptness according to the Design-Builder's information and belief.

5.2 Owner's Liability Insurance.

5.2.1 Owner shall procure and maintain from insurance companies authorized to do business in the state in which the Project is located such liability insurance as set forth in the Insurance Exhibit to the Agreement to protect Owner from claims which may arise from the performance of Owner's obligations under the Contract Documents or Owner's conduct during the course of the Project.

5.3 Builder's Risk Insurance.

5.3.1 Design-Builder shall procure and maintain from insurance companies authorized to do business in the state in which the Project is located builder's risk insurance on an "all risk" or equivalent policy form upon the entire Project to the full insurable value of the Project, including professional fees, overtime premiums and all other expenses incurred to replace or repair the insured property. The property insurance obtained by Design-Builder shall be the broadest coverage commercially available and shall include as additional insureds the interests of Owner, Design-Builder, Design Consultants and Subcontractors of any tier. Such insurance shall be on a special perils form and shall include but not be limited to the perils of fire and extended coverage, theft, vandalism, malicious mischief, collapse, flood, earthquake, debris removal and other perils or causes of loss as called for in the Contract Documents. A copy of the builder's risk policy shall be made available to the Owner for its approval at Owner's written request, such approval shall not be unreasonably withheld. The builder's risk insurance shall include physical loss or damage to the Work, including temporary buildings, debris removal, and damage to materials and equipment in transit, at the Site or at another location as may be indicated in Design-Builder's Application for Payment and approved by Owner. The Design-Builder is responsible for the payment of any deductibles under the insurance required by this Section 5.3.1 to the extent that the Design-Builder, or any subcontractor or subconsultant of any tier is responsible for the claim against the builder's risk insurance.

5.3.2 Not Used.

5.3.3 Not Used.

5.3.4 Any loss covered under the builder's risk insurance shall be adjusted with Owner and Design-Builder and made payable to both of them as trustees for the insureds as their interests may appear, subject to any applicable mortgage clause. All insurance proceeds received as a result of any loss will be placed in a separate account and distributed in accordance with such agreement as the interested parties may reach. Any disagreement concerning the distribution of any proceeds will be resolved in accordance with Article 10 hereof.

5.3.5 Owner and Design-Builder waive against each other and Owner's separate contractors, Design Consultants, Subcontractors, agents and employees of each and all of them, all damages covered by property insurance provided herein, except such rights as they may have to the proceeds of such insurance. Design-Builder and Owner shall, where appropriate, require similar waivers of subrogation from Owner's separate contractors, Design Consultants and Subcontractors and shall require each of them to include similar waivers in their contracts. These waivers of subrogation shall not contain any restriction or limitation that will impair the full and complete extent of its applicability to any person or entity unless agreed to in writing prior to the execution of this Agreement. Such waiver shall be effective whether the person or entity would otherwise have a duty of indemnification, do not pay the insurance premiums, and whether or not the person or entity had an insurable interest in the property damaged.

Article 6

Payment

6.1 Schedule of Values.

6.1.1 Design-Builder shall submit for Owner's review and approval a preliminary schedule of values for all of the Work as set forth in Exhibit C. The Schedule of Values will (i) subdivide the Work into its respective parts, (ii) include values for all items comprising the Work and (iii) serve as the basis for monthly progress payments made to Design-Builder throughout the Work. Design-Builder will furnish, as part of the Schedule of Values, adequate and reliable cost justification and documentation so as to provide both Owner and Design Builder a transparent understanding of the cost data estimates and bids that comprise the initial baseline Schedule of Values as well as any

updates thereto. Design-Builder will provide a final Schedule of Values with the GMP Proposal.

6.1.2 The Owner will timely review and approve the Schedule of Values so as not to delay the submission of the Design-Builder's first application for payment. The Owner and Design-Builder shall timely resolve any differences so as not to delay the Design-Builder's submission of its first application for payment.

6.2 Monthly Progress Payments.

6.2.1 On or before the date established in the Agreement, Design-Builder shall submit for Owner's review and approval its Application for Payment requesting payment for all Work performed as of the date of the Application for Payment. The Application for Payment shall be accompanied by all supporting documentation required by the Contract Documents and/or established at the meeting required by Section 2.1.4 hereof.

6.2.2 If authorized by Owner, the Application for Payment may include request for payment for equipment and/or material delivered to the Site and suitably stored, or for completed preparatory work. Payment may similarly be requested for material stored off Site, provided Design-Builder complies with or furnishes satisfactory evidence of the following:

- .1 The material will be placed in a warehouse that is structurally sound, dry, lighted and suitable for the materials to be stored;
- .2 The warehouse is located within a 10-mile radius of the Project. Other locations may be utilized, if approved in writing, by Owner;
- .3 Only materials for the Project are stored within the warehouse (or a secure portion of a warehouse set aside for the Project);
- .4 Design-Builder furnishes Owner a certificate of insurance extending Design-Builder's insurance coverage for damage, fire, and theft to cover the full value of all materials stored, or in transit;
- .5 The warehouse (or secure portion thereof) is continuously under lock and key, and only Design-Builder's authorized personnel shall have access;
- .6 Owner shall at all times have the right of access in the company of Design-Builder;
- .7 Design-Builder and its surety assume total responsibility for the stored materials;
- .8 Design-Builder furnishes to Owner certified lists of materials stored, bills of lading, invoices, and other information as may be required, and shall also furnish notice to Owner when materials are moved from storage to the Site; and
- .9 Upon payment, Owner will receive the equipment and materials free and clear of all liens and encumbrances.

6.2.3 All discounts offered by Subcontractor, Sub-Subcontractors and suppliers to Design-Builder for early payment shall accrue one hundred percent to Design-Builder to the extent Design-Builder advances payment. Unless Owner advances payment to Design-Builder specifically to receive the discount, Design-Builder may include in its Application for Payment the full undiscounted cost of the item for which payment is sought.

6.2.4 The Application for Payment shall constitute Design-Builder's representation that the Work described herein has been performed consistent with the Contract Documents, has progressed to the point indicated in the Application for Payment, and that title to all Work will pass to Owner free and clear of all claims, liens, encumbrances, and security interests upon the incorporation of the Work into the Project, or upon Design-Builder's receipt of payment, whichever occurs earlier.

6.3 Withholding of Payments.

6.3.1 On or before the date established in the Agreement, Owner shall pay Design-Builder all amounts properly due. If Owner determines that Design-Builder is not entitled to all or part of an Application for Payment as a result of Design-Builder's failure to meet its obligations hereunder, it will notify Design-Builder in writing at least five (5) days prior to the date payment is due. The notice shall indicate the specific amounts Owner intends to withhold, the reasons and contractual basis for the withholding, and the specific measures Design-Builder must take to rectify Owner's concerns. Design-Builder and Owner will attempt to resolve Owner's concerns prior to the date payment is due. If the parties cannot resolve such concerns, Design-Builder may pursue its rights under the Contract Documents, including those under Article 10 hereof.

6.3.2 Notwithstanding anything to the contrary in the Contract Documents, Owner shall pay Design-Builder all undisputed amounts in an Application for Payment within the times required by the Agreement.

6.4 Right to Stop Work and Interest.

6.4.1 If Owner fails to pay timely Design-Builder any undisputed amount that becomes due, Design-Builder, in addition to all other remedies provided in the Contract Documents, may stop Work pursuant to Section 11.3 hereof, provided Design-Builder gives Owner five business days' written notice of its intent to stop work and an opportunity to cure the late payment. All payments due and unpaid shall bear interest at the rate set forth in the Agreement.

6.5 Design-Builder's Payment Obligations.

6.5.1 Design-Builder will pay Design Consultants and Subcontractors, in accordance with its contractual obligations to such parties, all the amounts Design-Builder has received from Owner on account of their work. Design-Builder will impose similar requirements on Design Consultants and Subcontractors to pay those parties with whom they have contracted. Design-Builder will indemnify and defend Owner against any claims for payment and mechanic's liens as set forth in Section 7.3 hereof.

6.6 Substantial Completion.

6.6.1 Design-Builder shall notify Owner when it believes the Work, or to the extent permitted in the Contract Documents, a portion of the Work representing an Interim Milestone, has achieved Substantial Completion. Within five (5) days of Owner's receipt of Design-Builder's notice, Owner and Design-Builder will jointly inspect such Work to verify that Design-Builder has achieved Substantial Completion in accordance with the requirements of the Contract Documents. If Design-Builder has achieved Substantial Completion, Owner shall prepare and issue a Certificate of Substantial Completion that will set forth (i) the date of Substantial Completion of the Work or portion thereof, (ii) the remaining items of Work that have to be completed before final payment, (iii) provisions (to the extent not already provided in the Contract Documents) establishing Owner's and Design-Builder's responsibility for the Project's security, maintenance, utilities and insurance pending final payment, and (iv) an acknowledgment that warranties commence to run on the date of Substantial Completion, except as may otherwise be noted in the Certificate of Substantial Completion.

6.6.2 Not Used

6.6.3 Owner, at its option, may use a portion of the Work which has been determined to be Substantially Complete, provided, however, that (i) a Certificate of Substantial Completion has been issued for the portion of Work addressing the items set forth in Section 6.6.1 above, (ii) Design-Builder and Owner have obtained the consent of their sureties and insurers, and to the extent applicable, the appropriate government authorities having jurisdiction over the Project, and (iii) Owner and Design-Builder agree that Owner's use or occupancy will not interfere with Design-Builder's completion of the remaining Work.

6.7 Final Payment.

6.7.1 After receipt of a Final Application for Payment from Design-Builder, Owner shall make final payment by the time required in the Agreement, provided that Design-Builder has achieved Final Completion.

6.7.2 At the time of submission of its Final Application for Payment, Design-Builder shall provide the following information:

- .1** An affidavit that there are no claims, obligations or liens outstanding or unsatisfied for labor, services, material, equipment, taxes or other items performed, furnished or incurred for or in connection with the Work which will in any way affect Owner's interests;
- .2** A general release executed by Design-Builder waiving, upon receipt of final payment by Design-Builder, all claims, except those claims previously made in writing to Owner and remaining unsettled at the time of final payment;
- .3** Consent of Design-Builder's surety, if any, to final payment;
- .4** All operating manuals, warranties, record drawings, and other deliverables required by the Contract Documents;
- .5** "As Built" drawings, with any and all implemented changes that constitute a final record set of the Project; and
- .6** Certificates of insurance confirming that required coverages will remain in effect consistent with the requirements of the Contract Documents.

6.7.3 Upon making final payment, Owner waives all claims against Design-Builder except claims relating to (i) Design-Builder's failure to satisfy its payment obligations, if such failure affects Owner's interests, (ii) Design-Builder's failure to complete the Work consistent with the Contract Documents, including defects appearing after Substantial Completion and (iii) the terms of any special warranties required by the Contract Documents.

6.7.4 Deficiencies in the Work discovered after Substantial Completion, whether or not such deficiencies would have been included on the Punch List if discovered earlier, shall be deemed warranty Work. Such deficiencies shall be corrected by Design-Builder under Sections 2.9 and 2.10 herein, and shall not be a reason to withhold final payment from Design-Builder, provided, however, that Owner shall be entitled to withhold from the Final Payment the reasonable value of completion of such deficient work until such work is completed.

6.7.5 Owner shall release the Contract Retainage pursuant to RCW 60.28.011.

Article 7

Indemnification

7.1 Patent and Copyright Infringement.

7.1.1 Design-Builder shall defend any action or proceeding brought against Owner based on any claim that the Work, or any part thereof, or the operation or use of the Work or any part thereof, constitutes infringement of any United States patent or copyright, now or hereafter issued. Owner shall give prompt written notice to Design-Builder of any such action or proceeding and will reasonably provide authority, information and assistance in the defense of same. Design-Builder shall indemnify and hold harmless Owner from and against all damages and costs, including but

not limited to attorneys' fees and expenses awarded against Owner or Design-Builder in any such action or proceeding. Design-Builder agrees to keep Owner informed of all developments in the defense of such actions.

7.1.2 If Owner is enjoined from the operation or use of the Work, or any part thereof, as the result of any patent or copyright suit, claim, or proceeding, Design-Builder shall at its sole expense take reasonable steps to procure the right to operate or use the Work. If Design-Builder cannot so procure such right within a reasonable time, Design-Builder shall promptly, at Design-Builder's option and at Design-Builder's expense, (i) modify the Work so as to avoid infringement of any such patent or copyright or (ii) replace said Work with Work that does not infringe or violate any such patent or copyright.

7.1.3 Sections 7.1.1 and 7.1.2 above shall not be applicable to any suit, claim or proceeding based on infringement or violation of a patent or copyright (i) relating solely to a particular process or product of a particular manufacturer specified by Owner and not offered or recommended by Design-Builder to Owner or (ii) arising from modifications to the Work by Owner or its agents after acceptance of the Work. If the suit, claim or proceeding is based upon events set forth in the preceding sentence, Owner shall defend, indemnify and hold harmless Design-Builder to the same extent Design-Builder is obligated to defend, indemnify and hold harmless Owner in Section 7.1.1 above.

7.1.4 The obligations set forth in this Section 7.1 shall constitute the sole agreement between the parties relating to liability for infringement or violation of any patent or copyright.

7.2 Not Used.

7.3 Payment Claim Indemnification.

7.3.1 Provided that Owner is not in breach of its contractual obligation to make payments to Design-Builder for the Work, Design-Builder shall indemnify, defend and hold harmless Owner from any claims or mechanic's liens brought against Owner or against the Project as a result of the failure of Design-Builder, or those for whose acts it is responsible, to pay for any services, materials, labor, equipment, taxes or other items or obligations furnished or incurred for or in connection with the Work. Within three (3) days of receiving written notice from Owner that such a claim or mechanic's lien has been filed, Design-Builder shall commence to take the steps necessary to discharge said claim or lien, including, if necessary, the furnishing of a mechanic's lien bond. If Design-Builder fails to do so, Owner will have the right to discharge the claim or lien and hold Design-Builder liable for costs and expenses incurred, including attorneys' fees.

7.4 Design-Builder's General Indemnification.

7.4.1 Except as set forth in Section 7.4.2 below, Design-Builder, to the fullest extent permitted by law, shall indemnify, hold harmless and defend Owner, its Consultants, and their respective, its officers, directors, and employees (collectively "Indemnitees") from and against claims, losses, damages, liabilities, including attorneys' fees and expenses, for bodily injury, sickness or death, and property damage or destruction (other than to the Work itself) to the extent resulting from the negligent acts or omissions of Design-Builder, Design Consultants, Subcontractors, anyone employed directly or indirectly by any of them or anyone for whose acts any of them may be liable. Design-Builder's duty to indemnify shall not apply to liability for damages arising out of Design-Builder's services or out of bodily injury to persons or damage to property that are (a) caused by or resulting from the sole negligence of Indemnitee or (b) caused by or resulting from the concurrent negligence of (i) Indemnitee, its agents or employees and (ii) Design-Builder, its agents or employees, with such liability limited only to the extent of the negligence of Design-Builder, its agents or employees.

7.4.2 For indemnity obligations that arise from professional errors and omissions, Design-Builder, to the fullest extent permitted by law, shall indemnify Owner, its officers, directors, and

employees from and against claims, losses, damages, liabilities, including attorneys' fees and expenses, for bodily injury, sickness or death and property damage or destruction (other than to the Work itself) but only to the extent resulting from the negligent acts or omissions of Design-Builder, Design Consultants, Subcontractors, anyone employed directly or indirectly by any of them or anyone for whose acts any of them may be liable.

7.4.3 If an employee of Design-Builder, Design Consultants, Subcontractors, anyone employed directly or indirectly by any of them or anyone for whose acts any of them may be liable has a claim against Owner, its officers, directors, employees, or agents, Design-Builder's indemnity obligations set forth in Sections 7.4.1 and 7.4.2 above shall not be limited by any limitation on the amount of damages, compensation or benefits payable by or for Design-Builder, Design Consultants, Subcontractors, or other entity under any employee benefit acts, including workers' compensation or disability acts. Solely for the purposes of the indemnification obligations under this Agreement, Design Builder specifically and expressly waives any immunity that may be granted it under the worker's compensation laws under the Washington State Industrial Insurance Act, Title 51 RCW; provided that such waiver shall be expressly limited to Design-Builder's indemnity obligations herein and shall not be intended as a benefit to any third party. Further, the indemnification obligation under this Agreement shall not be limited in any way by any limitation on the amount or type of damages, compensation or benefits payable to or for any third party under workers compensation acts, disability benefits acts, or other employee benefits acts. This waiver was mutually negotiated.

7.4.4 THE PARTIES ACKNOWLEDGE THAT THE INDEMNIFICATION OBLIGATIONS IN THIS AGREEMENT AND THE WAIVER OF IMMUNITY UNDER RCW TITLE 51 WERE MUTUALLY NEGOTIATED.

OWNER'S INITIALS: (____)

DESIGN-BUILDER'S INITIALS: (____)

7.4.5 The Owner shall not be responsible or be held liable for any damage to person or property consequent upon the use, misuse or failure of any crane, hoist, rigging, blocking, scaffolding or other equipment used by the Design-Builder or any of its Subcontractors, even though the said crane, hoist, rigging, blocking, scaffolding, or other equipment be furnished or loaned to the Design-Builder by the Owner. The acceptance and/or use of any such crane, hoist, rigging, blocking, scaffolding or other equipment by the Design-Builder or its Subcontractors shall be construed to mean that the Design-Builder accepts all responsibility for any claims for damages whatsoever resulting from the use, misuse or failure of such apparatus whether such damages by its own employees or property or to the employees or property of other contractors, the Owner, or otherwise.

7.5 Lower Tier Contractors Indemnification Obligations

7.5.1 Design-Builder shall include in its contracts with all lower tier contractors, including but not limited to its Design Consultant, Subconsultants, and Subcontractors, the indemnification obligations set forth in this Agreement and the General Conditions and shall include Owner as an Indemnitee for all such indemnification provisions.

7.6 Limited Recourse.

7.6.1 None of the obligations set forth in this Agreement (on behalf of any Party) constitute personal obligations of any natural persons who are the officers, shareholders, members, partners, employees or agents of any Party unless the natural person is expressly identified as a contracting party. All Parties to this Agreement shall not seek recourse against any natural person described herein. This provision, however, shall not protect such natural persons from liability for willful misconduct, illegal acts or intentional violation of any duty of corporate loyalty.

Article 8

Time

8.1 Obligation to Achieve the Contract Times.

8.1.1 Design-Builder agrees that it will commence performance of the Work and achieve the Contract Time(s) in accordance with Article 5 of the Agreement and any Amendment to the Agreement.

8.2 Delays to the Work.

8.2.1 If Design-Builder is delayed on the critical path in the performance of the Work due to acts, omissions, conditions, events, or circumstances beyond its control and due to no fault of its own or those for whom Design-Builder is responsible, the Contract Time(s) for performance shall be reasonably extended by Change Order. By way of example, events that will entitle Design-Builder to an extension of the Contract Time(s) include acts or omissions of Owner or anyone under Owner's control (including separate contractors), changes in the Work, Differing Site Conditions, Hazardous Conditions, and Force Majeure Events.

8.2.2 In addition to Design-Builder's right to a time extension for those events set forth in Section 8.2.1 above, Design-Builder shall also be entitled to an appropriate adjustment of the Contract Price provided, however, that the Contract Price shall not be adjusted for Force Majeure Events unless otherwise provided in the Agreement.

Article 9

Changes to the Contract Price and Time

9.1 Change Orders.

9.1.1 A Change Order is a written instrument issued after execution of the Agreement signed by Owner and Design-Builder, stating their agreement upon all of the following:

- .1** The scope of the change in the Work;
- .2** The amount of the adjustment to the Contract Price or any Commercial Term; and
- .3** The extent of the adjustment to the Contract Time(s) or any Commercial Term.

9.1.2 All changes in the Work authorized by applicable Change Order shall be performed under the applicable conditions of the Contract Documents. Owner and Design-Builder shall negotiate in good faith and as expeditiously as possible the appropriate adjustments for such changes. Unless expressly set forth in the Change Order, Change Orders shall include all costs, including but not limited to all incidental and indirect costs and time extensions associated with the Change. Changes Orders will not be allowed unless there is an actual change to the Work.

9.1.3 If Owner requests a proposal for a change in the Work from Design-Builder and subsequently elects not to proceed with the change, a Change Order shall be issued to reimburse Design-Builder for reasonable costs incurred for estimating services, design services and services involved in the preparation of proposed revisions to the Contract Documents.

9.1.4 Owner may make changes in the Project, including but not limited to adding and/or removing Work from the Project. In such case, Design-Builder shall work with the Owner to adjust the remaining Work to meet as many of Owner's Project changes as reasonably possible within the applicable Commercial Term. At Owner's sole discretion, it may remove Work from the Project rather than increase the applicable Commercial Term to equitably adjust for claims by Design-Builder pursuant to Article 10 or Differing Site Conditions pursuant to Section 4.2.

9.2 Work Change Directives.

9.2.1 A Work Change Directive is a written order prepared and signed by Owner directing a change in the Work prior to agreement on an adjustment in the Contract Price and/or the Contract Time(s).

9.2.2 Owner and Design-Builder shall negotiate in good faith and as expeditiously as possible the appropriate adjustments for the Work Change Directive. Upon reaching an agreement, the parties shall prepare and execute an appropriate Change Order reflecting the terms of the agreement.

9.3 Minor Changes in the Work.

9.3.1 Minor changes in the Work do not involve an adjustment in the Contract Price and/or Contract Time(s) and do not materially and adversely affect the Work, including the design, quality, performance and workmanship required by the Contract Documents. Design-Builder may make minor changes in the Work consistent with the intent of the Contract Documents, provided, however, that Design-Builder shall promptly inform Owner, in writing, of any such changes and record such changes on the documents maintained by Design-Builder.

9.4 Contract Price Adjustments.

9.4.1 The increase or decrease in Contract Price resulting from a change in the Work shall be determined by one or more of the following methods:

- .1** Unit prices set forth in the Agreement or as subsequently agreed to between the parties;
- .2** A mutually accepted lump sum, properly itemized and supported by sufficient substantiating data to permit evaluation by Owner;
- .3** The Cost of the Work as set forth in the Agreement; or
- .4** If an increase or decrease cannot be agreed to as set forth in items.1 through.3 above and Owner issues a Work Change Directive, the cost of the change of the Work shall be determined by the reasonable expense and savings in the performance of the Work resulting from the change, including the Fee Percentage (if applicable), as set forth in the Agreement.

9.4.2 If unit prices are set forth in the Contract Documents or are subsequently agreed to by the parties, but application of such unit prices will cause substantial inequity to Owner or Design-Builder because of differences in the character or quantity of such unit items as originally contemplated, such unit prices shall be equitably adjusted.

9.4.3 If Owner and Design-Builder disagree upon whether Design-Builder is entitled to be paid for any services required by Owner, or if there are any other disagreements over the scope of Work or proposed changes to the Work, Owner and Design-Builder shall resolve the disagreement pursuant to Article 10 hereof. As part of the negotiation process, Design-Builder shall furnish Owner with a good faith estimate of the costs to perform the disputed services in accordance with Owner's interpretations. If the parties are unable to agree and Owner expects Design-Builder to perform the

services in accordance with Owner's interpretations, Design-Builder shall proceed to perform the disputed services, conditioned upon Owner issuing a written order to Design-Builder (i) directing Design-Builder to proceed and (ii) specifying Owner's interpretation of the services that are to be performed. If this occurs, Design-Builder shall be entitled to submit in its Applications for Payment an amount equal to fifty percent (50%) of its reasonable estimated direct cost to perform the services, and Owner agrees to pay such amounts, with the express understanding that (i) such payment by Owner does not prejudice Owner's right to argue that it has no responsibility to pay for such services and (ii) receipt of such payment by Design-Builder does not prejudice Design-Builder's right to seek full payment of the disputed services if Owner's order is deemed to be a change to the Work.

9.5 Emergencies.

9.5.1 In any emergency affecting the safety of persons and/or property, Design-Builder shall act, at its discretion, to prevent threatened damage, injury or loss. Any change in the Contract Price and/or Contract Time(s) on account of emergency work shall be determined as provided in this Article 9.

Article 10

Contract Adjustments and Disputes

10.1 Requests for Contract Adjustments and Relief.

10.1.1 If either Design-Builder or Owner believes that it is entitled to relief against the other for any event arising out of or related to the Work or Project, such party shall provide written notice to the other party of the basis for its claim for relief. Such notice shall, if possible, be made prior to incurring any cost or expense and in accordance with any specific notice requirements contained in applicable sections of these General Conditions of Contract. In the absence of any specific notice requirement, written notice shall be given within a reasonable time, not to exceed twenty-one (21) days, after the occurrence giving rise to the claim for relief or after the claiming party reasonably should have recognized the event or condition giving rise to the request, whichever is later. Such written notice shall be separate from the Design Log or Trend Log maintained by the Design-Builder, unless the parties specifically agree to allow the Design Log or Trend Log to operate as such written notice of claims. The Design-Builder shall provide more complete information with respect to the claim within fourteen (14) days of the initial notice, the more complete information shall include sufficient information to advise the other party of the circumstances giving rise to the claim for relief, the specific contractual adjustment or relief requested and the basis of such request. The failure to provide timely written notice of any claim shall operate as a waiver of such claim, but only to the extent that the failure to provide timely written notice prejudices the position of the non-claiming party.

10.2 Dispute Avoidance and Resolution.

10.2.1 The parties are fully committed to working with each other throughout the Project and agree to communicate regularly with each other at all times so as to avoid or minimize disputes or disagreements. If disputes or disagreements do arise, Design-Builder and Owner each commit to resolving such disputes or disagreements in an amicable, professional and expeditious manner so as to avoid unnecessary losses, delays and disruptions to the Work.

10.2.2 Design-Builder and Owner will first attempt to resolve disputes or disagreements at the field level through discussions between Design-Builder's Representative and Owner's Representative which shall conclude within fourteen (14) days of the written notice provided for in Section 10.1.1 unless the Owner and Design-Builder mutually agree otherwise.

10.2.3 If a dispute or disagreement cannot be resolved through Design-Builder's Representative and Owner's Representative, Design-Builder's Senior Representative and Owner's Senior Representative, upon the request of either party, shall meet as soon as conveniently possible, but in no case later than thirty (30) days after such a request is made, to attempt to resolve such dispute or disagreement. Five (5) days prior to any meetings between the Senior Representatives, the parties will exchange relevant information that will assist the parties in resolving their dispute or disagreement.

10.2.4 If after meeting the Senior Representatives determine that the dispute or disagreement cannot be resolved on terms satisfactory to both parties, the parties shall submit within thirty (30) days of the conclusion of the meeting of Senior Representatives the dispute or disagreement to non-binding mediation. The mediation shall be conducted by a mutually agreeable impartial mediator, or if the parties cannot so agree, a mediator designated by the American Arbitration Association ("AAA") pursuant to its Construction Industry Mediation Rules. The mediation will be governed by and conducted pursuant to a mediation agreement negotiated by the parties or, if the parties cannot so agree, by procedures established by the mediator. Unless otherwise mutually agreed by the Owner and Design-Builder and consistent with the mediator's schedule, the mediation shall commence within ninety (90) days of the submission of the dispute to mediation. Good faith mediation is a condition precedent to proceeding with arbitration or other binding dispute resolution procedure. Representatives of the parties with authority to resolve the dispute shall be present at any mediation.

10.3 Arbitration.

10.3.1 Any claims, disputes or controversies between the parties arising out of or relating to the Agreement, or the breach thereof, which have not been resolved in accordance with the procedures set forth in Section 10.2 above, shall be decided by arbitration in accordance with the Construction Industry Arbitration Rules of the AAA then in effect, unless the parties mutually agree otherwise.

10.3.2 The award of the arbitrator(s) shall be final and binding upon the parties without the right of appeal to the courts. Judgment may be entered upon it in accordance with applicable law by any court having jurisdiction thereof.

10.3.3 Design-Builder and Owner expressly agree that any arbitration pursuant to this Section 10.3 may be joined or consolidated with any arbitration involving any other person or entity (i) necessary to resolve the claim, dispute or controversy, or (ii) substantially involved in or affected by such claim, dispute or controversy. Both Design-Builder and Owner will include appropriate provisions in all contracts they execute with other parties in connection with the Project to require such joinder or consolidation.

10.3.4 The prevailing party in any arbitration, or any other final, binding dispute proceeding upon which the parties may agree, shall be entitled to recover from the other party reasonable attorneys' fees and expenses incurred by the prevailing party. The prevailing party, if any, shall be determined by the applicable binding dispute tribunal.

10.4 Duty to Continue Performance.

10.4.1 Unless provided to the contrary in the Contract Documents, Design-Builder shall continue to perform the Work and Owner shall continue to satisfy its payment obligations to Design-Builder for undisputed amounts to Design-Builder as well as any further amounts pursuant to Section 9.4.3, pending the final resolution of any dispute or disagreement between Design-Builder and Owner.

10.5 CONSEQUENTIAL DAMAGES.

10.5.1 NOTWITHSTANDING ANYTHING HEREIN TO THE CONTRARY (EXCEPT AS SET FORTH IN SECTIONS 10.5.2 AND 10.5.3 BELOW), NEITHER DESIGN-BUILDER NOR OWNER SHALL BE LIABLE TO THE OTHER FOR ANY CONSEQUENTIAL LOSSES OR DAMAGES,

WHETHER ARISING IN CONTRACT, WARRANTY, TORT (INCLUDING NEGLIGENCE), STRICT LIABILITY OR OTHERWISE, INCLUDING BUT NOT LIMITED TO LOSSES OF USE, PROFITS, BUSINESS, REPUTATION OR FINANCING.

10.5.2 The consequential damages limitation set forth in Section 10.5.1 above is not intended to affect the payment of liquidated damages or lost early completion bonus, if any, set forth in Article 5 of the Agreement, which both parties recognize has been established, in part, to reimburse Owner or reward Design-Builder for some damages that might otherwise be deemed to be consequential.

10.5.3 The consequential damages limitation set forth in Section 10.5.1 above does not affect the ability of any party to recover consequential damages that are covered by insurance.

Article 11

Stop Work and Termination for Cause

11.1 Owner's Right to Stop Work.

11.1.1 Owner may, without cause and for its convenience, order Design-Builder in writing to stop and suspend the Work. Such suspension shall not exceed sixty (60) consecutive days or aggregate more than ninety (90) days during the duration of the Project.

11.1.2 Design-Builder is entitled to seek an adjustment of the Contract Price and/or Contract Time(s) if i) its cost or time to perform the Work has been materially and adversely impacted by any suspension or stoppage of the Work by Owner, ii) the Design-Builder is entitled to the adjustment pursuant to the other provisions of the Contract Documents, and iii) the Design-Builder complies with all provisions of the Contract Documents regarding an adjustment to the Contract Price and/or Contract Time.

11.2 Owner's Right to Perform and Terminate for Cause.

11.2.1 If Design-Builder persistently fails to (i) provide a sufficient number of skilled workers, (ii) supply the materials required by the Contract Documents, (iii) comply with applicable Legal Requirements, (iv) timely pay, without cause, Design Consultants or Subcontractors, (v) prosecute the Work with promptness and diligence to ensure that the Work is completed by the Contract Time(s), as such times may be adjusted, (vi) perform material obligations under the Contract Documents, or (vii) comply with the requirements regarding safety, then Owner, in addition to any other rights and remedies provided in the Contract Documents or by law, shall have the rights set forth in Sections 11.2.2 and 11.2.3 below.

11.2.2 Upon the occurrence of an event set forth in Section 11.2.1 above, Owner may provide written notice to Design-Builder that it intends to terminate the Agreement unless the problem cited is cured, or commenced to be cured, within seven (7) days of Design-Builder's receipt of such notice. If Design-Builder fails to cure, or reasonably commence to cure, such problem, then Owner may give a second written notice to Design-Builder of its intent to terminate within an additional seven (7) day period. If Design-Builder, within such second seven (7) day period, fails to cure, or reasonably commence to cure, such problem, then Owner may declare the Agreement terminated for default by providing written notice to Design-Builder of such declaration.

11.2.3 Upon declaring the Agreement terminated pursuant to Section 11.2.2 above, Owner may enter upon the premises and take possession, for the purpose of completing the Work, of all materials, equipment, scaffolds, tools, appliances and other items thereon, which have been purchased or provided for the performance of the Work, all of which Design-Builder hereby transfers, assigns and sets over to Owner for such purpose, and to employ any person or persons to complete the Work and provide all of the required labor, services, materials, equipment and other items. In the event of such termination, Design-Builder shall not be entitled to receive any further

payments under the Contract Documents until the Work shall be finally completed in accordance with the Contract Documents. Design-Builder will only be entitled to be paid for Work performed prior to its default. If Owner's cost and expense of completing the Work exceeds the unpaid balance of any Commercial Term, then Design-Builder shall be obligated to pay the difference to Owner. Such costs and expense shall include not only the cost of completing the Work, but also losses, damages, costs and expense, including attorneys' fees and expenses, incurred by Owner in connection with the procurement and defense of claims arising from Design-Builder's default, subject to the waiver of consequential damages set forth in Section 10.5 hereof.

11.2.4 If Owner improperly terminates the Agreement for cause, the termination for cause will be converted to a termination for convenience in accordance with the provisions of Article 8 of the Agreement.

11.3 Design-Builder's Right to Stop Work.

11.3.1 Design-Builder may, in addition to any other rights afforded under the Contract Documents or at law, stop the Work for the following reasons:

- .1** Owner's failure to provide financial assurances as required under Section 3.3 hereof; or
- .2** Owner's failure to pay amounts properly due under Design-Builder's Application for Payment.

11.3.2 Should any of the events set forth in Section 11.3.1 above occur, Design-Builder has the right to provide Owner with written notice that Design-Builder will stop the Work unless said event is cured within seven (7) days from Owner's receipt of Design-Builder's notice. Design-Builder may not stop work unless it provides such written notice. If Owner does not cure the problem within such seven (7) day period, Design-Builder may stop the Work. In such case, Design-Builder shall be entitled to make a claim for adjustment to the Contract Price and Contract Time(s) to the extent it has been adversely impacted by such stoppage.

11.4 Design-Builder's Right to Terminate for Cause.

11.4.1 Design-Builder, in addition to any other rights and remedies provided in the Contract Documents or by law, may terminate the Agreement for cause for the following reasons:

- .1** The Work has been stopped for sixty (60) consecutive days, or more than ninety (90) days during the duration of the Project, because of court order, any government authority having jurisdiction over the Work, or orders by Owner under Section 11.1.1 hereof, provided that such stoppages are not due to the acts or omissions of Design-Builder or anyone for whose acts Design-Builder may be responsible.
- .2** Owner's failure to provide Design-Builder with any information, permits or approvals that are Owner's responsibility under the Contract Documents which result in the Work being stopped for sixty (60) consecutive days, or more than ninety (90) days during the duration of the Project, even though Owner has not ordered Design-Builder in writing to stop and suspend the Work pursuant to Section 11.1.1 hereof.
- .3** Owner's failure to cure the problems set forth in Section 11.3.1 above after Design-Builder has stopped the Work.

11.4.2 Upon the occurrence of an event set forth in Section 11.4.1 above, Design-Builder may provide written notice to Owner that it intends to terminate the Agreement unless the problem cited is cured, or commenced to be cured, within seven (7) days of Owner's receipt of such notice. If Owner fails to cure, or reasonably commence to cure, such problem, then Design-Builder may give a second written notice to Owner of its intent to terminate within an additional seven (7) day period.

If Owner, within such second seven (7) day period, fails to cure, or reasonably commence to cure, such problem, then Design-Builder may declare the Agreement terminated for default by providing written notice to Owner of such declaration. In such case, Design-Builder shall be entitled to recover in the same manner as if Owner had terminated the Agreement for its convenience under Article 8 of the Agreement.

11.5 Bankruptcy of Owner or Design-Builder.

11.5.1 If either Owner or Design-Builder institutes or has instituted against it a case under the United States Bankruptcy Code (such party being referred to as the "Bankrupt Party"), such event may impair or frustrate the Bankrupt Party's ability to perform its obligations under the Contract Documents. Accordingly, should such event occur:

.1 The Bankrupt Party, its trustee or other successor, shall furnish, upon request of the non-Bankrupt Party, adequate assurance of the ability of the Bankrupt Party to perform all future material obligations under the Contract Documents, which assurances shall be provided within ten (10) days after receiving notice of the request; and

.2 The Bankrupt Party shall file an appropriate action within the bankruptcy court to seek assumption or rejection of the Agreement within sixty (60) days of the institution of the bankruptcy filing and shall diligently prosecute such action.

If the Bankrupt Party fails to comply with its foregoing obligations, the non-Bankrupt Party shall be entitled to request the bankruptcy court to reject the Agreement, declare the Agreement terminated and pursue any other recourse available to the non-Bankrupt Party under this Article 11.

11.5.2 The rights and remedies under Section 11.5.1 above shall not be deemed to limit the ability of the non-Bankrupt Party to seek any other rights and remedies provided by the Contract Documents or by law, including its ability to seek relief from any automatic stays under the United States Bankruptcy Code or the right of Design-Builder to stop Work under any applicable provision of these General Conditions of Contract.

Article 12

Electronic Data

12.1 Electronic Data.

12.1.1 The parties recognize that Contract Documents, including drawings, specifications and three-dimensional modeling (such as Building Information Models) and other Work Product may be transmitted among Owner, Design-Builder and others in electronic media as an alternative to paper hard copies (collectively "Electronic Data").

12.2 Transmission of Electronic Data.

12.2.1 Owner and Design-Builder shall agree upon the software and the format for the transmission of Electronic Data. Each party shall be responsible for securing the legal rights to access the agreed-upon format, including, if necessary, obtaining appropriately licensed copies of the applicable software or electronic program to display, interpret and/or generate the Electronic Data.

12.2.2 Neither party makes any representations or warranties to the other with respect to the functionality of the software or computer program associated with the electronic transmission of Work Product. Unless specifically set forth in the Agreement, ownership of the Electronic Data does not include ownership of the software or computer program with which it is associated, transmitted,

generated or interpreted.

12.2.3 By transmitting Work Product in electronic form, the transmitting party does not transfer or assign its rights in the Work Product. The rights in the Electronic Data shall be as set forth in Article 4 of the Agreement. Under no circumstances shall the transfer of ownership of Electronic Data be deemed to be a sale by the transmitting party of tangible goods.

12.3 Electronic Data Protocol.

12.3.1 The parties acknowledge that Electronic Data may be altered or corrupted, intentionally or otherwise, due to occurrences beyond their reasonable control or knowledge, including but not limited to compatibility issues with user software, manipulation by the recipient, errors in transcription or transmission, machine error, environmental factors, and operator error. Consequently, the parties understand that there is some level of increased risk in the use of Electronic Data for the communication of design and construction information and, in consideration of this, agree, and shall require their independent contractors, Subcontractors and Design Consultants to agree, to the following protocols, terms and conditions set forth in this Section 12.3.

12.3.2 Electronic Data will be transmitted in the format agreed upon in Section 12.2.1 above, including file conventions and document properties, unless prior arrangements are made in advance in writing.

12.3.3 The Electronic Data represents the information at a particular point in time and is subject to change. Therefore, the parties shall agree upon protocols for notification by the author to the recipient of any changes which may thereafter be made to the Electronic Data, which protocol shall also address the duty, if any, to update such information, data or other information contained in the electronic media if such information changes prior to Final Completion of the Project.

12.3.4 The transmitting party specifically disclaims all warranties, expressed or implied, including, but not limited to, implied warranties of merchantability and fitness for a particular purpose, with respect to the media transmitting the Electronic Data. However, transmission of the Electronic Data via electronic means shall not invalidate or negate any duties pursuant to the applicable standard of care with respect to the creation of the Electronic Data, unless such data is materially changed or altered after it is transmitted to the receiving party, and the transmitting party did not participate in such change or alteration.

Article 13

Miscellaneous

13.1 Confidential Information.

13.1.1 Confidential Information is defined as information which is determined by the transmitting party to be of a confidential or proprietary nature and: (i) the transmitting party identifies as either confidential or proprietary; (ii) the transmitting party takes steps to maintain the confidential or proprietary nature of the information; and (iii) the document is not otherwise available in or considered to be in the public domain. The receiving party agrees to maintain the confidentiality of the Confidential Information and agrees to use the Confidential Information solely in connection with the Project.

13.2 Assignment.

13.2.1 Neither Design-Builder nor Owner shall, without the written consent of the other assign, transfer or sublet any portion or part of the Work or the obligations required by the Contract Documents.

13.3 Successorship.

13.3.1 Design-Builder and Owner intend that the provisions of the Contract Documents are binding upon the parties, their employees, agents, heirs, successors and assigns.

13.4 Governing Law.

13.4.1 The Agreement and all Contract Documents shall be governed by the laws of the place of the Project, without giving effect to its conflict of law principles.

13.5 Severability.

13.5.1 If any provision or any part of a provision of the Contract Documents shall be finally determined to be superseded, invalid, illegal, or otherwise unenforceable pursuant to any applicable Legal Requirements, such determination shall not impair or otherwise affect the validity, legality, or enforceability of the remaining provision or parts of the provision of the Contract Documents, which shall remain in full force and effect as if the unenforceable provision or part were deleted.

13.6 No Waiver.

13.6.1 The failure of either Design-Builder or Owner to insist, in any one or more instances, on the performance of any of the obligations required by the other under the Contract Documents shall not be construed as a waiver or relinquishment of such obligation or right with respect to future performance.

13.7 Headings.

13.7.1 The headings used in these General Conditions of Contract, or any other Contract Document, are for ease of reference only and shall not in any way be construed to limit or alter the meaning of any provision.

13.8 Notice.

13.8.1 Whenever the Contract Documents require that notice be provided to the other party, notice will be deemed to have been validly given (i) if delivered in person to the individual intended to receive such notice, (ii) four (4) days after being sent by registered or certified mail, postage prepaid to the address indicated in the Agreement, (iii) if transmitted by facsimile, by the time stated in a machine generated confirmation that notice was received at the facsimile number of the intended recipient, or (iv) by electronic mail, by the time frame stated in the email generated confirmation that notice was received by the email of the intended recipient.

13.9 Amendments, Work Directives and Change Orders.

13.9.1 The Contract Documents may not be changed, altered, or amended in any way except in writing signed by a duly authorized representative of each party.



COUNCIL AGENDA ITEM COVERSHEET

Council Date: 9/6/2022

Agenda Category: Resolutions - Adoption

Core Focus Area I - Promote Financial Stability & Operational Effectiveness

Subject:

Resolution No. 2022-117, Authorizing an Interagency Agreement with the Washington State Department of Natural Resources for Wildlife Emergency Response and Reimbursement

Department/Office
Fire & Emergency Services

Ordinance/Resolution Number:
2022-117

Document Type:
Resolution

Recommended Motion:

Adopt Resolution No. 2022-117, authorizing the City Manager to sign and execute an interagency agreement with the Washington State Department of Natural Resources for wildfire emergency response and reimbursement.

Summary:

Interagency Agreement No. 93-103949 allows the City of Richland Fire Department to bill the Washington State Department of Natural Resources (DNR) for incident response and support in the event RFD engages in wildland fire suppression or management activities with DNR outside of a state mobilization structure.

This Agreement is a successor agreement to Interagency Agreement No. 93-101180, which was approved by Richland City Council on August 4, 2020 and expired on December 31, 2020.

Staff recommends adoption of Resolution No. 2022-117.

Fiscal Impact:

Interagency Agreement No. 93-103949 gives the City the ability to bill the Washington State Department Natural Resources for expenses incurred during wildland fire operations occurring outside of state mobilization. Revenue will vary based on each fire season's needs and activities.

Attachments:

1. Resolution No. 2022-117
2. Proposed Interagency Agreement with Department of Natural Resources

RESOLUTION NO. 2022-117

**A RESOLUTION OF THE CITY OF RICHLAND, WASHINGTON,
AUTHORIZING AN INTERAGENCY AGREEMENT WITH THE
WASHINGTON STATE DEPARTMENT OF NATURAL
RESOURCES FOR WILDFIRE EMERGENCY RESPONSE AND
REIMBURSEMENT.**

WHEREAS, the Interlocal Cooperation Act permits local governmental organizations to make the most efficient use of their resources by enabling them to cooperate with other government agencies on the basis of mutual advantage; and

WHEREAS, the City of Richland (“Richland”) and the Washington State Department of Natural Resources (“DNR”) have determined that it would be in the best interests of the citizens, and of mutual benefit to the delivery of emergency services to both agencies if, in some circumstances, the services of one fire agency are extended outside corporate limits of that city or district into another; and

WHEREAS, Richland and DNR desire to enter into an interagency agreement wherein, under some circumstances, Richland Fire & Emergency Services will be fully reimbursed, according to the agreement, for responding to an emergency incident within the fire protection boundaries of DNR; and

WHEREAS, the interagency agreement creates an opportunity for Richland Fire & Emergency Services to provide resources to an emergency incident within the fire protection boundaries of DNR, but does not create an obligation to act.

NOW, THEREFORE, BE IT RESOLVED by the City Council of the City of Richland that the City Manager is authorized to sign and execute an interagency agreement for wildfire emergency response and reimbursement between Richland Fire & Emergency Services and the Washington State Department of Natural Resources.

BE IT FURTHER RESOLVED that this Resolution shall take effect immediately.

ADOPTED by the City Council of the City of Richland, Washington, at a regular meeting on the 6th day of September, 2022.

Michael Alvarez, Mayor

Attest:

Approved as to Form:

Jennifer Rogers, City Clerk

Heather Kintzley, City Attorney



100

INTERAGENCY AGREEMENT DEPARTMENT OF NATURAL RESOURCES (DNR) AND CITY OF RICHLAND

**on behalf of the
RICHLAND FIRE DEPARTMENT**

NO. 93-103949

PI: 221, 222, 223, 224

Funding Source: State

Grant Funded: ☐ Yes ☒ No

COVID 19 Contractor Vaccination Declaration required ☐ yes

☒ **No, the work performed is not subject to Proclamation Requirements.**

This Agreement is made and entered into between the Washington State Department of Natural Resources, hereinafter referred to as DNR, and the City of Richland on behalf of the Richland Fire Department (hereafter "RFD").

DNR and RFD enter into this agreement under Chapter 39.34, Interlocal Cooperation Act.

Richland Fire Department
1000 George Washington Way
Richland, WA 99352
Phone: (509) 942-7703
FAX: (509) 942-7575
Email: raust@ci.richland.wa.us

IT IS MUTUALLY AGREED THAT:

1.0 Purpose. The limited purpose of this Agreement is for RFD to provide employees, referred to as single resources, equipment, material and/or services for wildfire or other emergency response and to establish DNR's payment and reimbursement responsibilities to RFD for providing such single resources, equipment material and/or services. Dispatches

under this agreement are limited to the State of Washington, unless the single resource is rostered on a Pacific Northwest Incident Management Team (IMT) type 1, 2 or 3.

2.0 Scope of Work. The RFD shall furnish the necessary personnel, equipment, material and/or services and otherwise do all things necessary for or incidental to perform work set forth in the Attachment A – Scope of Work.

3.0 Period of Performance. The period of performance of this Agreement shall begin on August 15, 2022, and end on August 15, 2027, unless terminated sooner as provided herein.

4.0 Billing Procedures. RFD shall submit invoices within sixty (60) days of the last date of demobilization. Payment for approved goods and/or services will be made by check, warrant or account transfer within 30 days of receipt of the invoice and required documentation. Upon expiration of the Agreement, invoices shall be paid, if received within 30 days after the expiration date. However, invoices for all work done within a fiscal year must be submitted within 30 days after the end of DNR's fiscal year, which is June 30th.

Each invoice submitted to DNR shall include information needed by DNR to determine the actual expenditures to be reimbursed and the exact nature of all approved expenditures for services provided. Invoices & billing packages shall be prepared according to the requirements outlined in Attachment A

5.0 Records Maintenance. RFD shall maintain books, records, documents and other evidence, to sufficiently document all direct and indirect costs incurred by RFD in providing the services. These records shall be available for inspection, review, or audit by personnel of the DNR, other personnel authorized by the DNR, the Office of the State Auditor, and federal officials as authorized by law. RFD shall keep all books, records, documents, and other material relevant to this Agreement for the retention period established under the applicable Washington State Records Retention Schedule. The Office of the State Auditor, federal auditors, and any persons authorized by the parties shall have full access to and the right to examine any of these materials during this period.

Records and other documents in any medium furnished by one party to this agreement to the other party, will remain the property of the furnishing party, unless otherwise agreed. The receiving party will not disclose this material to any third parties without first notifying the furnishing party and giving it a reasonable opportunity to respond. Each party will use reasonable security procedures and protections to assure that records and documents provided by the other party are not erroneously disclosed to third parties.

6.0 Independent Capacity. The employees or agents of each party who are engaged in performing this Agreement shall continue to be employees or agents of that party and shall not be considered for any purpose to be employees or agents of the other party.

7.0 Amendments. This Agreement may be amended by mutual agreement of the parties. Amendments shall be in writing and signed by personnel authorized to bind each of the parties.

8.0 Termination for Convenience. Either party may terminate this Agreement upon 30 calendar days' prior written notice to the other party. If this Agreement is terminated, the parties shall be liable only for performance rendered or costs incurred in accordance with the terms of this Agreement prior to the effective date of termination.

9.0 Termination for Cause. If for any cause either party does not fulfill in a timely and proper manner its obligations under this Agreement, or if either party violates any of the terms and conditions, the aggrieved party will give the other party written notice of the failure or violation. The aggrieved party will give the other party 15 working days to correct the violation or failure. If the failure or violation is not corrected within 15 days, the aggrieved party may immediately terminate this Agreement by notifying the other party in writing.

10.0 Disputes. If a dispute arises, each party will make a good faith effort to resolve issues at the lowest possible level in their respective agencies. If they cannot resolve an issue, they will elevate the issue within their respective chains of command to resolve it.

ALTERNATE DISPUTE RESOLUTION. In the event of any issue of controversy under this agreement, the parties may pursue Alternate Dispute Resolution procedures to voluntarily resolve those issues. These procedures may include, but are not limited to, conciliation, facilitation, mediation, and fact finding.

11.0 Governance. This contract is entered into the authority granted by the laws of the State of Washington and any applicable federal laws. The provisions of this agreement shall be construed to conform to those laws.

If there is an inconsistency in the terms of this Agreement, or between its terms and any applicable statute or rule, the inconsistency shall be resolved by giving precedence in the following order:

- (1) Applicable federal statutes and rules, that supersede applicable State of Washington statutes and regulations;
- (2) State of Washington statutes and regulations
- (3) Scope of Work; and
- (4) Any other provisions of the agreement, including materials incorporated by reference.

12.0 Assignment. The work to be provided under this Agreement and any claim arising from this Agreement cannot be assigned or delegated in whole or in part by either party, without the express prior written consent of the other party. Neither party shall unreasonably withhold consent.

13.0 Waiver. A party that fails to exercise its rights under this agreement is not precluded from subsequently exercising its rights. A party's rights may only be waived through a written amendment to this agreement.

14.0 Severability. The provisions of this agreement are severable. If any provision of this Agreement or any provision of any document incorporated by reference should be held invalid, the other provisions of this Agreement without the invalid provision remain valid.

15.0 Responsibilities of the Parties/Indemnification.

DNR shall indemnify and hold harmless the RFD from all claims, costs, damages or expenses arising out of the negligent acts or omissions of DNR. Likewise, the RFD shall indemnify DNR from all claims, costs, damages or expenses arising out of the negligent acts or omissions of the RFD. In the case of negligence of both the

RFD and DNR, any damages shall be levied in proportion to the percentage of negligence attributable to each party. For this purpose, each party by mutual negotiation, hereby waives any immunity that would otherwise be available against such claims under the industrial insurance provisions of Title 51 RCW.

16.0 Insurance. Before using any of said rights granted herein and its own expense, RFD shall purchase and maintain the insurance described below for the entire duration of this Agreement. Failure to purchase and maintain the required insurance may result in the termination of the Agreement at DNR's option.

All insurance provided in compliance with this Agreement shall be primary as to any other insurance or self-insurance programs afforded to, or maintained by, the State of Washington, Department of Natural Resources.

RFD shall provide DNR with certificates of insurance, executed by a duly authorized representative of each insurer, showing compliance with the insurance requirements specified in this Agreement before using any of said rights granted herein. The description section of the certificate shall contain the Contract Number and the name of the DNR Project Manager. RFD shall also provide renewal certificates as appropriate during the term of this Agreement.

RFD shall include all subcontractors and agents as insured under all required insurance policies or shall provide separate certificates of insurance for each subcontractor or agent. Failure of RFD to have its subcontractors and agents comply with the insurance requirements contained herein does not limit RFD's liability or responsibility.

INSURANCE TYPES & LIMITS: The limits of insurance, which may be increased by State, as deemed necessary, shall not be less than as follows:

Commercial General Liability (CGL) Insurance: RFD shall purchase and maintain commercial general liability insurance with a limit of not less than \$2,000,000 per each occurrence. If such CGL insurance contains aggregate limits, the general aggregate limits shall be at least twice the "each occurrence" limit, and the products-completed operations aggregate limit shall be at least twice the "each occurrence" limit. All insurance must cover liability arising out of premises, operations, independent contractors, products completed operations, personal injury and advertising injury, and liability assumed under an insured contract (including the tort liability of another party assumed in a business contract) and

contain separation of insured (cross-liability) condition.

Employer's liability ("Stop Gap") Insurance: RFD shall purchase and maintain employer's liability insurance and if necessary, commercial umbrella liability insurance with limits not less than \$2,000,000 each accident for bodily injury by accident and \$2,000,000 each employee for bodily injury by disease.

Business Auto Policy (BAP) Insurance: RFD shall purchase and maintain business auto insurance and if necessary, commercial umbrella liability insurance with a limit of not less than \$2,000,000 per accident, with such insurance covering liability arising out of "Any Auto". The policy shall be endorsed to provide contractual liability coverage and cover a "covered pollution cost or expense." RFD waives all rights of subrogation against State for the recovery of damages to the extent they are covered by business auto liability or commercial umbrella liability insurance.

Industrial Insurance (Workers Compensation): RFD shall comply with Title 51 RCW by maintaining workers compensation insurance for its employees. RFD waives all rights of subrogation against State for recovery of damages to the extent they are covered by Industrial Insurance, employer's liability, general liability, excess, or umbrella insurance.

ADDITIONAL PROVISIONS:

Additional Insured: DNR, its officials, agents, and employees shall be named as additional insured by endorsement on all general liability, excess, and umbrella insurance policies.

Cancellation: DNR shall be provided written notice before cancellation or non-renewal of any insurance referred to therein, in accord with the following specifications.

1. Insurers subject to Chapter 48.18 RCW (Admitted and Regulated by the Insurance Commissioner): The insurer shall give the State 45 days advance notice of cancellation or nonrenewal. If cancellation is due to non-payment of premium, the State shall be given 10 days advance notice of cancellation.
2. Insurers subject to Chapter 48.15 RCW (Surplus Lines): The State shall be given 20 days advance notice of cancellation. If cancellation is due to non-payment of premium, the State shall be given 10 days advance notice of cancellation.

Insurance Carrier Rating: All insurance shall be issued by companies admitted to do business in the State of Washington and have a rating of A-, Class VII, or better. Any exception must be reviewed and approved by the DNR Risk Manager or the DNR Contracts Manager, in the Risk Manager's absence. If an insurer is not admitted to do business in the State of Washington, all insurance policies and procedures for issuing the insurance policies must comply with Chapters 48.15 RCW and 284-15 WAC.

Self-Insurance: If RFD is self-insured, including insurance under a recognized governmental entity insurance pool evidence of its status as a self-insured entity shall be provided to State.

The evidence should demonstrate that RFD's self- insurance meets all of the required insurance coverage of this Agreement to the satisfaction of State including the description of the funding mechanism and its financial condition. If the funding mechanism or financial condition of the self-insurance program of RFD is inadequate, then State may require the purchase of additional commercial insurance to comply with this Agreement.

Waiver: RFD waives all rights of subrogation against State for recovery of damages to the extent these damages are covered by general liability, excess, or umbrella insurance maintained pursuant to this Agreement.

17.0 Covid-19 Vaccination Requirement. Pursuant to Proclamation 21-14.2 – COVID-19 Vaccination Requirement, as now or hereafter amended by the Governor (“Proclamation”), contractors who have goods, services, or public works contracts with a Washington state agency, including the Department of Natural Resources (DNR), must ensure that their personnel (including subcontractors) who perform contract activities on-site comply with the COVID-19 vaccination requirements of the Proclamation, unless exempted as prescribed by the Proclamation. Compliance with the Proclamation is mandatory. Contractor shall comply with the Proclamation.

18.0 Complete Agreement in Writing. This Agreement contains all the terms and conditions agreed upon by the parties. No other understanding, oral or otherwise, regarding the subject matter of this Agreement shall be deemed to exist or to bind any of the parties.

19.0 Contract Management.

District Contract Manager Information	DNR Contract Manager Information
Trish Auchmoody Richland Fire Department 1000 George Washington Way Richland, WA 99352 <i>Phone : (509) 942-7792</i> <i>Fax: (509) 942-7575</i> <i>Email address: tauchmoody@ci.richland.wa.us</i>	Wyatt Leighton Department of Natural Resources 713 Bowers Rd. Ellensburg, WA 98926 <i>Phone: (509) 925-0959</i> <i>Fax: (509) 925-8522</i> <i>Email address: wyatt.leighton@dnr.wa.gov</i>
District Project Manager Information	DNR Project Manager Information
Randy Aust Richland Fire Department 1000 George Washington Way Richland, WA 99352 <i>Phone : (509) 942-7555</i> <i>Fax: (509) 942-7575</i> <i>Email address: raust@ci.richland.wa.us</i>	Callan L. Wilkins Department of Natural Resources 713 Bowers Rd. Ellensburg, WA 98926 <i>Phone: (509) 899-3876</i> <i>Fax: (509) 925-8522</i> <i>Email address: callan.wilkins@dnr.wa.gov</i>

By signature below, the Parties certify that the individuals listed in this document, as representatives of the Parties, are authorized to act in their respective areas for matters related to this instrument.

This Agreement is intended to supersede the previously executed IAA agreement No. 93-101180. This agreement is not intended to supersede any existing Forestland Response Agreement (FLRA).

IN WITNESS WHEREOF, the Parties have executed this Agreement.

CITY OF RICHLAND

**STATE OF WASHINGTON
DEPARTMENT OF NATURAL
RESOURCES (DNR)**

Signature	Date	Signature	Date
Jon Amundson		Todd Welker	
Name		Name	
City Manager		SE Region Manager	
Title		Title	
625 Swift Blvd.		713 Bowers Rd.	
Richland, WA 99352		Ellensburg, WA 98926	
Address		Address	
(509) 942-7380		(509) 925-0954	
Telephone		Telephone	

SCOPE OF WORK

This agreement is to allow Richland Fire Department to provide personnel for wildfire or emergency response within the State of Washington and to define DNR's responsibility to pay and reimburse Richland Fire Department. This includes IMT members and wildland resources (personnel, equipment, services and supplies available, or potentially available, for assignment to incidents) Personnel and equipment are described by kind and type, e.g., ground, water, air, etc., and may be used in tactical, support or overhead capacities at an incident. This agreement will not be an avenue for dispatches to fires outside of the State of Washington with the exception of rostered Type 1, 2 and 3 IMT members. This agreement does not address wildfire or emergency response operations, incident command or operational decisions.

If a district/department has a Forest land Response Agreement (FLRA) it will take precedence over this agreement for dispatches to wildfire incidents, and this agreement will only be used for dispatching of IMT members to non-wildfire/all-hazard incidents.

This agreement extends to all District/Department members as defined below:

- Washington Fire Service (WFS) agency personnel that are full-time and part-time paid employees, and personnel under contract/agreement with the District/Department will be paid by the District/Department. DNR will reimburse District/Department costs as outlined in this agreement. Personnel covered under this section are regularly paid by the agency for performed work and are compensated the same for work including if assigned to an incident covered by this agreement "Full and Part Time Personnel."
- Members dispatched by DNR from a WFS agency that have contracts for the sole purpose of responding to wildfire or non-wildfire incidents outside of the agency's jurisdictional boundaries are paid by the agency and reimbursed in accordance with the Washington State Wage & Equipment Rate Guide "Temporary Personnel."
- Members of a WFS agency who are volunteers will need to be hired by DNR via the DNR casual hire process and paid directly by DNR. This may be completed pre-season, and shall be completed prior to the first dispatch. The local DNR Region office will handle the casual hire process.

District/Department agrees that/to:

- 1) All personnel dispatched will have a valid Incident Qualification Card (red card) stating current qualifications; and will adhere to qualifications and standards described in PMS 310-1;
- 2) Provide a copy of the Master IQS Record for each participating employee (needed to update status in Interagency Resource Ordering Capability (IROC));
- 3) Provide local DNR Dispatch with status of each employee who is listed as a rostered IMT member every Monday by 1200 hours. Dispatch will then update their status in IROC for that week (0800 Tuesday to 0800 Tuesday).

- 4) All personnel and equipment dispatched will be paid by the District/Department; (except volunteers will follow payment procedures outlined in their individual agreement and be paid directly by DNR);
- 5) All Equipment and Personnel dispatched under this agreement will arrive at each incident with a copy of their current agreement.
- 6) Invoice for personnel, equipment, & travel cost billed to DNR shall be submitted within sixty (60) days and will include the following:
 - a. DNR Personnel Reimbursement Request Worksheet
 - b. Original Emergency Fire Time Report (OF-288); hourly wage rate including salaries & benefit (regular and OT) for personnel hours on the OF-288.
 - c. Original Shift Ticket (OF-297) documenting mileage to/from incident as well as daily mileage incurred on the incident signed by incident supervisor.
 - d. Original Emergency Equipment Use Invoice (OF-286) signed by finance section on the incident.
 - e. Copy of district/department shift schedule
 - f. Earning statements showing hourly wage for each employee
 - g. Receipts or Copy of Employee travel reimbursement for travel expenses.
 - h. Copy of Resource Order card.
- 7) Volunteers shall submit original copies of payment documents directly to the DNR region office for payment.
- 8) For fire line or off-road use, only utilize agency owned vehicles or procured rental vehicles. If agency owned vehicles are available, they shall be used prior to procuring a rental vehicle.
 - a. Rental vehicles for off-road use must be procured using the USFS NERV rental vehicle agreement.
 - b. Off-road rental vehicles procured from alternative sources other than the agreement listed above are not compensable.
 - c. Rental vehicle authorization must be documented on the resource order. Please speak with your local DNR Region for more specific information.
 - d. In order to provide appropriate tracking for all rental vehicles, rentals ordered for overhead shall be ordered using the resource's O#. They do not require their separate resource order number.
 - e. The use of USFS NERV rental vehicles is specific to off-road use. Rental vehicles used for non-fire line positions must be approved on the resource order, and shall be rented through alternative sources other than the USFS NERV rental vehicle agreement.

DNR agrees that/to:

- 1) Status the employee in the Interagency Resource Ordering Capability System (IROC).
- 2) Dispatch resources on preseason IMT rosters, and alternate pool list.

- 3) Reimburse the District/Department within 30 days of receipt of complete & accurate invoice and required documentation.
- 4) Reimburse the District/Department for Temporary Personnel under contract or agreement with the District/Department, as defined above, per the Interagency Wildfire Resource Wage Rates in the Washington State Wage & Equipment Rate Guide.
- 5) Reimburse the District/Department for Full and Part Time Personnel (as defined above) to the resource provider at the resource provider's actual total cost. This will include backfill cost for the Full-time Personnel as outlined in the State Mobilization Plan.
 - a. DNR will reimburse district/department of all regular scheduled hours for the personnel assigned to the incident.
 - b. The DNR will not pay for muster time, wildland premium pay, portal to portal, or other unspecified pay provisions.
 - c. Sleeping Periods, Meal Breaks, Time required for vehicle/equipment maintenance, Crew Change Time, Out of Service Time are considered non-compensable.
- 6) Reimburse Fire Service District/Department for approved travel expenses. The following guidelines apply:
 - a. Per-diem is authorized for resources while traveling to an incident for meals that they are in travel status for the entire DNR designated meal period, and will be based on where the resource stops to sleep.
 - i. Breakfast: 7AM-8AM
 - ii. Lunch: 12PM-1PM
 - iii. Dinner: 6PM-7PM
 - b. Once arriving at an incident all resources shall stay and eat in camp. Resources may not seek reimbursement for meals or lodging unless services are not provided by the incident.
 - c. Approval for per diem shall be documented on the resource order card, or through written approval including justification, from the Incident Commander.
 - d. Reimbursement for approved per-diem for incidents in Washington will be paid in accordance with Washington State Office of Financial Management (OFM) rates. Receipts are not required.
 - e. Reimbursement for approved per-diem for incidents outside Washington, will be paid using the U.S. General Service Administration (GSA) daily per diem rates, applying the following breakdown: 25% for Breakfast, 30% for Lunch, 45% for Dinner, applied to daily totals including meals & incidental rates. Receipts are not required.
 - f. Local resources who return home each night, and do not remain in camp overnight will not be entitled to per diem.
 - g. Hotels will only be reimbursed at actual expenses including daily rate and applicable taxes, not to exceed the government rates established in (GSA). All hotel reimbursements require an itemized receipt, and must be approved with a resource order or written approval from the Incident Commander. Booking fees associated with online travel agents are non-compensable.
 - h. Alternate accommodations may be utilized at the expense of the user. The cost for alternative accommodations is not reimbursable.
 - i. For travel home if sack lunches are provided, per diem claims will not be reimbursed.
 - j. Travel time to and from the incident will be paid according to the DNR pay provisions in the Washington State Wage & Equipment Rate Guide.

- k. Travel time and cost associated with picking up and dropping off rental vehicles will be paid according to the DNR pay provision in the Washington State Wage & Equipment Rate Guide.
- 7) Reimburse the district/department for all approved supply expenses approved at the incident. The following guidelines apply
 - a. All supply expenses, with the exception of rental car fuel, require a resource order from the incident in order to be reimbursable.
 - b. Itemized receipts must be included for all supply purchases in order to be eligible for reimbursement.
- 8) To pay all volunteers directly, unless otherwise requested in writing by the Chief. Volunteers will be paid for hours worked at the rates in the Washington State Wage & Equipment Rate Guide.
- 9) Reimburse district/department for Equipment Cost at the rates published in the Washington State Wage & Equipment Rate Guide.
 - a. All equipment will be paid at the wet rate
 - b. All equipment will be paid based on the resource order
 - c. All equipment will be paid according to the DNR provisions in the Washington State Wage & Equipment Rate Guide.



COUNCIL AGENDA ITEM COVERSHEET

Council Date: 9/6/2022

Agenda Category: Items - Approval

Core Focus Area I - Promote Financial Stability & Operational Effectiveness

Subject:

Relocation Expenses for the BCES Executive Director

Department/Office
Assistant City Manager

Ordinance/Resolution Number:

Document Type:
General Business Item

Recommended Motion:

Authorize reimbursement of reasonable and necessary moving expenses up to \$7,500 for relocation of the incoming BCES Executive Director.

Summary:

Richland Municipal Code Section 2.28.450 allows for reimbursement of reasonable and necessary relocation expenses for new employees not currently residing in Richland upon recommendation of the City Manager and authorization by Council.

The incoming Benton County Emergency Services (BCES) Executive Director currently resides in Spokane, Washington. City Manager Amundson recommends reimbursement of reasonable and necessary relocation costs for the BCES Executive Director of up to \$7,500.

Fiscal Impact:

Funds are available in the City Manager's budget to address relocation expenses for strategic recruitment.

Attachments:



COUNCIL AGENDA ITEM COVERSHEET

Council Date: 9/6/2022

Agenda Category: Items - Approval

Core Focus Area I - Promote Financial Stability & Operational Effectiveness

Subject:

Travel for Mayor Alvarez and Councilmember Richardson

Department/Office
City Manager

Ordinance/Resolution Number:

Document Type:
General Business Item

Recommended Motion:

Authorize travel for Mayor Alvarez and Councilmember Richardson to attend the Energy Communities Alliance (ECA) conference in Alexandria, Virginia from September 21-24, 2022.

Summary:

Mayor Alvarez and Councilmember Richardson plan to attend the Energy Communities Alliance (ECA) National Cleanup Workshop in Alexandria, Virginia from September 21-24, 2022.

The Energy Communities Alliance (ECA) is the only non-profit, membership organization of local governments adjacent to or impacted by U.S. Department of Energy activities. This workshop brings together local government officials to share information, establish policy positions, and promote community interests in coordination with the Department of Energy.

Richland Municipal Code (RMC) Sections 1.01.040 and 2.26.062 require Council approval for travel which requires either an overnight stay, the use of commercial transportation to travel outside of Washington State or when expenses exceed \$500.

Fiscal Impact:

Anticipated expenses are \$6,843.73 (total) for Mayor Alvarez and Councilmember Richardson to attend the ECA National Cleanup Workshop. Many of these expenses will be reimbursed by ECA. City Council has an adequate budget to cover costs not reimbursed.

Attachments:

- I. National Clean Up Conference Agenda

2022 National Cleanup Workshop Agenda

Marriott Crystal Gateway
1700 Richmond Hwy, Arlington, VA

“Clearing the Decks to Enable the Next Decade of Cleanup Success”

Hosted by the Energy Communities Alliance in cooperation with the U.S.
Department of Energy and the Energy Facility Contractors Group

WEDNESDAY, SEPTEMBER 21, 2022

4:00pm – 6:00pm	Registration Opens
4:00pm – 7:00pm	Exhibits Open
5:00pm – 7:00pm	Welcome Reception

THURSDAY, SEPTEMBER 22, 2022

7:00am – 8:00am	Registration and Continental Breakfast
8:00am – 8:15am	Opening Remarks Introduction: Seth Kirshenberg , Executive Director, Energy Communities Alliance Brent Gerry , Mayor, City of West Richland, WA; Chair, Energy Communities Alliance (ECA) Michael Lempke , Chair, Energy Facility Contractors Group (EFCOG); President, Nuclear and Environmental group, Hill's Mission Technologies division
8:15am – 8:45am	Keynote Address: DOE Priorities Hon. Jennifer Granholm , U.S. Secretary of Energy (Invited)
8:45am – 9:15am	A New Era for EM Cleanup Ike White , Senior Advisor for Environmental Management, DOE
9:15am – 9:45am	Perspective from Capitol Hill Rep. Susie Lee (D-Nev.)
9:45am – 10:15 am	COFFEE BREAK



10:15 am – 12:00pm	The Next Phase of EM Progress Moderator: Candice Robertson, Acting Principal Deputy Assistant Secretary, DOE-EM ...Completing D&D of Building 326 at Portsmouth Joel Bradburne, Manager, Portsmouth Paducah Project Office, DOE Greg Wilkett, Site Project Director, FBP ...A New Radioactive Waste Disposal Facility in Oak Ridge Laura Wilkerson, Acting Manager, Oak Ridge Office of Environmental Management Ken Rueter, President and CEO, United Cleanup Oak Ridge (UCOR) ...End-State Contracting Model Implementation at Idaho Connie Flohr, Manager, EM-Idaho Ty Blackford, President, Idaho Environmental Coalition, LLC
12:00pm – 1:00pm	LUNCH
1:00pm – 2:00pm	Resetting Regulatory Relationships and Approaches to Enable the EM Mission Moderator: Shelly Wilson, Longenecker & Associates Jay Mullis, Associate Principal Deputy Assistant Secretary for Regulatory and Policy Affairs, DOE-EM Kim Lebak, President, N3B Los Alamos Laura Wilkerson, Acting Manager, Oak Ridge Office of Environmental Management Wyatt Clark, Chief Operating Officer, Savannah River Mission Completion Connie Herman, Associate Lab Director, Savannah River National Laboratory and executive sponsor, SRNL Regulatory Center of Excellence Amy Fitzgerald, Government Affairs and Information Services Director, City of Oak Ridge, TN
2:00pm – 2:30pm	Upcoming EM Acquisition Plans and Schedule Angela Watmore, Acting Deputy Assistant Secretary for Acquisition and Project Management, DOE-EM
2:30pm – 3:00pm	COFFEE BREAK
3:00pm – 4:00 pm	Developing the Future EM Workforce Moderator: David Izraelevitz, Councilor, Los Alamos County, N.M.; Treasurer, ECA Kristen Ellis, Acting Director for Regulatory Intergovernmental and Stakeholder Engagement, DOE-EM Nicole Nelson-Jean, Associate Principal Deputy Assistant Secretary for Field Operations, DOE-EM JJ Chavez, Council Member, City of Carlsbad, N.M.; ECA Executive Board John Eschenberg, President, CPCC

4:00pm – 5:00pm	Roundtable: Lessons Learned and Improving Project Performance Moderator: Martin Schneider, Energy Facility Contractors Group (EFCOG) Candice Robertson, Acting Principal Deputy Assistant Secretary, DOE-EM Tom Jouvani, President, Atkins Nuclear Secured Michael Lempke, President, Huntington Ingalls Industries' Technical Solutions Division Greg Meyer, Senior Vice President, Fluor Billy Morrison, President and CEO, Veolia Nuclear Solutions-Federal Services Dena Volovar, Executive Vice President, Nuclear, Security & Environmental (NS&E), Bechtel Mark Whitney, President-National Security, Amentum
-----------------	--

FRIDAY, SEPTEMBER 23, 2022

7:00am – 8:00am	Registration and Continental Breakfast
8:00am – 8:30am	Legislative Challenges and Opportunities for the EM Program Introduction: Chuck Hope, Council Member, City of Oak Ridge, Tenn. Rep. Chuck Fleischmann (R-Tenn.), Chairman, House Nuclear Cleanup Caucus (invited)
8:30 am – 9:30 am	DOE Leadership Perspectives Moderator: Colin Jones, Deputy General Manager, North American Nuclear, Jacobs Candice Robertson, Acting Principal Deputy Assistant Secretary, DOE-EM Nicole Nelson-Jean, Associate Principal Deputy Assistant Secretary for Field Operations, DOE-EM Dae Chung, Associate Principal Deputy Assistant Secretary for Corporate Services, DOE-EM Jay Mullis, Associate Principal Deputy Assistant Secretary for Regulatory and Policy Affairs, DOE-EM
9:30am – 10:00am	COFFEE BREAK
10:00am – 11:00 am	Roundtable: DOE Field Office Managers Moderator: Rebecca Casper, Mayor, City of Idaho Falls Laura Wilkerson, acting Manager, Oak Ridge Office of Environmental Management, DOE-EM Joel Bradburne, Manager, Portsmouth Paducah Project Office Connie Flohr, Manager, EM Idaho Operations Office, DOE Michael Mikolanis, Manager, EM Los Alamos Reinhard Knerr, Carlsbad Operations Office, DOE Michael Budney, Manager, Savannah River Site Operations Office, DOE-EM Brian Vance, Manager, Office of River Protection/ Richland Operations Office, DOE-EM Jack Zimmerman, Director, Environmental Management Consolidated Business Center, DOE-EM

11:00am-12:00 pm	Maximizing Reuse Opportunities at EM Sites Moderator: Rick McLeod , President and CEO, Savannah River Site Community Reuse Organization Randall Ryti , Chair, Los Alamos County Council Diahann Howard , Executive Director, Port of Benton Steve L. Shepherd , Executive Director, Southern Ohio Diversification Initiative (invited) Ken Ruefer , President and CEO, UCOR
12:00pm – 1:00pm	LUNCH
1:00pm – 2:00pm	Making Glass: Entering a New Era for Hanford Tank Waste Brian Vance , Manager, Office of River Protection/Richland Operations Office Steven Ashby , Director, Pacific Northwest National Laboratory Wes Bryan , President, Washington River Protection Solutions Val McCain , Project Manager, Bechtel-WTP Bob Wilkinson , President, Hanford Mission Integration Solutions David Reeploeg , Executive Director, Hanford Communities
2:00pm – 3:00pm	Improving Assurance Approaches to Address Emerging Challenges Moderator: Jack Craig , COO, Atkins Nuclear Secured Dae Chung , Associate Principal Deputy Assistant Secretary for Corporate Services, DOE-EM David Blevins , Vice President and General Manager, North American Nuclear, Jacobs Stuart MacVean , President, Savannah River Nuclear Solutions Jim Blankenhorn , Senior Vice President-Environment and Security, Amentum Sandra Fairchild , Director of Mission Assurance and Controls, UCOR Heatherly Dukes , President, BWXT Technical Services Group Nathan Anderson , Director-Natural Resources and Environment, GAO
3:00pm-4:00 pm	Perspectives on Legislative Priorities and Actions Moderator: Seth Kirshenber , Executive Director, Energy Communities Alliance Speakers TBD
4:00pm	ADJOURN



COUNCIL AGENDA ITEM COVERSHEET

Council Date: 9/6/2022

Agenda Category: Items of Business

Core Focus Area I - Promote Financial Stability & Operational Effectiveness

Subject:

Resolution No. 2022-112, Establishing Richland City Council Meeting Dates for Calendar Year 2023

Department/Office
City Manager

Ordinance/Resolution Number:
2022-112

Document Type:
Resolution

Recommended Motion:

Adopt Resolution No. 2022-112, establishing Richland City Council meeting dates for calendar year 2023.

Summary:

Pursuant to RMC 1.01.011, the regular meetings of the city council shall be held the first and third Tuesday evenings of the month, commencing at the hour of 6:00 p.m., in the council chamber at Richland City Hall. In the event that the regular meeting falls on a legal holiday, then the regular meeting shall be held on the next succeeding day; provided, however, that the council, by affirmative vote of at least four members thereof, may, upon good cause being shown, not less than seven days prior thereto, reschedule a regular meeting with appropriate notice as may be provided by law.

In reviewing the anticipated council meeting dates for 2023, a few conflicts exist that are best addressed in advance, such as National Night Out/City Fair and Independence Day.

An affirmative vote of at least four (4) councilmembers is necessary to adopt the Richland City Council meeting dates identified in Resolution No. 2022-112 for calendar year 2023.

Fiscal Impact: None.

Attachments:

I. Resolution No. 2022-112

RESOLUTION NO. 2022-112

**A RESOLUTION OF THE CITY OF RICHLAND, WASHINGTON,
ESTABLISHING RICHLAND CITY COUNCIL MEETING DATES
FOR CALENDAR YEAR 2023.**

WHEREAS, pursuant to RMC 1.01.011, the regular meetings of the Richland City Council shall be held on the first and third Tuesday evenings of the month, commencing at the hour of 6:00 p.m., in the Council Chamber at Richland City Hall; and

WHEREAS, RMC 1.01.011 authorizes the City Council, by affirmative vote of at least four (4) members thereof, and upon good cause being shown, to reschedule a regular meeting not less than seven days prior to with appropriate notice; and

WHEREAS, in reviewing the anticipated meeting dates in 2023, a few conflicts exist that are best addressed in advance, such as National Night Out/City Fair and Independence Day.

NOW, THEREFORE, BE IT RESOLVED by the City Council of the City of Richland that the dates listed in the attached **Exhibit A** are hereby adopted as the meeting dates of the Richland City Council for calendar year 2023.

BE IT FURTHER RESOLVED that this Resolution No. 2022-112 does not limit the City Council's ability to call special meetings as authorized by Chapter 42.30 RCW or to reschedule any of the regular meetings established hereby pursuant to RMC 1.01.011.

BE IT FURTHER RESOLVED that this Resolution shall take effect immediately.

ADOPTED by the City Council of the City of Richland, Washington, at a regular meeting on the 6th day of September, 2022.

Michael Alvarez, Mayor

Attest:

Approved as to Form:

Jennifer Rogers, City Clerk

Heather Kintzley, City Attorney

Exhibit A to Resolution No. 2022-112

<i>Month</i>	<i>Date</i>	<i>Day of the Week</i>	<i>Meeting Type</i>
January	3	Tuesday	Regular
January	17	Tuesday	Regular
January	24	Tuesday	Workshop
February	7	Tuesday	Regular
February	21	Tuesday	Regular
February	28	Tuesday	Workshop
March	7	Tuesday	Regular
March	21	Tuesday	Regular
March	28	Tuesday	Workshop
April	4	Tuesday	Regular
April	18	Tuesday	Regular
April	25	Tuesday	Workshop
May	2	Tuesday	Regular
May	16	Tuesday	Regular
May	23	Tuesday	Workshop
June	6	Tuesday	Regular
June	20	Tuesday	Regular
June	27	Tuesday	Workshop
July	6	Thursday	Regular
July	18	Tuesday	Regular
July	25	Tuesday	Workshop
August	2	Wednesday	Regular
August	15	Tuesday	Regular
August	22	Tuesday	Workshop
September	5	Tuesday	Regular
September	19	Tuesday	Regular
September	26	Tuesday	Workshop
October	3	Tuesday	Regular
October	17	Tuesday	Regular
October	24	Tuesday	Workshop
November	7	Tuesday	Regular
November	21	Tuesday	Regular
December	5	Tuesday	Regular
December	19	Tuesday	Regular