



WENATCHEE CITY COUNCIL
Thursday, December 12, 2019
Wenatchee City Hall Council Chambers
301 Yakima Street, 2nd Floor
Wenatchee, WA 98801

AGENDA

5:15 p.m. Regular Meeting

1. Call to Order, Pledge of Allegiance, and Roll Call.

2. Consent Items:

- Motion to approve agenda, vouchers, and minutes from previous meetings.
Vouchers:
Payroll distribution in the amount of \$9,185.32 for December 5, 2019
Payroll distribution in the amount of \$82,404.09 for December 5, 2019
Claim checks #193209 through #193296 in the amount of \$356,774.52 for December 5, 2019
- Motion for City Council to accept the work performed by the contractor, DJB Construction, on the Poplar Avenue Sanitary Sewer Extension, Project No. 1902, and further authorize the Mayor to sign the Final Contract Voucher Certification on behalf of the City of Wenatchee.
- Motion for City Council to accept the work performed by the contractor, Hurst Construction, LLC, on City Project No. 1715 - Middle School Crossing Improvements Project, and further authorize the Mayor to sign the Final Contract Voucher.
- Motion for City Council to accept the work performed by the contractor, Hurst Construction, LLC, on City Project NO. 1616 - Western and Springwater Intersection Control, and further authorize the Mayor to sign the Final Contract Voucher.
- Motion for City Council to authorize the Mayor to accept the work performed by the contractor, Grindline Skateparks, on the Hale Skate Park, Project No. 16-1666, and further authorize the Mayor to sign the Final Contract Voucher on behalf of the City of Wenatchee.

3. Citizen Requests/Comments.

The "Citizen Comments" period is to provide the opportunity for members of the public to address the Council on items either not on the agenda or not listed as a public hearing. The Mayor will ask if there are any citizens wishing to address the Council. When recognized, please step up to the microphone, give your name and mailing address, and state the matter of your interest. If your interest is an agenda item, the Mayor may suggest that your comments wait until that time. Citizen comments will be limited to three minutes.

4. Presentations.

- Service Awards

5. Action Items.

- A. 2020 Wages – Management/Administrative Group
Presented by Human Resources Director Kari Page
Motion for City Council to adopt Ordinance No. 2019-45, establishing positions for regular status employment within the City of Wenatchee Management/Administrative Group, fixing the compensation to be paid for the calendar year 2020, and repealing Ordinance No. 2019-07.

- B. Pay Ranges – Temporary Employees
Presented by Human Resources Director Kari Page
Motion for City Council to adopt Ordinance No. 2019-46, establishing pay ranges for temporary employees for the calendar year 2020, and repealing Ordinance No. 2019-06.
- C. Arts, Recreation and Parks Commission Appointments
Presented by Parks, Recreation & Cultural Services Director David Erickson
Motion for City Council to approve Resolution No. 2019-56, appointing a member to the Arts, Recreation and Parks Commission (Lyle Markhart).
Motion for City Council to approve Resolution No. 2019-57, re-appointing a member to the Arts, Recreation and Parks Commission (Lisa Adan).
- D. Charter Communications Franchise
Presented by Executive Services Director Allison Williams, IS Director Dale Cantrell, Public Works Director Rob Jammerman, and Finance Director Brad Posenjak
Motion for City Council to adopt Ordinance No. 2019-48, renewing the grant of a franchise to Spectrum Pacific West, L.L.C., locally known as Charter Communications, to operate and maintain a cable system in the City of Wenatchee, and approving the franchise agreement setting forth the conditions accompanying the grant of the franchise.
- E. Wastewater Treatment Plant Digester 4 – Project No. 1810
Authorization for Consultant Supplemental Agreement #1
Presented by Senior Engineer Jeremy Hoover
Motion for City Council to authorize the Mayor to sign Consultant Supplemental Agreement #1 on behalf of the City with HDR Engineering, Inc., for additional design services for the Wastewater Treatment Plant Digester #4, Project No. 1810.
- F. Tacoma Avenue Improvements, City Project #1907
Interlocal Agreement with Chelan County PUD
Presented by Engineering Services Manager Jacob Huylar and Project Engineer Jake Lewing
Motion for City Council to authorize the Mayor to approve the Interlocal Agreement between the City of Wenatchee and Public Utility District No. 1 of Chelan County, providing for the reimbursement of costs incurred with the design and construction of water line improvements associated with Project No. 1907.
- G. Lease for Temporary Use at Former WSDOT Property
Presented by Development Project Manager
Motion for City Council to authorize the Mayor to enter into a lease with Town Auto Group for the temporary use and operation of a car dealership on the former WSDOT property.

H. Confluence Parkway Chelan PUD Coordination Memorandum of Understanding

Presented by Economic Development Director Steve King

Motion for City Council to authorize the Mayor to negotiate and sign a Memorandum of Understanding between the Chelan County PUD and the City of Wenatchee for the purposes of NEPA compliance for Confluence Parkway.

I. Stella Street Annexation – Ordinance No. 2019-34

Presented by Housing & Community Planner Brooklyn Holton

Motion for City Council to adopt Ordinance No. 2019-34, to fully include the public right of way known as Stella Avenue within the corporate limits of the City of Wenatchee, and authorize the Mayor to sign and enter into an Agreement with Chelan County to share equally the cost of \$16,836.49 to overlay the unincorporated segment of Stella Avenue.

6. Public Hearing Items.

The Mayor will call the Public Hearing to order and state the ground rules, the purpose of the hearing, the action that the hearing body may take on the matter, will address the appearance of fairness doctrine, and will state the manner in which the hearing will proceed. Staff will first give a report, followed by testimony of experts and/or the applicant, followed then by public testimony. All speakers must speak into the microphone and clearly state their names and addresses. All comments should be addressed to the hearing body, should be relevant to the application, and should not be of a personal nature. Public testimony may be limited to three minutes, unless further time is granted by the Mayor. If there are a large number of speakers, a representative may be appointed to speak on behalf of the group.

J. Consideration of Limited Business and Occupation Tax

Presented by Executive Services Director Allison Williams, Finance Director Brad Posenjak, and City Attorney Steve Smith

Motion for City Council to adopt Ordinance No. 2019-44, imposing a business and occupation tax of two tenths of one percent (.2%) on business within the City of Wenatchee, establishing exemptions, and providing for an effective date.

K. WCC 10.72 - Nonconforming Signs – Billboard Amortization

Presented by Community Development Staff

Motion for City Council to adopt Ordinance No. 2019-51, amending and restating Chapter 10.72 “Nonconforming uses, structures and lots” of the Wenatchee City Code.

7. Reports.

- a. Mayor’s Report
- b. Reports/New Business of Council Committees

8. Announcements.

9. Adjournment.



WENATCHEE CITY COUNCIL
Thursday, December 5, 2019
Wenatchee City Hall Council Chambers
301 Yakima Street, 2nd Floor
Wenatchee, WA 98801
MINUTES

DRAFT

In attendance:

Mayor Frank Kuntz
Councilmember Jim Bailey
Councilmember Ruth Esparza
Councilmember Lyle Markhart
Councilmember Keith Huffaker
Councilmember Mark Kulaas
Councilmember Linda Herald
Councilmember Mike Poirier

Staff in attendance:

Executive Services Director Allison Williams
City Attorney Steve Smith
City Clerk Tammy Stanger
IS Support Jessi Saucedo
Parks, Recreation & Cultural Services Director David Erickson
Utilities Manager John Ricardi
Community Development Director Glen DeVries
Finance Director Brad Posenjak
Planning Manager Stephen Neuenschwander
Senior Planner Matt Parsons
Economic Development Director Steve King
Public Works Director Rob Jammerman

5:15 p.m. Special Meeting

1. Call to Order, Pledge of Allegiance, and Roll Call.

Mayor Frank J. Kuntz called the meeting to order at 5:15 p.m. Councilmember Ruth Esparza led the Pledge of Allegiance. All Councilmembers were present.

2. Consent Items:

- Motion to approve agenda, vouchers, and minutes from previous meetings.
- Motion for City Council to accept the work performed by the contractor, Road Products, Inc., on City Project No. SW18-11 – Iron Adjustments, and further authorize the Mayor to sign the Final Contract Voucher.
- Motion for City Council to accept the work performed by the contractor, Pipkin Construction, on City Project No. 1614 – Wenatchee Regional Vector Waste Facility, and further authorize the Mayor to sign the Final Contract Voucher.
- Motion for City Council to accept the work performed by the contractor, Pipkin Construction, on the Montana and Dakota Water Main Replacement Project, City Project No. 1702, and further authorize the Mayor to sign the Final Contract Voucher.

- Motion for City Council to accept the work performed by the contractor, Pipkin Construction, on City Project No. SW19-05 – WWTP Snowmelt & Old Clarifier Demolition Project, and further authorize the Mayor to sign the Final Contract Voucher.

Motion by Councilmember Keith Huffaker to approve the consent items. Motion seconded by Councilmember Jim Bailey. Motion carried (7-0).

3. Citizen Requests/Comments.

Manuel Valencia thanked the Mayor and Council for all of the good work in South Wenatchee and Methow Park. He shared some photos of the clean-up effort they held a few weeks ago with sponsorship from Lowes.

4. Action Items.

A. Lease Amendment No. 3 (WRC – Parcel D)

Executive Services Director Allison Williams presented the staff report. Council asked questions.

Motion by Councilmember Mike Poirier for City Council to authorize the Mayor's signature on Lease Amendment No. 3 between the City of Wenatchee and the Women's Resource Center of North Central Washington for Parkside Parcel D. Councilmember Linda Herald seconded the motion. Motion carried (7-0).

B. Tourism Promotion Area Annual Budget Approval

Executive Services Director Allison Williams presented the staff report. Tourism Promotion Area Board Chair Freyda Stephens was also present. Council asked questions. Councilmember Linda Herald recused herself from this item due to a conflict of interest.

Motion by Councilmember Lyle Markhart for City Council to approve the 2020 Tourism Promotion Area budget. Councilmember Keith Huffaker seconded the motion. Motion carried (6-0) (Herald conflict).

C. Tourism Promotion Area Advisory Board

Executive Services Director Allison Williams presented the staff report. Tourism Promotion Area Board Chair Freyda Stephens was also present. Councilmember Linda Herald recused herself from this item due to a conflict of interest.

Motion by Councilmember Mike Poirier for City Council to approve Resolution No. 2019-55, appointing a member to the Tourism Promotion Area Advisory Board for a three (3) year term (Tiffany Petty). Councilmember Ruth Esparza seconded the motion. Motion carried (6-0) (Herald conflict).

D. Acceptance of RCO Grants – Lincoln Park Project

Parks, Recreation and Cultural Services Director David Erickson presented the staff report. Council asked questions.

Motion by Councilmember Keith Huffaker for City Council to approve the Project Funding Agreement 18-18246D with the State of Washington for the Lincoln Park Project and authorize the Mayor to sign the agreement. Motion seconded by Councilmember Jim Bailey. Motion carried (7-0).

Motion by Councilmember Jim Bailey for City Council to approve the Project Funding Agreement 18-1250D with the State of Washington for the Lincoln Park Project and authorize the Mayor to sign the agreement. Councilmember Lyle Markhart seconded the motion. Motion carried (7-0).

E. Chelan County Natural Hazard Mitigation Plan

Utilities Manager John Ricardi presented the staff report. Council asked questions.

Motion by Councilmember Linda Herald for City Council to approve Resolution No. 2019-52, authorizing the adoption of the Chelan County Hazard Mitigation Plan. Councilmember Jim Bailey seconded the motion. Motion carried (7-0).

F. Historic Preservation Board Re-Appointments

Community Development Director Glen DeVries presented the staff report.

Motion by Councilmember Ruth Esparza for City Council to approve Resolution No. 2019-53, reappointing two voting representatives to the Wenatchee Historic Preservation Board for three-year terms (Robert Culp and Jon Campbell). Councilmember Jim Bailey seconded the motion. Motion carried (7-0).

G. Planning Commission Member Re-Appointments

Community Development Director Glen DeVries presented the staff report.

Motion by Councilmember Keith Huffaker to approve Resolution No. 2019-54, reappointing three voting representatives to the Planning Commission (Ace Bollinger, Josh Jorgensen, and Rani Sampson). Councilmember Lyle Markhart seconded the motion. Motion carried (7-0).

H. Interlocal Agreement for Housing of Inmates

Finance Director Brad Posenjak presented the staff report. Council asked questions.

Motion by Councilmember Lyle Markhart for City Council to authorize the Mayor's signature on the Interlocal Agreement between Chelan County and the City of Wenatchee for the Housing of Inmates, after final contract language has been negotiated. Councilmember Ruth Esparza seconded the motion. Motion carried (7-0).

I. Ecology Construction Grant – Walla Walla Street Stormwater Retrofit

Utilities Manager John Ricardi presented the staff report.

Motion by Councilmember Keith Huffaker for City Council to authorize the Mayor to sign the Water Quality Combined Financial Assistance Agreement between the State of Washington Department of Ecology and the City of Wenatchee for the Walla Walla Street Stormwater Retrofit project. Councilmember Jim Bailey seconded the motion. Motion carried (7-0).

5. Public Hearing Items.

The Mayor explained the public hearing process.

J. Sign Code Update – Amendments to Chapter 10.50 Signs

Community Development Director Glen DeVries, Planning Manager Stephen Neuenschwander, and Senior Planner Matt Parsons presented the staff report.

Council asked questions.

The Mayor asked for public comment. The following citizens spoke:

1. Mike Walker, business owner and property owner on North Wenatchee Avenue, had concerns about loss of right-of-way with the North Wenatchee Avenue project, and nonconforming signs being required to conform to the new code, rather than relocated on the property. Staff responded and stated there is no relocation provision in the code, the new code would need to be followed.
2. Michael Noyd, 1720 Madison, Wenatchee, while he believes there are a lot of good provisions in the proposed code, he has concerns with non-compliant signs and the new variable of ten years. He also has concerns with single tenant buildings vs. multi-tenant buildings and feels that small businesses are being singled out. He also stated his concern with sight lines and monument signs.
3. Linda Haglund, Wenatchee Downtown Association Executive Director, was thankful for the city inviting them to the table allowing thoughtful consideration as they worked through the code updates. The WDA is comfortable with the updated sign code but recognizes there is more work to be done with respect to historic downtown.

With no further public comments, the Mayor turned the matter back over to the City Council. The Council discussed and asked for further clarification and asked for a change to the Ordinance as presented. The following motion was made:

Motion by Councilmember Linda Herald to adopt the recommendation of the City of Wenatchee Planning Commission incorporated in Ordinance 2019-50, with the following amendment. The amended noted as Alternative 1, 12/4/2019, would provide a new subsection, WCC 10.50.150(9), providing for the amortization of nonconforming pole and pylon signage within a 10 year period. Motion seconded by Councilmember Ruth Esparza. Motion carried (7-0).

K. 2020-2025 Capital Facilities Plan

Senior Planner Matt Parsons and Economic Development Director Steve King presented the staff report. Council asked questions.

The Mayor asked for public comment. There was no one who wished to speak.

The Mayor then turned the matter back to the Council.

Motion by Councilmember Mark Kulaas for City Council to approve Resolution No. 2019-59, amending and restating the City of Wenatchee Capital Facilities Plan. Councilmember Keith Huffaker seconded the motion. Motion carried (7-0).

At 6:36 p.m. the Council took a 5 minute break. The meeting resumed at 6:41 p.m.

L. Annual Amendments to the Wenatchee Urban Area Comprehensive Plan and the Official Zoning Map

Planning Manager Stephen Neuenschwander and Senior Planner Matt Parsons presented the staff report. Council asked questions.

The Mayor then asked for public comment. The following people spoke:

1. Cherie Keller, 1111 Westview, Wenatchee, said she is fully supportive of changing the zoning of her property to RF and spoke of wildfire concerns for her neighborhood.
2. Paul Furmanczyk, 1044 Surry Road, Wenatchee, spoke of his concerns with wildfire and is in support of the zoning change to RF for lower risk.

3. Don Stone, 900A Westmoreland, Wenatchee, said he was concerned with the hasty last minute inclusion of zoning changes. He provided some photos for the council to see of his property. He said the intentions are good but the results may not be what they are looking for, and he is concerned with a greater lack of access. He stated that further review is needed.
4. Andy Dappen, 2332 Westview Drive, Wenatchee, spoke of his concerns with high density and the threat to the neighborhood with greater wildfire risk.
5. Scott Davenport, 2500 Westwick Road, Wenatchee, owns 37 acres that he hopes to develop and is concerned with the quickness at which the proposed zone changes are being considered with a lack of communication to property owners. He would also like to see a west access road to his property.
6. Dave Beck, 1398, Westview Drive, Wenatchee, spoke in support of the RF zone.
7. Greg Wright, 580 7th Street NE, East Wenatchee, with the Nick McLean Real Estate Group, spoke of his concerns with downzoning in a time when there are no available homes to buy and a lack of rentals. He feels more work needs to be done before adopting the zoning changes. He also spoke of his concerns about wildfire.

With no further comments, the Mayor turned the matter back over to the City Council for consideration. The Council asked additional questions of staff and discussed the matter.

Motion by Councilmember Ruth Esparza to adopt the recommendation of the City of Wenatchee Planning Commission incorporated in Ordinance No. 2019-49, with the following amendment: incorporate and adopt the entire set of comprehensive plan land use designation and zone change map amendments identified in the planning staff report issued to the Planning Commission on November 13, 2019, and presented at the November 20, 2019, City of Wenatchee Planning Commission Hearing. Motion seconded by Councilmember Lyle Markart.

Amended motion by Councilmember Ruth Esparza to adopt the recommendation of the City of Wenatchee Planning Commission incorporated in Ordinance No. 2019-49 and Resolution No. 2019-58, with the following amendment: incorporate and adopt the entire set of comprehensive plan land use designation and zone change map amendments identified in the planning staff report issued to the Planning Commission on November 13, 2019, and presented at the November 20, 2019, City of Wenatchee Planning Commission Hearing. Motion seconded by Councilmember Lyle Markart. Motion carried (6-1) (Poirier nay)

After further discussion an additional motion was made as follows:

Motion by Councilmember Mark Kulaas that the Planning Commission is instructed to further analyze the wildland urban interface areas, specifically the application of the RF zoning district, and how it fits into the Community Planning Assistance for Wildfire Recommendation for Wenatchee, Washington Report. The analysis needs to be delivered to the Council not later than the third Thursday in August 2020. Motion seconded by Councilmember Keith Huffaker. Motion carried (7-0).

M. Franchise Renewal with Spectrum Pacific West, LLC, locally known as Charter Communications

Executive Services Director Allison Williams presented the staff report. Council asked questions. There was no one present who wished to comment.

No action to be taken at this time. The hearing was held for public input. There are some additional changes requested by Charter. It is scheduled for final consideration by the City Council on December 12.

6. Reports.

a. Mayor's Report. The Mayor reported on the following:

- (1) Code on billboards will be heard next week.
- (2) Confluence Health has asked the Mayor to consider a payment in lieu of taxes. The B & O tax ordinance is set for hearing next week. If there is a signed payment in lieu of taxes agreement it will come to the Council for consideration.

b. Reports/New Business of Council Committees

- (1) Councilmember Keith Huffaker announced that the ribbon cutting for the waste facility was today. He also mentioned that he would like to receive the agenda packet a week prior to the meetings (this will be discussed at next week's training).

7. Announcements. None.

8. Adjournment. With no further business the meeting adjourned at 8:22 p.m.

Frank J. Kuntz, Mayor

Attest:

Tammy L. Stanger, City Clerk

**COUNCIL AGENDA REPORT
PUBLIC WORKS DEPARTMENT**

TO: Frank Kuntz, Mayor
City Council

FROM: Jeremy Hoover, P.E., Senior Engineer - Utilities



SUBJECT: Poplar Avenue Sanitary Sewer Extension - Project No. 1902
Final Acceptance

DATE: December 6, 2019

MEETING DATE: December 12, 2019

I. OVERVIEW

Approximately 335 linear feet of 8 inch sanitary sewer main line was installed in Poplar Avenue south of Springwater to Westwood Ave. The project was identified and included in the 2017 Comprehensive Sewer Plan. A request for bids was issued and advertised on July 4 and July 11, 2019. As the low bidder with a base bid of \$166,155.00, or \$180,112.02 after applicable sales tax, DJB Construction was awarded the contract on August 20. Construction was substantially complete on October 25 with Physical Completion on October 31, 2019.



II. FISCAL IMPACT

This project was included in the 2019 Budget and funded through Fund 405 - Sewer. Due to the poor condition of the existing roadway, repaving of the entire road section was performed throughout the work area. **The final construction contract cost is \$178,793.27.** To date, total expenditures including staff utilization, construction inspection, and minor costs are \$192,860.42.1. Including the contribution to the Art Fund in the amount of 1,787.93, the project will be under budget upon final closeout. The approved project budget is as follows:

Budget Items	Amount
Design	12,000
In House Management	11,000
Construction & Surveying	205,000
Construction Engineering	20,000
Art Fund	2,000
Total Project Budget	250,000

**COUNCIL AGENDA REPORT
PUBLIC WORKS DEPARTMENT**

III. ACTION REQUESTED

Staff recommends the City Council accept the work performed by the contractor, DJB Construction on the Poplar Avenue Sanitary Sewer Extension, Project #1902 and further authorize the Mayor to sign the Final Contract Voucher Certification on behalf of the City of Wenatchee.

IV. REFERENCES

Agenda Report 2019-47, Authorization to Award Construction Contract
Final Contract Voucher Certificate

VI. ADMINISTRATIVE ROUTING

Tammy Stanger, City Clerk
Rob Jammerman, Public Works Director
John Ricardi, Utilities Manager
Gary Owen, City Engineer
Natalie Thresher, Contracts Coordinator
Brad Posenjak, Finance Director

City of Wenatchee
Poplar Avenue Sanitary Sewer Extension

Summer 2019
Contract Forms



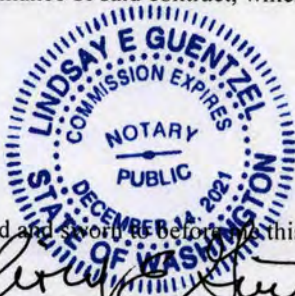
City of Wenatchee
Department of Public Works

Final Contract
Voucher Certificate

Contractor <u>DJB Construction LLC</u>			
Street Address <u>119 Tara Pl</u>			
City <u>Wenatchee</u>	State <u>WA</u>	Zip <u>98801</u>	Date <u>10/31/19</u>
City Project Number <u>1902</u>	Federal-Aid Project Number <u>N/A</u>	Highway Number	
Job Title <u>Poplar Avenue Sanitary Sewer Extension</u>			
Date Work Physically Completed <u>October 31, 2019</u>		Final Amount <u>\$178,793.27</u>	

Contractor's Certification

I, The undersigned, having first been duly sworn, certify that I am authorized to sign for the claimant; that in connection with the work performed and to the best of my knowledge no loan, gratuity or gift in any form whatsoever has been extended to any employee of the City of Wenatchee nor have I rented or purchased any equipment or materials from any employee of the City of Wenatchee; I further certify that the attached final estimate is a true and correct statement showing all the monies due me from the City of Wenatchee for work performed and materials furnished under this contract; that I have carefully examined said final estimate and understand the same and that I hereby release the City of Wenatchee from any and all claims of whatsoever nature which I may have, arising out of the performance of said contract, which are not set forth in said estimate.



[Signature]
Contractor Authorized Signature Required
David Robinson
Type Signature Name

Subscribed and sworn to before me this 31st day of October 2019
[Signature]
 Notary Public in and for the State of
Washington,
residing at Wenatchee, WA 98801 ex: 12-14-21

City of Wenatchee

City of Wenatchee hereby accepts the completed contract pursuant to Section 1-05.12 of the contract provisions.

Mayor/or Designee

Date of Acceptance

**COUNCIL AGENDA REPORT
PUBLIC WORKS DEPARTMENT**

TO: Frank Kuntz, Mayor
City Council

FROM: Jacob Huylar, Engineering Services Manager



SUBJECT: Middle School Crossing Improvements – City Project #1715
Final Acceptance

DATE: December 6, 2019

MEETING DATE: December 12, 2019

I. OVERVIEW

This project installed radar speed feedback signs and a mid-block crossing with flashing beacons across Maple Street in front of Foothills Middle School. The project also installed illumination and flashing beacons at the intersection of Miller Street and Orchard Ave. Curb ramps and driveway approaches were improved as well.

This project contained work at Foothills Middle School for Wenatchee School District which was covered in an interlocal agreement. The City portion of the work is primarily funded by a Safe Routes to School Grant awarded to the City in 2017.

The project was awarded to Hurst Construction LLC on July 30, 2018 and construction began on August 8, 2018. The work was deemed physically complete in 2019 after punch list items were completed.

II. ACTION REQUESTED

Staff recommends that the City Council accept the work performed by the contractor, Hurst Construction, on City Project No. 1715 – Middle School Crossing Improvements Project, and further authorize the Mayor to sign the final Contract Voucher.

III. FISCAL IMPACT

The table below shows the project budget and anticipated final costs. The project came in approximately 7% under budget.

Middle School Crossing Improvements	Project Budget	Final Amount
City Funding	\$84,276	\$73,231
ILA Wenatchee School District Funding	\$44,752	\$33,276
Federal Grant Funding	\$341,000	\$330,595
Total:	\$470,028	\$437,102

**COUNCIL AGENDA REPORT
PUBLIC WORKS DEPARTMENT**

IV. REFERENCE(S)

1. Final Contract Voucher

V. ADMINISTRATIVE ROUTING

Tammy Stanger, City Clerk
Rob Jammerman, Public Works Director
Gary Owen, City Engineer
Natalie Thresher, Contracts Coordinator



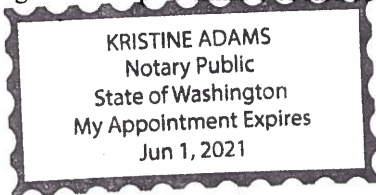
**City of Wenatchee
Department of Public Works**

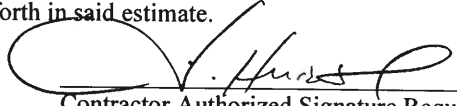
**Final Contract
Voucher Certificate**

Contractor Hurst Construction LLC			
Street Address P.O. Box 990			
City Wenatchee	State WA	Zip 98807	Date November 1, 2019
City Project Number 1715	Contract Number: TA-6270	Federal Aid No.: SRTS-9904(014)	Highway Number N/A
Job Title Middle School Crossings Improvements			
Date Work Physically Completed November 1, 2019		Final Amount \$364,481.77	

Contractor's Certification

I, The undersigned, having first been duly sworn, certify that I am authorized to sign for the claimant; that in connection with the work performed and to the best of my knowledge no loan, gratuity or gift in any form whatsoever has been extended to any employee of the City of Wenatchee nor have I rented or purchased any equipment or materials from any employee of the City of Wenatchee; I further certify that the attached final estimate is a true and correct statement showing all the monies due me from the City of Wenatchee for work performed and materials furnished under this contract; that I have carefully examined said final estimate and understand the same and that I hereby release the City of Wenatchee from any and all claims of whatsoever nature which I may have, arising out of the performance of said contract, which are not set forth in said estimate.




Contractor Authorized Signature Required
JESSE HURST
Type Signature Name

Subscribed and sworn to before me this 18th day of November 20 19

X Kristine Adams Notary Public in and for the State of Washington,
residing at East Wenatchee

City of Wenatchee

City of Wenatchee hereby accepts the completed contract pursuant to Section 1-05.12 of the contract provisions.

Mayor/or Designee

Date of Acceptance

**COUNCIL AGENDA REPORT
PUBLIC WORKS DEPARTMENT**

TO: Frank Kuntz, Mayor
City Council

FROM: Jacob Huylar, Engineering Services Manager



SUBJECT: Western and Springwater Intersection Control, City Project No. 1616
Final Acceptance

DATE: December 6, 2019

MEETING DATE: December 12, 2019

I. OVERVIEW

This project installed a mini roundabout at the intersection of Western Avenue and Springwater Avenue. Improvements included new pavement, sidewalks, channelization, and signing.

The project was partially funded with federal grant money. The City received a \$230,000 Surface Transportation Block Grant from the Chelan-Douglas Transportation Council (CDTC) in 2016 and an additional \$50,148 July of 2018, resulting in a total grant amount of \$280,148.

The project was awarded to Hurst Construction LLC on June 14, 2018 and construction began on July 9, 2018. The work was deemed physically complete on March 19, 2019. Due to the federal funding associated with the project, the City had been waiting on various paperwork prior to Final Acceptance.

II. ACTION REQUESTED

Staff recommends that the City Council accept the work performed by the contractor, Hurst Construction LLC, on City Project No. 1616 – Western and Springwater Intersection Control, and further authorize the Mayor to sign the Final Contract Voucher.

III. FISCAL IMPACT

The table below shows the project budget and anticipated final costs. While the overall total exceeded the project budget by approximately 4%, the City funding was lower than the project budget by \$29,291. This difference is attributed to the additional grant funding that the City received in July of 2018.

Western and Springwater Intersection Control	Project Budget	Final Amount
City Funding	\$269,110	\$239,819
Federal Grant Funding	\$230,000	\$279,350
Private Irrigation Group	\$6,000	\$6,000
Total:	\$505,110	\$525,169

**COUNCIL AGENDA REPORT
PUBLIC WORKS DEPARTMENT**

IV. REFERENCE(S)

1. Final Contract Voucher

V. ADMINISTRATIVE ROUTING

Tammy Stanger, City Clerk
Rob Jammerman, Public Works Director
Gary Owen, City Engineer
Natalie Thresher, Contracts Coordinator

City of Wenatchee
Western and Springwater Intersection Control

May 2018
Contract Forms



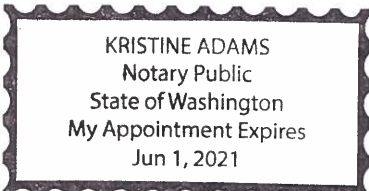
City of Wenatchee
Department of Public Works

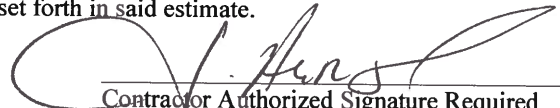
Final Contract
Voucher Certificate

Contractor Hurst Construction LLC			
Street Address P.O. Box 990			
City Wenatchee	State WA	Zip 98807	Date November 19, 2019
City Project Number 1616	Federal-Aid Project Number STPUS-9904(012)	Highway Number N/A	
Job Title Western and Springwater Intersection Control			
Date Work Physically Completed March 19, 2019		Final Amount \$436,785.45	

Contractor's Certification

I, The undersigned, having first been duly sworn, certify that I am authorized to sign for the claimant; that in connection with the work performed and to the best of my knowledge no loan, gratuity or gift in any form whatsoever has been extended to any employee of the City of Wenatchee nor have I rented or purchased any equipment or materials from any employee of the City of Wenatchee; I further certify that the attached final estimate is a true and correct statement showing all the monies due me from the City of Wenatchee for work performed and materials furnished under this contract; that I have carefully examined said final estimate and understand the same and that I hereby release the City of Wenatchee from any and all claims of whatsoever nature which I may have, arising out of the performance of said contract, which are not set forth in said estimate.




Contractor Authorized Signature Required
Jesse Hurst
Type Signature Name

Subscribed and sworn to before me this 6th day of December 20 19

X Kristine Adams Notary Public in and for the State of Washington,

residing at East Wenatchee

City of Wenatchee

City of Wenatchee hereby accepts the completed contract pursuant to Section 1-05.12 of the contract provisions.

Mayor/or Designee

Date of Acceptance



MEMO

Parks, Recreation and Cultural Services Department

To: Mayor Kuntz and City Council
From: Charlotte Mitchell, Capital Projects Manager
Re: Hale Skate Park Construction Final Acceptance
Date: December 9, 2019

ACTION REQUESTED:

Motion to authorize the Mayor to accept the work performed by the contractor, Grindline Skateparks, on the Hale Skate Park, Project No 16-1666, and further authorize the Mayor to sign the Final Contract Voucher on behalf of the City of Wenatchee.

BACKGROUND:

The Hale Family approached the City in early 2013 to discuss donating five parcels of land totaling 4.97 acres for a future park. Following the completion of appraisals and environmental and cultural review, the City Council approved Resolution 2013-23 on April 25, 2013, which accepted the donation of the property for the park. A request for proposals for the skatepark design and construction was sent out in the fall of 2018. Grindline Skateparks was selected from this process and a contract was signed with them on December 7, 2018. Grindline held three outreach meetings in the community January 2019-March 2019. Construction started on May 20, 2019 and was complete September 13, 2019.

Original contract amount	\$279,672
Final contract amount	<u>\$279,672</u>
Difference	\$0



WHAT IS NEXT AFTER THIS PHASE IS COMPLETE?

A contract to complete the design of the children's play area, picnic shelter, security cameras, restrooms and additional landscaping will be awarded this winter with construction of the final phase of Hale Park to occur summer 2020.



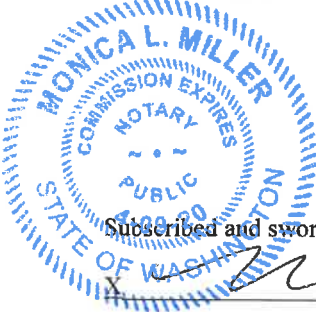
**City of Wenatchee
Department of Public Works**

**Final Contract
Voucher Certificate**

Contractor Gindline Skateparks LLC			
Street Address 4619 14th Ave SW			
City Seattle	State WA	Zip 98106	Date 12/06/2019
City Project Number #16-1666	Federal-Aid Project Number N/A		Highway Number N/A
Job Description (Title) Hale Skate Park			
Date Work Physically Completed 09/13/2019		Final Amount \$279,672.00	

Contractor's Certification

I, The undersigned, having first been duly sworn, certify that I am authorized to sign for the claimant; that in connection with the work performed and to the best of my knowledge no loan, gratuity or gift in any form whatsoever has been extended to any employee of the City of Wenatchee nor have I rented or purchased any equipment or materials from any employee of the City of Wenatchee; I further certify that the attached final estimate is a true and correct statement showing all the monies due me from the City of Wenatchee for work performed and materials furnished under this contract; that I have carefully examined said final estimate and understand the same and that I hereby release the City of Wenatchee from any and all claims of whatsoever nature which I may have, arising out of the performance of said contract, which are not set forth in said estimate.



Micah Shapiro
Contractor Authorized Signature Required
Micah Shapiro, CEO
Type Signature Name

Subscribed and sworn to before me this 9th day of December 20 19

[Signature]

Notary Public in and for the State of Washington,

residing at Seattle, WA 98116

City of Wenatchee

City of Wenatchee hereby accepts the completed contract pursuant to Section 1-05.12 of the contract provisions.

X
Mayor/or Designee

Date of Acceptance

Council Agenda Report

To: Mayor Frank Kuntz
City Council Members

From: Kari Page, Director of Human Resources

RE: **Service Awards**

Date: December 12, 2019

Overview / Background:

The City of Wenatchee acknowledges employees who have reached milestones in their years of service. We recognize the following employees and extend our sincere gratitude for their dedication and many contributions to City of Wenatchee success.

30 Years

Employee Name	Job Title	Department
Tom Lewis	Maintenance Worker II – Parks (Cemetery)	Parks, Recreation & Cultural Services

10 Years

Tammy Stanger	City Clerk	Executive Services
---------------	------------	--------------------

5 Years

Cory Bernaiche	Officer First Class	Police
Jerred Gardner	Maintenance Worker II – Parks	Parks, Recreation & Cultural Services
Brooklyn Holton	Housing & Community Planner	Community Development
Elizabeth Rivera Avila	Utility Billing Specialist	Finance

Council Agenda Report

To: Mayor Frank Kuntz
City Council Members

From: Kari Page, Director of Human Resources

RE: **Ordinance No. 2019-45**

Date: December 12, 2019

Overview / Background:

Ordinance No. 2019-45 establishes positions for regular status employment within the Management and Administrative Group and fixes the compensation to be paid for calendar year 2020, per Exhibit "A" (Management/Administrative Group Wage Schedule).

This ordinance repeals Ordinance No. 2019-07.

Budget Impact:

Compensation is incorporated into the approved 2020 budget.

Action Requested:

Motion to approve Ordinance No. 2019-45 which establishes positions for regular status employment within the City of Wenatchee Management and Administrative Group, fixing the compensation to be paid for calendar year 2020 and repeals Ordinance No. 2019-07.

ORDINANCE NO. 2019-45

AN ORDINANCE, establishing positions for regular status employment within the City of Wenatchee Management/Administrative Group, fixing the compensation to be paid for the calendar year 2020, and repealing Ordinance No. 2019-07.

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF WENATCHEE DO ORDAIN AS FOLLOWS:

SECTION I

The City of Wenatchee does hereby create and establish those regular full-time and part-time employment positions as set forth on Exhibit “A” attached hereto and by this reference incorporated herein as though fully set forth. The wage range for these positions shall be as set forth on Exhibit “A.”

SECTION II

That this Ordinance shall take effect thirty days from and after publication as provided by law, and be applied retroactively to January 1, 2020.

SECTION III

That prior Ordinance No. 2019-07 shall be and hereby is repealed to the extent it is in conflict herewith.

**PASSED BY THE CITY COUNCIL OF THE CITY OF
WENATCHEE** this 12th day of December, 2019.

CITY OF WENATCHEE, a municipal corporation

By _____
FRANK KUNTZ, Mayor

ATTEST:

By: _____
Tammy Stanger, City Clerk

APPROVED:

By: _____
STEVE D. SMITH, City Attorney

City of Wenatchee

Management/Administrative Group Monthly Wage Schedule

January 1 - December 31, 2020

Grade	Job Classification	Step 1	Step 2	Step 3	Step 4	Step 5
MA1	Police Chief Director of Public Works	9,371.82	9,840.41	10,332.43	10,849.05	11,500.00
MA2	Director of Economic Development Director of Executive Services Director of Finance	8,964.35	9,412.57	9,883.20	10,377.36	11,000.00
MA3	Director of Community Development Police Captain	8,760.62	9,198.65	9,658.58	10,141.51	10,750.00
MA4	Director of Human Resources Director of Information Services Director of Parks, Recreation & Cultural Services	8,149.41	8,556.88	8,984.72	9,433.96	10,000.00
MA5	City Engineer	7,957.65	8,355.53	8,773.30	9,211.97	9,764.69
MA6	Assistant Director of Finance Engineering Services Manager Public Works Operations Manager Utilities Manager	7,335.45	7,702.23	8,087.34	8,491.70	9,001.21
MA7	Building/Fire Official Planning Manager	7,158.45	7,516.37	7,892.19	8,286.80	8,784.01
MA8	Development Review Engineer Senior Engineer - Utilities	6,862.05	7,205.16	7,565.41	7,943.68	8,420.31
MA9	Capital Projects Manager Development Project Manager Environmental Manager Facilities Manager Project Engineer Utilities Assistant Manager Wastewater Supervisor	6,596.04	6,925.85	7,272.14	7,635.75	8,093.89
MA10	Network Administrator	6,555.44	6,883.21	7,227.38	7,588.74	8,044.07
MA11	Storm/Sewer Collections Supervisor Street Maintenance Supervisor Water Distribution Supervisor	6,235.36	6,547.13	6,874.48	7,218.21	7,651.30
MA12	Accounting Supervisor Business & Asset Manager GIS Manager Police Support & Technical Services Manager Senior Planner	6,105.69	6,410.97	6,731.52	7,068.10	7,492.18
MA13	Recreation Supervisor	5,851.44	6,144.01	6,451.21	6,773.77	7,180.20
MA14	Accountant Parks Maintenance Supervisor	5,766.47	6,054.79	6,357.53	6,675.41	7,075.94
MA15	Building/Fire Inspector City Clerk Fleet Supervisor Network Specialist Plans Examiner Public Services Supervisor	5,562.24	5,840.35	6,132.37	6,438.99	6,825.33
MA16	Contracts Coordinator Housing Program Coordinator (RPT) Staff Engineer	5,245.38 2,622.69	5,507.65 2,753.83	5,783.03 2,891.52	6,072.19 3,036.09	6,436.52 3,218.26
MA17	Associate Planner	5,011.35	5,261.92	5,525.01	5,801.26	6,149.34
MA18	Accreditation & Administration Coordinator Human Resources Coordinator Public Information Officer/Deputy Clerk	4,864.49	5,107.72	5,363.10	5,631.26	5,969.13
MA19	Building Inspector Code Compliance Officer Code Compliance Officer/Building Inspector Housing & Community Planner IS Support Technician	4,770.08	5,008.58	5,259.01	5,521.96	5,853.28
MA20	Administrative Assistant	4,527.13	4,753.48	4,991.16	5,240.72	5,555.16
	Mayor					8,742.25

Council Agenda Report

To: Mayor Frank Kuntz
City Council Members

From: Kari Page, Director of Human Resources

RE: **Ordinance No. 2019-46**

Date: December 12, 2019

Overview / Background:

Ordinance No. 2019-46 establishes pay ranges for temporary employees for calendar year 2020 and repeals Ordinance No. 2019-06.

The Washington State minimum wage increased by \$1.50 cents to \$13.50 effective January 1, 2020.

Budget Impact:

Compensation is incorporated into the approved 2020 budget.

Action Requested:

Motion to approve Ordinance No. 2019-46, which establishes pay ranges for temporary employees hired during calendar year 2020 and repeals Ordinance No. 2019-06.

ORDINANCE NO. 2019-46

AN ORDINANCE, establishing pay ranges for temporary employees for the calendar year 2020, and repealing Ordinance No. 2019-06.

WHEREAS, Ordinance No. 2019-06 directed the Director of Human Resources to establish hiring procedures for temporary employees, and

WHEREAS, Ordinance No. 2019-06 directed the Director of Human Resources, together with the Mayor, to establish wage ranges for temporary employees.

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF WENATCHEE DO ORDAIN, as follows:

SECTION I

Attached hereto as Exhibit “A” are general guidelines for hiring, maintaining and promoting temporary employees of the City of Wenatchee.

SECTION II

Attached hereto as Exhibit “B” are the temporary positions and pay ranges for the calendar year 2020.

SECTION III

That this Ordinance shall take effect thirty days from and after publication as provided by law, and be applied retroactively to January 1, 2020.

SECTION III

That prior Ordinance No. 2019-06 shall be and hereby is repealed to the extent it is in conflict herewith.

**PASSED BY THE CITY COUNCIL OF THE CITY OF
WENATCHEE** at a regular meeting thereof this 12th day of December, 2019.

CITY OF WENATCHEE, a Municipal corporation

By: _____
FRANK KUNTZ, Mayor

ATTEST:

By: _____
Tammy Stanger, City Clerk

APPROVED:

By: _____
STEVE SMITH, City Attorney

EXHIBIT "A"

GENERAL GUIDELINES FOR HIRING TEMPORARY EMPLOYEES

The Mayor, together with the Director of Human Resources, shall establish and maintain general guidelines for the hiring of temporary employees. The guidelines shall include appropriate wage ranges for temporary employees.

Guidelines

Prior to an offer of employment, the rate of pay for each temporary employee hired will be established by the Human Resources Director depending on the temporary position and qualifications of the applicant.

Hiring of temporary employees shall provide for an objective means of selecting persons for such employment. There shall be an equal opportunity for all persons interested in employment with the City of Wenatchee to seek and obtain such employment. To promote such a practice, Department Directors shall work with Human Resources to determine how to announce or otherwise make available temporary work opportunities with the City of Wenatchee.

A Department Director may hire temporary employees who have worked previously for the City of Wenatchee after approval from the Director of Human Resources. A returning temporary employee shall mean a person previously employed by the City within the past 18 months.

No person shall be employed by the City of Wenatchee until an application and all other required documentation has been received and approved by Human Resources.

No offer of employment may be made outside of these guidelines or existing Ordinances unless authorized, in writing, by the Mayor.

Within the first three (3) days of employment, an orientation for the new temporary employee will be held. During the orientation, all employment forms shall be reviewed and completed.

EXHIBIT “B”

2020 TEMPORARY POSITIONS AND WAGE RANGES

The following table sets forth the most commonly utilized temporary positions and the wage range for each. The Human Resources Director authorizes any employment for the following positions and determines the appropriate rate of pay within the wage range set forth depending upon qualifications (DOQ). Any employment for a position not set forth in the following table or for a position other than within the following pay range shall require City Council approval.

Position	Wage Range	
	Minimum	Maximum (DOQ)
Intern	\$13.50	\$18.00
General Office Community Center Staff Pool Staff Recreation Staff	\$13.50	\$20.00
Maintenance Worker Utility Worker	\$13.50	\$22.00



MEMO

Parks, Recreation and Cultural Services Department

To: Mayor Kuntz and City Council Members
From: Dave Erickson, Parks, Recreation and Cultural Services Director
Date: November 21, 2019
Re: Arts, Recreation and Parks Commission appointments

ACTION REQUESTED

Move approval of Resolution 2019-56 appointing Lyle Markhart to position one of the Wenatchee Arts, Recreation and Parks Commission with a term expiring December 31, 2022.

Move approval of Resolution 2019-57 re-appointing Lisa Adan to position two of the Wenatchee Arts, Recreation and Parks Commission with a term expiring December 31, 2022.

BACKGROUND

The Arts, Recreation and Parks Commission is a nine-member citizen volunteer commission that serves in an advisory capacity to the Wenatchee City Council. The primary functions of the Commission are to:

- Review and make recommendations concerning recreation program offerings of the City.
- Oversee the City's art collection and comprehensive arts program.
- Provide recommendations regarding the acquisition, development and maintenance of park areas.
- Serve as the City Forestry Board and oversee the Urban Forestry Program.
- Review and make recommendations regarding the implementation of the City Parks, Recreation and Open Space Plan.
- Provide advice and make recommendations concerning the Wenatchee Community Center and Cemetery.
- Review art, recreation and park related proposals.
- Complete regular reviews of fees and charges for services.

Two vacancies will be created at the end of the year when Commissioner Sara Urdahl (Position 1) completes her second term and Commissioner Lisa Adan (Position 2) completes her first term on the Commission.

At their November 19, 2019 meeting, the Arts, Recreation and Park Commission interviewed potential candidates and unanimously recommended the appointment of Lyle Markhart for position one and the re-appointment of Lisa Adan for position two.

Copies of their applications are attached.



City of Wenatchee
Volunteer Commission and Board Application

COMMISSION/BOARD INFORMATION

Board (s) I would like to be considered for: (If more than one, please rank them in order of preference)

- | | |
|---|---|
| <input checked="" type="checkbox"/> Arts, Recreation & Parks Commission | <input type="checkbox"/> Greater Wenatchee Regional Events Center PFD Board |
| <input type="checkbox"/> Cemetery Advisory Board | <input type="checkbox"/> Historic Preservation Board |
| <input type="checkbox"/> Civil Service Board | <input type="checkbox"/> Lodging Tax Advisory Committee |
| <input type="checkbox"/> Code Enforcement Board | <input type="checkbox"/> Planning Commission |
| <input type="checkbox"/> Diversity Advisory Committee | <input type="checkbox"/> Tourism Promotion Area Board |

APPLICANT INFORMATION

City of Wenatchee Resident Yes No

Residency Requirement: Applicants must reside within the City Limits of Wenatchee except the Arts Commission, Diversity Advisory Committee, Historic Preservation Board, and the Parks & Recreation Advisory Board

Last Name: MARKHART First Name: LYLE Initial: M

Physical Address: 635 KITTITAS ST. City: WENATCHEE Zip: 98801

Mailing Address: SAME City: _____ Zip: _____

Day Phone: (509) 665-0823 Evening Phone: SAME

E-mail: Lmarkhart62@charter.net Years lived in Wenatchee Valley: 27 years

Occupation: RETIRED LINK OPERATOR Years of Experience: 20

Work Address: N/A City: _____ Zip: _____

Education and Formal Training: B.A. IN INDUSTRIAL FILMMAKING FROM UOFW

Have you ever been convicted of a felony or released from prison? Yes No

(A conviction record will not necessarily bar you from serving. Factors such as the nature and gravity of the crime, the length of time that has passed since the conviction and/or completion of any sentence, and the nature of the position for which you have applied will be considered.)

Volunteer/Community Experience:

Organization and Duties: <u>WENATCHEE CITY COUNCIL</u>	Length of Service: <u>4 YEARS</u>
Organization and Duties: <u>WV MCE BOARD OF DIRECTORS</u>	Length of Service: <u>4 YEARS</u>
Organization and Duties: <u>NORTH CENTRAL WA. ECONOMIC DEVELOPMENT</u>	Length of Service: <u>—</u>
Organization and Duties: <u>DISTRICT BOARD</u>	Length of Service: <u>4 YEARS</u>
Organization and Duties: <u>WELL'S HOUSE ADVISORY COMMITTEE</u>	Length of Service: <u>3 1/2 YEARS</u>
Skills/Special Interests: <u>CREATING CONSENSUS, INTEREST IN HISTORY AND POLITICS.</u>	

Experience related to the Commission/Board: CITY COUNCIL MEMBER LAST 4 YEARS.
BEING INVOLVED IN METHOW PARK CREATION. BEING INVOLVED IN
HISPANIC COMMUNITY.

Why are you seeking this appointment? TO BE INVOLVED IN CREATING AND
MAINTAINING THIS CITY'S GREAT PARK SYSTEM.

Would any conflict of interest be created as a result of your appointment? Yes No

If yes, please explain: _____

REFERENCES

Name: LINDA HAGLAND - EXECUTIVE DIRECTOR WDA
Address: 103 PALOUSE ST. SUITE # 35 City: WENATCHEE Zip: 98801
Phone: (509) 662-0059 Email: linda@wendowntown.org.
Occupation: EXECUTIVE DIRECTOR WENATCHEE DOWNTOWN ASSOCIATION Years known: 4 YEARS

Name: TAMMY STANGER
Address: P.O. Box 519 City: WENATCHEE Zip: 98807-0519
Phone: (509) 888-6204 Email: TStanger@wenatchee.wa.gov
Occupation: CITY CLERK Years known: 4 YEARS

Name: LYNN BURTON
Address: 2700 ELLIOT AVE. City: WENATCHEE Zip: 98801
Phone: (509) 662-1595 Email: lynn@linktransit.com
Occupation: H.R. DIRECTOR LINK TRANSIT Years known: 27

AFFIDAVIT OF APPLICANT

I, Lyle M. Markhart, do hereby certify that the information contained in the foregoing application is true and correct to the best of my knowledge and belief. I also understand that this completed application may be made available for public inspection.

Lyle M. Markhart
(Signature)
Date: 11/17/19



**City of Wenatchee
Volunteer Board, Commission and Committee Responsibilities**

To be selected and serve as a City of Wenatchee volunteer Board, Commission or Committee Member is a high honor and provides an unusual opportunity for genuine public service. Although the specific duties of each of the City's Boards vary widely with the purpose for which they are formed, there are certain responsibilities that are common to all members. As a volunteer Board, Commission or Committee representative of the City of Wenatchee, I agree to:

1. Understand my role and scope of responsibility. I will be informed of the individual group's scope of responsibility and operating procedures.
2. Represent the majority views of the group. Individual "opinions" to the public and press are discouraged, and, if given, must be identified as such.
3. Practice open and accountable government. I will be as open as possible about my decisions and actions, and also protect confidential information.
4. Represent the public interest and not special interest groups.
5. Not make decisions in order to gain financial or other benefits for myself, my family, or friends.
6. Serve as a liaison between the City and its citizens and can help reconcile contradictory viewpoints and to build a consensus around common goals and objectives. I will serve as a communication link between community, staff, and City, representing City programs and recommending and providing a channel for citizen expression.
7. Understand my role as a supportive relationship with the City Council and City staff and to follow the proper channel of communication through the designated staff person providing support for the group.
8. Do my homework and be thorough in recommendations. I will review agenda items under consideration prior to the meeting in order to be fully prepared to discuss, evaluate, and act on all matters scheduled for consideration. My conclusions will be based on careful preparation to strengthen the value of the group's recommendation.
9. Adhere to the highest standards of integrity and honesty in all endeavors and strive to safeguard the public trust. I shall announce any direct or remote conflict of interests prior to the discussion (RCW 42.36).
10. Understand that my authority is limited to decisions made by the group, and that in most cases, the decisions are advisory.
11. Understand that in my role I recommend policy while administrators and staff carry out approved policy.
12. Establish a good working relationship with fellow group members. I will respect individual viewpoints and allow other members time to present their views fully before making comments. I will be open and honest and welcome new members.
13. Not use or involve my membership in the conduct of political activities. However, I am not restricted from participating in political activities outside of my involvement in the group.

I hereby pledge to be positive in my role as a volunteer with the City and accept responsibility for my participation.

Signed: Lyle M. Markhart Date: 11/17/19



City of Wenatchee
Volunteer Commission and Board Application

COMMISSION/BOARD INFORMATION

Board (s) I would like to be considered for: (If more than one, please rank them in order of preference)

- | | |
|---|---|
| <input checked="" type="checkbox"/> Arts Commission | <input type="checkbox"/> Greater Wenatchee Regional Events Center PFD Board |
| <input type="checkbox"/> Cemetery Advisory Board | <input type="checkbox"/> Historic Preservation Board |
| <input type="checkbox"/> Civil Service Board | <input type="checkbox"/> Lodging Tax Advisory Committee |
| <input type="checkbox"/> Code Enforcement Board | <input type="checkbox"/> Parks and Recreation Advisory Board |
| <input type="checkbox"/> Diversity Advisory Committee | <input type="checkbox"/> Planning Commission |
| | <input type="checkbox"/> Tourism Promotion Area Board |

APPLICANT INFORMATION

Last Name: Adkin First Name: Lisa Initial: L

Mailing Address: 2516 Poplar Ave City: Wenatchee Zip: 98801

Residency Requirement: Applicants must reside within the City Limits of Wenatchee except the Arts Commission, Diversity Advisory Committee, Historic Preservation Board, and the Parks & Recreation Advisory Board

Day Phone: 214-734-6868 Evening Phone: same

E-mail: lisa.adkin@gmail.com Years lived in Wenatchee Valley: 9

Occupation: Library Secretary Years of Experience: 1

Work Address: 401 Washington St. City: Wenatchee Zip: 98801

Education and Formal Training: BA in Kinesiology

Have you ever been convicted of a felony or released from prison? Yes No
(A conviction record will not necessarily bar you from serving. Factors such as the nature and gravity of the crime, the length of time that has passed since the conviction and/or completion of any sentence, and the nature of the position for which you have applied will be considered.)

Volunteer/Community Experience:

- | | |
|---|---|
| Organization and Duties: <u>Wen. Soccer Club - Coach</u> | Length of Service: <u>2.5 yrs.</u> |
| Organization and Duties: <u>Wen. School District - Classroom Volunteer</u> | Length of Service: <u>5 yrs ongoing</u> |
| Organization and Duties: <u>Mothers of Preschoolers (MOPS) Steering Team</u> | Length of Service: <u>4 yrs.</u> |
| Organization and Duties: <u>Washington Elem. PTSA - Event/Fundraising Coordinator</u> | Length of Service: <u>3 yrs.</u> |
| Organization and Duties: _____ | Length of Service: _____ |
| Skills/Special Interests: _____ | |

Experience related to the Commission/Board:

10 years of experience working for Parks and Recreation Departments

Why are you seeking this appointment?

I love parks and recreation and would enjoy helping the city I live in

Would any conflict of interest be created as a result of your appointment? Yes No

If yes, please explain: _____

REFERENCES

Name: Jason Brown
Address: _____ City: _____ Zip: _____
Phone: 972-834-2704 Email: Jbrownaggie@yahoo.com
Occupation: Recreation Center Manager Irving, TX Years known: 10

Name: Jill Thayer
Address: _____ City: Wenatchee Zip: 98801
Phone: 509-393-4461 Email: jthayer31@icloud.com
Occupation: Former MOPS Coordinator Years known: 5

Name: Kristin Lodge
Address: 2211 Stephanie Brooke City: Wenatchee Zip: 98801
Phone: 806-799-9953 Email: Kristin.lodge@gmail.com
Occupation: Project Mgr/Volunteer soccer coach Years known: 1

AFFIDAVIT OF APPLICANT

I, Lisa Adlan, do hereby certify that the information contained in the foregoing application is true and correct to the best of my knowledge and belief. I also understand that this completed application may be made available for public inspection.

[Signature]
(Signature)
Date: 11-1-19



City of Wenatchee Volunteer Board, Commission and Committee Responsibilities

To be selected and serve as a City of Wenatchee volunteer Board, Commission or Committee Member is a high honor and provides an unusual opportunity for genuine public service. Although the specific duties of each of the City's Boards vary widely with the purpose for which they are formed, there are certain responsibilities that are common to all members. As a volunteer Board, Commission or Committee representative of the City of Wenatchee, I agree to:

1. Understand my role and scope of responsibility. I will be informed of the individual group's scope of responsibility and operating procedures.
2. Represent the majority views of the group. Individual "opinions" to the public and press are discouraged, and, if given, must be identified as such.
3. Practice open and accountable government. I will be as open as possible about my decisions and actions, and also protect confidential information.
4. Represent the public interest and not special interest groups.
5. Not make decisions in order to gain financial or other benefits for myself, my family, or friends.
6. Serve as a liaison between the City and its citizens and can help reconcile contradictory viewpoints and to build a consensus around common goals and objectives. I will serve as a communication link between community, staff, and City, representing City programs and recommending and providing a channel for citizen expression.
7. Understand my role as a supportive relationship with the City Council and City staff and to follow the proper channel of communication through the designated staff person providing support for the group.
8. Do my homework and be thorough in recommendations. I will review agenda items under consideration prior to the meeting in order to be fully prepared to discuss, evaluate, and act on all matters scheduled for consideration. My conclusions will be based on careful preparation to strengthen the value of the group's recommendation.
9. Adhere to the highest standards of integrity and honesty in all endeavors and strive to safeguard the public trust. I shall announce any direct or remote conflict of interests prior to the discussion (RCW 42.36).
10. Understand that my authority is limited to decisions made by the group, and that in most cases, the decisions are advisory.
11. Understand that in my role I recommend policy while administrators and staff carry out approved policy.
12. Establish a good working relationship with fellow group members. I will respect individual viewpoints and allow other members time to present their views fully before making comments. I will be open and honest and welcome new members.
13. Not use or involve my membership in the conduct of political activities. However, I am not restricted from participating in political activities outside of my involvement in the group.

I hereby pledge to be positive in my role as a volunteer with the City and accept responsibility for my participation.

Signed: _____

A handwritten signature in blue ink, appearing to read "Lion" followed by a stylized monogram.

Date: _____

11-1-19

RESOLUTION NO. 2019-56

A RESOLUTION, appointing a member to the Arts, Recreation and Parks Commission.

WHEREAS, a vacancy exists on the Arts, Recreation and Parks Commission;

WHEREAS, Lyle Markhart is desiring to continue his service to the community by serving as a member of the Commission; and

WHEREAS, by a vote of the Commissioners Lyle Markhart was recommended for appointment to the Arts, Recreation and Parks Commission;

NOW, THEREFORE, BE IT RESOLVED THAT THE CITY COUNCIL OF THE CITY OF WENATCHEE makes the following appointment to Arts, Recreation and Parks Commission Position One with a term ending on December 31, 2022:

NAME & ADDRESS

Lyle Markhart
635 Kittitas Street
Wenatchee, WA 98801

TERM EXPIRES

December 31, 2022

PASSED BY THE CITY COUNCIL OF THE CITY OF WENATCHEE at a regular meeting thereof this 12th day of December, 2019.

CITY OF WENATCHEE, a Municipal
Corporation

By: _____
FRANK J. KUNTZ, Mayor

ATTEST:

By: _____
TAMMY STANGER, City Clerk

APPROVED:

By: _____
STEVE D. SMITH, City Attorney

RESOLUTION NO. 2019-57

A RESOLUTION, re-appointing a member to the Arts, Recreation and Parks Commission.

WHEREAS, a vacancy exists on the Arts, Recreation and Parks Commission from the expiration of Commissioner Lisa Adan's term;

WHEREAS, Lisa Adan was initially appointed to the Arts, Recreation and Parks Commission in 2017; and

WHEREAS, Lisa Adan is desiring to continue her service to the community by continuing to serve as a member of the Commission; and

WHEREAS, by a vote of the Commissioners Lisa Adan was recommended for re-appointment to the Arts, Recreation and Parks Commission;

NOW, THEREFORE, BE IT RESOLVED THAT THE CITY COUNCIL OF THE CITY OF WENATCHEE makes the following re-appointment to Arts, Recreation and Parks Commission Position Two with a term ending on December 31, 2022:

NAME & ADDRESS

Lisa Adan
226 Poplar Avenue
Wenatchee, WA 98801

TERM EXPIRES

December 31, 2022

PASSED BY THE CITY COUNCIL OF THE CITY OF WENATCHEE at a
regular meeting thereof this 12th day of December, 2019.

CITY OF WENATCHEE, a Municipal Corporation

By: _____
FRANK J. KUNTZ, Mayor

ATTEST:

By: _____
TAMMY STANGER, City Clerk

APPROVED:

By: _____
STEVE D. SMITH, City Attorney

COUNCIL AGENDA REPORT

TO: Frank Kuntz, Mayor
City Council Members

FROM: Allison Williams, Executive Services Director; Dale Cantrell, IS Director; Rob Jammerman, Public Works Director; Brad Posenjak, Finance Director

SUBJECT: Ordinance 2019-48

DATE: December 6, 2019

Overview: The City of Wenatchee has had a franchise agreement with Falcon Video Communications, locally known as Charter Communications, since July 13, 1995. The current franchise (which was last renewed in January 2013) expires at the end of this year and during the term of the current franchise the agreement was transferred and the franchise is with Spectrum Pacific West, LLC, locally known as Charter Communications.

WCC 5.04.130 guides the process for the consideration of a renewal of a franchise. Upon receiving notice in mid-2018 from Spectrum/Charter, staff began negotiations under the informal process with the first negotiation call on August 20, 2018. After the initial meeting a redlined version of the existing franchise was received from Spectrum/Charter and staff began the update process which included outreach about the franchise areas where changes were proposed. Under city code, staff may elect to undertake a full assessment of cable related needs, however for a renewal, the past record of the franchisee provides a basis for renewing the franchise and an opportunity must be provided for public comment. Staff believes it is in the best interest of the public to follow through with renewal.

The proposed updates to the franchise were reviewed at the Special Council meeting on December 5th and during the public hearing, no comments were received. Last week a red-lined version of the franchise was provided to Council via email. The one item is still outstanding, so provided for Council is a blacklined version of last week's agreement with the item in 8.10 highlighted. Staff is not accepting this language.

Budget Impact: There is no change in the financial impact of this franchise with its renewal.

Action Requested: Approval of Ordinance No. 2019-48 renewing the grant of a franchise to Spectrum Pacific West, LLC, locally known as Charter Communications, to operate and maintain a cable system in the City of Wenatchee, and approving the franchise agreement setting forth the conditions accompanying the grant of the franchise.

ORDINANCE NO. 2019-48

AN ORDINANCE, renewing the grant of a franchise to Spectrum Pacific West, LLC, locally known as Charter Communications, to operate and maintain a cable system in the City of Wenatchee, and approving the franchise agreement setting forth the conditions accompanying the grant of the franchise.

WHEREAS, Spectrum Pacific West, LLC, locally known as Charter Communications (“Grantee”) desires to continue operation of a cable system in the right of way of the City of Wenatchee under the authority of Chapter 5.04 of the Wenatchee Municipal Code; and

WHEREAS, negotiations between Grantee and the City have been completed and the franchise renewal process followed in accordance with the guidelines established by the City code and federal law; and

WHEREAS, the City Council has reviewed the qualifications of Grantee and the adequacy of its provision of services in the City of Wenatchee; and

WHEREAS, pursuant to RCW 35A.47.040, this Ordinance was first introduced to the City Council at a regular meeting thereof on December 5, 2019.

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF WENATCHEE DO ORDAIN as follows:

SECTION I

That the franchise agreement attached hereto as Exhibit “A” shall be and hereby is approved and the Mayor is authorized to execute the same on behalf of the City.

SECTION II

This Ordinance shall take effect on January 1, 2020 after passage and publication as provided by law.

SECTION III

If any section, subsection, sentence, clause or phrase of this Ordinance is declared or adjudged by a court of competent jurisdiction to be invalid or unconstitutional, such adjudication shall in no manner affect the remaining portions of this Ordinance which shall be in full force and effect as if said section, subsection, sentence, clause or phrase, so declared or adjudged invalid or unconstitutional were not originally a part hereof.

PASSED BY THE CITY COUNCIL OF THE CITY OF WENATCHEE at a regular meeting thereof this ____ day of _____, 2019.

CITY OF WENATCHEE, a Municipal corporation

By: _____
FRANK KUNTZ, Mayor

ATTEST:

By: _____
TAMMY STANGER, City Clerk

APPROVED:

By: _____
STEVE SMITH, City Attorney

FRANCHISE AGREEMENT
WENATCHEE, WASHINGTON

This Franchise Agreement (hereinafter "Franchise" or "Agreement") is between the City of Wenatchee, Washington, hereinafter referred to as the "Grantor" or "City" and Spectrum Pacific West, LLC, locally known as CHARTER COMMUNICATIONS, hereinafter referred to as the "Grantee."

WHEREAS, the Grantor finds that the Grantee has substantially complied with the material terms of the current Franchise under applicable laws, and that the financial, legal and technical ability of the Grantee is sufficient to provide services, Facilities and equipment necessary to meet the future cable-related needs of the community, and

WHEREAS, having afforded the public adequate notice and opportunity for comment, Grantor desires to enter into this Franchise with the Grantee for the construction and operation of a cable system on the terms set forth herein; and

WHEREAS, the Grantor and Grantee have complied with all federal and State-mandated procedural and substantive requirements pertinent to this franchise renewal;

NOW, THEREFORE, the Grantor and Grantee agree as follows:

SECTION 1
Definition of Terms

1.1 Terms. For the purpose of this Franchise the following terms, phrases, words and their derivations shall have the meaning ascribed to them in the Cable Act. When not inconsistent with the context, words used in the present tense include the future, words in the plural number include the singular number, and words in the singular number include the plural number. The word "shall" is mandatory and "may" is permissive. Words not defined shall be given their common and ordinary meaning.

- A. "Access Channel" means any channel set aside for public use, educational use or governmental use as required by the Grantor and without a channel usage charge.
- B. "Affiliate," when used in relation to any Person, means another Person who owns or controls, is owned or controlled by, or is under common ownership or control with such Person.
- C. "Cable Act" shall mean the Cable Communications Policy Act of 1984, as amended by the Cable Television Consumer Protection and Competition

Act of 1992, as amended by the Telecommunications Act of 1996, and as they may be further amended (47 U.S.C. §§ 521, et. seq).

- D. "Cable System," "Cable Service," and "Basic Cable Service" shall be defined as set forth in the Cable Act.
- E. "Channel" means a portion of the electromagnetic frequency spectrum which is used in a Cable System and which is capable of delivering a television channel.
- F. "City Council" shall mean the governing body of the City.
- G. "City Owned Infrastructure" shall include, but is not limited to, facilities, equipment and structures, along with Streets and rights-of-way owned by the City.
- H. "FCC" shall mean the Federal Communications Commission and any successor governmental entity thereto.
- I. "Facilities" means the physical components of any Person who uses Grantor Streets, such as transmission lines, cable, fiber, equipment, poles and other structures.
- J. "Franchise" shall mean the non-exclusive rights granted pursuant to this Agreement to construct, operate and maintain a Cable System along the Streets within all or a specified area in the Service Area.
- K. "Gross Revenues" means any and all compensation, as determined in accordance with Generally Accepted Accounting Principles, in whatever form, from whatever source, directly received by Grantee or affiliate of Grantee that would constitute a Cable Operator of the Cable System to provide Cable Service insofar as such operation in any manner whatsoever requires use of the public streets and rights-of-way of the City. Gross Revenues shall include, but not be limited to, basic, expanded basic and pay service revenues; revenues from installation and equipment rental; advertising revenues; any leased access revenues; revenues from any home shopping network or similar programming and the fair market value of in-kind payments such as barter.

Gross Revenues shall not include: (1) any taxes, fees (other than Franchise Fees) or assessments of general applicability, such as the FCC user fee or utility tax; (2) bad debt; provided that if amounts previously representing bad debt are collected, then those amounts shall be included in Gross Revenues for the period in which they are collected or as soon thereafter as practicable; (3) credits, refunds and deposits paid to Subscribers; (4) any exclusions available under applicable State law and (5) PEG Fees as set forth in subsection 13.5 hereof. The Franchise Fee is not a tax and shall be included for the purposes of calculating Gross Revenues.

Revenue of affiliated entities that are Cable Operators of the Cable System to provide Cable Services are included in this definition in order that Grantee shall not escape or limit its obligation to pay Franchise Fees through the creation or use of said affiliated entities.

- L. "Person" shall mean an individual, partnership, association, organization, corporation, trust or governmental entity.
- M. "Service Area" shall mean the geographic boundaries of the City, and shall include any additions thereto by annexation or other legal means, subject to the exception in Section 6.4 herein.
- N. "State" shall mean the State of Washington.
- O. "Streets" shall include each of the following located within the Service Area: public streets, roadways, highways, bridges, land paths, boulevards, avenues, lanes, alleys, sidewalks, circles, drives, easements, rights-of-way and similar public ways and extensions and additions thereto, including but not limited to public utility easements, dedicated utility strips, or rights-of-way dedicated for compatible uses now or hereafter held by the Grantor in the Service Area, which shall entitle the Grantee to the use thereof for the purpose of installing, operating, repairing and maintaining the Cable System.
- P. "Subscriber" shall mean any Person lawfully receiving Cable Service from the Grantee's Cable System.

SECTION 2 **Grant of Franchise**

2.1 Grant. The Grantor hereby grants to the Grantee a nonexclusive Franchise which authorizes the Grantee to erect, construct, operate and maintain in, upon, along, across, above, over and under the Streets, now in existence and as may be created or established; any poles, wires, cable, underground conduits, manholes, and other conductors and fixtures necessary for the maintenance and operation of a Cable System.

Grantor shall not impose any requirements that have the purpose or effect of prohibiting, limiting restricting, or conditioning the provision of a telecommunications service by a Cable Operator or an affiliate thereof. Grantor shall not order Grantee or affiliate thereof to (i) discontinue the provision of a telecommunications service, or (ii) discontinue the operation of a Cable System to the extent such Cable System is used for the provision of a telecommunications service, by reason of the failure of such Cable Operator or affiliate thereof to obtain a cable franchise or cable franchise renewal with respect to the provision of such telecommunications service.

2.2 Term. The Franchise and the rights, privileges and authority hereby granted shall be for a term of ten (10) years, commencing on the Effective Date of this Franchise as set forth in subsection 16.24.

2.3 Application Fee. Grantee shall satisfy the payment of a one-time application fee in the amount of \$5,000 as an offset against the Grantee's Franchise Fee payments under this Franchise consistent with the payment schedule under Section 10.2. Grantee's payment of application fee to Grantor is due within 45 days of the Effective Date of this Franchise.

2.4 Police Powers and Conflicts with Franchise.

- A. The Grantee agrees to comply with the terms of any lawfully adopted generally applicable current local ordinance, to the extent that the provisions of the ordinance do not have the effect of limiting the benefits or expanding the obligations of the Grantee that are granted by this Franchise. This Franchise is a contract and except as to those changes which are the result of the Grantor's lawful exercise of its general police power, the Grantor may not take any future unilateral action which materially changes the explicit mutual promises in this contract. Any changes to this Franchise must be made in writing signed by the Grantee and the Grantor.
- B. In the event of any conflict between the terms and conditions of this Franchise and the City Code, Ordinance or Regulation, the Franchise shall prevail, except Grantee's rights shall be subject to the police powers of the Grantor to adopt and enforce resolutions and ordinances necessary to the health, safety, and welfare of the public. Grantee shall comply with all applicable general laws, resolutions and ordinances enacted by the Grantor pursuant to that police power.

2.5 Cable System Franchise Required. No Cable System shall be allowed to occupy or use the Streets or public rights-of-way of the Service Area or be allowed to operate without a Cable System Franchise.

SECTION 3
Franchise Renewal

3.1 Procedures for Renewal. The Grantor and the Grantee agree that any proceedings undertaken by the Grantor that relate to the renewal of the Grantee's

Franchise shall be governed by and comply with the provisions of Section 626 of the Cable Act, or any such successor statute.

SECTION 4
Indemnification and Insurance

4.1 Indemnification. The Grantee shall, by acceptance of the Franchise granted herein, defend the Grantor, its officers, boards, commissions, agents, and employees from all claims for injury to any Person or property caused by the negligence of Grantee in the construction, operation or maintenance of the Cable System or any other Grantee act or omission arising under this Franchise, and in the event of a determination of liability shall indemnify and hold Grantor, its officers, boards, commissions, agents, and employees harmless from any and all liabilities, claims, demands, costs, expenses, attorneys' fees or judgments growing out of any injury to any Person or property as a result of the construction, repair, extension, maintenance, operation, upgrade or removal of its wires, poles or other equipment of any kind or character used in connection with the operation of the Cable System, provided that the Grantor shall give the Grantee written notice of its obligation to indemnify the Grantor within seven (7) days of receipt of a claim for damages or action pursuant to this section. In the event any such claim arises, the Grantor shall tender the defense thereof to the Grantee and the Grantee shall have the right to defend, settle or compromise any claims arising hereunder and the Grantor shall cooperate fully herein. If the Grantor determines that it is necessary for it to employ separate counsel, the costs for such separate counsel shall be the responsibility of the Grantor. Notwithstanding the foregoing, the Grantee shall not be obligated to indemnify the Grantor for any damages, liability or claims resulting from the willful misconduct or negligence of the Grantor or for the Grantor's use of the Cable System, including any Public, Education and Government (PEG) channels.

4.2 Insurance.

- A. The Grantee shall maintain throughout the term of the Franchise insurance in amounts at least as follows:

Workers' Compensation	Statutory Limit
Commercial General Liability	\$2,000,000 per occurrence, Combined Single Limit (C.S.L.) \$5,000,000 General Aggregate
Auto Liability including coverage on all owned, non-owned and hired autos	\$2,000,000 per occurrence C.S.L.
Umbrella Liability	\$1,000,000 per occurrence C.S.L.

- B. The Grantor shall be added as an additional insured, arising out of work performed by Grantee, to the above Commercial General Liability, Auto Liability and Umbrella Liability insurance coverage.

- C. The Grantee shall furnish the Grantor with current certificates of insurance evidencing such coverage upon request.

Should any of the policies described herein be cancelled before the expiration date thereof, the insurer affording coverage will use its best efforts to mail thirty (30) days prior written notice to the Grantor.

SECTION 5 **Service Obligations**

5.1 No Discrimination. Grantee shall not deny service, deny access, or otherwise discriminate against Subscribers, channel users, or general citizens on the basis of race, color, religion, national origin, age, military status, sexual orientation, marital status, physical or mental disability or gender.

5.2 Privacy. The Grantee shall fully comply with the privacy rights of Subscribers as contained in Cable Act Section 631 (47 U.S.C. § 551).

SECTION 6 **Service Availability**

6.1 Service Area. The Grantee shall make Cable Service distributed over the Cable System available to every residence within the Service Area where there is a minimum density of at least thirty (30) residences per linear strand mile of cable (excluding any residence subscribing to any satellite service and any residential passed by the Cable System) as measured from Grantee's closest technologically feasible tie-in point that is actively delivering Cable Service as of the date of such request for service. If such residence is located within one hundred twenty five (125) feet of Grantee's feeder cable, the Cable Service will be provided at Grantee's published rate for standard installations. Notwithstanding the foregoing, the Grantee shall have the right, but not the obligation, to extend the Cable System into any portion of the Service Area where another operator is providing Cable Service or into any annexed area which is not contiguous to the present Service Area of the Grantee. Grantee shall not be obligated to provide Cable Service to any area which is financially or technically infeasible.

6.2 Subscriber Charges for Extensions of the Cable System. No Subscriber shall be refused service arbitrarily. However, if an area does not meet the density requirements of subsection 6.1 above, the Grantee shall only be required to extend the Cable System to Subscribers in that area if the Subscribers are willing to share the capital costs of extending the Cable System. The Grantee may require that payment of the capital contribution in aid of construction borne by such potential Subscribers be paid in advance. Subscribers shall also be responsible for any standard/non-standard installation charges to extend the Cable System from the tap to the residence.

6.3 New Development - Undergrounding. In cases of new construction or property development where utilities are to be placed underground, the Grantor agrees to notify the Grantee of a development application. The Grantee shall coordinate with the developer or property owner for Grantee's installation of conduit, pedestals and/or vaults, and laterals to be provided at Grantee's expense. Grantee shall also provide specifications as needed for trenching. Costs of trenching and easements required to bring service to the development shall be borne by the developer or property owner; except that if Grantee fails to install its conduit, pedestals and/or vaults, and laterals within five (5) working days of the date the trenches are available, as designated in the notice given by the developer or property owner, then should the trenches be closed after the five-day period, the cost of new trenching is to be borne by Grantee.

6.4 Annexation. The Grantor shall provide Notice (pursuant to subsection 16.8) to the Grantee of an annexation of any contiguous territory which is being provided Cable Service by the Grantee or its affiliates. Notice shall include detailed and sufficient information for the Grantee, at its discretion, to make any and all necessary changes. Grantee shall pay the Grantor Franchise Fees on revenue received from the operation of the Cable System to provide Cable Services in the recently annexed Service Area, commencing ninety (90) days after receipt of Grantor's Notice.

SECTION 7 **Construction and Technical Standards**

7.1 Compliance with Codes. All construction practices and installation of equipment shall be done in accordance with all applicable sections of the National Electrical Safety Code, National Electrical Code, Occupational Safety and Health Administration, and industry standards.

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

7.3 Safety. The Grantee shall, at all times, employ ordinary care and shall use commonly accepted methods and devices for preventing failures and accidents which are likely to cause damage.

7.4 System Technical Requirements. The Cable System shall be designed, constructed and operated so as to meet those technical standards adopted by the FCC relating to Cable Systems contained in Part 76 of the FCC's rules and regulations as may, from time to time, be amended.

7.5 Performance Monitoring. Grantee shall test the Cable System consistent with the FCC regulations.

7.6 Emergency Alert System. Grantee shall comply with the Emergency Alert System ("EAS") requirements of the FCC and federal and state law, in order that required emergency messages may be distributed over the system. Grantee may execute agreements with broadcast licensees regarding EAS.

SECTION 8 **Conditions on Street Occupancy**

8.1 General Conditions. The Grantee acknowledges that the Grantor desires to promote a policy of coordination and cooperation among franchisees in the Streets and agrees to make a good faith effort to coordinate and share excavations or poles with other franchisees upon such terms as may be agreed between franchisees and satisfactory to the Grantor. Grantee shall have the right to utilize existing poles, conduits and other Facilities whenever possible, and shall not construct or install any new, different, or additional poles, conduits, or other Facilities on public property without obtaining all legally required permits of the Grantor. The terms and conditions of attachment to poles owned by third parties are to be set forth in a pole attachment agreement between Grantee and the third party pole owner.

8.2 Underground Construction. Except for high voltage transmission lines, the Facilities of the Grantee shall be installed underground in those Service Areas where other utility or franchise holders are both underground at the time of system construction. In areas where other Facilities of any utility or franchise holder (except high voltage transmission) are installed aerially at the time of system construction, the Grantee may install its Facilities aerially if the required pole attachment agreements can be obtained and with the understanding that at such time as the existing aerial Facilities are required to be placed underground by the Grantor, the Grantee shall likewise place its Facilities underground. No new utility poles to support Charter facilities will be allowed unless there are extenuating circumstances and the Public Works Director reviews and approves the proposed pole(s) installation; such approval not to be unreasonably withheld. In the event that any facility owners are reimbursed by the Grantor or any agency thereof for the placement of Facilities underground or the movement of Facilities, Grantee shall be reimbursed upon the same terms and conditions as any electric utility or franchise holder.

8.3 Joint Trenching/Boring. To the extent it is technically, commercially and economically feasible, Grantee shall joint trench or share bores or cuts and work with other providers (such as, but not limited to, other cable, telecommunications, gas, and electric companies), licensees, permittees and franchisees so as to reduce the number of right-of-way cuts within the Service Area.

8.4 Construction Codes and Permits. Grantee shall obtain all legally required permits before commencing any work requiring a permit, including the opening or disturbance of any Street within the Service Area. The Grantor shall cooperate with the Grantee in granting any permits required, providing such grant and subsequent construction by the Grantee shall not unduly interfere with the use of such Streets and Grantor owned utilities

such as water, storm, and sanitary sewer. The Grantee shall adhere to all applicable state laws, all building codes, engineering codes, zoning codes, Environmental Protection codes, and normally practiced construction standards currently or hereafter applicable to construction, operation or maintenance of the Cable System in the Service Area, provided that such codes are of general applicability and such codes are uniformly and consistently applied by the Grantor as to other public utility companies and other entities operating in the Service Area. The cost of all permits shall be in addition to Franchise Fees owed to the Grantor by Grantee.

Except for emergency repairs, Grantee shall, prior to excavating within any street, alley or other public place, and installing any conduit, overhead cable or equipment therein, file with the Public Works Department plans showing the work to be done, the location and nature of the installation to be made, repaired or maintained, and a schedule showing the times of beginning and completion. This information shall be submitted with a right of way/street cut permit from the City before proceeding with any such work and permits shall not be unreasonably withheld or delayed. In the event of an emergency requiring immediate action by Grantee for the protection of its Facilities, City property or other Persons or property, Grantee may proceed without first obtaining the normally required permits. In such event Grantee must (1) take all necessary and prudent steps to protect, support, and keep safe from harm the Facilities, or any part thereof, City property, or other Persons or property, and (2) as soon as possible thereafter, must obtain the required permits and comply with any mitigation requirements or other conditions in the after-the-fact permit.

8.5 System Construction. All transmission lines, equipment and structures shall be so installed and located as to cause minimum interference with the rights and reasonable convenience of property owners and at all times shall be kept and maintained in a safe, adequate and substantial condition, and in good order and repair. The Grantee shall, at all times, employ ordinary care and use commonly accepted methods and devices for preventing failures and accidents which are likely to cause damage, injuries, or nuisances to the public. Suitable barricades, flags, lights, flares or other devices shall be used at such times and places as are reasonably required for the safety of all members of the public. The Grantee shall comply with the most currently adopted Manual on Uniform Traffic Control Devices (MUTCD) published by the Federal Highway Administration. Any of the Grantee's Facilities placed in any public way shall be placed in such a manner as not to unreasonably interfere with the City's or public's use of the right of way.

8.6 Construction Bonds. If Grantee or Grantee's subcontractors undertakes any construction in the public right-of-way, prior to issuance of the Right-of-way Construction Permit, the Grantee shall post the required construction bonds as defined in Title 7.28 of the Wenatchee City Code. In lieu of separate bonds for routine individual projects involving work in the Franchise Area, Grantee may satisfy the City's bond requirement of this Section by posting an approved annual indemnity bond with the City of \$50,000.

8.7 Restoration of Public Ways. Upon completion of any construction work, the Franchisee shall promptly repair any and all public property, improvements, fixtures, structures and Facilities which are damaged during the course of construction, restoring the same to their condition before construction commenced in accordance with City

requirements. Grantee shall complete all work in an adequate and workmanlike manner. All excavations within the right-of-way, whether restoration or not, shall be performed in accordance with the City's Street Excavation Ordinance (Chapter 7.28 WMC). The City Street Excavation Ordinance defines minimum standards for repair of pavement, sidewalks and alleys. Whenever necessary, after construction or maintaining any of Grantee's Facilities within the Streets, the Grantee shall, without delay, and at Grantee's sole expense, remove all debris and restore the surface disturbed by Grantee as nearly as possible to as good or better condition as it was in before the work began. Grantee shall replace any property corner monuments, survey reference or equipment that was disturbed or destroyed during Grantee's work in the Streets. Such restoration shall be done in a manner consistent with applicable codes and laws and to the City's satisfaction and specifications where applicable.

8.8 Removal in Emergency. Whenever, in case of fire or other disaster, it becomes necessary in the judgment of the Grantor to remove any of the Grantee's Facilities, no charge shall be made by the Grantee against the Grantor for restoration and repair, unless such acts amount to gross negligence by the Grantor.

8.9 Tree Trimming. Grantee or designee shall have the authority to trim trees or branches measuring up to two (2) inches in caliper on public property or which overhang streets, alleys, sidewalks and public ways of the City so as to prevent the branches of such trees from coming in contact with wires and cables and other television conductors and fixtures of the Grantee. Grantee or designee shall give prior written notice and shall obtain approval from the City Director of Public Works before trimming trees measuring more than two (2) inches in caliper. Grantor agrees to either approve of Grantee's request or to meet with Grantee to review the proposed tree trimming within two (2) business days of the receipt of Grantee's written notice. Grantee takes full responsibility for removing debris when the work is complete. All trimming is to be done at the sole expense and responsibility of Grantee. Grantee is solely responsible for property or tree damaged caused by it, and must fully restore any such property or tree damage when so requested by the City. In an emergency, Grantee or designee shall have the right to trim trees without prior approval from the Grantor.

8.10 Relocation of Facilities.

A. Whenever the City causes the construction of any public works project within the Streets and such construction necessitates the relocation of Grantee's Facilities from their existing location within the Streets, such relocation will be at no cost to the City, except as follows:

~~(i) [§ JM1][AW2] funds are available to any Person using the Streets for the purpose of defraying the cost of any of the hereinafter, the City shall reimburse the Grantee in the same manner in which other Persons affected by the requirement are reimbursed. If the funds are controlled by another governmental entity, the City shall make application for such funds on behalf of the Grantee.~~

~~(ii)(i)~~ If the City requires the subsequent relocation of any of Grantee's

Facilities, including relocation pursuant to Section 8.10(D) below, within twelve (12) years from the date of relocation of such Facilities are in service, the City (or third party if pursuant to Section 8.10(D) below) shall bear the entire cost of such subsequent relocation.

~~(iii)~~(ii) All costs and expenses to relocate Grantee's Facilities to accommodate another utility or franchise holder shall be paid by the utility or franchise holder.

~~(iv)~~(iii) All costs to temporarily relocate Grantee's Facilities to accommodate the moving of a building, vehicle, equipment or other item by a person holding a valid permit issued by the City. The permit holder, including the City if the permit holder, shall pay all costs and expenses of such temporary relocation.

~~(v)~~(iv) Costs incurred by Grantee but are within the City's scope of work for a public works project, such as, but not limited to costs to relocate fences, retaining walls or underground irrigation in advance of Grantee Facilities relocation, shall be paid by City or as mutually agreed by the City's or Grantee's designated engineers.

B. In the event an emergency posing a threat to public safety or welfare, as declared by the Mayor of the City, requires the relocation of Grantee's Facilities within the Streets, the City shall give Grantee notice of the emergency as soon as reasonably practicable. Upon receipt of such notice from the City, Grantee shall endeavor to respond as soon as reasonably practicable to relocate the affected Facilities.

C. Subject to Section D, whenever the City or any third party requires the relocation of Grantee's Facilities to accommodate work of such third party within the Streets, then Grantee shall have the right as a condition of any such relocation to require payment to Grantee, at a time and upon terms acceptable to Grantee, for any and all costs and expenses incurred by Grantee in the relocation of Grantee's Facilities.

D. Any condition or requirement imposed by the City upon any third party (including, without limitation, any condition or requirement imposed pursuant to any contract or in conjunction with approvals or permits obtained pursuant to any zoning, land use, construction or other development regulation) which requires the relocation of Grantee's Facilities within the Streets, shall be a condition or requirements causing relocation of Grantee's Facilities to occur subject to the provisions of Section 8.10(C) above; provided, however in the event the City reasonably determines and notifies Grantee that the primary purpose of imposing such condition or requirement upon such third party is to cause or facilitate the construction of a public works project to be undertaken within a segment of the Streets on the City's behalf and consistent with the first three years (financially constrained) of the City's Capital Improvement Plan or 6-year Transportation Improvement Program; then only those costs and expenses incurred by Grantee in reconnecting such relocated Facilities with Grantee's other Facilities shall be paid to Grantee by such Third Party, and Grantee shall otherwise relocate its Facilities within such segment of the Franchise Area in accordance with Section 8.10(A) above. The third party shall be responsible to Grantee for any incremental cost increases, as determined by Charter, above costs attributable for the public works project due to factors such as, but not limited to, increased distance or interim design changes necessitated by less than full public

works project relocation. The third party shall adhere to Grantee's regulations, standards and policies for all development.

E. Nothing in this Section 8.10 shall require Grantee to bear any cost or expense in connection with the relocation of any Grantee Facilities existing under benefit of easement (other than City owned utility easements) or other rights not arising under this Franchise, nor shall anything in this Section 8.10 require the City to bear any such cost or expense. Nothing in this Section 8.10 shall be construed to be a waiver of any right of either Grantee or the City to contest any claim or assertion by the other of responsibility to pay such cost or expense.

8.11 Emergency Use. If the Grantee provides an Emergency Alert System ("EAS"), then the Grantor shall permit only appropriately trained and authorized Persons to operate the EAS equipment and shall take reasonable precautions to prevent any use of the Grantee's Cable System in any manner that results in inappropriate use thereof, or any loss or damage to the Cable System. The Grantor shall hold the Grantee, its employees, officers and assigns harmless from any claims or costs arising out of use by the Grantor of the EAS, including, but not limited to, reasonable attorneys' fees and costs.

8.12 Work of Contractors and Subcontractors. Grantee's contractors and subcontractors shall be insured, licensed and bonded in accordance with local policies, ordinances, regulations and requirements. Work by contractors and subcontractors shall be subject to the same restrictions, limitations and conditions as if the work were performed by Grantee.

8.13 Traffic Control. In addition to the other requirements herein, Grantee, and any Person acting on its behalf, shall develop a traffic control plan that conforms to the latest edition of the Manual of Uniform Traffic Control Devices (MUTCD). Said plan shall use suitable barricades, flags, flagmen, lights, flares, and other measures as required for the safety of all members of the general public during the performance of work, of any kind whatsoever, in public ways to prevent injury or damage to any Person, vehicle, or property. Grantee shall implement and comply with its approved traffic control plan during execution of its work. All road closures requested by Grantee requiring a Detour Plan shall be submitted at least forty eight (48) hours in advance for prior City approval unless there is an emergency. The Traffic Control Plan shall be kept on-site in Grantee's possession.

8.14 Sale of the System or Removal of Facilities After Revocation. The Grantee and the Grantor agree that in the case of a final determination of a lawful revocation of the Franchise, or if the Franchise is otherwise lawfully terminated:

(1) The Grantee shall be given at least twelve (12) months to effectuate a transfer of its Cable System to a qualified third party. Furthermore, the Grantee shall be authorized to continue to operate pursuant to the terms of this Franchise during this period. If, at the end of that time, the Grantee is unsuccessful in procuring a qualified transferee or assignee of its Cable System which is reasonably acceptable to the Grantor, the Grantee and the Grantor may avail themselves of any rights they may have pursuant to federal or state law. It is further agreed that the Grantee's continued operation of the Cable System during the

twelve (12) month period shall not be deemed to be a waiver, nor an extinguishment of, any rights of either the Grantor or the Grantee.

(2) If a transfer of the Cable System to a qualified third party does not occur within twelve (12) months, Grantee shall forthwith, upon written notice by the Grantor, vacate and remove at its own expense all designated portions of the Cable System and Facilities from all Streets within the Service Area and shall restore said Streets to their former condition. If Grantee fails to remove its Facilities the Grantor may perform the work at the Grantee's expense. The requirements of this subsection shall not apply to underground cable that has been de-energized and for which an accurate map ("as built") has been provided to the City describing in detail the location of such cable and Facilities; except that the City may continue, in its sole discretion, to require removal where necessary to avoid congestion or, at its option, remove such Facilities at Grantee's expense.

8.15 Alleys. Grantee shall locate its facilities and equipment in alleyways wherever possible.

8.16 Historic Districts. Grantee shall comply with City Codes and requirements regarding Historic Districts.

SECTION 9 **Service and Rates**

9.1 Toll-Free Service. The Grantee shall maintain a toll-free telephone number and a phone service operated such that complaints and requests for repairs or adjustments may be received at any time.

9.2 Notification of Procedures. The Grantee shall furnish each Subscriber at the time service is installed, written instructions that clearly set forth information concerning the procedures for making inquiries or complaints, including the Grantee's name, address and local telephone number. Grantee shall give the Grantor thirty (30) days prior notice of any rate increases, channel lineup or other substantive programming changes that are within the control of Grantee.

9.3 Rate Regulation. Grantor shall have the right to exercise rate regulation to the extent authorized by law, or to refrain from exercising such regulation for any period of time, at the sole discretion of the Grantor. If and when exercising rate regulation, the Grantor shall abide by the terms and conditions set forth by the FCC. Nothing herein shall be construed to limit the Grantee's ability to offer or provide bulk rate discounts or promotions.

9.4 Continuity of Service. It shall be the right of all Subscribers to continue receiving Cable Service insofar as their financial and other obligations to the Grantee are honored, and subject to Grantee's rights under Section 16.4 of this Franchise.

SECTION 10 **Franchise Fee**

10.1 Amount of Franchise Fee. Grantee shall pay to the Grantor an annual Franchise Fee in an amount equal to five percent (5%) of the annual Gross Revenues. Such payment shall be in addition to taxes of general applicability such as City Utility Tax or Business and Occupation (B&O) Tax, owed to the Grantor by the Grantee that are not included as Franchise Fees under Federal law. Franchise Fees may be passed through to Subscribers as a line item on Subscriber bills or otherwise as Grantee chooses, consistent with Federal law.

10.2 Payment of Franchise Fees. Payment of the Franchise Fees due the Grantor shall be calculated on an annual basis consistent with Federal law. Notwithstanding the above, Grantee agrees to pay Franchise Fees to the Grantor on a quarterly basis, within forty-five (45) days of the close of each calendar quarter and transmitted by electronic funds transfer to a bank account designated by Grantor. The sum of the Franchise Fees paid during the term of this Franchise may not exceed the amount, including the time value of money, which would have lawfully been collected if such fees had been paid per annum. The payment period and the collection of the Franchise Fees that are to be paid to the Grantor pursuant to this Franchise shall commence sixty (60) days after the Effective Date (subsection 16.24) of the Franchise. Franchise Fees shall continue to be assessed and paid under the previous franchise agreement (Ordinance No. 3126) until sixty (60) days after the Effective Date of this Franchise or until a renewed franchise comes into effect whichever is later. The payment of Franchise Fees shall be either accompanied by or closely followed by a statement of said payment, reflecting the Gross Revenues and the applicable charges. The Grantee shall take all necessary steps to protect and ensure the confidentiality of the City's bank account information.

10.3 Accord and Satisfaction. No acceptance of any payment by the Grantor shall be construed as a release or as an accord and satisfaction of any claim the Grantor may have for additional sums payable as a Franchise Fee under this Franchise.

10.4 Limitation on Recovery. Grantor's right to audit, and Grantee(s)'s obligation to retain records related to the Franchise Fee audit, shall expire three (3) years from the date on which payment by the Grantee was due. The Grantor also retains the right to audit the Grantee under the terms of the prior franchise; however the limitation on recovery shall not exceed three (3) years.

10.5 Annual Report. Upon request, and no more than once per calendar year, Grantee shall furnish to the Grantor a statement stating the total amount of Gross Revenues for the previous year and all payments, deductions and computations for the period. Adjustments for any Franchise Fee overpayment or underpayment shall be by credit or debit to subsequent payments. Such statement shall be certified by a public accountant who may also be a representative of Grantee, prior to submission to the Grantor.

10.6 Franchise Fee Audits. The Grantor may also conduct an audit of Grantee's financial records by a Person of the Grantor's choosing. Upon thirty (30) days written notice to Grantee, the Grantor shall have the right to audit the books and records of Grantee to determine whether Grantee has paid the Franchise Fees owed. If there is a dispute as to whether a particular item of revenue is within the scope of the term "Gross Revenues" and Grantee withholds revenue records on the ground that the revenues are not subject to the

Franchise Fee, Grantee agrees that it will provide a certified statement describing the nature of the revenues contained in the records withheld. Said audit shall be conducted no more often than annually, and the audit period shall not be any greater than the previous three (3) years. The audit shall not last longer than six (6) months. Any undisputed additional amounts, and interest as set forth herein, due to the Grantor as a result of the audit shall be paid within sixty (60) days following written notice to Grantee by the Grantor, which notice shall include a copy of the audit findings.

In the event that any Franchise Fee payment is not received by the Grantor on or before the applicable date due, interest shall be charged from such date at the annual rate equal to the commercial prime interest rate of the Grantor's primary depository bank plus one percent (1%). The due date for the purposes of calculating any interest owed by the Grantee to the Grantor shall be December 31 following the quarterly prepaid due date, consistent with subsection 10.2.

In the event the Franchise is revoked or otherwise terminated prior to its expiration date, Grantee shall file with the Grantor, within ninety (90) days of the date of revocation or termination, a verified, or, if available, an audited financial statement showing the Gross Revenues under the Franchise since the end of the previous year and shall make adjustments at that time for the Franchise Fees due up to the date of revocation or termination.

SECTION 11 **Transfer of Franchise**

The Franchise granted hereunder shall not be assigned, other than to an entity controlling, controlled by, or under common control with the Grantee, without the prior written consent of the Grantor, such consent not to be unreasonably withheld or delayed. No such consent shall be required, however, for a transfer in trust, by mortgage, by other hypothecation, or by assignment of any rights, title, or interest of the Grantee in the Franchise or Cable System to secure indebtedness. Within thirty (30) days of receiving a request for transfer, the Grantor shall notify the Grantee in writing of any additional information it reasonably requires to determine the legal, financial and technical qualifications of the transferee. If the Grantor has not taken action on the Grantee's request for transfer within one hundred twenty (120) days after receiving a completed Application including FCC Form 394, consent by the Grantor shall be deemed given.

SECTION 12 **Records, Reports and Maps**

12.1 Reports Required. The Grantee's schedule of charges, contract or application forms for regular Subscriber service, policy regarding the processing of Subscriber complaints, delinquent Subscriber disconnect and reconnect procedures and any other terms and conditions adopted as the Grantee's policy in connection with its Subscribers shall be filed with the Grantor upon written request.

12.2 Records Required.

The Grantee shall at all times maintain:

- A. A record of all written complaints received regarding interruptions or degradation of Cable Service for one (1) year.
- B. A set of strand maps showing the location of the Cable System.

12.3 Inspection of Records. Grantee shall permit any duly authorized representative of the Grantor, upon receipt of advance written notice to examine during normal business hours and on a non-disruptive basis any and all records that are legally permissible for release and which are reasonably necessary to ensure Grantee's compliance with Sections 10 and 12.2 of the Franchise. Such notice shall specifically reference the section or subsection of the Franchise that is under review so that the Grantee may organize the necessary books and records for easy access by the Grantor. The Grantee shall not be required to maintain any books and records for Franchise compliance purposes longer than three (3) years, except for service complaints, which shall be kept for one (1) year as specified above. The Grantee shall not be required to provide Subscriber information in violation of Section 631 of the Cable Act. The Grantor agrees to treat as confidential any books, records or maps that constitute proprietary or confidential information to the extent Grantee makes the Grantor aware of such confidentiality. If the Grantor believes it must release any such confidential books or records in the course of enforcing this Franchise, or for any other reason, it shall advise Grantee in advance so that Grantee may take appropriate steps to protect its interests. Until otherwise ordered by a court or agency of competent jurisdiction, the Grantor agrees that, to the extent permitted by State and Federal law, it shall deny access to any of Grantee's books and records marked confidential, as set forth above, to any Person. The Grantor, its agents, employees, representatives or any other Person who has access to records provided by the Grantee shall sign Grantee's nondisclosure agreement prior to records review provided such records are confidential. Grantee shall provide copies of records to Grantor if such are not confidential or unless it is determined by Grantee to be voluminous or unreasonable to reproduce.

SECTION 13 **Support for Local Cable-Related Needs**

13.1 Public, Educational and Governmental Access.

- A. **Access Channels.** The Grantee shall provide one (1) Access Channel for use by the Grantor for original, non-commercial video programming for Public, Educational and Governmental (PEG) Access programming and subject to the conditions set forth below.
- B. **Unused Channel.** Grantee shall have the right to reclaim any Channel, or portion thereof, which is allocated under this Section for PEG access use, within sixty (60) days after a written request for such use is submitted to Grantor if such Channel is not "fully utilized" as defined herein. A PEG Channel shall be considered fully utilized if substantially unduplicated programming is delivered over it more than an average of 36 hours per week over a six (6) month period. Programming that is repeated on a PEG Channel up to three times per week over any one week period shall be considered "unduplicated programming." The City may gain the return of

the PEG Access channel by providing information to the Grantee that demonstrates that the Channel can be programmed for thirty-six (36) hours per week with locally produced PEG video programming (as defined herein). At such time, the Grantee shall have six (6) months to restore the PEG Access Channel for use by the City or its designated access provider for PEG access purposes.

- C. Access Channel Designation. Grantee acknowledges and agrees that if Grantee relocates the channel, the Grantee shall provide no less than sixty (60) days notice of such relocation. Subject to subsection 13.1 , Grantee reserves all rights under the Cable Act to specify channel locations.

- D. Non-Commercial Use. PEG Access Channel shall be non-commercial, not-for-profit, and non-competitive. The PEG Access Channel shall not be used for commercial purposes, such as leasing capacity, advertising, or any use whatsoever that may generate revenue (subject to the permissible uses as outlined in this subsection) for the Grantor or any other Person, or compete with current or future services provided by the Grantee, its designee or assignee. Notwithstanding the foregoing, Grantor and Grantee agree that the Grantor may receive and acknowledge financial support for the provision of PEG Programming for charitable, educational or governmental access purposes with a fifteen (15) second video and/or audio acknowledgment window at the beginning and end of the sponsored program. This window may only contain the name and logo of each sponsor.

13.2 Indemnification and Restrictions. The Grantor shall indemnify, save and hold harmless the Grantee from and against any and all liability resulting from the Grantor's use of the two-way insertion points under subsection 13.3 and the aforementioned PEG Channel whether Grantor operates the PEG Channel from a third party's Facilities or from Grantee's Facilities. Grantee shall not be responsible for operating and managing the PEG Channel including approving any PEG programming and/or for obtaining releases from programmers for any PEG programming. Grantor reserves the right to permit a third party to operate and manage the PEG Channel on the Grantor's behalf.

13.3 Insertion Points. Grantee shall continue to provide one (1) insertion point at City Hall (129 South Chelan Avenue, Wenatchee, WA 98801), provided that users of such insertion point shall hold the Grantee harmless from any and all liability or claims arising out of its use. If, at any time, the Grantor requests that the insertion point be moved from its original location to another location, Grantor shall pay the entire cost for the move and transport costs. To the extent permitted by applicable law, Grantee may recover the fair market value of the recurring operating and maintenance costs for the facilities connecting the insertion point to Grantee's Cable System through a deduction against the franchise fee paid to the Grantor in accordance with Section 10 herein.

13.4 Technical Support from Grantee. Upon receipt of a call or other communication from the Grantor to Grantee identifying a technical problem and requesting assistance, Grantee shall provide technical assistance or diagnostic services to determine whether or not a problem with a PEG signal is the result of matters for which Grantee is responsible, and if so, Grantee shall take corrective action. If the problem persists and there is a dispute about the cause, then the parties shall convene a meeting or telephone call with

personnel from Grantee and Grantor in order to determine the course of action to remedy the problem.

13.5 Financial Support for PEG Access. Grantee formerly made a one-time capital contribution to the Grantor in the amount of one hundred thousand dollars (\$100,000), and Grantee shall continue to collect from and bill each Subscriber an amount of eight cents (\$0.08) per month per Subscriber for recovery of the one-time capital contribution. Grantee shall, annually and at the request of the Grantor, provide the Grantor with the amount of capital contribution collected and the amount remaining to be collected.

SECTION 14 **Enforcement or Revocation**

14.1 Notice of Violation. If the Grantor believes that the Grantee has not complied with the terms of the Franchise, the Grantor shall first informally discuss the matter with Grantee. If these discussions do not lead to resolution of the problem, the Grantor shall notify the Grantee in writing of the exact nature of the alleged noncompliance (the "Violation Notice").

14.2 Grantee's Right to Cure or Respond. The Grantee shall have sixty (60) days from receipt of the Violation Notice to (i) respond to the Grantor, contesting the assertion of noncompliance, or (ii) to cure such default, or (iii) if, by the nature of default, such default cannot be cured within the sixty (60) day period, initiate reasonable steps to remedy such default and notify the Grantor of the steps being taken and the projected date that they will be completed.

14.3 Public Hearing. If the Grantee fails to respond to the Violation Notice received from the Grantor, or if the default is not remedied within the cure period set forth above, the City Council shall schedule a public hearing if it intends to continue its investigation into the default. The Grantor shall provide the Grantee at least twenty (20) days prior written notice of such hearing, which specifies the time, place and purpose of such hearing, notice of which shall be published by the Clerk of the Grantor in a newspaper of general circulation within the Service Area. The Grantee shall have the right to present evidence and to question witnesses. The Grantor shall determine if the Grantee has committed a violation and shall make written findings of fact relative to its determination. If a violation is found, the Grantee may petition for reconsideration before any competent tribunal having jurisdiction over such matters.

14.4 Enforcement. Subject to applicable federal and State law, in the event the Grantor, after the hearing set forth in subsection 14.3 above, determines that the Grantee is in default of any provision of the Franchise, the Grantor may:

- A. Seek specific performance of any provision, which reasonably lends itself to such remedy, as an alternative to damages; or
- B. Commence an action at law for monetary damages or seek other equitable relief; and

- C. In the case of a substantial default of a material provision of the Franchise, seek to revoke the Franchise itself in accordance with subsection 14.5 below.

14.5 Revocation.

- A. Prior to revocation or termination of the Franchise, the Grantor shall give written notice to the Grantee of its intent to revoke the Franchise on the basis of noncompliance by the Grantee, including one or more instances of substantial noncompliance with a material provision of the Franchise. The notice shall set forth the exact nature of the noncompliance. The Grantee shall have sixty (60) days from such notice to either object in writing and to state its reasons for such objection and provide any explanation or to cure the alleged noncompliance. If the Grantor has not received a satisfactory response from Grantee, it may then seek to revoke the Franchise at a public hearing. The Grantee shall be given at least thirty (30) days prior written notice of such public hearing, specifying the time and place of such hearing and stating Grantor's intent to revoke the Franchise.
- B. At the hearing, the City Council shall give the Grantee an opportunity to state its position on the matter, present evidence and question witnesses, after which the City Council shall determine whether or not the Franchise shall be revoked. The public hearing shall be on the record and a written transcript shall be made available to the Grantee within ten (10) business days. The decision of the City Council shall be made in writing and shall be delivered to the Grantee. The Grantee may appeal such determination to an appropriate court, which shall have the power to review the decision of the City Council *de novo*. The Grantee may continue to operate the Cable System until all legal appeals procedures have been exhausted.
- C. Notwithstanding the above provisions, neither the Grantor nor the Grantee waive any of their rights under Federal law or regulation.

SECTION 15 **Customer Service**

Grantee shall comply with the customer service standards set forth in Section 76.309 of the Federal Rules and Regulations, as such may be amended from time to time.

SECTION 16 **Miscellaneous Provisions**

16.1 Binding Acceptance. This Franchise shall bind and benefit the parties hereto and their respective permitted successors and assigns.

16.2 Preemption. In the event that federal or State laws, rules or regulations preempt a material provision or limit the enforceability of a material provision of this Franchise, then the provision shall be read to be preempted to the extent and for the time required by law. In the event such federal or State law, rule or regulation is subsequently repealed,

rescinded, amended or otherwise changed so that the provision hereof that had been preempted is no longer preempted, the Grantor and the Grantee shall work together in good faith to re-implement such provision or one that is materially similar.

16.3 Compliance with Federal State and Local Laws. The Grantee shall comply with all applicable Federal and State laws. Grantee shall comply with local laws and regulations consistent with subsection 2.4.

16.4 Force Majeure. The Grantee shall not be held in default under, or in noncompliance with the provisions of the Franchise, nor suffer any enforcement or penalty relating to noncompliance or default, where such noncompliance or alleged defaults occurred or were caused by circumstances reasonably beyond the ability of the Grantee to anticipate and control. This provision includes work delays caused by waiting for utility providers to service or monitor their utility poles to which Grantee's Cable System is attached, as well as unavailability of materials and/or qualified labor to perform the work necessary.

16.5 Minor Violations. Furthermore, the parties hereby agree that it is not the Grantor's intention to subject the Grantee to penalties, fines, forfeitures or revocation of the Franchise for violations of the Franchise where the violation was a good faith error that resulted in no or minimal negative impact on the City or the Subscribers within the Service Area.

16.6 Action of Parties. In any action by the Grantor or the Grantee that is mandated or permitted under the terms hereof, such party shall act in a reasonable, expeditious and timely manner. Furthermore, in any instance where approval or consent is required under the terms hereof, such approval or consent shall not be unreasonably withheld.

16.7 Equal Protection. If any new provider of wireline cable services or wireline video services (without regard to the technology used to deliver such services) is lawfully authorized by the Grantor or by any other State or federal governmental entity to provide such services using Facilities located wholly or partly in the public Streets of the Grantor, and if such new provider of wireline cable services or wireline video services actually offers such wireline cable services or wireline video services in the Service Area (or if an existing provider is currently providing wireline cable services or wireline video services and has its existing franchise modified by the Grantor or other State or federal governmental entity), the Grantor shall within sixty (60) days of a written request from Grantee, modify this Franchise to ensure that the obligations applicable to Grantee are no more burdensome than those imposed on any such competing wireline video provider. As an alternative to a Franchise modification request, the Grantee shall have the right and may choose to have this Franchise with the Grantor be deemed expired sixty (60) days after written notice to the Grantor. Grantor and Grantee shall continue to reserve all rights under Section 626 of Title VI of the Communications Act of 1934, as amended, or any successor statute, and do not waive any right related thereto.

16.8 Notices. Unless otherwise provided by Federal, State or Local law, all notices, reports or demands pursuant to this Franchise shall be in writing and shall be deemed to be sufficiently given upon hand delivery to a Person at the addresses set forth below, or by U.S. certified mail, return receipt requested or by nationally or internationally recognized

courier service such as Federal Express. Grantee shall provide thirty (30) days written notice of any changes in rates, programming services or channel positions using any reasonable written means at its sole discretion.

As set forth above, notice served upon the Grantor shall be delivered to:

Mayor
City of Wenatchee
P.O. Box 519
Wenatchee, WA 98807

And every notice served upon Grantee shall be delivered or sent by U.S. certified mail, return receipt requested, to:

Attn: Director, Government Relations
Charter Communications
222 NE Park Plaza Drive, #231
Vancouver, WA 98684

With a copy to:

Attn: Vice President, Government Relations
Charter Communications
601 Massachusetts Ave NW, Ste 400W
Washington, DC 20001

Either party may change the address to which notices are sent at any time during the term of this Franchise by notifying the other party in writing not less than thirty (30) days in advance.

16.9 Public Notice. Minimum public notice of any public meeting relating to this Franchise or any such grant of additional franchises, licenses, consents, certificates, authorizations, or exemptions by the Grantor to any other Person(s) to provide Cable Services, video services, or other television services utilizing any system or technology requiring use of the Streets shall be by publication at least once in a newspaper of general circulation in the area at least ten (10) days prior to the meeting and a posting at the administrative building of the Grantor.

Grantor shall provide written notice within ten (10) days of Grantor's receipt from any other Person(s) of an application or request for a franchise, license, consent, certificate, authorization, or exemption to provide Cable Services, video services, or other television services utilizing any system or technology requiring use of the public rights of way. Any public hearings to consider such application or request shall have the same notice requirement as outlined herein.

16.10 Governing Law. This Franchise shall be governed in all respects by the laws of the State of Washington and by applicable federal law. Grantee shall also comply with local laws and regulations consistent with subsection 2.4.

16.11 Time of Essence. In determining whether the Grantee has substantially complied with this Franchise, the parties agree that time is of the essence.

16.12 Cumulative Rights. All rights and remedies given to the Grantor or Grantee by this Franchise or retained by the Grantor or Grantee herein shall be in addition to and cumulative with any and all other rights and remedies, existing or implied, now or hereafter available to the Grantor or Grantee, at law or in equity, and such rights and remedies shall not be exclusive, but each and every right and remedy specifically given by this Franchise or otherwise existing may be exercised from time to time and as often and in such order as may be deemed expedient by the Grantor or Grantee.

16.13 No Joint Venture. Nothing herein shall be deemed to create a joint venture or principal-agent relationship between the parties, and neither party is authorized to, nor shall either party act toward third Persons or the public in any manner that would indicate any such relationship with the other.

16.14 No Third-Party Beneficiaries. Nothing in this Franchise is or was intended to confer third-party beneficiary status on any Person or any member of the public to enforce the provisions of this Franchise.

16.15 Reservation of Rights. Nothing in this Franchise shall be construed as a waiver of any rights, substantive or procedural, Grantee or Grantor may have under Federal or State law unless such waiver is expressly stated herein.

16.16 Venue. The venue for any dispute related to this Franchise shall be in the Superior Court in Wenatchee, Washington or the district court of the U.S. for any judicial district in which the Cable System is located.

16.17 No Waiver of Terms. A failure of the Grantor on one or more occasions to insist upon or to seek compliance with any term or condition of this Franchise shall not excuse Grantee from complying with said term or condition on any other occasion. A failure of either the Grantor or Grantee on one or more occasions to insist upon or to seek compliance with any term or condition of this Franchise shall not excuse the other party from complying with said term or condition on any other occasion.

16.18 Captions. The captions and headings of Sections and subsections throughout this Franchise are intended solely to facilitate the reading hereof and shall not affect the meaning or interpretation of this Franchise.

16.19 Recitals. The recitals set forth in this Franchise are incorporated into the body of this Franchise as if they had been originally set forth therein.

16.20 Interpretation. This Franchise and the provisions contained herein shall not be construed or interpreted for or against any party because that party drafted or caused that party's legal representative to draft any of its provisions.

16.21 Severability. If any section, subsection, sentence, clause, phrase, or portion of this Franchise is, for any reason, held invalid or unconstitutional by any court of

competent jurisdiction, such shall be deemed a separate, distinct and independent provision and such holding shall not affect the validity of the remaining portions of this Franchise.

16.22 Entire Agreement. This Franchise sets forth the entire agreement between the parties respecting the subject matter hereof. All agreements, covenants, representations and warranties, express and implied, oral and written, of the parties with regard to the subject matter hereof are contained herein. No other agreements, covenants, representations or warranties, express or implied, oral or written, have been made by any party to the other with respect to the subject matter of this Franchise. All prior and contemporaneous conversations, negotiations, agreements, representations, covenants and warranties with respect to the subject matter hereof are superseded hereby.

16.23 Amendments. This Franchise is a contract and neither party may take unilateral action that materially changes the explicit mutual promises and covenants contained herein. Any changes, modifications or amendments to this Franchise must be made in writing, signed by the Grantor and the Grantee.

16.24 Effective Date. The Franchise granted herein will take effect and be in full force from such date of acceptance by Grantee recorded on the signature page of this Agreement. This Franchise shall expire on December 31, 2029 unless extended by the mutual agreement of the parties or unless otherwise terminated in accordance with the terms of this Franchise.

16.25 Publication Costs. The Grantee shall be responsible for all costs of publication of this Franchise and any extensions thereto. Such costs shall include, but are not limited to, the cost of publication in any newspaper.

Considered and approved this ___ - day of _____, 2019.

City of Wenatchee, Washington

Signature: _____

Name/Title: _____

Accepted this ____ day of _____, _____, subject to applicable Federal, State and local law.

Spectrum Pacific West, LLC
By: Charter Communications Inc., its Manager

By: _____

Printed Name: Paul D.
Abbott

Title: Vice-President,
Local Government
Affairs & Franchising
Charter Communications

**COUNCIL AGENDA REPORT
PUBLIC WORKS DEPARTMENT**

TO: Frank Kuntz, Mayor
City Council

FROM: Jeremy Hoover, P.E., Senior Engineer - Utilities

SUBJECT: Wastewater Treatment Plant Digester #4 - Project No. 1810
Authorization for Consultant Supplemental Agreement #1

DATE: December 9, 2019

MEETING DATE: December 12, 2019

I. OVERVIEW

The City's Wastewater Treatment Plant (WWTP) is a Class III activated sludge plant designed in 1957 with subsequent upgrades including the construction of the newest anaerobic digester (Digester 3) and Solids Handling Building during the plant expansion in 1990. At present, there are two primary digesters and one secondary digester (Digester 3) in use. As discussed in the most current Wastewater Facilities Plan and Sanitary Sewer Comprehensive Plan, an additional secondary digester (Digester 4) is needed. Per the adopted plans, the new Digester would be sited at the northwest corner of the existing solids handling building.

In April of 2019, the City executed a Professional Services Agreement with HDR Engineering for investigation and assessment activities for the existing facility along with design services necessary to construct and bring online the new Digester #4 and its related control elements.

In coordination with sub-consultants RH2 Engineering (Structural and Instrumentation) as well as Shannon & Wilson (Geotechnical), the evaluation of the existing facilities resulted in the generation of a Geotechnical Report and Technical Memorandum. These documents provided a detailed overview of the current condition of the existing thickening and dewatering equipment, digester mixing and heating system, transfer pumps, air and gas handling apparatus, solids processes, programmable logic controls, and structural condition along with performance trending and regulatory compliance considerations.

Included in the evaluation was a discussion regarding the need to bring the new facility into compliance with the most recent National Fire Protection Association (NFPA) codes and standards. Although not retroactive for existing facilities, any new construction outside of normal maintenance activities results in a mandate for the new facility to meet the provisions of NFPA 820.

Structurally, the existing solids handling building cannot be modified to accept all of the explosion-proof elements necessary to meet NFPA 820. Any new spark-generating apparatus such as motors, controls, and electrical components must therefore be remotely located. The implications associated with that mandate result in a requirement for a separate digester control building to contain this equipment in an area not exposed to explosive bio-gas.

Design of the new Digester Control Building is beyond the scope of the original Professional Services Agreement. Inasmuch, at the request of city staff, HDR drafted a revised scope of services and associated fee structure to include the design of the new facility. The attached Contract Amendment Number 1 describes that scope and fee revision.

**COUNCIL AGENDA REPORT
PUBLIC WORKS DEPARTMENT**

II. ACTION REQUESTED

Staff recommends the City Council authorize the Mayor to sign Consultant Supplemental Agreement #1 on behalf of the City with HDR Engineering, Inc. for additional design services for the Wastewater Treatment Plant Digester #4 - Project No. 1810.

III. FISCAL IMPACT Submitted to the Finance Committee (Yes) No

This project was identified in both the 2016 Wastewater Treatment Facilities Plan, 2017 Sewer Comprehensive Plan, as well as the 2020 CIP budget. It will be funded by Fund 405 - Sewer.

Project Budget

Approved Budget 2020	
Task	Amount
Design Engineering	\$ 978,000
Construction	\$ 8,600,000
Construction Engineering	\$ 150,000
Art Fund	\$ 86,000
TOTALS	\$ 9,814,000

Amended Budget	
Task	Amount
Design Engineering	\$ 1,024,438
Construction	\$ 8,600,000
Construction Engineering	\$ 150,000
Art Fund	\$ 86,000
TOTALS	9,860,438

IV. PROPOSED PROJECT SCHEDULE

Design duration is expected to proceed through Fall of 2021. Although originally expected to occur in 2021, bid advertisement is now expected in the first half of 2022 with construction, startup and calibration of the new system through late 2023.

VI. ADMINISTRATIVE ROUTING

Tammy Stanger, City Clerk
 Rob Jammerman, Public Works Director
 Gary Owen, City Engineer
 Jacob Huylar, Engineering Services Manager
 Brad Posenjak, Finance Director
 Natalie Thresher, Contracts Coordinator



CONTRACT AMENDMENT NUMBER 1 TO THE PROFESSIONAL SERVICES AGREEMENT Wastewater Treatment Plant Digester 4 – Project 1810

This Contract Amendment Number 1 dated this _____ day of December, 2019, is entered into by and between the City of Wenatchee, a municipal corporation, herein called the "City," and HDR Engineering, Inc. hereinafter the "Consultant":

WHEREAS, the City entered into a Professional Services Agreement ("Agreement") with the Consultant on April 29, 2019 for professional Engineering services on the Wastewater Treatment Plant Digester 4 – Project 1810; and

WHEREAS, the City now desires to retain the services of the Consultant to perform additional professional services and/or extend the time for performance; and

WHEREAS, the Consultant is qualified, willing, and able to provide and perform the services, if any, as described in this Contract Amendment Number 1; and

WHEREAS, the services to be performed by the Consultant are temporary in duration.

NOW, THEREFORE, in consideration of the mutual promises and covenants herein contained and of the Professional Services Agreement, and the Request for Additional Funds to be kept, performed, and fulfilled by the respective parties hereto, it is mutually agreed as follows:

I. SERVICES BY CONSULTANT

All services and all duties incidental or necessary thereto, shall be conducted and performed diligently and completely in accordance with professional standards of conduct and performance. The Consultant agrees to accomplish additional services as described in Exhibit A, if any, and the time to perform all services is extended to March 7, 2022.

II. COMPENSATION

- A. Compensation for completion of the additional services, if any, shall not exceed \$ 249,537.11, as described in Exhibit A.
- B. The total contract amount, including the Professional Services Agreement for \$774,901.23, and this Contract Amendment Number 1 for \$249,537.11, shall not exceed \$1,024,438.34.
- C. The above fees include all labor, materials, and expenses for completion of the work.

III. EXTENT OF AGREEMENT/MODIFICATION

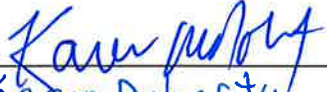
The Professional Services Agreement, together with Contract Amendment Number 1, represent the entire and completely integrated Agreement between the parties

and supersedes all prior negotiations, representations, or agreements either written or oral. Except as modified herein, all provisions within the Agreement shall remain in full force and effect for the services provided under this Amendment. Additional amendments, modifications, or additions to the Agreement may only be made by written instrument properly signed by both parties.

IN WITNESS WHEREOF, the parties hereto have executed this Contract Amendment Number 1 on the dates written below:

CONSULTANT:

CITY OF WENATCHEE:

By: 
Print Name: Karen Doherty

By: _____
Frank Kuntz, Mayor

Date: 12/6/19

Date: _____

City of Wenatchee

Wastewater Treatment Plant Digester 4 Design, Permitting, Bid Support, Construction, and Startup/Commissioning Services

Amendment 1

Exhibit A: Scope of Services

December 4, 2019



**935 N Post Street, Suite 100
Spokane, WA 99201
(509) 343-8500**



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EXHIBIT A

SCOPE OF SERVICES

Background

As part of the original project scope, HDR Engineering, Inc. (HDR) performed a National Fire Protection Association (NFPA) 820 analysis of the existing solids handling facility. Following the results of this analysis and further consultation with the City of Wenatchee (City), it was determined that a new mechanical building would be required to contain the new equipment associated with digester 4 that was not included in the original scope of services.

This scope of services outlines the engineering activities, project assumptions, and deliverables for an amendment to the design of digester 4 and related facilities for the following:

- A new mechanical building to include the following equipment:
 - Two new hot water loop pumps
 - One new heat exchanger
 - Two new thickened waste activated sludge (TWAS) pumps
 - Two new digester recirculation pumps
 - One new boiler with recirculation pumps
 - One rotary-drum thickening (RDT) unit
 - One screw press
 - Motor control center (MCC) 5 for new pumps and thickening/dewatering equipment
- New air handling equipment for the existing solids handling building and the new mechanical building to comply with NFPA 820.
- Odor control for the new mechanical building dewatering/thickening areas.
- Relocation of the solids handling MCCs (4, 4A) to the new mechanical building electrical room. New MCCs will be designed to replace the existing units.
- Relocation of all PLC connection points from the solids handling building within the MCC-4,4A room to the new mechanical building. New PLCs will be designed to replace the existing units.
- Removal of sediment traps from the process rooms of the solids handling building and relocation to the gas handling/mix room adjacent to digester 3.
- Installation of new combustible gas detectors per recommendations in the NFPA technical memorandum (TM).

Engineering services during construction, applications software, startup and testing, record drawings, and operations and maintenance (O&M) manual will be negotiated during or following the Preliminary (60 Percent) Design phase.

Project Assumptions:

Project assumptions from the original scope apply except as noted below.

1. The following are included in the project design:
 - Design of a new mechanical building and associated mixing and heating for digester 4. This will include making connections between the existing process mechanical piping and extending pipe into the new mechanical building.



- Relocating the wastewater treatment plant (WWTP) water system inside the mechanical building, including reduced-pressure backflow assembly (RPBA) and double check valve assembly (DCVA), above grade to reduce cross-contamination potential.
- 2. The existing odor control system is adequate to handle digester 4 and the mechanical building and other improvements included in this scope of services, and therefore no additional upgrades are required.
- 3. The new mechanical building will be located between digesters 3 and 4, north of the solids handling building. The mechanical building is approximately 5,300 square feet with three levels, basement, ground and upper each having approximately equal square footage. The mechanical building will be designed as cast-in-place concrete with exterior consistent with the Visual Mitigation project.
- 4. The mechanical equipment serving digester 4 will be located in the new mechanical building.
- 5. Sludge circulation pumps will be installed on the lower level of the new mechanical building serving new digester 4.
- 6. One new, dedicated heat exchanger will be installed on the lower level of the new mechanical building serving new digester 4.
- 7. Heat exchanger circulation pumps will be installed on the lower level of the new mechanical building serving the new digester 4 heat exchanger.
- 8. Modifications to the existing digester gas system will include removal of the existing sediment traps within the solids handling building. The sediment trap within the gas compressor room shall remain. This is a recommendation from the NFPA TM.
- 9. Relocation of RPBA, DCVA, W-1 system including control/pump skid with hydropneumatic tank and air gap tank to fit within the new mechanical building ground floor. A toilet room will be provided in the new mechanical building.
- 10. Modifications to the existing heating, ventilation, and air conditioning (HVAC) system will include replacement of existing air handling units with upsizing only for units 8001, 8002, and 8003. Other air handling units will be replaced with new units sized to match or exceed the existing units' specifications.
- 11. The electrical power distribution system will be reused without major modifications for normal and backup power. Adequate capacity is available for new electrical loads serving digester 4 and the new mechanical building.
- 12. Soils will support the digester and mechanical building foundations through a shallow reinforced concrete foundation, and it is assumed that no special pile-supported, deep foundation, or soil improvements will be required.
- 13. Stormwater improvements in the digester and mechanical building areas will be designed only for the proposed improvements and connection to the existing facilities, flow control, or retrofitting of existing facilities will not be required.
- 14. A three-dimensional (3D) model file of the design will be provided at the 30, 60, 90, and 100 percent design stages as the primary deliverable for review and comment. Attached as Drawing List and Specification List are the amended deliverable lists for drawing and specification development at 30, 60, 90, and 100 percent design stages of the project.



Scope of Services

Task 200 Project Management

Additional effort has been added to cover additional project scope.

Task 300 Site and Condition Assessment

No changes have been made to this task.

Task 400 Conceptual Design (30 Percent)

Objective

The purpose of this task is to establish engineering requirements for City O&M objectives, and address condition-related items and Washington State Department of Ecology (Ecology) requirements. The changes include the addition of the new design elements. Recommendations for the following will be established and carried through to a 30 percent design:

1. Mechanical building
2. Heating improvements related to the mechanical building
3. New boiler and heat exchanger now located in the new mechanical building
4. Landscaping to match existing WWTP landscaping, taking into account the new mechanical building
5. Relocating the WWTP water system (RPBA and DCVA) above grade within the new mechanical building ground floor or within the existing solids handling building boiler room
6. Replacement of existing solids handling building pumps as recommended in the condition assessment

Approach

The HDR team will prepare alternatives evaluations for project design and conduct a review workshop to discuss layout alternatives with City staff and select a preferred approach for each project element or unit process. After the alternatives review workshop, selected alternatives will be carried forward to a 30 percent design level and compiled in an Engineering Report.

HDR Services

1. The 2016 WWTP Facilities Plan Update conceptualized a mechanical building between digesters 3 and 4 north of the solids handling building in what is now a landscaped area. This location is assumed for the purpose of the scope and budget herein.
2. Develop design of the new mechanical building to approximately 10 percent completion, consisting of preliminary sizing, capital costs, and construction sequencing requirements. Use condition assessment information and City staff input as basis for development. Opinion of probable construction cost (OPCC) and quality assurance/quality control (QA/QC) efforts are included in Tasks 700 and 800, respectively.
3. Organize and attend an alternatives evaluation workshop with City staff.



4. Establish design criteria to meet reliability and redundancy and other requirements from *Ecology Criteria for Sewage Works Design* (Orange Book).
5. Complete project preliminary design of selected digester 4 mechanical building and related facilities to the 30 percent level.
6. Incorporate the new mechanical building into the Engineering Report.
7. Mechanical building and associated improvements shall be added to the 30 percent design review workshop.

Client Responsibilities

No changes have been made to client responsibilities.

Assumptions

1. 10 percent sketches will consist of no more than five sheets.
2. The alternatives evaluation workshop will include the mechanical building and associated improvements, site plan, and building plan.
3. 30 percent level design will consist of the site plan, process and instrumentation diagram (P&ID), and building information modeling (BIM) model. The BIM model will be used for review purposes.
4. Detailed mechanical drawings will not be prepared at this design stage. The mechanical design will be presented in BIM model format for City review.
5. Class 3 OPCC for conceptual alternatives will have a range of accuracy based upon Association for the Advancement of Cost Engineering (AACE) International Recommended Practice 18R-97, Class 3, 0 to 30 percent project definition, +50 percent to -20 percent range of accuracy.

Deliverables

No changes have been made to deliverables other than the inclusion of the mechanical building and associated improvements.

1. Engineering Report content will be modified for the addition of the mechanical building and associated improvements.

Task 500 Preliminary Design (60 Percent)

Objective

The purpose of this task is to advance selected alternatives for the new mechanical building associated with digester 4 from the conceptual design task to preliminary (60 percent) design completion. No changes have been made to this task except the addition of the new design elements.

Approach

Complete project preliminary design of new mechanical building and related facilities to the 60 percent level and develop BIM models of the key areas for review. Preliminary design includes completion of site layouts, P&IDs, and process control descriptions for identified unit processes not included in the original project scope.



Provide 60 percent design documents for review by the City.

HDR Services

1. Perform hydraulic, process, mechanical, electrical, and controls calculations for the facilities included in Amendment 1.
2. Revise and finalize lists of anticipated drawings and specifications included with this scope of services.
3. Assemble data sheets or equipment lists and prepare a specifications list for the equipment included in Amendment 1. Obtain manufacturer's information and data sheets for major equipment items. Establish design and performance criteria and select equipment. Review options and select materials of construction.
4. Prepare 3D BIM model in Revit showing process, mechanical, and structural for the mechanical building.
5. Prepare electrical and instrumentation and controls drawings for the facilities included in Amendment 1.
6. Develop Class 2 OPCC and construction schedule (included in Task 700) including the mechanical building and associated improvements.
7. Organize and attend a 60 percent design review meeting via screen share/web-based. BIM models will be generated for review during this meeting.
8. Conduct formal QA/QC reviews of deliverables (included in Task 800).

Client Responsibilities

No changes have been made to client responsibilities.

Assumptions

1. Preliminary (60 percent) design of the following is not included in this scope/budget:
 - Waste gas burner (WGB) modification/upgrade
 - Use of digester gas for WWTP power needs
 - Landscaping improvements to address Public Utility District (PUD) requirements or other requirements beyond keeping consistent with the existing WWTP landscaping
2. Class 2 OPCC will have a range of accuracy based upon AACE International Recommended Practice 18R-97, Class 2, 30 to 60 percent project definition, +20 percent to -15 percent range of accuracy.

Deliverables

1. Meeting agenda and summary meeting minutes (emailed in Portable Document Format [PDF] format)
2. BIM model presentation using Navisworks and drawings (Navisworks NWD file provided)
3. 60 percent drawings (see Drawing List)
4. Draft specifications
5. Summary of review conference call/presentation (emailed in PDF format)



Task 600 Air Permit Application Support

No changes have been made to this task.

Task 700 90 Percent and 100 Percent (Final) Design

Objective

The purpose of this task is to furnish detailed design for the new mechanical building and associated improvements, including preparation of Issued for Bid and Issued for Construction documents. No changes have been made except for the addition of the new design elements.

Approach

Complete final design of mechanical building and associated improvements. This work includes completion of 3D modeling and rendering of design drawings that define the project, summary of improvements by project element or unit process, process element descriptions, and/or unit process control strategy including P&IDs where applicable.

Provide a detailed sequencing plan to demonstrate how the mechanical building and associated support facilities would be constructed with minimum impact to the day-to-day operation of the WWTP.

Prepare construction documents for bidding and construction of project improvements. Prepare technical and contract documents necessary for project implementation. Produce deliverables for City review at the 90 percent and Issued for Bid documents.

HDR Services

HDR services will remain unchanged from the original scope except for the addition of the mechanical building and associated improvements.

Client Responsibilities

No changes have been made to client responsibilities.

Assumptions

Assumptions will remain unchanged except for the addition of the mechanical building and associated improvements.

Deliverables

Deliverables will remain unchanged except for the addition of the mechanical building and associated improvements.

Task 800 Opinion of Probable Cost and Schedule

Objective

The purpose of this task is to prepare and Engineer's OPCC and schedule at key milestones in the project.



Approach

HDR will prepare estimates for OPCC and project schedules. Estimates will be prepared during the 30 percent (Conceptual Design) as well as at the 60 and 90 percent design stages. The 30 percent (Conceptual Design) estimate will be provided as a Class 5 Estimate. A sequence of construction will be developed and revised during the project, which will serve as input to specification Section 01 01 40, Work Sequence. From the sequence, a construction schedule will be developed, and the schedule will be used to identify overall project duration.

HDR Services

1. Prepare a Class 5 estimate following AACE guidelines for the respective submittal. Note: this work was not part of the original scope of services, but has already been delivered and has been billed on a time-and-materials basis. It has been added to this amendment per HDR's discussion with the City regarding the NFPA 820 TM. The Class 5 estimate will complete HDR's estimating efforts for the 30 percent (Conceptual Design).
2. The tasks under the original agreement for Engineer's OPCC shall remain the same except for the addition of the mechanical building and associated improvements included in this amendment.
3. Construction sequence: The Design Confirmation construction sequence will be prepared at the 100 percent design stage including the mechanical building and associated improvements.

City Responsibilities

No changes have been made to City responsibilities.

Assumptions

The project scope has increased to include a new mechanical building and associated items as listed in this Amendment. These new items are included in the Class 5 estimate.

Deliverables

Class 5 estimate. This item has already been delivered.

Task 900 Quality Assurance and Quality Control

Objective

Additional hours have been added to this task to reflect the inclusion of the mechanical building and associated improvements. No other changes have been made.

Task 1000 Bid Support Services

No changes have been made to this task.

Task 1100 Engineering Support during Construction

(To be negotiated during the Final [90 percent] design phase)



Task 1200 Field Services

(To be negotiated during the Preliminary [60 percent] design phase)

Task 1300 Application Software Programming

(To be negotiated during the Preliminary [60 percent] design phase)

Task 1400 Startup, Testing, Commissioning, and Training

(To be negotiated during the Preliminary [60 percent] design phase)

Task 1500 Record Drawings

(To be negotiated during the Preliminary [60 percent] design phase)

Schedule

The project schedule for the City of Wenatchee WWTP Digester 4 began in March 2019 and will be completed within 38 months. This initial scope of services and budget covers the project through completion of the Bid Period. By milestones the basic project schedule is as shown in Table 1.

Key Milestone	Weeks from NTP	Days from NTP	Date (week of)
Notice to Proceed	0	0	4/29/2019
Kickoff workshop	3	21	5/20/2019
Site condition assessment/LiDAR scanning	3	21	5/20/2019
Conceptual 10% design review workshop	36	252	1/6/2020
30% design review workshop	39	273	1/27/2020
60% design review workshop	62	434	7/6/2020
90% design review workshop	81	567	11/16/2020
100% design review workshop	86	602	12/21/2020
Bid Period	91	637	1/25/2021
Contractor Notice to Proceed	95	665	2/22/2021
Substantial completion	140	980	1/3/2022
Startup and training completion	145	1015	2/7/2022
Final completion	149	1043	3/7/2022



Fee

HDR's total compensation for services provided pursuant to this agreement, including labor and overhead costs and expenses, and subconsultant compensation shall not exceed \$249,537.11 without written authorization by the City.

Task	Description	HDR Labor	HDR Expenses*	Subconsultant Labor*	Total
100	Project Management	\$ 11,957.84	\$1,050.00		\$ 13,007.84
300	Conceptual Design (30%)	\$ 17,071.24	\$1,050.00	\$ 42,797.16	\$ 60,918.40
400	Preliminary Design (60%)	\$ 25,776.18	\$2,100.00	\$ 50,384.94	\$ 78,261.12
600	Final Design (90% and 100%)	\$ 15,947.59	\$2,100.00	\$ 31,273.20	\$ 49,320.79
700	Opinion of Probable Construction Cost and Schedule	\$ 31,886.89	\$-		\$ 31,886.89
800	Quality Assurance and Quality Control	\$ 10,894.77	\$-		\$ 10,894.77
900	Bid Support Services	\$-	\$1,050.00	\$ 4,197.30	\$ 5,247.30
Total					\$ 249,537.11

* Expenses and subconsultants will be billed at a 2% markup for Amendment 1.



Drawing List

Sheet No.	Drawing No.	Title	30%	60%	90%	100%
Civil						
1	00X101	Site Demolitions			♦	♦
2	00C102	Site Piping			♦	♦
Demolition						
3	80X105	Solids Handling Lower level			♦	♦
4	80X106	Solids Handling Ground Level			♦	♦
5	80X107	Solids Handling Upper Level and Roof			♦	♦
Architectural						
6	80A201	Mechanical Building Architectural Elevations			♦	♦
7	80A202	Mechanical Building Architectural Elevations			♦	♦
8	80A100	Mechanical Building Architectural Plan Lower and Ground Floor Level			♦	♦
9	80A101	Mechanical Building Architectural Plan 2nd Floor and Roof			♦	♦
10	80A501	Architectural Details			♦	♦
11	80A502	Architectural Details			♦	♦
Structural						
12	80S103	Mechanical Building Lower Level			♦	♦
13	80S104	Mechanical Building Ground Level Plan			♦	♦
14	80S105	Mechanical Building 2nd Floor Plan			♦	♦
15	80S106	Mechanical Building Structural Framing Roof			♦	♦
16	80S302	Mechanical Building Structural Section			♦	♦
17	80S303	Mechanical Building Structural Section			♦	♦
18	80S304	Mechanical Building Structural Section			♦	♦
19	80S305	Mechanical Building Structural Section			♦	♦
20	80S502	Mechanical Building Structural Details			♦	♦
21	80S503	Mechanical Building Beam Schedule			♦	♦
Process, Plumbing and HVAC						



22	80D103	Mechanical Bldg Lower Level, Process, Plumbing, and HVAC			♦	♦
23	80D104	Mechanical Bldg Ground Level, Process, Plumbing, and HVAC			♦	♦
24	80D105	Mechanical Bldg Upper/Roof Level, Process, Plumbing, and HVAC			♦	♦
25	80P601	Mechanical Building Plumbing Isometric			♦	♦
26	80D501	Process Details			♦	♦
27	80P501	HVAC and Plumbing Details			♦	♦
Electrical						
28	80E002	One-line Distribution Modifications		♦	♦	♦
29	80E003	Switchboard Modifications and Standby Power			♦	♦
30	80E005	Mechanical Building MCC-5 One-Line Diagram and Elevation		♦	♦	♦
31	80E109	Solids Handling Bldg Lighting Plan Lower, Ground and Upper Levels			♦	♦
32	80E110	Mechanical Bldg Lighting Plan Lower, Ground and Upper Levels			♦	♦
33	80E110	Mechanical Building Power, Instrument Plan Lower, Ground and Upper/Roof Levels			♦	♦
34	80E112	Solids Handling Bldg Power and Instrument Plan, Lower, Ground and Upper/Roof Levels			♦	♦
35	80E009	Control Diagrams	♦	♦	♦	♦
36	80E010	Control Diagrams	♦	♦	♦	♦
37	80E602	Luminaire Schedule and Power Panels		♦	♦	♦
Instrumentation and Control						
38	80Y012	Process Interface Summary	♦	♦	♦	♦
39	80Y105	P&ID Digesters 1 and 3 mixing	♦	♦	♦	♦
40	80Y106	P&ID New Thickening	♦	♦	♦	♦
41	80Y107	P&ID New Dewatering	♦	♦	♦	♦
42	80Y108	P&ID Revisions to Gas Handling	♦	♦	♦	♦
43	80Y109	P&ID Polymer	♦	♦	♦	♦
44	80Y110	P&ID Hot Water Revisions	♦	♦	♦	♦
45	80Y111	P&ID Revisions to Thickening and Dewatering	♦	♦	♦	♦
46	80Y112	P&ID Revisions to Sludge Transfer	♦	♦	♦	♦

Note: HVAC replacements in solids handling building will be located on sheets with original agreement.



Specification List

The specification list below assumes that the following specification divisions will not be supplied for this bid package: Divisions 2, 6, 8, 11–25, 27–30, and 34–39.

NUMBER	TITLE	30%	60%	90%	100%
DIVISION 0: BIDDING REQUIREMENTS					
DIVISION 1: GENERAL REQUIREMENTS					
DIVISION 3 – CONCRETE					
DIVISION 4 - MASONRY					
DIVISION 5 – METALS					
DIVISION 6 – WOOD AND PLASTIC					
06 10 00	ROUGH CARPENTRY			x	x
06 82 00	FIBERGLASS REINFORCED PLASTIC FABRICATIONS			x	x
DIVISION 7 – THERMAL AND MOISTURE PROTECTION					
DIVISION 8 – OPENINGS					
08 11 00	HOLLOW METAL DOORS AND FRAMES				
08 11 16	ALUMINUM DOORS AND FRAMES				
08 30 00	SPECIALTY DOORS				
08 31 00	ACCESS DOORS				
08 33 22	ALUMINUM ROLLING OVERHEAD DOOR				
08 70 00	FINISH HARDWARE				
08 81 00	GLASS AND GLAZING				
08 90 00	LOUVERS AND VENTS				
DIVISION 9 – FINISHES					
DIVISION 10 – SPECIALTIES					



DIVISION 22 – PLUMBING					
22 20 00	PLUMBING: FIXTURES AND EQUIPMENT			X	X
DIVISION 23 – HEATING, VENTILATING, AND AIR-CONDITIONING (HVAC)					
23 05 93	HVAC SYSTEMS: BALANCING AND TESTING			X	X
23 09 00	INSTRUMENTATION AND CONTROL FOR HVAC SYSTEMS			X	X
23 21 00	HYDRONIC SPECIALTIES			X	X
23 31 00	HVAC: DUCTWORK			X	X
23 34 00	HVAC: FANS			X	X
23 52 00	BOILERS			X	X
23 80 00	HVAC: EQUIPMENT			X	X
DIVISION 26 – ELECTRICAL					
DIVISION 31 – EARTHWORK					
DIVISION 32 – EXTERIOR IMPROVEMENTS					
DIVISION 33 – UTILITIES					
DIVISION 40 – PROCESS INTERCONNECTIONS					
DIVISION 43 – PROCESS GAS AND LIQUID HANDLING, PURIFICATION, AND STORAGE EQUIPMENT					
43 24 16	PUMPING EQUIPMENT: SUMP			X	X
43 41 43	POLYETHYLENE CHEMICAL TANKS			X	X
DIVISION 44 – POLLUTION AND WASTE CONTROL EQUIPMENT					
44 31 00	ODOR REDUCTION SYSTEM			X	X
DIVISION 46 – WATER AND WASTEWATER EQUIPMENT					



NUMBER	TITLE	30%	60%	90%	100%
DIVISION 6: WOOD AND PLASTIC					
06 10 00	ROUGH CARPENTRY			✓	✓
06 82 00	FIBERGLASS REINFORCED PLASTIC FABRICATIONS			✓	✓
DIVISION 8: OPENINGS					
08 11 00	HOLLOW METAL DOORS AND FRAMES			✓	✓
08 11 16	ALUMINUM DOORS AND FRAMES			✓	✓
08 30 00	SPECIALTY DOORS			✓	✓
08 31 00	ACCESS DOORS			✓	✓
08 33 22	ALUMINUM ROLLING OVERHEAD DOOR			✓	✓
08 70 00	FINISH HARDWARE			✓	✓
08 81 00	GLASS AND GLAZING			✓	✓
08 90 00	LOUVERS AND VENTS			✓	✓
DIVISION 22: PLUMBING					
22 20 00	PLUMBING: FIXTURES AND EQUIPMENT			✓	✓
DIVISION 23: HEATING, VENTILATING, AND AIR-CONDITIONING (HVAC)					
23 05 93	HVAC SYSTEMS: BALANCING AND TESTING			✓	✓
23 09 00	INSTRUMENTATION AND CONTROL FOR HVAC SYSTEMS			✓	✓
23 21 00	HYDRONIC SPECIALTIES			✓	✓
23 31 00	HVAC: DUCTWORK			✓	✓
23 34 00	HVAC: FANS			✓	✓
23 52 00	BOILERS			✓	✓
23 80 00	HVAC: EQUIPMENT			✓	✓
DIVISION 43: PROCESS GAS AND LIQUID HANDLING, PURIFICATION, AND STORAGE EQUIPMENT					
43 24 16	PUMPING EQUIPMENT: SUMP			✓	✓
43 41 43	POLYETHYLENE CHEMICAL TANKS			✓	✓
DIVISION 44: POLLUTION AND WASTE CONTROL EQUIPMENT					
44 31 00	ODOR REDUCTION SYSTEM			✓	✓
DIVISION 46: WATER AND WASTEWATER EQUIPMENT					



46 33 11	CHEMICAL FEED: LIQUID SYSTEMS			✓	✓
46 33 33	LIQUID POLYMER FEED EQUIPMENT			✓	✓
46 71 16	GRAVITY BELT THICKENERS			✓	✓
46 71 33	ROTARY DRUM SLUDGE THICKENING SYSTEM			✓	✓
46 81 11	SAMPLING AND MONITORING EQUIPMENT			✓	✓

**COUNCIL AGENDA REPORT
PUBLIC WORKS DEPARTMENT**

TO: Frank Kuntz, Mayor
City Council

FROM: Jake Lewing, Project Engineer
Jacob Huylar, Engineering Services Manager

SUBJECT: Tacoma Avenue Improvements, City Project #1907
Interlocal Agreement with Chelan County PUD

DATE: December 6, 2019

MEETING DATE: December 12, 2019

I. OVERVIEW

The City of Wenatchee has received a Transportation Improvement Board (TIB) grant to complete this project. The project will tie into recent improvements at McKittrick Street and Maple Street. Anticipated improvements include curb & gutter on both sides of the roadway, sidewalk along the west side of Tacoma, ADA ramps, roadway paving, and re-channelizing to provide bike lanes. The project will also include stormwater collection and conveyance, illumination, and other utility improvements.

A 6 inch water main owned by Chelan County PUD is among the existing utilities within the corridor. The water main will be replaced with an 8 inch ductile iron main as part of this project and funded by the PUD. Staff negotiated this agreement for design and construction costs, and the agreement is now ready to be executed by the city.

II. ACTION REQUESTED

Staff recommends the City Council authorize the Mayor to approve the Interlocal Agreement between the City of Wenatchee and Public Utility No. 1 of Chelan County, providing for the reimbursement of costs incurred with the design and construction of water line improvements associated with Project No. 1907.

III. FISCAL IMPACT

The project budget was approved by the Finance Committee and City Council on December 6, 2018.

IV. PROPOSED PROJECT SCHEDULE

Project design and Right of Way acquisition is expected to take place in 2019 and 2020, with construction to follow in the summer of 2021.

V. REFERENCE(S)

1. Interlocal Agreement between City of Wenatchee and Public Utility No.1 of Chelan County

VI. ADMINISTRATIVE ROUTING

Tammy Stanger, City Clerk
Rob Jammerman, Public Works Director
Gary Owen, City Engineer
Ruta Jones, Administrative Assistant

INTERLOCAL AGREEMENT
City of Wenatchee and Public Utility No. 1 of Chelan County
CCPUD SA No. 19-045

THIS INTERLOCAL AGREEMENT (“Agreement”) is hereby entered into this date by and between the CITY OF WENATCHEE (“City”), and PUBLIC UTILITY DISTRICT NO. 1 OF CHELAN COUNTY (“District”), sometimes collectively referred to as the “Parties.”

RECITALS

City is engaged in a roadway and utility project involving Tacoma Avenue, Wenatchee, Chelan County, Washington (collectively the “Project”), as illustrated on Exhibit A, attached.

District owns existing water distribution infrastructure under Tacoma Avenue within the project limits, as illustrated on Exhibit A, attached.

District desires to replace the existing water distribution infrastructure as part of the City’s street and utility project.

City will publicly bid the design and development of the Project by a Consultant.

NOW, THEREFORE, in consideration of the mutual promises and covenants herein contained, the foregoing Recitals, which are incorporated by this reference into the Agreement, City and District agree as follows:

- 1. Purpose.** The purpose of this Agreement is to provide for the cooperation of the Parties for the design, public bidding, and the development of the Tacoma Avenue improvements including the District-owned water distribution infrastructure.
- 2. Scope of Work.** The Scope of Work is the design and development of street improvements along Tacoma Avenue between McKittrick Street and Maple Street, including curb, gutter, sidewalk, paving, new stormwater conveyance, and replacing the existing water distribution infrastructure.
- 3. District’s Obligations.** The District shall reimburse the City for City Project design and construction costs associated with the replacement of the District’s existing water distribution infrastructure. Reimbursement pursuant to this Agreement shall not exceed to following estimated costs without further written agreement between the parties:

Construction Contract (not including sales tax)	\$328,000
Sales Tax (8.4%)	\$27,552
Design & Construction Engineering	\$50,000
Project Contingency	\$49,448
Total:	\$455,000

3 City's Obligations. City shall:

3.1 Develop plans and specifications for replacement of the District's water distribution infrastructure in consultation with the District. Final design is subject to District written approval. Upon District approval, the plans and specifications will be included by the City in a public bid package.

3.2 Administer the bidding and contract award, consistent with public bid laws for the Project, including:

- a) Preparing bid documents;
- b) Providing bid documents to the District for District review and approval prior to advertising for construction bids;
- c) Advertising for construction bids;
- d) Awarding of the construction contract.

3.3 Subject to the provisions of this Agreement, administer the City Project Contract, including:

- a.) Disbursement of payments to the Project contractor (subject to District's approval in advance);
- b.) Scheduling the construction work;
- c.) Administration of change orders (subject to District's approval in advance);
- d.) Coordinating and providing all inspection and permitting necessary to the Project; and
- e.) Coordinating final acceptance of the Project following construction, including, inter alia, obtaining the District's written acknowledgement of Project completion prior to final acceptance of the Project.

3.4 Provide field engineering, including survey control and construction staking, through City Contractor.

3.5 Be responsible for the administration, management and budget for this Project.

4 Duration and Termination. This Agreement shall become effective upon the filing of the executed Agreement with the Chelan County Auditor, or alternatively listed by subject on District's web site pursuant to RCW 39.34.040. This Agreement will terminate upon the completion of the Project, and the final payment for the District Work is received by the City from the District.

5 Cost. Pursuant to Section 3, the District shall reimburse the City costs associated with the replacement of the District's water distribution infrastructure including Washington State sales tax. Costs shall be determined by actual quantity and line item cost for that portion of the Project set out in the lowest responsible bid included in the City Project Contract for the entire Project, plus any change orders, , attributable to accommodating the District's water distribution infrastructure. Costs shall be, approved by the District..

- 6 **Payment.** Upon receipt of a correct invoice from the City, the District shall make payments to the City consistent with Sections 3 and 6. Payment will be due within 20 days of the date a correct invoice is mailed by the City to the District.
- 7 **Records.** City and District shall keep and maintain accurate and complete cost records pertaining to their respective portions of the Project. Each Party shall have full access and the right to examine any such records during the term of this Agreement. All records, books, documents and other materials maintained, prepared, or issued by the District in the implementation of this Agreement shall be the property of the District, which shall have the responsibility of the retention and release of those materials.
- 8 **Mutual Indemnity.** The District shall indemnify, defend and hold harmless the City, its officers, agents and employees, from and against any and all claims, losses or liability, or any portion thereof, arising from injury or death to persons or damage to property occasioned by any negligent act, omission or failure of the District, its officers, agents, and employees, in connection with the District Work described in this Agreement, or arising out of the District's, its officer's, agent's and/or employee's non-observance or non-performance of any law, ordinance, or regulation applicable to the District Work.

The indemnification obligation of District shall not be limited in any way by the application of any workmen's compensation acts, disability benefit acts or other employee benefit acts and the District expressly waives the protection afforded by such laws. The foregoing waiver and indemnification obligations have been mutually negotiated.

The City shall indemnify, defend and hold harmless the District, its officers, agents, employees, contractors, and subcontractors from and against any and all claims, losses or liability, or any portion thereof, arising from injury or death to persons or damage to property occasioned by any negligent act, omission or failure of the City, its officers, agents, employees, Contractor and subcontractors in connection with the District Work and the City Project described in this Agreement, or arising out of the City's, its officer's, agent's, employee's, Contractor's and/or subcontractor's non-observance or non-performance of any law, ordinance, or regulation applicable to the District Work and City Project.

The indemnification obligation of the City shall not be limited in any way by the application of any workmen's compensation acts, disability benefit acts or other employee benefit acts and the City expressly waives the protection afforded by such laws. The foregoing waiver and indemnification obligations have been mutually negotiated.

- 9 **Severability.** In the event that any provision of this Agreement shall be determined to be unenforceable or otherwise invalid for any reason, such provision shall be enforced and validated to the extent permitted by law. All other provisions of this Agreement are severable, and the unenforceability or invalidity of any single provision hereof shall not affect the remaining provisions.

- 10 **Attorney's Fees.** In the event of litigation regarding any of the terms of this Agreement, each Party shall pay their own attorney's fees and costs.
- 11 **Construction.** This Agreement contains the entire agreement between the Parties with respect to the subject matter hereof and supersedes all prior agreements or understandings among the Parties with respect thereto. This Agreement may be amended only by an agreement in writing signed by the Parties.
- 12 **Mutual Negotiation and Construction.** This Agreement and each of the terms and provisions hereof are deemed to have been explicitly negotiated between, and mutually drafted by, the Parties, and the language in all parts of this Agreement shall, in all cases, be construed according to its fair meaning and not strictly for or against either Party.
- 13 **Governing Law; Venue.** This Agreement is governed by the laws of the state of Washington, without regard to its conflict of law provisions. The jurisdiction of any action hereunder shall be in the Superior Court, Chelan County, Washington.
15. **Public Disclosure.** The obligations of the parties regarding confidential information may be subject to state and federal public disclosure laws, as now exist or as may be hereafter amended. The parties may disclose confidential information to the extent it is required to be disclosed pursuant to the public disclosure laws. If a public disclosure of confidential information is requested, the Party receiving the request agrees to notify the other of such request at least ten (10) business days prior to disclosure being made. The other Party may immediately seek a protective order in the appropriate court. The receiving Party will reasonably cooperate with the other in such action, but is under no obligation to obtain or seek any court protection.
16. **Relationship of Parties.** The Parties intend that an independent contractor relationship will be created by this Agreement. The conduct and control of the Project Contract and safety measures required by Project Contract lie solely with the City and its Contractor. Neither Party, their officers, employees, agents, contractors or subcontractors shall be considered an agent or employee of the other for any purpose and neither Party is entitled to any of the benefits that the other provides for its respective employees.
17. **Termination for Material Breach.** Except as otherwise provided for herein, if either Party fails to cure any material breaches of this Agreement which are described in a written Notice from the other Party within thirty (30) days of receipt of such Notice, this Agreement may be terminated immediately, in whole or in part, by Notice from the non-breaching Party.
18. **Notices.**
 - 18.1 Any notice or demand or other communication required or permitted to be given under this Agreement or applicable law shall be effective if and only if it is in writing, properly addressed, and either delivered in person, or by a recognized courier service, or deposited with the United States Postal Service as first class certified

mail, postage prepaid, certified mail, return receipt requested, via facsimile or by electronic mail, to the parties at the addresses and fax number, and email addresses provided below the signatures to this Agreement.

18.2 Notices shall be effective upon receipt or four (4) business days after mailing, whichever is earlier. The Notice address as provided herein may be changed by Notice given as provided above.

APPROVED BY

APPROVED BY

CITY OF WENATCHEE

**PUBLIC UTILITY DISTRICT NO. 1 OF
CHELAN COUNTY, WASHINGTON**

this _____ day of _____, 2019.

this _____ day of _____, 2019.

By: _____

By: _____

Name: _____

Name: _____

Title: _____

Title: _____

Attest: _____

Attest: _____

Notice Address:

Notice Address:

Telephone: _____

Telephone: _____

Fax: _____

Fax: _____

E mail: _____

E mail: _____

**COUNCIL AGENDA REPORT
ECONOMIC DEVELOPMENT DEPARTMENT**

TO: Frank Kuntz, Mayor
City Council

FROM: Matt Shales, Development Project Manager

SUBJECT: Lease for Temporary Use at Former WSDOT Property

DATE: December 6th, 2019

MEETING DATE: December 12th, 2019

I. OVERVIEW

Surplus City property located in the North Wenatchee Re-Development area, formerly the WSDOT property is currently vacant. The City did not receive any proposals to purchase and develop the property during our initial proposal period. Since the proposal period ended, City staff received a request from Town Auto Group to consider a temporary lease of the property and buildings to operate as a car dealership while they demo and build new infrastructure on their current property between Chelan and Miller. A temporary use of the property would be beneficial by generating income while staff advertise and market the property for re-development. Furthermore, having the site and buildings occupied would eliminate the City's maintenance and upkeep associated with the property. Finally, the temporary use will allow Town Chrysler Jeep Dodge Ram to continue operating in Wenatchee for the 2.5 year period of the lease.

Prior to the lease City staff will verify basic building infrastructure (plumbing, heating/air and electrical) is operational and remove any office debris and furniture that will not be utilized by lessee. Site or building improvements will be the sole responsibility of the lessee as will all utility payments and maintenance. In the event that building infrastructure is not operational, the lease would not be executed unless lessee covers all costs associated with any necessary fixes or City Council approves those fixes.

The lease amount is for \$5,000/month, plus leasehold excise tax for 30 months for a total of \$169,260. The City will retain the right to advertise and market the property, including property site visits, signage and other work associated with planned transportation projects in this area.

II. ACTION REQUESTED

Authorize the mayor to enter into a lease with Town Auto Group for the temporary use and operation of a car dealership on the former WSDOT property.

III. FISCAL IMPACT Submitted to the Finance Committee Yes No NA

Funds generated from the 5,000/month lease would go into the North Wenatchee Redevelopment fund to offset interest carrying costs.

IV. PROPOSED PROJECT SCHEDULE

The term of the lease is for 30 months and would begin February 1st 2020 ending August 1st 2022.

VI. ADMINISTRATIVE ROUTING

**COUNCIL AGENDA REPORT
ECONOMIC DEVELOPMENT DEPARTMENT**

Tammy Stanger, City Clerk
Brad Posenjak, Finance Director
Steve King, Economic Development Director
Allison Williams, Executive Services Director

COUNCIL AGENDA REPORT
City of Wenatchee



TO: Frank Kuntz, Mayor
City Council

FROM: Steve King, Economic Development Director

SUBJECT: Confluence Parkway Chelan PUD Coordination Memorandum of Understanding

DATE: December 7, 2019

MEETING DATE: December 12, 2019

I. OVERVIEW

The City of Wenatchee has been engaged in the NEPA compliance process for approximately a year with formal NEPA initiation occurring in July of 2019. Given Confluence Parkway involves property acquisition from the Chelan PUD and an amendment to the PUD FERC License, City and PUD Staff have been working through the process of determining how best to satisfy both Federal Highways Administration and the Federal Energy Regulatory Commission requirements. The process is a complex regulatory process and thus a memorandum of understanding (MOU) between the PUD and City is being developed to help set the project up for success including defining roles and responsibilities of each of the public agencies.

The attached draft memorandum serves as the basis for the MOU. The attached memo provides the details specifically on how we address park impacts as well.

II. ACTION REQUESTED

Staff recommends the City Council Authorize the Mayor to negotiate and sign a memorandum of understanding between the Chelan County PUD and the City of Wenatchee for the purposes of NEPA compliance for Confluence Parkway.

III. FISCAL IMPACT Submitted to the Finance Committee Yes No

N/A

IV. PROPOSED PROJECT SCHEDULE

The development of an environmental assessment is underway and preliminary studies have been initiated. Completion of the EA is expected by the end of 2021.

V. REFERENCE(S):

a. Draft Chelan PUD Coordination Memo

VI. ADMINISTRATIVE ROUTING

Tammy Stanger, City Clerk
Allison Williams, Executive Services Director
Brad Posenjak, Finance Director

Memorandum

December 3, 2019

To: Steve King, City of Wenatchee
Michelle Smith, Chelan County PUD
Melanie Vance, WSDOT Local Programs Division
Paul Mahre, WSDOT Local Programs Division
Trent De Boer, WSDOT
Sharon Love, FHWA

From: Jennifer Horwitz, Anchor QEA, LLC
Barbara Bundy, Anchor QEA, LLC

cc: Derek Koellmann, Anchor QEA, LLC
Nelson Davis, KPG

**Re: Confluence Parkway Project
Chelan PUD Coordination Summary: EA and Section 4(f) Process**

Purpose

This memorandum describes the anticipated coordination between the City of Wenatchee (City) and Chelan County Public Utility District (Chelan PUD) on the Confluence Parkway Project (Project) Environmental Assessment (EA) and associated Section 4(f) process. It is informational only and non-binding; however, it will be used to inform a memorandum of understanding between Chelan PUD and the City. The City and Chelan PUD recognize that coordination is key because the Project will require a Federal Energy Regulatory Commission (FERC) license modification. In addition, this memorandum is intended to ensure there is an understanding of the Section 4(f) process, which is a component to the EA. The City and Chelan PUD must agree on the process to follow. It is the objective of this memorandum to provide information on the process.

In particular, the objective of the memorandum is to determine if the City and Chelan PUD agree to follow the *de minimis* process for Section 4(f) compliance. The initial design for the Project would require land from the Wenatchee Confluence State Park and the Horan Natural Area, and partial relocation of the Apple Capital Recreation Loop Trail. This constitutes a use of recreational properties that are protected by Section 4(f). The City recognizes the importance of the recreational and historic properties that would be impacted by the Project, and commits to working with community stakeholders to design a project that avoids impacts where possible and minimizes and mitigates impacts where they are unavoidable. Further, the Project offers the potential to enhance the recreational resources, with the overall result being a project that has broad-based community support. This will be accomplished through an iterative and collaborative context-sensitive design process as described in this memorandum.

In addition to describing how the EA and Section 4(f) processes relate, this memorandum lists the technical studies that will be prepared for the EA. It also identifies properties protected by Section 4(f) within the Project area that may be impacted by the Project and describes how the City will evaluate potential Section 4(f)-related impacts to those protected properties. It describes how the City will coordinate with stakeholders on the impact analysis and recommended Section 4(f) finding. Finally, it identifies steps in the Section 4(f) process that lead to the Federal Highway Administration's (FHWA's) determination, and, thus, the conclusion of the process.

Introduction

This Project is part of the North Wenatchee Capacity Improvements Project proposed by the City on behalf of the region and Chelan-Douglas Transportation Council (CDTC) to relieve traffic congestion on State Route (SR) 285 (also called North Wenatchee Avenue within the Project area). The Project may include funding from FHWA, administered by the Washington State Department of Transportation Local Programs Division (WSDOT LP). As such, FHWA is the lead federal agency for compliance with the National Environmental Policy Act (NEPA) and associated laws such as the Endangered Species Act, Section 106, and Section 4(f). Coordination and compliance related to NEPA, through an EA, and Section 4(f) are further discussed in the sections that follow.

Project Description

The Project is located in Wenatchee, Chelan County, Washington. Confluence Parkway is a new 2.5-mile bypass of SR 285. This 35-mile-per-hour, two-lane arterial street will begin on North Miller Street, cross the Wenatchee River on a new bridge, and extend north to Euclid Avenue just north of Gunn Road. The parkway will have one 11-foot-wide travel lane and a 5-foot-wide bicycle lane in each direction. Other specific features, such as sidewalks, planted buffers, and pedestrian/bicycle facilities, would vary by location. The Project also includes relocation and enhancement of the existing Apple Capital Recreation Loop Trail, which is currently located along Hawley Street and the railroad tracks, development of new stormwater facilities and temporary construction staging areas.

The majority of the new alignment is proposed adjacent to BNSF tracks. Portions of the alignment are also on, adjacent to, or near park and recreational land and historic properties, including an archaeological site and historic features of the built environment.

Alternatives Considered

The CDTC and the City of Wenatchee identified the SR 285/North Wenatchee corridor as a transportation bottleneck over 20 years ago. In the past 10 years, CDTC and the City have looked critically at various alternatives for addressing the transportation needs of this corridor, which include adding capacity, improving multi-modal mobility, supporting economic development, and enhancing safety. In particular, *Confluence 2030*, *North Wenatchee Transportation Master Plan* and *Transportation 2040*, evaluated various concepts for this corridor. In 2017, CDTC issued the *North*

Wenatchee Capacity Improvements Risk Assessment, which identified two options: North Wenatchee Avenue and the Confluence Parkway. Both alternatives would add capacity, but the Confluence Parkway alternative performed significantly better at reducing congestion, improving multi-modal connectivity, supporting community and economic development, and improving safety for motorized and non-motorized travelers.

NEW SECTION: NEPA Approach

FHWA has determined that an EA is the appropriate approach for NEPA compliance for this Project. FHWA EAs evaluate two alternatives: the build alternative (proposed project) and the no-build alternative. The EA will address aspects of the built and natural environment that are typically included in FHWA NEPA documents. In some cases, technical studies will be prepared; in others, a brief section will be written directly to the EA. Table 1 describes the approach for each environmental study area that will be included in the EA.

**Table 1
 Approach to Addressing Environmental Study Areas**

Environmental Study Area	Approach
Air Quality	Because the Wenatchee area has historically not exceeded the National Ambient Air Quality Standards and is currently in attainment for criterial pollutants, the evaluation will be qualitative, written directly into the body of the EA. The air quality analysis will also include the emissions reduction analysis that was included in the previously developed Project cost/benefit analysis.
Biological Assessment	Team biologists will prepare a Biological Assessment (BA) to evaluate the Project’s anticipated impacts to Endangered Species Act-listed species. Based on preliminary research, this is anticipated to focus on listed fish species. This will include information on current habitat conditions, species present and possibly present, and potential impacts associated with the Project. The BA will be summarized in the EA.
Climate Resiliency	This short section will be written directly into the EA. It will rely on design information that demonstrates the new bridge can withstand higher than normal river levels that may be associated with climate change.
Cultural Resources Assessment	<p>The Cultural Resources Assessment report will include a description of the Area of Potential Effects (APE) within which historic properties could be affected, an inventory of potential historic properties in the APE, an evaluation of National Register of Historic Places (NRHP)-eligibility of those properties, and an assessment of Project effects on NRHP-eligible properties. The report will be based on literature review, fieldwork, and consultation with Native American tribes.</p> <p>The EA will include a summary of the affected environment (cultural and historical background, efforts to identify cultural resources, impacts, and mitigation measures) that is drawn from the Section 106 documentation. The summary in the EA will also include a section on Tribal Considerations. Because the NEPA process fulfills the public outreach requirements of Section 106, coordination and consultation efforts will be highlighted. A redacted Cultural Resources Assessment report, suitable for public distribution, may be included as an attachment to the EA.</p>

Environmental Study Area	Approach
Floodplains and Surface Water	Floodplain delineations of potentially impacted areas will be field-verified and potential impacts within the delineated zone will be assessed. The evaluation will be documented in a technical memorandum that will be sufficient to comply with Executive Order 11988. Field staff will also delineate the ordinary high water mark (OHWM) within the Project study area (see Attachment 1 of this memorandum) to quantify potential impacts below OHWM. The delineations and impact evaluation will be documented in a technical memorandum. The results will be documented and summarized in the EA.
Habitat, Ecosystems, and Wildlife	Field staff will conduct a desktop evaluation and field reconnaissance to evaluate wildlife use and habitats within the Project footprint plus an additional 1/2-mile area from the Project limits. A site visit will be offered to agencies and stakeholders with interest in these resources, such as the Friends of Horan Natural Area and the North Central Washington Audubon Society. Use of the area by wildlife and people, and potential impacts to that use, will be described in a technical memorandum, a summary of which will be included in the EA.
Hazardous Materials	The existing work to document hazardous materials within the Project footprint that was completed in the NEPA preliminary assessment phase will be further advanced to identify (to the extent possible) the specific locations of known hazardous materials and associated potential mitigation measures for remediating identified hazardous materials. This assessment is limited to records research of existing and documented contamination as identified on the Washington State Department of Ecology's Site Register and Contaminated Sites list. A summary of the findings will be presented in the EA.
Noise Report	The project team will perform a traffic noise analysis for the Project, from Hawley Street/McKittrick Street in the south end to East Penny Road/Euclid Avenue in the north end. The noise analysis will be based on the guidelines presented in the current Federal-Aid Policy Guide, Sub-chapter H, Part 772, Procedures for Abatement of Highway Traffic Noise and Construction Noise and the 2011 Traffic Noise Policy and Procedures. The results will be documented in a technical memorandum and summarized in the EA.
Social, Community, and Environmental Justice	<p>The social and community portions will be written directly into the EA. It will address potential impacts to communities in the area and also the benefits of providing better access to places of employment. Input from public outreach that has occurred during the Project's planning process to date will inform the evaluation. Information on land use will be included in this section.</p> <p>The Environmental Justice Evaluation will be prepared according to WSDOT procedures, as documented at https://www.wsdot.wa.gov/environment/technical/disciplines/social-and-land-use-effects/environmental-justice. In general, the study area will be 1/4 mile from the Project boundaries but may be adjusted if potential impacts are identified at the edge of the study area, or if the study area bisects potentially significant resources such as schools or neighborhoods. A summary of the findings will be presented in the EA.</p>

Environmental Study Area	Approach
Stormwater	<p>A Stormwater Technical Memorandum will include information on existing stormwater conditions, applicable regulations, and a conceptual stormwater management approach for run-off treatment and flow control. A summary will be provided in the EA.</p> <p>In addition to the Stormwater Technical Memorandum, project hydrologists will evaluate the feasibility of routing treated stormwater into the Horan Natural Area as a means of re-watering the created wetlands. This is anticipated to come in advance of the technical memorandum, and it may inform the conceptual stormwater management approach. The results of this feasibility study will be shared with Chelan PUD. Utilizing stormwater to provide water to the wetlands would be separate from the Project, as this would have to be coordinated with regional stormwater systems in the Project area. However, the City would like to coordinate with Chelan PUD on this idea, which could be part of the Project’s mitigation measures.</p>
Transportation	<p>The Transportation Report will document changes in the transportation system, including general purpose, transit, and non-motorized transportation. A summary will be provided in the EA.</p>

Environmental Study Area	Approach
Visual Impacts	<p>A Standard Visual Impact Analysis (VIA) will be prepared following FHWA guidance. The VIA will include several simulations and, among other things, will address light and glare, per the City’s understanding that these are concerns for Chelan PUD.</p> <p>As described in the FHWA guidance, the affected environment section will include the following:</p> <ul style="list-style-type: none"> • Regulatory setting, listing any federal, state, or local laws, rules, ordinances, or other regulations that are related to visual issues, visual resources, visual character, visual quality, or the visual experience of viewers. Definition and map of the area of visual effect, showing the location of distinct landscape units and associated key views. • Representative images and descriptions of the visual character of the landscape units, identifying in particular the visual resources of the natural, cultural, and project environments. • Visual character of Project. These descriptions can be documented by landscape units, if the visual character of the Project in each landscape unit is unique. • Brief description of who the neighbors and travelers are, along with their self-interest, their sensitivity to visual change, and their visual preferences. • Existing visual quality by identifying viewer's impressions of existing visual character, especially their impressions of natural harmony, cultural order, and Project coherence. <p>The impact analysis section will include the following:</p> <ul style="list-style-type: none"> • Description of how the proposed Project will alter the visual character of the area of visual effect and consequently the experience of visual quality by viewers. Definition of the impacts to visual quality using the concepts of changes to natural harmony, cultural order, and Project coherence. • Description in common language of the visual impacts to natural harmony, cultural order, and Project coherence. Discussion of this in terms of the compatibility or incompatibility of the visual character of the proposed Project with the visual character that currently exists in the area of visual effect and how visual quality would be affected. Discussion of how key views would be affected, using before and after images to illustrate impacts, in cases where simulations are used. Inclusion of a narrative discussion with the simulations discussing how they relate to the public's viewer preferences. Description of the expected viewer sensitivity to these changes. Definition of impacts as being adverse, beneficial, or neutral. Description of any anticipated cumulative impacts to existing visual quality associated with the Project. • Suggestions for how to avoid, minimize, or compensate for adverse impacts and how to incorporate beneficial impacts into the Project as enhancements.
Wetlands and Conceptual Wetland Mitigation Plan	<p>Field staff will delineate all wetlands that overlap or are adjacent to (i.e., within 100 feet of) the Project footprint. The results will be mapped and used to quantify impact areas by type of wetland. The results will be documented in a technical memorandum. Additionally, the team will prepare a Conceptual Wetland Mitigation Plan for Project impacts. The plan will also describe measures that the Project has taken to minimize impacts. The plan will be presented to Chelan PUD, Washington State Parks (WSP), regulatory agencies, and other appropriate stakeholders for their input.</p>

In conjunction with the EA process, the City, WSDOT, and FHWA will also conduct the necessary consultation with agencies and tribes for compliance with the Endangered Species Act, Section 106, and Section 4(f). Summaries of these consultations and outcomes will be presented in the EA.

Two public processes are planned as part of the EA process: an open house to present findings from the technical studies prior to completing the EA, and a public hearing during the public review period of the EA, typically 15 days after publishing the EA.

As a member of the Core Team and as a cooperating agency for the NEPA process, the City will coordinate with Chelan PUD throughout the development of the technical studies and the EA. The City will provide technical studies and draft sections of the EA to Chelan PUD for their review and consideration.

NEW SECTION: FERC Requirements

FERC approval is required because the proposed Project would permanently incorporate Chelan PUD property into the transportation facility. Chelan PUD will be required to submit a license amendment to FERC to address the following three changes to their license for the Rock Island Hydroelectric project:

- Land transfer and/or lease
- Changes to the project boundary
- Revisions to Exhibit R (Recreation Plan)

Attachment 2 of this memorandum describes the information that Chelan PUD will need to provide to FERC for the license amendment. In particular, it outlines the process for conveying fee title, rights-of-way, or leases of project lands for bridge or road projects. It also provides a list of items typically required in the application for Non-project Use and Occupancies of Project Lands and Waters. There is significant overlap between this list of requirements and the analysis that will be included in the FHWA EA. The City will ensure that the FHWA EA prepared for the Project will meet these needs.

NEW SECTION: EA Process and Timing

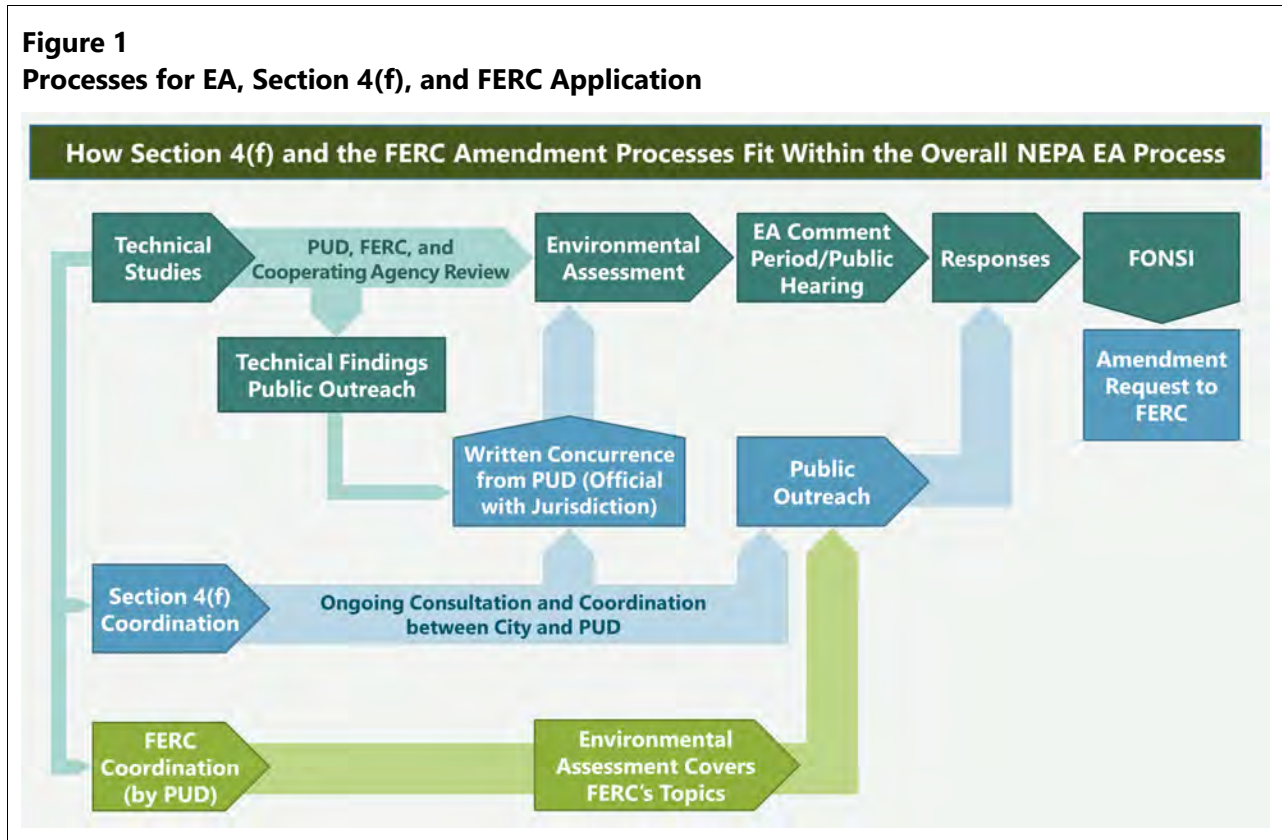
City and Chelan PUD staff, with support from FHWA and FERC, have developed an understanding of how the EA process fits with the Section 4(f) process and the FERC amendment process. Figure 1 illustrates how the EA and Section 4(f) overlap and work together to achieve the objective of securing a Finding of No Significant Impact (FONSI) from FHWA. It also shows where the ultimate FERC approval occurs—after the FONSI.

A key point of understanding in this process relates to when Chelan PUD would be asked to provide a concurrence letter for the Section 4(f) determination if *de minimis* under the Section 4(f) process

has been reached, based on all of the technical studies of impacts and mitigation measures developed through context-sensitive design and consultation with stakeholders. This request would occur prior to publishing the EA.

Further details on the Section 4(f) and EA process are outlined below.

Figure 1
Processes for EA, Section 4(f), and FERC Application



Section 4(f) Process

The U.S. Department of Transportation (USDOT) requires consideration of the following during development of a transportation project: public park and recreational lands, wildlife and waterfowl refuges, and historic properties. Historic properties are prehistoric and historic sites, districts, structures, and objects eligible for listing in the National Register of Historic Places (NRHP). The process for this consideration is commonly known as Section 4(f), because it was originally published in that section of the USDOT Act of 1966. The law is now codified in 49 United States Code (U.S.C.) §303 and 23 U.S.C. §138, and its implementing regulations are found at 23 Code of Federal Regulations (CFR) 774.

Seven Section 4(f) properties have been identified within the Project area (Table 2).

Table 2
Section 4(f) Properties

Resource Name	Type of Site
Wenatchee Confluence State Park	Park and recreation land
Horan Natural Area	Park and recreation land
Apple Capital Recreation Loop Trail	Park and recreation land
Wenatchee Flats Site (45CH209)	Archaeological site, NRHP listed
Southbound SR 285 Bridge	Historic property, NRHP listed
Northbound SR 285 Bridge	Historic property, NRHP eligible
BNSF Rail Corridor	Historic property, NRHP eligible

Definitions

The law prohibits land from a Section 4(f) property from being used by a transportation facility unless there is no feasible and prudent alternative (and all possible planning to minimize harm occurs; Figure 2), or the use is determined to be *de minimis*.

- What is a 4(f) property? A Section 4(f) property¹ is a “publicly owned land of a public park, recreation area, or wildlife and waterfowl refuge of national, state, or local significance, or land of an historic site of national, state, or local significance” (23 CFR 774.17). A 4(f) property must be open to the public and owned by a public entity, unless it is a historic property.

Identification of Section 4(f) properties requires:

- Analysis of the activities, features, or attributes² of the property that qualify it for Section 4(f) protection; and
- Concurrence from the official with jurisdiction, generally the official of the agency that owns or manages the public property for parks, recreation areas, and refuges, or the State Historic Preservation Officer for historic properties.
- How are impacts determined? A property is impacted, or used, when:
 - Land is permanently incorporated through acquisition into a transportation facility.
 - There is a temporary occupancy of land that is adverse (i.e., affects the activities, features, or attributes of the property).
 - There is a constructive use of land (the land is not acquired, but effects such as noise and vibration substantially impair the activities, features, or attributes of the property).

¹ Section 4(f) properties are physical places such as parks, wildlife refuges, or historic sites. Section 4(f) properties are also referred to as “Section 4(f) resources.”

² The activities, features, or attributes that qualify parks, recreation areas, and wildlife and waterfowl refuges as a Section 4(f) property, and the associated Section 4(f) protection, most often include: being publicly owned, being open to the public, providing recreational opportunities to the public, or providing opportunities for public viewing of wildlife.

- If there is a 4(f) use, it is *de minimis* if FHWA determines, and the official with jurisdiction concurs, that the impact will not compromise the attributes that qualify the resource for protection.

Through early and ongoing coordination with the parties listed above, the City is working towards designing the Project and developing mitigation measures with the goal of obtaining a *de minimis* determination per subpart (b) in Figure 2. With guidance from FHWA and WSDOT, the City is pursuing a *de minimis* approach based on the ability and commitment to work cooperatively in partnership with Chelan PUD to identify mitigation measures that create the best possible Project outcome. The City and Chelan PUD partnership allows focused effort on the Section 4(f) resources to create a net positive outcome for the community in terms of transportation and park uses.

If it is not possible to reach a *de minimis* determination, two other options exist. Subpart (c) in Figure 2 establishes the possibility of using a Section 4(f) property if there is no feasible and prudent alternative that avoids the Section 4(f) use and the selected alternative causes the least overall harm. This would require an individual evaluation. It is also possible that the Project could qualify for FHWA's Nationwide Net Benefit Programmatic Section 4(f) Evaluation. In this case, the Project would have to result in an overall enhancement to impacted properties. In either of the latter two options, extensive collaboration and coordination would be required with the officials with jurisdiction as the Project is designed to avoid, minimize, and mitigate for impacts.

Figure 2
Excerpt from 23 CFR 774.3

The Administration may not approve the use of publicly owned land of a public park, recreation area, or wildlife and waterfowl refuge of national, state, or local significance, or land of an historic site of national, state, or local significance (as determined by the federal, state, or local officials having jurisdiction over the park, area, refuge or site), unless a determination is made under paragraph (a) or (b) as follows:

(a) The Administration determines that:

(1) There is no feasible and prudent avoidance alternative to the use of land from the property; and

(2) The action includes all possible planning to minimize harm to the property resulting from such use; or

*(b) The Administration determines that the use of the property, including any measure(s) to minimize harm (such as any avoidance, minimization, mitigation, or enhancement measures) committed to by the applicant, will have a *de minimis* impact on the property.*

(c) If the analysis concludes that there is no feasible and prudent avoidance alternative, then the Administration may approve only the alternative that causes the least overall harm in light of the statute's preservation purpose.

Participants and Roles

For the Confluence Parkway Project, FHWA/WSDOT is responsible for ensuring that requirements of Section 4(f) are met. This includes ongoing engagement with Chelan PUD, Washington State Parks (WSP), and other stakeholders. It also includes compliance with the requirements of applicable laws and regulations, as well as FHWA guidance and practices, shown in Figure 3. The City is the Project proponent and is responsible for preparing analysis and documentation and coordinating with the officials with jurisdiction. FHWA is responsible for evaluating the documentation and issuing final decisions concerning the NEPA and Section 4(f) processes.

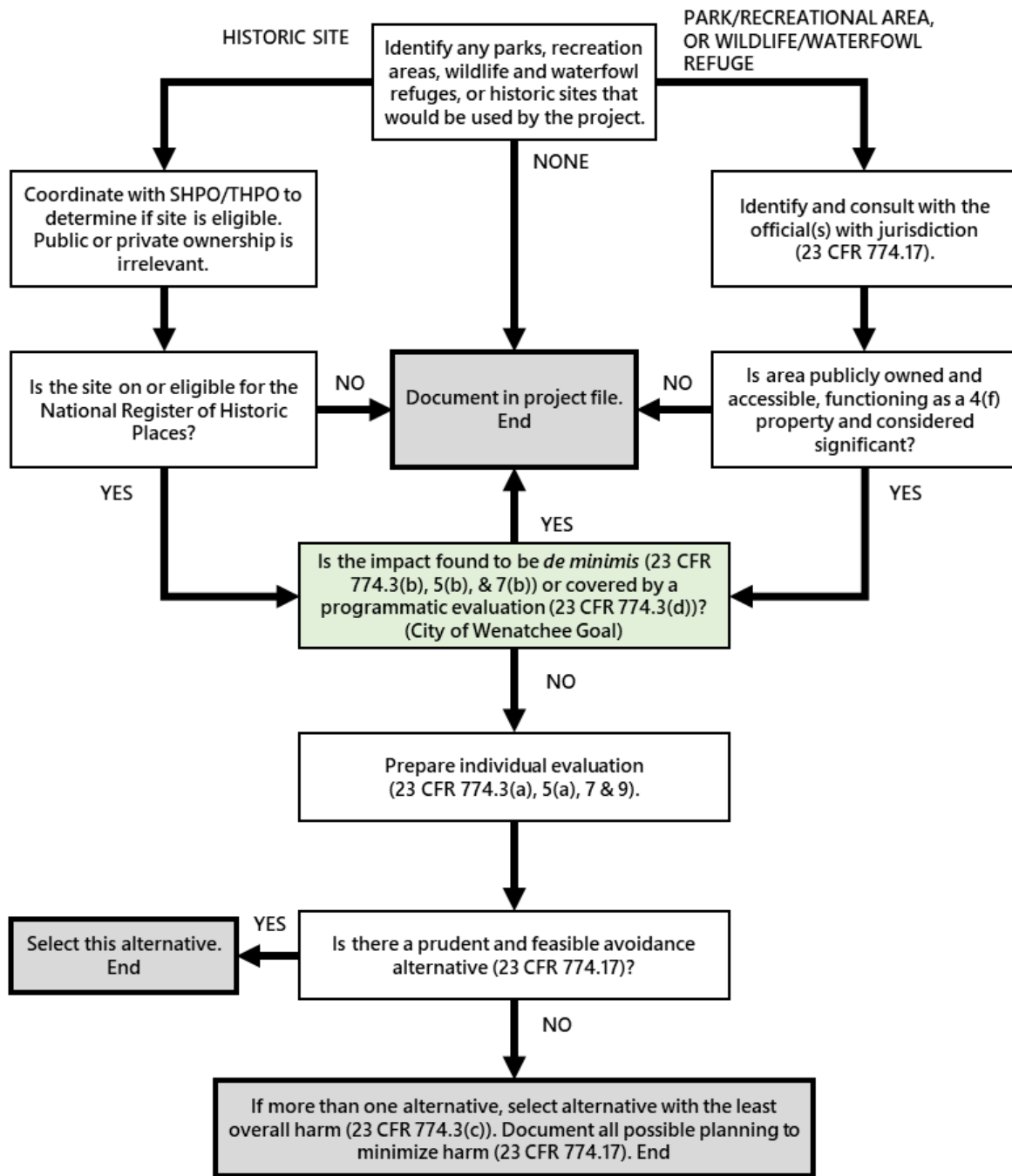
Wenatchee Confluence State Park and Horan Natural Area are owned by Chelan PUD and are required as part of Chelan PUD's Rock Island Hydroelectric Project (FERC No. 943) license issued by the FERC. Confluence State Park and a majority of the Horan Natural Area are operated and maintained by WSP through a lease and operating agreement with Chelan PUD. Chelan PUD is an official with jurisdiction for the park and natural area and will be entering into a Memorandum of Agreement with WSP (Attachment 3) acknowledging that the agencies will work together on the Section 4(f) process, including issue and impact identification and review and comment on documents. WSP has deferred to Chelan PUD for the responsibility of the official with jurisdiction. Portions of the Apple Capital Recreation Loop Trail located within Confluence State Park and the Horan Natural Area are owned by Chelan PUD and maintained by WSP. The City of Wenatchee owns the Apple Capital Recreation Loop Trail along Hawley Street. The Department of Archaeology and Historic Preservation (DAHP) is the official with jurisdiction for the four historic properties. The State Historic Preservation Officer is the director of DAHP.

Context-Sensitive Design

The Project team is using a context-sensitive solutions approach to avoid impacts to Section 4(f) properties listed in Table 2. When avoidance is not possible, impacts will be minimized to the extent possible and mitigated where appropriate. The context-sensitive approach is a collaborative, interdisciplinary design approach used to create transportation solutions that fit into the physical setting while preserving and enhancing community and natural environments.

Through close collaboration with Chelan PUD, WSP, FHWA, WSDOT, DAHP, interested Native American tribes, and other community stakeholders, the City will create a project that respects and honors the rich history and culture of the area, protects cultural and historic properties, and preserves park and recreational land.

**Figure 3
 FHWA Section 4(f) Process**



Source: <https://www.environment.fhwa.dot.gov/legislation/section4f/4fpolicy.aspx>

Section 4(f) Properties, Characteristics, and Evaluation

Table 3 provides a description of the characteristic for each of the Section 4(f) properties within the Project area and the elements of the environment that will most strongly inform the evaluation. It is important to note that evaluation of impacts to a Section 4(f) property is specifically related to the features and attributes that qualify the property for Section 4(f) protection. For the Wenatchee Confluence State Park, the Horan Natural Area, and the Apple Capital Recreation Loop Trail, the qualifying features and attributes must be related to recreational or wildlife sanctuary purposes. Section 4(f) protection applies to archaeological site 45CH209 if, as a result of consultation with DAHP and interested Native American tribes, the site is determined to be worthy of preservation in place. If the site is determined to be important primarily because of what can be learned by data recovery, the site may qualify for the Section 4(f) exception described in 23 CFR 774.13(b).

Table 3
Section 4(f) Properties, Characteristics and Evaluation

Section 4(f) Property Name/Official with Jurisdiction	Key Characteristics and Attributes	Evaluation Factors	Preliminary Section 4(f) Use Finding
Wenatchee Confluence State Park/Chelan PUD	Campground; active water-based recreation including a protected swimming area and boat launch; land-based recreation including wildlife viewing, walking trails, a playground, and ball fields; open to the public	Temporary changes in access during construction; visual changes associated with physical proximity to transportation facility; project alignment; changes in the level of noise experienced by users of the park	Likely physical incorporation of property—use; with mitigation could be <i>de minimis</i>
Horan Natural Area/Chelan PUD	Natural area with passive recreation; educational and cultural interpretation; hiking trails; wildlife viewing; created wetlands; wildlife and avian habitat; non-motorized boat access; open to the public	Temporary changes in access during construction; visual changes associated with physical proximity to transportation facility; project alignment; changes in the level of noise experienced by users of the park	Likely physical incorporation of property—use; with mitigation could be <i>de minimis</i>
Apple Capital Recreation Loop Trail/Chelan PUD and City of Wenatchee	Trail used for bicycling, walking, jogging, skating; much of the trail is along the western edge of the Wenatchee Confluence State Park and the Horan Natural Area; open to the public	Temporary changes in access during construction; visual changes associated with relocation of trail to be farther away from the railroad and other transportation facilities; project alignment	Likely physical incorporation of portions of current trail footprint—use; temporary occupancy during construction and trail relocation; with mitigation could be <i>de minimis</i>

Section 4(f) Property Name/Official with Jurisdiction	Key Characteristics and Attributes	Evaluation Factors	Preliminary Section 4(f) Use Finding
Wenatchee Flats Site (45CH209)/DAHP	NRHP listed	Project alignment, including ancillary project elements such as stormwater and other utilities	Possible location of transportation facility or ancillary project elements over the known boundary; if no intrusion into the site boundary, could be no use
Southbound SR 285 Bridge/DAHP	NRHP listed	Although the view of and view from the bridge will change, the addition of a transportation facility is consistent with the current context; changes are unlikely to alter the aspects of the bridge that qualify it for listing on the NRHP	No use
Northbound SR 285 Bridge/DAHP	NRHP eligible	Although the view of and view from the bridge will change, the addition of a transportation facility is consistent with the current context; changes are unlikely to alter the aspects of the bridge that qualify it for listing on the NRHP	No use
BNSF Rail Corridor/DAHP	NRHP eligible	Although the view of and view from the bridge will change, the addition of a transportation facility is consistent with the current context; changes are unlikely to alter the aspects of the rail corridor that qualify it for listing on the NRHP	No use

Attachment 4 provides the Wenatchee Confluence State Park Land Classification and Long-Term Boundary Map from the *Wenatchee Confluence Area State Parks Management Plan, 2007*.

Technical Studies

The assessment of impacts to Section 4(f) properties will rely, in part, on the technical studies (described in Table 1) that will be conducted to inform the Project's EA and the Section 106 process, which is how the Project will comply with the National Historic Preservation Act in accordance with 36 CFR 800.

The physical layout of the Project most directly informs the Section 4(f) impacts in terms of use (i.e., permanent incorporation of property into a transportation facility). However, we must also consider how the Project might change the activities, features, and attributes that qualify the Section 4(f) properties for Section 4(f) protection. Sometimes, those impacts are not direct, but rather related to a project's proximity to a Section 4(f) property.

Technical studies such as noise and visual impacts will be used to determine whether there are constructive uses. Constructive uses are those in which the Project's proximity impacts are so severe that the features, activities, and attributes that qualify the resource for Section 4(f) protection are substantially impaired. These features could include campsites, maintenance facilities, and safe pedestrian and bicycle use, among others.

Section 106 documentation will be used to determine whether there are direct or constructive uses of historic properties. The Section 106 consultation process will guide additional research, documentation, and consultation with DAHP and Native American tribes that may be required.

In addition to the technical studies, Section 4(f) documentation will also include the following:

- Agendas and notes from stakeholder coordination
- Meetings summaries for public involvement activities
- Materials presented online and at open houses
- Summary of comments from the public hearing for the EA

Anticipated Section 4(f) Finding

The City's goal is to coordinate with Chelan PUD and DAHP to design the Project to ensure a *de minimis* determination through avoiding, minimizing, and mitigating impacts, which may include implementing enhancement measures to the activities, features, or attributes that qualify it for protection. The City envisions that this will result in the following:

- A Section 106 determination that the Project will have no adverse effects on the Wenatchee Flats site (45CH209), the bridges and rail corridor, and any other historic properties recorded during the process
- *De minimis* determinations for Wenatchee Confluence State Park, Horan Natural Area, and the Apple Capital Recreation Loop Trail

This will require coming to agreement with Chelan PUD and DAHP through collaboration and communication.

Stakeholder Coordination

The City, FHWA, WSDOT, Chelan PUD, and DAHP will cooperate to review the approach, fieldwork protocols, and associated draft reports and memoranda as they are developed to evaluate and

inform the Project's overall development, including the Section 4(f) process. In addition, the City will obtain all permits, rights-of-entry, and other required approvals prior to commencing fieldwork to ensure Chelan PUD and DAHP's requirements for fieldwork are known and incorporated into the study design. After the City has completed the technical studies in cooperation with Chelan PUD and DAHP, data and analysis from the studies will be used to complete final identification of Section 4(f) properties; evaluate the types of uses that will occur on Section 4(f) properties including permanent uses, temporary occupancies, and constructive uses (indirect impacts that cause substantial impairment); and identify measures to mitigate adverse impacts. The City will ask Chelan PUD for informal concurrence on the studies as well as mitigation measures throughout the process.

After the analysis of impacts is complete, the preliminary findings will be presented in a meeting, to which Chelan PUD, DAHP, and interested Native American tribes will be invited. Concurrence in appropriateness of the analysis and the preliminary findings will be documented through meeting notes. The City will continue to work with Chelan PUD to develop and refine minimization and mitigation measures related to park and recreation Section 4(f) resources. The City will also hold a public meeting to provide a project update, share findings from the technical studies, including the proposed Section 4(f) determination, and to request feedback from interested parties. This will be held prior to publishing the EA.

At the conclusion of all studies and after the public meeting, the City will send a letter to Chelan PUD requesting the agency's formal concurrence with Section 4(f) determination. A response letter back from Chelan PUD is necessary before FHWA can sign the EA with the Section 4(f) finding of *de minimis* impact. If the Project is determined to have no adverse effect on historic properties, FHWA/WSDOT will inform DAHP of FHWA's intent to make a *de minimis* finding based on DAHP's concurrence with the no adverse effect determination. This information will be incorporated into the Project's EA.

Throughout the process, the City will coordinate and share information with Chelan PUD, DAHP, interested Native American tribes, and other stakeholders. This will include a continuation of the regularly scheduled meetings with Chelan PUD. The City will also extend that offer to DAHP and interested tribes, if desired.

Because the public process for the EA will also serve as the public process for Section 106 and Section 4(f), the Section 4(f) process will not conclude until after the EA's period of public availability. This is typically 30 days, during which a public hearing with additional public involvement opportunities will be held. After this, FHWA is anticipated to issue a FONSI and will include the agency's final Section 4(f) finding in that document.

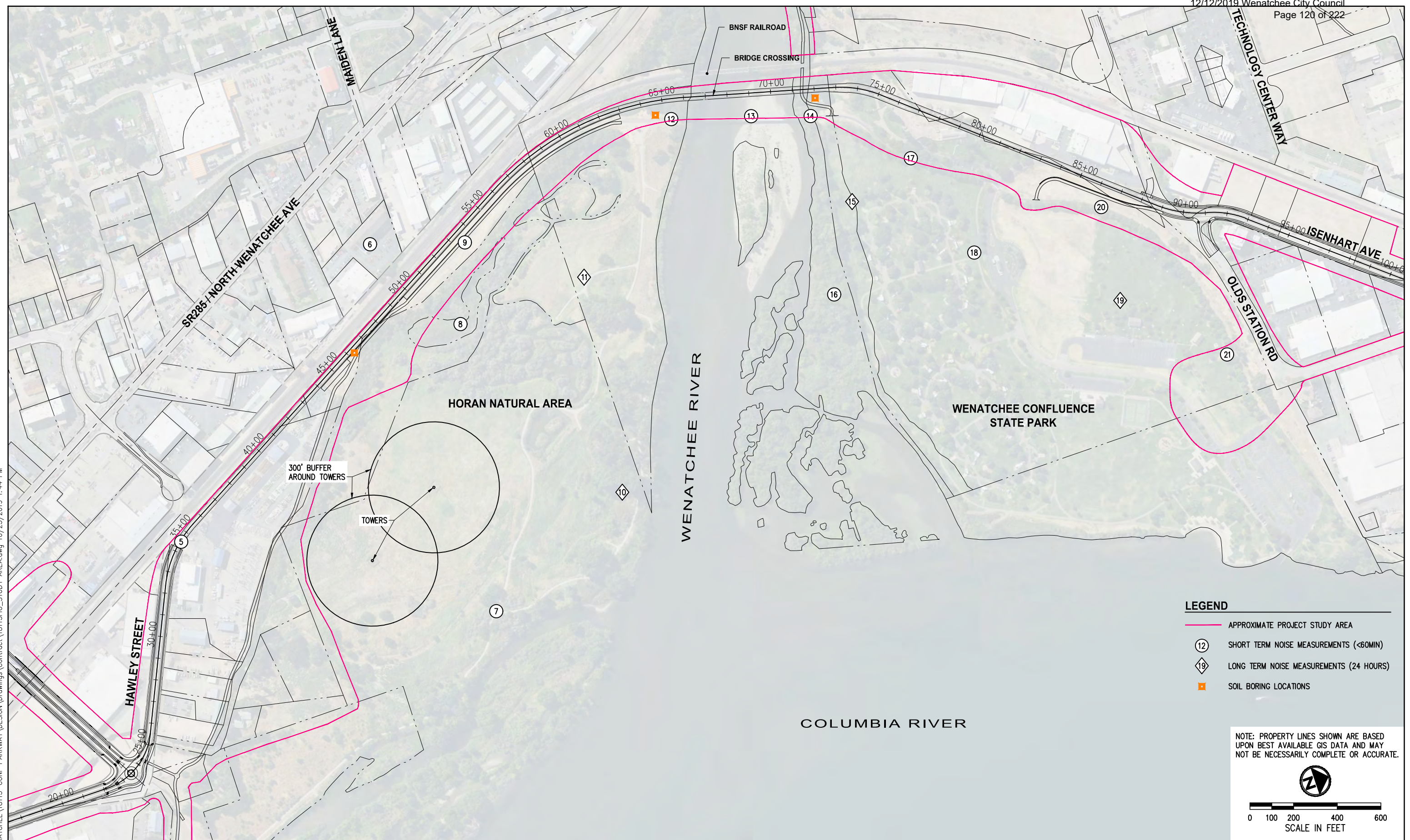
Key steps in the coordination process are described in Table 4. A schedule for the Section 4(f) and the EA processes is included as Attachment 5.

**Table 4
 Confluence Parkway Section 4(f) Roadmap**

Step	Coordination	Documentation	Expected Schedule
Preliminary identification of Section 4(f) properties and their qualifying activities, features, or attributes – Parks	FHWA/WSDOT and Chelan PUD have reviewed draft documentation. The City has met on site with Chelan PUD and WSP.	Chelan PUD Coordination Summary: EA and Section 4(f) Process Memorandum, December 3, 2019	Expected to be finalized December 2019.
Preliminary identification of Section 4(f) properties and their qualifying activities, features, or attributes – Historic properties	FHWA/WSDOT has initiated the Section 106 process, under which the NRHP-eligibility of historic properties will be determined. This analysis will also serve as the identification of activities, features, or attributes.	APE letter	APE determined April 2019, DAHP concurred May 2019
		Archaeological Study Plan (ASP)	ASP completed and initial fieldwork conducted June 2019.
		Initial Cultural Resources Survey Results Memorandum	Completed August 2019
Discipline studies. Analysis of potential uses or constructive uses – Parks	The City will continue to coordinate with Chelan PUD as design advances, including regular meetings if desired by the official with jurisdiction.	Notes from meetings and site visits Monthly coordination meetings with the official with jurisdiction	Throughout the NEPA process prior to completion of final documents
Analysis of potential uses or constructive uses – Historic properties	FHWA/WSDOT will determine Project effects to historic properties and consult with DAHP and Native American tribes under Section 106. The City will continue to evaluate data gaps as design advances, and additional fieldwork may be necessary.	Additional memoranda describing fieldwork plans and results, as needed	Throughout the NEPA process prior to completion of final documents
Final identification of Section 4(f) properties, and evaluation of any uses, temporary occupancies, or constructive uses. Determination of avoidance, minimization, and mitigation or enhancement measures to reach <i>de minimis</i> impact – Parks	FHWA/WSDOT and the City will coordinate with Chelan PUD on Section 4(f) conclusions. The City will also hold a public meeting to share information on all technical studies prepared for the EA, including the draft Section 4(f) Technical Memorandum.	Letter from the City to Chelan PUD requesting concurrence with Section 4(f) determinations	Expected towards completion of the NEPA process
		Section 4(f) Technical Memorandum	With NEPA documentation
Final identification of Section 4(f) properties and evaluation of any uses, temporary occupancies, or <i>de minimis</i> uses – Historic properties	Evaluation of historic properties through the Section 106 process includes consultation with DAHP as well as Native American tribes.	Letter from FHWA/WSDOT to DAHP with determination of NRHP-eligibility and effects	Expected towards completion of the NEPA process
		Cultural Resources Assessment report including NRHP determinations of eligibility and effects	With NEPA documentation

Attachment 1

Study Area



LEGEND

- APPROXIMATE PROJECT STUDY AREA
- SHORT TERM NOISE MEASUREMENTS (<60MIN)
- LONG TERM NOISE MEASUREMENTS (24 HOURS)
- SOIL BORING LOCATIONS

NOTE: PROPERTY LINES SHOWN ARE BASED UPON BEST AVAILABLE GIS DATA AND MAY NOT BE NECESSARILY COMPLETE OR ACCURATE.



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NO.	DATE	BY	APPR.	REVISIONS

Approved By		18113FIG_STUDY AREA.dwg
ENGINEERING MANAGER	DATE	FILENAME
PROJECT MANAGER	DATE	AC 09/2019
PROJECT ENGINEER	DATE	DESIGNED BY DATE
		AC 09/2019
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		JF 09/2019
		CHECKED BY DATE

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City of Wenatchee

**CITY OF WENATCHEE
CONFLUENCE PARKWAY
STUDY AREA**

**FIGURE 1
NATURAL RESOURCE STUDY AREA
PROPOSED STUDY LOCATIONS**

KPG PROJECT No. 18113 | SHT 1 OF 1

Attachment 2 (NEW)

FERC License Amendment Requirements

FERC approvals will be required through a non-capacity amendment to remove land from Rock Island Hydroelectric Project Boundary and Amend Exhibit R, Recreation Plan:

In an order issued in 1980 involving the Brazos River Authority (Project No. 1490), in Texas (11 FERC ¶61,162)(see Appendix D), the Commission began including a **standard land use article** in licenses. This standard land use article, subject to specific license conditions, gives licensees much broader authority to act on relatively routine shoreline matters without Commission approval and allows the licensee to grant permission to applicants for specific non-project related uses. This authority may only be exercised if the proposed use and occupancy is consistent with the purposes of protecting and enhancing the scenic, recreational, and environmental values of the project.

(d) The Licensee may convey fee title to, easements or rights-of-way across, or leases of project lands for: (1) construction of new bridges or roads for which all necessary state and Federal approvals have been obtained...

At least 60 days before conveying any interest in project lands (d), the Licensee must submit a letter to the Director, Office of Energy Projects, stating its intent to convey the interest and briefly describing the type of interest and location of the lands to be conveyed (a marked Exhibit G map may be used), the nature of the proposed use, the identity of any Federal or state agency official consulted, and any Federal or state approvals required for the proposed use. Unless the Director, within 45 days from the filing date, requires the Licensee to file an application for prior approval, the Licensee may convey the intended interest at the end of that period.

(e) The following additional conditions apply to any intended conveyance under paragraphs (c) or (d) of this article:

(1) Before conveying the interest, the Licensee shall consult with Federal and state fish and wildlife or recreation agencies, as appropriate, and the State Historic Preservation Officer.

(2) Before conveying the interest, the Licensee shall determine that the proposed use of the lands to be conveyed is not inconsistent with any approved report on recreational resources of an Exhibit E; or, if the project does not have an approved report on recreational resources, that the lands to be conveyed do not have recreational value.

(3) The instrument of conveyance must include the following covenants running with the land: (i) the use of the lands conveyed shall not endanger health, create a nuisance, or otherwise be incompatible with overall project recreational use; (ii) the grantee shall take all reasonable precautions to ensure that the construction, operation, and maintenance of structures or facilities on the conveyed lands will occur

in a manner that will protect the scenic, recreational, and environmental values of the project; and (iii) the grantee shall not unduly restrict public access to project waters.

(4) The Commission reserves the right to require the Licensee to take reasonable remedial action to correct any violation of the terms and conditions of this article, for the protection and enhancement of the project's scenic, recreational, and other environmental values.

(f) The conveyance of an interest in project lands under this article does not in itself change the project boundaries. The project boundaries may be changed to exclude land conveyed under this article only upon approval of revised Exhibit G drawings (project boundary maps) reflecting exclusion of that land. Lands conveyed under this article will be excluded from the project only upon a determination that the lands are not necessary for project purposes, such as operation and maintenance, flowage, recreation, public access, protection of environmental resources, and shoreline control, including shoreline aesthetic values. Absent extraordinary circumstances, proposals to exclude lands conveyed under this article from the project shall be consolidated for consideration when revised Exhibit G drawings would be filed for approval for other purposes.

(g) The authority granted to the licensee under this article, shall not apply to any part of the public land and reservation of the United States included within the project boundaries.

The FERC reviews the application and may request additional information from the licensee. The FERC will determine whether a public notice on the application is needed and if an environmental assessment is warranted. Determinations on whether to prepare an environmental assessment are made on a case-by-case basis, in accordance with Part 380 of the Commission's regulations (See **Part 380.4**). Section 2.7 discusses compliance with National Environmental Policy Act (NEPA).

Based on the results of the Commission's technical and environmental analysis, including a review of the license requirements, comment letters, and other information in the Commission record (public file), the Commission may approve, modify (approve with conditions), or deny an application for a non-project use of project lands or waters.

Chelan PUD is required to include the following in its Applications for the Non-project Use and Occupancies of Project Lands and Waters

While the information below applies to most applications, it is not an inclusive list and not all the individual items may apply to every proposed facility or use.

1) Description of proposed non-project use or facility

- location, quantity, type of conveyance (i.e., lease, right-of-way, easement, fee-title, etc.)

- major components, materials, and layout or design
- construction and operation methods, construction duration and approximate start and completion dates
- purpose of proposed use
- description of any Federal, state, and local permits or approvals required or obtained for proposed use
- if available, copies of any government agency permits or agency review documents obtained for the proposed use
- maps or drawings showing the location and/or layout of the proposed facility

2) Description of Affected Environment (the immediate area surrounding the site of the proposed facility or use)

- common fish and wildlife species
- threatened and endangered species (request in writing a list of species from NMFS and USFWS)
- wetlands, critical habitats, or significant features
- cultural resources
- common vegetation and trees
- soils and lakebed material
- water quality and approximate depth
- scenic quality
- existing recreation facilities and uses
- existing land and water uses and structures

3) Evaluation of how the proposed use is compatible with:

- Commission approved management plans (i.e., recreation, shoreline or land use, dredging, cultural resource, wildlife protection, etc.)
- project operations and purposes and applicable license requirements
- licensee's own project management guidelines or requirements

4) Documentation of consultation (copies of correspondence) with appropriate Federal, state, and local government agencies and interested non-governmental organizations (NGOs and Tribes) including:

- government agencies or NGOs that own or manage lands or facilities in the immediate area
- government agencies that would likely need to authorize or approve the proposed use
- government agencies that have jurisdiction over resources that may be affected by the proposed use (i.e., T & E species or habitats, wetlands, dredging activities, cultural resources,

etc.). These agencies typically include the U.S. Fish and Wildlife Service, the State Historic Preservation Officer, the U.S. Army Corps of Engineers, and state fish, wildlife, recreation and environmental protection agencies.

- In addition, please note the following:
- a minimum of 30 days should be provided for consulted parties to reply to requests for comments on a proposed use
- if no reply is received, the filing should include a copy of written request for comments
- the filing should include responses to any specific agency or NGO comments or recommendations. If recommendations are rejected, include site specific reasons for the rejection.
- following a Commission public notice period for the application, responses to any specific comments or recommendations provided on the proposed use should be filed
- if it is generally known that local property owners or entities are opposed to the proposed use, the filing should identify the nature of this opposition and include general responses to the concerns raised.

5) A description of the proposed use's potential impact on each resource area identified under item (2) above. For example, impacts may include:

- vegetation removal
- shoreline erosion or turbidity
- dredging and lakebed disturbance
- impingement and entrainment of fish
- project generation related to water withdrawals
- disturbance of significant resources, species, or habitats
- specific impacts on existing land uses or structures
- cumulative effects on water quality or shoreline resources
- potential discharge of pollutants

6) A description of any proposed construction, design, and/or operation practices or measures to minimize or mitigate for any specific impacts identified under item (5) above. For example, measures may include:

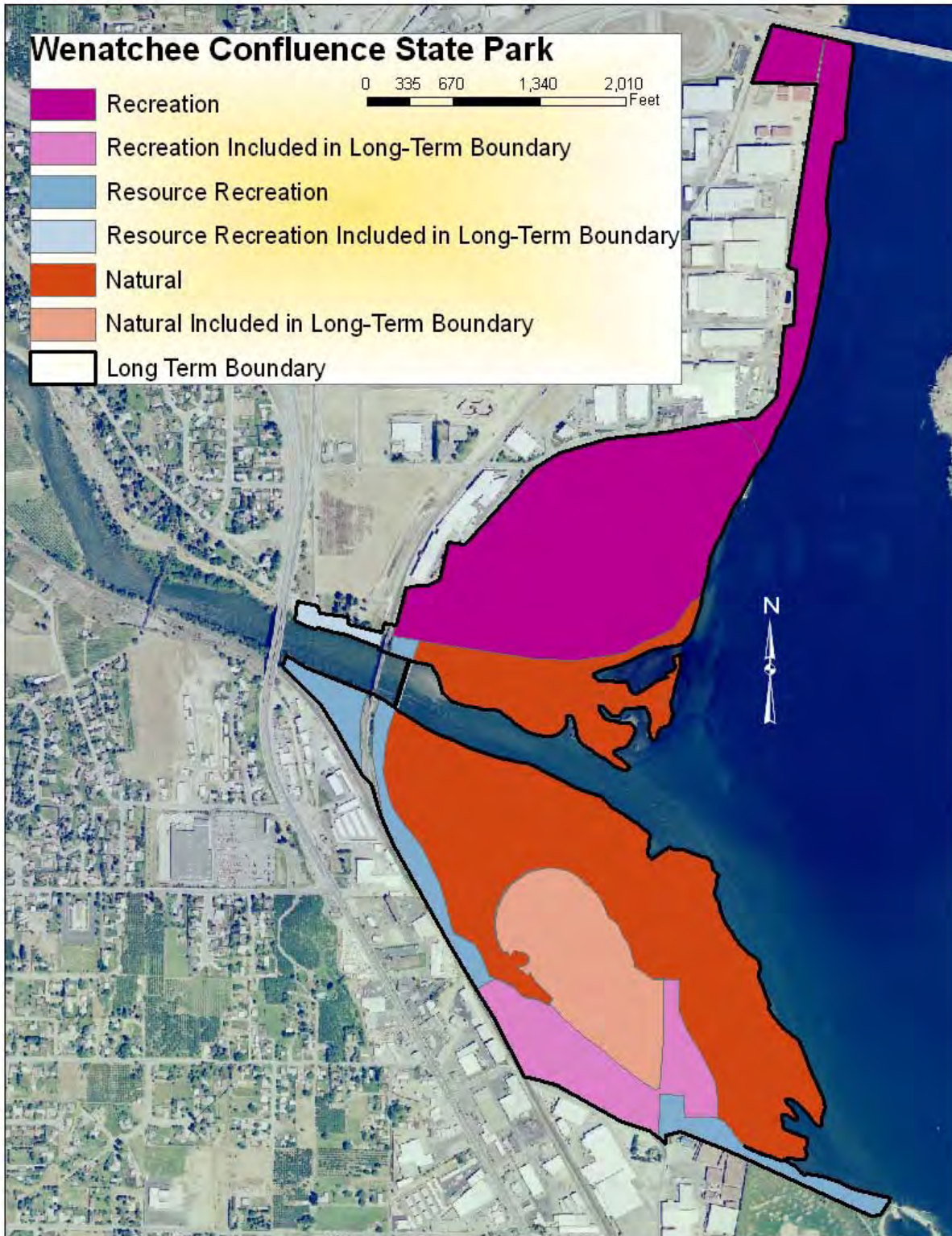
- erosion control measures
- avoidance of affected resources
- changes in design or location of a proposed facility
- close oversight to ensure compliance with licensee mandated permitting programs or land use regulations, Commission approved plans, or agency permit requirements
- Intake screen approach velocity and screen mesh size

Attachment 3
Memorandum of Agreement Between
Chelan PUD and Washington State Parks
(placeholder)

Attachment 4

Wenatchee Confluence State Park Land Classification and Long-Term Boundary Map

Figure 4: Wenatchee Confluence State Park Land Classification and Long-Term Boundary Map



Attachment 5

Schedule

Confluence Parkway Project Draft Section 4(f) Schedule (December 3, 2019)

Confluence Parkway Project Section 4(f)	2019				2020												2021											
	S	O	N	D	J	F	M	A	M	J	J	A	S	O	N	D	J	F	M	A	M	J	J	A	S	O	N	D
Element 1: EA Progress and Comment Meetings (PUD, State Parks, City, KPG Team)	X	X	X	X	X	X	XR ¹	XR ²	X	XR ³	X	X	XR ⁴	X	XR ⁵	X	X	X	X	X	X	X	X	X	X	XR ⁶	X	X
Element 2: Core Team Meetings (CDTC, PUD, WSDOT, FHWA, City)			X			X		X		X		X		X		X		X		X		X		X		X		X
Element 3: Field Work																												
Geotech (ground disturbing via drill rig)				O	X																							
Cultural Resources (monitoring Geotech disturbance)				O	X																							
Wetland Delineation (ground disturbing via shovel probes)								X																				
Stream Ordinary High (placing flags within project area at Wenatchee River)								X																				
Element 4: Technical Studies																												
Cultural Resources		O												X														
Biological Assessment				O					X																			
Floodplains and Surface Water									O			X																
Habitat, Ecosystems and Wildlife									O			X																
Noise		O							X																			
Stormwater				O			X																					
Transportation			O			X																						
Visual Impacts				O					X																			
Wetlands									O		X																	
Conceptual Wetland Mitigation Report										O		X																
Section 4(f) Analysis			O											X														
Section 4(f) Letter from Chelan PUD Concurring with <i>de Minimis</i> Finding																			X									
Element 5: Public Involvement																												
Public Meeting to Present Preliminary Findings from Technical Studies																		X										
Public Hearing during EA Comment Period																									X			
Element 6: ESA Consultation									O																	X		
Submit BA to USFWS and NOAA-Fisheries										X																		
Biological Opinion issued																										X		
Element 7: Prepare EA												O														X		
V1 City, DCTC, PUD, State Parks, WSDOT, FHWA Review Draft EA																		X										
V2 City, DCTC, PUD, State Parks, WSDOT, FHWA Review Revised EA																			X									
Publish EA																										X		
Element 8: FONSI and FHWA Section 4(f) Determination																												
Review comments on EA																									X			
Review draft FONSI and coordination (City, WSDOT, FHWA)																								O	X			
FONSI issued																										X		

O: start activity; X: finish activity; EA Initiation Letter: July 19, 2019

Anticipated timing for review of technical documentation:

XR¹: Transportation

XR²: Stormwater

XR³: Biological Assessment (expedited, 1-week review requested), Noise, Visual Impacts

XR⁴: Floodplains and Surface Water; Habitat, Ecosystems, and Wildlife; Wetlands; Conceptual Wetland Mitigation Report

XR⁵: Cultural Resources; Section 4(f)

XR⁶: Resources Draft FONSI

**COUNCIL AGENDA REPORT
COMMUNITY DEVELOPMENT DEPARTMENT**

TO: Mayor Frank Kuntz
City Council Members

FROM: Brooklyn Holton, Housing & Community Planner

SUBJECT: Stella Street Annexation - Ordinance 2019-34

DATE: December 9, 2019

MEETING DATE: December 12, 2019

I. OVERVIEW

There is a segment of Stella Avenue from Walnut Street half way to McKittrick Street that creates a circuitous city limit boundary due to the corporate limits of this portion existing on the east side of the street. A more congruent corporate boundary can be achieved by substituting the right-of-way line to the west side of Stella Avenue along the identified segment. In addition to a smoother boundary, this adjustment would support an improved ability to conduct maintenance for Stella Avenue in its entirety.

A revision of a corporate boundary by substituting right-of-way line through agreement between city and county is allowable through RCW 35A.21.210. On November 12, 2019, Chelan County passed Resolution No. 2019-120 approving the revision of the corporate boundary. Chelan County also approved entering into an Agreement with the City of Wenatchee to share the costs of overlaying Stella Avenue in an amount just under \$17,000.

The annexation of the unincorporated segment of Stella Avenue is subject to the provisions of Ordinance No. 2007-34 and all subsequent amendments thereto.

II. FISCAL IMPACT

Submitted to the Finance Committee:

III. PROPOSED PROJECT SCHEDULE

Upon approval, staff will

1. Notify local agencies and utility providers and forward the information to the State OFM for final verification and certificate of approval
2. Execute conditions of Agreement for payment between Chelan County and the City of Wenatchee

IV. ATTACHMENT(S)

1. Ordinance 2019-34
2. Chelan County Resolution 2019-120

V. MOTION

City Council approves Ordinance No. 2019-34 providing approval for:

1. The annexation of an unincorporated segment of Stella Avenue from Walnut Street approximately half way to McKittrick Street; and
2. The Mayor's signature to enter into an Agreement with Chelan County to share equally the cost of \$16,836.49 to overlay the unincorporated segment of Stella Avenue.

VI. ADMINISTRATIVE ROUTING

Tammy Stanger
Kim Schooley

ORDINANCE NO. 2019-34

AN ORDINANCE, to fully include the public right of way known as Stella Avenue within the corporate limits of the City of Wenatchee.

WHEREAS, RCW 35A.21.210(1) provides that the governing bodies of a county and any code city located therein may by agreement revise any part of the corporate boundary of the city which coincides with the centerline, edge, or any portion of a public street, road or highway right-of-way by substituting therefor a right-of-way line of the same public street, road or highway so as fully to include or fully to exclude that segment of the public street, road or highway from the corporate limits of the city; and

WHEREAS, pursuant to RCW 35A.21.210(2) the revision of a corporate boundary as authorized by this section shall become effective when approved by ordinance of the city council and by ordinance or resolution of the county legislative authority. Such a boundary revision is not subject to potential review by a boundary review board; and

WHEREAS, the City of Wenatchee and Chelan County desire to revise the corporate limits of the City of Wenatchee to fully include Stella Avenue within the City.

WHEREAS, the City of Wenatchee and Chelan County have agreed to share in the costs to overlay a segment of Stella Avenue; and

WHEREAS, Chelan County has passed Resolution No. 2019-120 approving both the revision of the corporate boundary regarding a portion of Stella Avenue and approving sharing equally the costs to overlay a segment of Stella Avenue; contingent upon the passage of a corresponding ordinance by the City of Wenatchee.

NOW, THEREFORE, the City Council of the City of Wenatchee do

ordain as follows:

SECTION I

That the corporate limits of the City of Wenatchee shall be revised upon joint approval of Chelan County to include the public right of way known as Stella Avenue as described in Exhibit A.

SECTION II

That the Mayor shall be and hereby is authorized to sign an Agreement with the County of Chelan in the same or substantially the same form as set forth in Exhibit B attached hereto providing for the sharing in overlay costs to the described portion of Stella Avenue and for the annexation of a portion of Stella Avenue within the corporate limits of the City of Wenatchee.

SECTION III

The power to revise the corporate boundary of the City having been granted specifically to the City Council, this ordinance shall become effective on the later of five (5) days from the date of publication of this Ordinance and the date Chelan County adopted Resolution 2019-120 approving the revision of the corporate limits of the City of Wenatchee as set forth herein.

SECTION IV

If any section, subsection, sentence, clause or phrase of this Ordinance is declared or judged by a court of competent jurisdiction to be invalid or unconstitutional, such adjudication shall in no manner affect the remaining portions of this Ordinance which shall be in full force and effect as if said section, subsection, sentence, clause or phrase so declared or adjudged invalid or unconstitutional were not originally a part hereof.

**PASSED BY THE CITY COUNCIL OF THE CITY OF
WENATCHEE** this ____ day of _____, 2019.

CITY OF WENATCHEE, a municipal corporation

By _____
FRANK KUNTZ, Mayor

ATTEST:

By _____
TAMMY L. STANGER, City Clerk

APPROVED:

By _____
STEVE D. SMITH, City Attorney

EXHIBIT A

Boundary Description of the STELLA AVENUE ANNEXATION

October 2, 2019

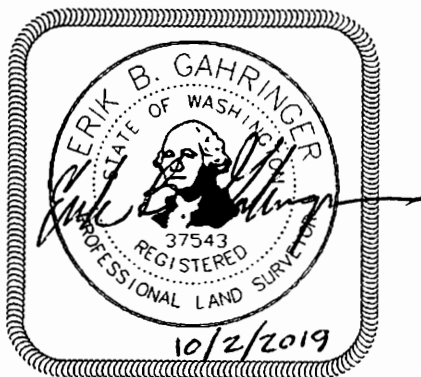
A strip of land 50 feet in width located within a portion of the northwest quarter of Section 33, Township 23 North, Range 20 East of the Willamette Meridian, Chelan County, Washington, being more particularly described as follows:

Stella Avenue right of way, Kiser's Addition to the City of Wenatchee, according to the plat thereof recorded in Volume 4 of Plats, at page 99, records of said County;

TOGETHER WITH that portion of Walnut Street right of way bound on the North by the North right of way boundary of said Walnut Street and bound on the East and West by the East and West boundaries of said strip extended northerly to said North right of way boundary;

EXCEPT any portion thereof lying within the boundaries described within the City of Wenatchee Annexation Ordinance Numbers 2002-19, on file with the City of Wenatchee (unrecorded), and 2007-09 recorded under Auditor's File Number 225629, records of said County.

Prepared By: Erik B. Gahringer, PLS
48° North
Professional Land Surveying & Land Use Consultants
P.O. Box 4266
Wenatchee, WA 98807-4266
Phone: (509) 436-1640



KISER'S ADDITION TO THE CITY OF WENATCHEE

250

E-2-3

ORD. 2002-19

Scale: 1"=50'

NORTH RIGHT OF WAY
BOUNDARY

DESCRIPTION

This plat of KISER'S ADDITION to the CITY OF WENATCHEE comprises the portion of Section 33, T23N, R20E, W.M. known as Lot 4, Block 2, Powell's addition to Wenatchee more particularly described as follows:

Assuming the center line of Walnut Street to be due East and West and commencing from a marked stone identified as the NE corner common to Sections 26 & 33, T23N, R20E, W.M., proceed S0°12'W a distance of 676.3' to an iron pipe which is the NE corner of Lot 4, Block 2, Powell's addition to Wenatchee, which is the true point of beginning; thence S0°12'W a distance of 656.3' to a point; thence S89°56'W a distance of 660.40' to a point; thence N0°30'W a distance of 657.20' to a point; thence due East a distance of 668.70' to the true point of beginning.

DEDICATION

Know all men by these presents that W. A. KISER and STELLA KISER, his wife, the undersigned being owners in fee simple of the land hereby plotted declare this plot and dedicate to the use of the public forever, all streets, avenues, places and sewer easements or whatever public property there is shown on the plat and the use thereof for any and all public purposes not inconsistent with the use thereof for public highway purposes; also, the right to make all necessary slopes for cuts or fills upon the lots, blocks, tracts, etc., shown on this plat in the reasonable, original grading of all streets, avenues, places, etc., shown hereon.

IN WITNESS WHEREOF, we have hereunto set our hands and seals this 28th day of February, A.D., 1946.

Signed and Sealed

W.A. Kiser
Stella Kiser

in the presence of

ACKNOWLEDGMENT

STATE OF WASHINGTON)

COUNTY OF CHELAN)ss.

THIS IS TO CERTIFY THAT on this 28th day of February, A.D., 1946, before me, the undersigned, a Notary Public, personally appeared W.A. Kiser and Stella Kiser, to me known to be the persons who executed the foregoing dedication and acknowledge to me that they signed and sealed the same as their free and voluntary act and deed for the uses and purposes therein mentioned.

WITNESS my hand and official seal the day and year first written.

Anna J. [Signature]
Notary Public in and for the State of Washington, residing at, [Address]

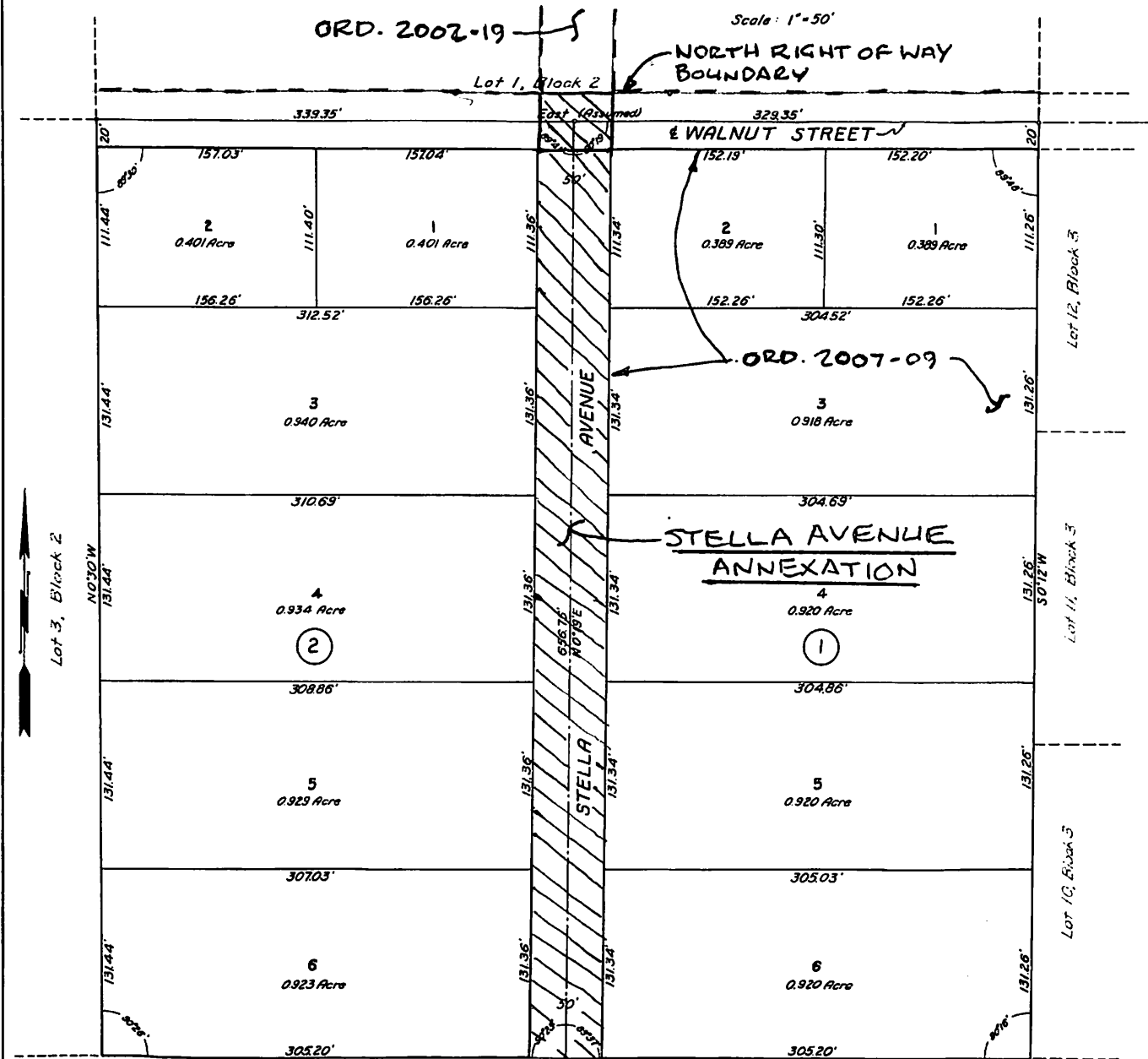
CERTIFICATE FROM ENGINEER

I hereby certify that the plat of Kiser's Addition to the City of Wenatchee is based on actual survey and subdivision of Section 33, Township 23 North, Range 20, E.W.M., that the distances and courses and angles are shown thereon correctly; that monuments have been set and lot and block corners staked on the ground.

Frank W. Hughes
Licensed Engineer

EXAMINED AND APPROVED this 16th day of Feb., A.D., 1946

Donald B. West
Chelan County Road Engineer



Filed for record at the request of the Chelan County Board of Commissioners, A.D., 1946, at 5:11 Minutes past 1 o'clock P.M., and recorded in Volume 4 of plats, on Page 29 Records of Chelan County, Washington.
By *Thomas Johnson* Deputy County Auditor
Madge Bushong Chelan County Auditor

EXAMINED AND APPROVED this 4th day of March, A.D., 1946.

Attest:
Madge Bushong
Clerk of the Board

Board of County Commissioners,
Chelan County, Washington
By *[Signature]* Chairman

K-2-3

4/99

EXHIBIT B

AGREEMENT

BY AND BETWEEN THE CITY OF WENATCHEE AND CHELAN COUNTY

TO REVISE ADJUST MUNICIPAL BOUNDARIES

THIS AGREEMENT is made and entered into this _____ day of _____, 2019, by and between the City of Wenatchee a non-charter code city, hereinafter "City" and Chelan County, a political subdivision of the State of Washington, hereinafter the "County", for the adjustment of the City boundaries to move the boundaries from certain roadway centerlines to the edges of the rights-of-way.

WITNESSETH: That

WHEREAS, RCW 35A.21.210 provides in part that the governing bodies of a County and non-charter code City located therein may by agreement revise any part of the corporate boundary of the City which coincides with the centerline of a road by substituting therefore a right-of-way line of the same road so as to fully include the road segment in the corporate limit of the City; and

WHEREAS, a segment of Stella Avenue is located in the County, the segment of which is legally described as follows:

That portion of Stella Avenue lying southerly of Walnut Street and Northerly of McKittrick Street, in The Northwest quarter of Section 33, Township 23 North, Range 20 East of the Willamette Meridian, Chelan County, Washington.

EXCEPT that portion lying within the City of Wenatchee city limits.

A drawing of the segment of Stella Avenue to be revised is attached hereto as **Exhibit A** and incorporated herein by reference.

WHEREAS, the County and the City wish to revise the City's corporate boundary so as to include the segment of Stella Avenue legally described herein within the corporate limits of the City; and

WHEREAS, the County and City agree to share to the costs to overlay the segment of Stella Avenue legally described herein; and

WHEREAS, the Board of Chelan County Commissioners, has by Resolution No. _____ dated _____, authorized the County to enter into an agreement with the City to adjust the City's corporate boundaries pursuant to RCW 35A.21.120 and further authorized the County to share equally in the costs to overlay the segment of Stella Avenue legally described herein; and

WHEREAS, the City Council, has by Ordinance No. _____ dated _____, authorized the Mayor to enter into an agreement with the County to adjust the City's corporate boundaries pursuant to RCW 35A.21.120 and further authorized the City to share equally in the costs to overlay the segment of Stella Avenue legally described herein.

NOW, THEREFORE,

The County and City do hereby agree that the City Corporate boundaries should be and by this agreement are revised to fully include the rights-of-way of a segment of Stella Avenue legally described herein and as depicted on attached **Exhibit A** which is incorporated herein by reference; and

The County and City further agree to share equally in the costs to overlay the segment of Stella Avenue legally described herein.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed as of the dates set forth below:

CITY OF WENATCHEE

Chelan County

BY _____
Frank Kuntz, Mayor

By _____
Kevin Overbay, Chair

By _____
Doug England, Commissioner

By _____
Bob Bugert, Commissioner

ATTEST:

ATTEST:

By _____
City Clerk

By _____
Carlye Baity, Clerk of the Board

APPROVED AS TO FORM:

By _____
Steve Smith, City Attorney

By _____
Robert W. Sealby,
Deputy Prosecuting Attorney

After Recording Return to:

Penny Goehner
Chelan County Public Works
316 Washington Street, Suite 316
Wenatchee, WA 98801

The information contained in this boxed section is for recording purposes only pursuant to RCW 36.18 and RCW 65.04, and is not to be relied upon for any other purpose, and shall not affect the intent of the warranty contained in the document itself.

Document Title: Resolution Revising a Corporate Boundary Regarding a Portion of Stella Avenue
Grantor(s): Chelan County
Grantee(s): City of Wenatchee
Legal Description: N/A
Assessor's Tax Parcel ID: N/A

Filed with the Auditor pursuant to RCW 39.34.040

BOARD OF CHELAN COUNTY COMMISSIONERS
Chelan County, Washington

RESOLUTION NO. 2019 - 120

**A RESOLUTION REVISING CORPORATE BOUNDARY REGARDING
A PORTION OF STELLA AVENUE**

WHEREAS, Revised Code of Washington (RCW) 35A.21.210 provides that the governing bodies of a county and any code city located therein may by agreement revise any part of the corporate boundary of the city which coincides with the centerline, edge, or any portion of a public street, road or highway right-of-way by substituting therefor a right-of-way line of the same public street, road or highway so as fully to include that segment of the public street, road or highway in the corporate limits of the city; and

WHEREAS, revisions of corporate boundaries as authorized by RCW 35A.21.210 become effective when approved by an ordinance of the City of Wenatchee and by resolution by the legislative authority of Chelan County; and

WHEREAS, revisions of corporate boundaries as authorized by RCW 35A.21.210 are not subject to potential review by a boundary review board; and

WHEREAS, Chelan County and the City of Wenatchee have agreed to share in the costs to overlay Stella Avenue; and

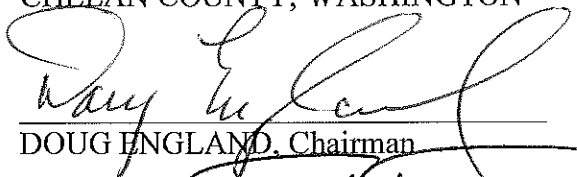
WHEREAS, Chelan County and the City of Wenatchee have agreed that Chelan County will transfer a portion of Stella Avenue as legally described herein to the City of Wenatchee so that this described portion of Stella Avenue shall be included within the Wenatchee City limits. Said portion of Stella Avenue is legally described in **Exhibit B** attached hereto and incorporated herein by reference.

NOW, THEREFORE, BE IT RESOLVED that:

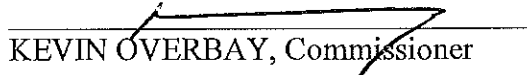
1. The Board of County Commissioners is authorized to enter into an agreement with the City of Wenatchee that is the same or substantially the same as set forth in **Exhibit A**, attached hereto and incorporated herein by reference, to share in overlay costs to a described portion of Stella Avenue and to transfer to the City of Wenatchee a portion of Stella Avenue described in **Exhibit B** attached hereto to fully include this described portion of Stella Avenue within the corporate limits of the City of Wenatchee.

RESOLUTION APPROVED this 12th day of November, 2019 in Wenatchee, Washington.

BOARD OF COUNTY COMMISSIONERS
CHELAN COUNTY, WASHINGTON


DOUG ENGLAND, Chairman


BOB BUGERI, Commissioner


KEVIN OVERBAY, Commissioner




ATTEST: CARLYE BAITY


Clerk of the Board

Dated: 11/12/19

EXHIBIT B

Boundary Description of the STELLA AVENUE ANNEXATION

October 2, 2019

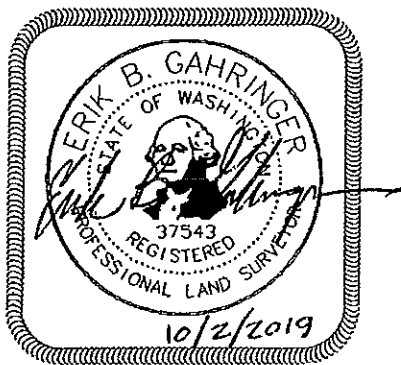
A strip of land 50 feet in width located within a portion of the northwest quarter of Section 33, Township 23 North, Range 20 East of the Willamette Meridian, Chelan County, Washington, being more particularly described as follows:

Stella Avenue right of way, Kiser's Addition to the City of Wenatchee, according to the plat thereof recorded in Volume 4 of Plats, at page 99, records of said County;

TOGETHER WITH that portion of Walnut Street right of way bound on the North by the North right of way boundary of said Walnut Street and bound on the East and West by the East and West boundaries of said strip extended northerly to said North right of way boundary;

EXCEPT any portion thereof lying within the boundaries described within the City of Wenatchee Annexation Ordinance Numbers 2002-19, on file with the City of Wenatchee (unrecorded), and 2007-09 recorded under Auditor's File Number 225629, records of said County.

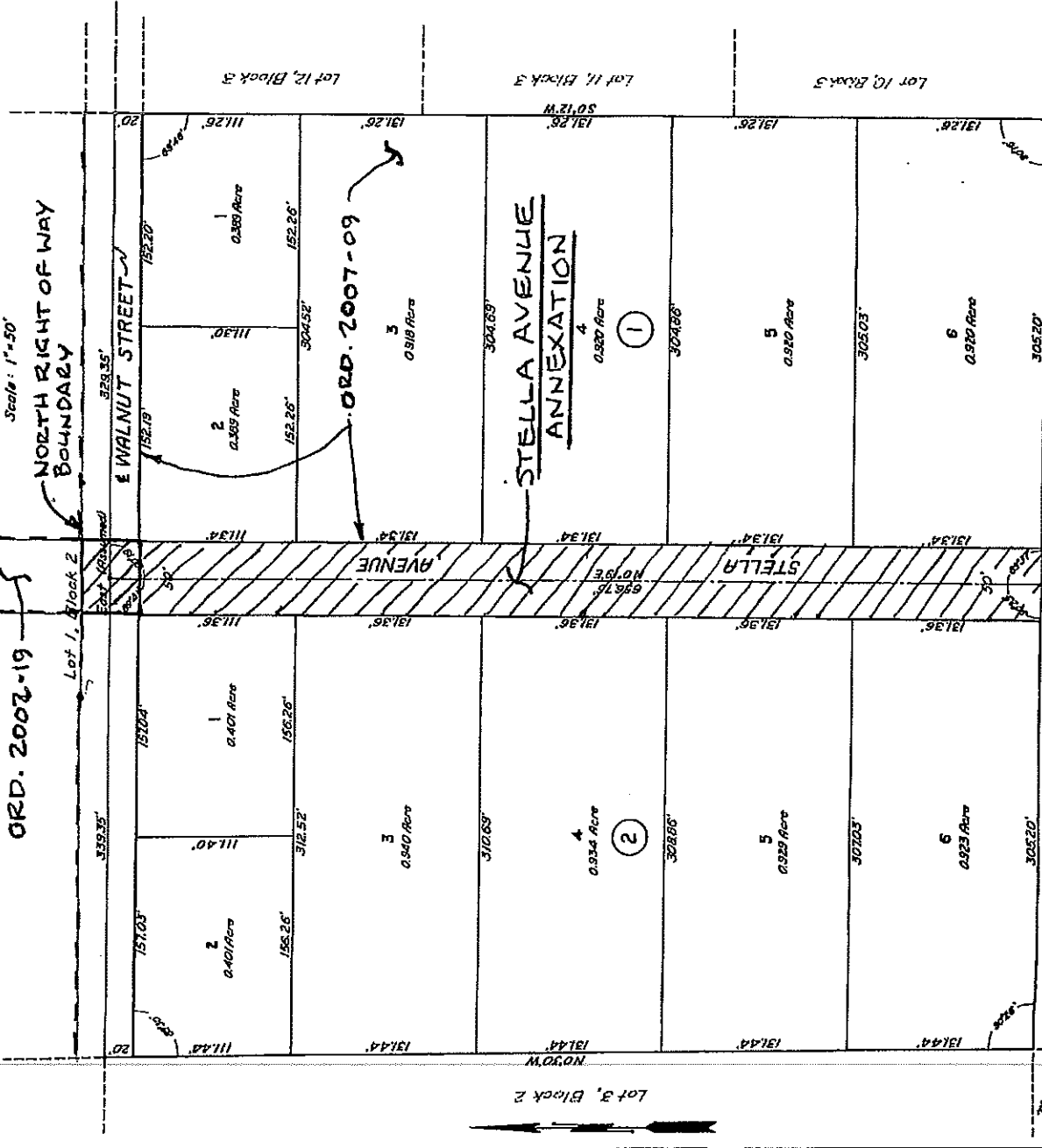
Prepared By: Erik B. Gahringer, PLS
48° North
Professional Land Surveying & Land Use Consultants
P.O. Box 4266
Wenatchee, WA 98807-4266
Phone: (509) 436-1640



4/99

KISER'S ADDITION TO THE CITY OF WENATCHEE

25(1)



DESCRIPTION

This plat of KISER'S ADDITION to the CITY OF WENATCHEE comprises the portion of Section 33 T23N, R20E, W4M, known as Lot 4, Block 2, Powell's addition to Wenatchee more particularly described as follows:
Assuming the center line of Walnut Street to be due East and West and commencing from a marked iron identified as the E corner common to sections 28 1/3, T23N, R20E, W4M, proceed S07 1/2 W a distance of 678.3 to an iron pipe which is in the NE corner of Lot 4, Block 2, Powell's addition to Wenatchee, which is the true point of beginning; thence S07 1/2 W a distance of 656.3 to a point; thence S89 56 W a distance of 660.40 to a point; thence due East a distance of 657.20 to a point; thence due East a distance of 656.70 to the true point of beginning.

DEDICATION

Know all men by these presents that W. A. KISER and STELLA KISER, his wife, the undersigned being owners in fee of the land hereby planned to be dedicated to the use of the public for all streets, avenues, places and sewer easements, as wherever public property there is shown on this plat and that the interest for any and all public purposes not inconsistent with the use thereof for public highway purposes; also the right to make all necessary stops for cars or trolleys upon the lots, blocks, tracts, shown on this plat in the reasonable original grade of all streets, avenues, places, etc, shown herein IN WITNESS WHEREOF, we have hereunto set our hands and seals this 12th day of December, A.D. 1946.

Signed and Sealed

in the presence of

ACKNOWLEDGMENT

STATE OF WASHINGTON)
COUNTY OF CHELAN) ss

THIS IS TO CERTIFY THAT on this 12th day of December, A.D. 1946, before me the undersigned, a Notary Public, personally appeared W. A. Kiser and Stella Kiser, to me known to be the persons who executed the foregoing dedication and acknowledge to me that they signed and sealed the same as their free and voluntary act and deed for the uses and purposes therein mentioned.
WITNESS my hand and official seal the day and year first written.

Notary Public in and for the State of Washington, residing at _____

CERTIFICATE FROM ENGINEER

I hereby certify that the plat of Kiser's Addition to the City of Wenatchee is based on actual survey and subdivision of Section 33, Township 23 North, Range 20, E. 4M, that the distances and courses and angles are shown thereon correctly; that monuments have been set and lot and block corners staked on the ground.

Frank W. Hughes
Licensed Engineer

EXAMINED AND APPROVED this 12th day of Feb., A.D. 1946.

Frank B. West
Cheban County Road Engineer

EXAMINED AND APPROVED this 12th day of March, A.D. 1946.

Board of County Commissioners,
Cheban County, Washington
By _____ Chairman
The Lin. Secretary
Clark of the Board

Filed for recording at the request of the Cheban County Board of Commissioners, A.D. 1946, of S.T. Mining past 1st - October 1924, and recorded in Volume 4 of plats, an Progress Records of Cheban County, Washington

By _____ Cheban County Auditor
Cheban County Auditor

K-2-3

MEMORANDUM

TO: Frank Kuntz, Mayor
City Council Members

FROM: Allison Williams, Executive Services Director; Brad Posenjak, Finance Director;
Steve Smith, City Attorney

SUBJECT: Public Hearing for the Consideration of Limited Business and Occupation Tax –
Ordinance 2019-44

DATE: December 6, 2019

Background: In 2014, the Mayor established a Sustainability Committee that went through a thorough process of exploring various funding sources to provide long term financial stability for our City. As a result of their recommendations a number of actions have been taken by City Council including the annexation of Olds Station which occurred in 2016, and the annexation of the City's fire service into Chelan County Fire Protection District #1. Long term sustainability continues to be a concern so as a part of the 2020 budget process the need for additional revenue was discussed to fund additional police positions and other city needs.

The city's General fund and Streets fund are substantially funded by property taxes. In the City of Wenatchee, approximately 45 acres of property are owned by Confluence Health and as a result are exempt from property taxes, although prior to the merger of Wenatchee Valley Clinic and Central Washington Hospital under the umbrella of Confluence Health, the Clinic was paying property taxes.

Options for revenues from exempt properties include Payment in Lieu of Property Taxes (PILT), Business and Occupation Taxes (B & O) and a per-employee Business License fee. At the time of the Sustainability Committee recommendations, Confluence was approached about a contractual PILT that would reflect a per employee fee but no agreement resulted. In December 2017, the City approved a one year PILT agreement for Confluence, when given the choice of a B & O Tax or PILT agreement. The goal was to negotiate further years of this PILT agreement but those negotiations were unsuccessful in adding years to the agreement.

As a part of the budget process, the City Attorney was directed to draft the attached Limited Business and Occupation Tax Ordinance that provides for a tax as described in Section 5.112.050. This revenue has been included in the 2020 budget. A PILT has also been discussed however at this time, Ordinance 2019-44 is provided for City Council consideration.

Additional support for Council deliberation is included in the packet. Following is the AWC list of cities across the state that levy a B & O tax. Two articles are also included for identical actions taken in both Olympia and Bellingham.

A public hearing is required after which City Council is asked to consider the following action:

COUNCIL ACTION:

A MOTION to approve Ordinance 2019-44 imposing a business and occupation tax of 2/10ths of one percent (.2%) on business within the City of Wenatchee, establishing exemptions, and providing for an effective date.

ORDINANCE NO. 2019-44

AN ORDINANCE, imposing a business and occupation tax of two tenths of one percent (.2%) on business within the City of Wenatchee, establishing exemptions, and providing for an effective date.

SECTION ONE

That the following Chapter 5.112 "Business and Occupation Tax" shall be and hereby is added to the Wenatchee City Code:

CHAPTER 5.112

5.112.010 Purpose. This chapter implements Washington Constitution Article XI, Section 12 and RCW 35A.82.020 and 35A.11.020 (code cities); which give municipalities the authority to license for revenue. In the absence of a legal or constitutional prohibition, municipalities have the power to define taxation categories as they see fit in order to respond to the unique concerns and responsibilities of local government. It is intended that this chapter be consistent with the mandatory requirements of Chapter 35.102 RCW for municipalities. Uniformity with provisions of state tax laws should not be presumed.

5.112.020 Exercise of revenue license power. The provisions of this chapter shall be deemed an exercise of the power of the City to license for revenue. The provisions of this chapter are subject to periodic statutory or administrative rule changes or judicial interpretations of the ordinances or rules. The responsibility rests with the licensee or taxpayer to reconfirm tax computation procedures and remain in compliance with the City code.

5.112.028 Administrative Provisions. The administrative provisions contained in Chapter 5.116 WCC shall be fully applicable to the provisions of this chapter except as expressly stated to the contrary herein.

5.112.030 Definitions. In construing the provisions of this chapter, the following definitions shall be applied. Words in the singular number shall include the plural, and the plural shall include the singular.

"Business." "Business" includes all activities engaged in with the object of gain, benefit, or advantage to the taxpayer or to another person or class, directly or indirectly.

"Business and occupation tax." "Business and occupation tax" or "gross receipts tax" means a tax imposed on or measured by the value of products, the gross income of the business, or the gross proceeds of sales, as the case may be, and that is the legal liability of the business.

"Commercial or industrial use." "Commercial or industrial use" means the following uses of products, including by-products, by the extractor or manufacturer thereof:

(1) Any use as a consumer; and

(2) The manufacturing of articles, substances or commodities.

"Delivery" means the transfer of possession of tangible personal property between the seller and the buyer or the buyer's representative. Delivery to an employee of a buyer is considered delivery to the buyer. Transfer of possession of tangible personal property occurs when the buyer or the buyer's representative first takes physical control of the property or exercises dominion and control over the property. Dominion and control means the buyer has the ability to put the property to the buyer's own purposes. It means the buyer or the buyer's representative has made the final decision to accept or reject the property, and the seller has no further right to possession of the property and the buyer has no right to return the property to the seller, other than under a warranty contract. A buyer does not exercise dominion and control over tangible personal property merely by arranging for shipment of the property from the seller to itself. A buyer's representative is a person, other than an employee of the buyer, who is authorized in writing by the buyer to receive tangible personal property and take dominion and control by making the final decision to accept or reject the property. Neither a shipping company nor a seller can serve as a buyer's representative. It is immaterial where the contract of sale is negotiated or where the buyer obtains title to the property. Delivery terms and other provisions of the Uniform Commercial Code (Title 62A RCW) do not determine when or where delivery of tangible personal property occurs for purposes of taxation.

"Digital automated service," "digital code," and "digital goods" have the same meaning as in RCW 82.04.192.

"Digital products" means digital goods, digital codes, digital automated services, and the services described in RCW 82.04.050(2)(g) and (6)(b).

"Eligible gross receipts tax." The term "eligible gross receipts tax" means a tax which:

- (1) Is imposed on the act or privilege of engaging in business activities within section 5.112.050; and
- (2) Is measured by the gross volume of business, in terms of gross receipts and is not an income tax or value added tax; and
- (3) Is not, pursuant to law or custom, separately stated from the sales price; and
- (4) Is not a sales or use tax, business license fee, franchise fee, royalty or severance tax measured by volume or weight, or concession charge, or payment for the use and enjoyment of property, property right or a privilege; and
- (5) Is a tax imposed by a local jurisdiction, whether within or without the State of Washington, and not by a Country, State, Province, or any other non-local jurisdiction above the County level.

"Engaging in business" - (1) The term "engaging in business" means commencing, conducting, or continuing in business, and also the exercise of corporate or franchise powers, as well as liquidating a business when the liquidators thereof hold themselves out to the public as conducting such business.

(2) This section sets forth examples of activities that constitute engaging in business in the City, and establishes safe harbors for certain of those activities so that a person who meets the criteria may engage in de minimis business activities in the City without having to register and obtain a business license or pay City business and occupation taxes. The activities listed in this section are illustrative only and are not intended to narrow the definition of "engaging in business" in subsection (1). If an activity is not listed, whether it constitutes engaging in business in the City shall be determined by considering all the facts and circumstances and applicable law.

(3) Without being all inclusive, any one of the following activities conducted within the City by a person, or its employee, agent, representative, independent contractor, broker or another acting on its behalf constitutes engaging in business and requires a person to register and obtain a business license.

(a) Owning, renting, leasing, maintaining, or having the right to use, or using, tangible personal property, intangible personal property, or real property permanently or temporarily located in the City.

(b) Owning, renting, leasing, using, or maintaining, an office, place of business, or other establishment in the City.

(c) Soliciting sales.

(d) Making repairs or providing maintenance or service to real or tangible personal property, including warranty work and property maintenance.

(e) Providing technical assistance or service, including quality control, product inspections, warranty work, or similar services on or in connection with tangible personal property sold by the person or on its behalf.

(f) Installing, constructing, or supervising installation or construction of, real or tangible personal property.

(g) Soliciting, negotiating, or approving franchise, license, or other similar agreements.

(h) Collecting current or delinquent accounts.

(i) Picking up and transporting tangible personal property, solid waste, construction debris, or excavated materials.

(j) Providing disinfecting and pest control services, employment and labor pool services, home nursing care, janitorial services, appraising, landscape architectural services, security system services, surveying, and real estate services including the listing of homes and managing real property.

(k) Rendering professional services such as those provided by accountants, architects, attorneys, auctioneers, consultants, engineers, professional athletes, barbers, baseball clubs and other sports organizations, chemists, consultants, psychologists, court reporters, dentists, doctors, detectives, laboratory operators, teachers, veterinarians.

(l) Meeting with customers or potential customers, even when no sales or orders are solicited at the meetings.

(m) Training or recruiting agents, representatives, independent contractors, brokers or others, domiciled or operating on a job in the City, acting on its behalf, or for customers or potential customers.

(n) Investigating, resolving, or otherwise assisting in resolving customer complaints.

(o) In-store stocking or manipulating products or goods, sold to and owned by a customer, regardless of where sale and delivery of the goods took place.

(p) Delivering goods in vehicles owned, rented, leased, used, or maintained by the person or another acting on its behalf.

(4) If a person, or its employee, agent, representative, independent contractor, broker or another acting on the person's behalf, engages in no other activities in or with the City but the following, it need not register and obtain a business license and pay tax.

(a) Meeting with suppliers of goods and services as a customer.

(b) Meeting with government representatives in their official capacity, other than those performing contracting or purchasing functions.

(c) Attending meetings, such as board meetings, retreats, seminars, and conferences, or other meetings wherein the person does not provide training in connection with tangible personal property sold by the person or on its behalf. This provision does not apply to any board of director member or attendee engaging in business such as a member of a board of directors who attends a board meeting.

(d) Renting tangible or intangible property as a customer when the property is not used in the City.

(e) Attending, but not participating in a "trade show" or "multiple vendor events". Persons participating at a trade show shall review the City's trade show or multiple vendor event ordinances.

(f) Conducting advertising through the mail.

(g) Soliciting sales by phone from a location outside the City.

(5) A seller located outside the City merely delivering goods into the City by means of common carrier is not required to register and obtain a business license, provided that it engages in no other business activities in the City. Such activities do not include those in subsection (4).

The City expressly intends that engaging in business include any activity sufficient to establish nexus for purposes of applying the tax under the law and the constitutions of the United States and the State of Washington. Nexus is presumed to continue as long as the taxpayer benefits from the activity that constituted the original nexus generating contact or subsequent contacts.

"Gross income of the business." "Gross income of the business" means the value proceeding or accruing by reason of the transaction of the business engaged in and includes gross proceeds of sales, compensation for the rendition of services, gains realized from trading in stocks, bonds, or other evidences of indebtedness, interest, discount, rents, royalties, fees, commissions, dividends, and other emoluments however designated, all without any deduction on account of the cost of tangible property sold, the cost of materials used, labor costs, interest, discount, delivery costs, taxes, or any other expense whatsoever paid or accrued and without any deduction on account of losses.

"Gross proceeds of sales." "Gross proceeds of sales" means the value proceeding or accruing from the sale of tangible personal property, digital goods, digital codes, digital automated services or for other services rendered, without any deduction on account of the cost of property sold, the cost of materials used, labor costs, interest, discount paid, delivery costs, taxes, or any other expense whatsoever paid or accrued and without any deduction on account of losses.

"Manufacturing." "Manufacturing" means the activity conducted by a manufacturer and is reported under the manufacturing classification.

"Manufacturer," "to manufacture." (1) "Manufacturer" means every person who, either directly or by contracting with others for the necessary labor or mechanical services, manufactures for sale or for commercial or industrial use from the person's own materials or ingredients any products. When the owner of equipment or facilities furnishes, or sells to the customer prior to manufacture, materials or ingredients equal to less than twenty percent (20%) of the total value of all materials or ingredients that become a part of the finished product, the owner of the equipment or facilities will be deemed to be a processor for hire, and not a manufacturer. (A business not located in this City that is the owner of materials or ingredients processed for it in this City by a processor for hire shall be deemed to be engaged in business as a manufacturer in this City.) (2) "To manufacture" means all activities of a commercial or industrial nature wherein labor or skill is applied, by hand or machinery, to materials or ingredients so that as a result thereof a new, different or useful product is produced for sale or commercial or industrial use, and shall include:

(a) The production of special made or custom made articles;

(b) The production of dental appliances, devices, restorations, substitutes, or other dental laboratory products by a dental laboratory or dental technician;

(c) Crushing and/or blending of rock, sand, stone, gravel, or ore; and

(d) The producing of articles for sale, or for commercial or industrial use from raw materials or prepared materials by giving such materials, articles, and substances of trade or commerce new forms, qualities, properties or combinations including, but not limited to, such activities as making, fabricating, processing, refining, mixing, slaughtering, packing, aging, curing, mild curing, preserving, canning, and the preparing and freezing of fresh fruits and vegetables.

“To manufacture” shall not include the production of digital goods or the production of computer software if the computer software is delivered from the seller to the purchaser by means other than tangible storage media, including the delivery by use of a tangible storage media where the tangible storage media is not physically transferred to the purchaser.

“Non-Profit.” “Non-Profit” means a person as defined in this Chapter that operates in a not for profit manner and is exempt from State of Washington property taxes.

“Person.” “Person” means any individual, receiver, administrator, executor, assignee, trustee in bankruptcy, trust, estate, firm, co-partnership, joint venture, club, company, joint stock company, business trust, municipal corporation, political subdivision of the State of Washington, corporation, limited liability company, association, society, or any group of individuals acting as a unit, whether mutual, cooperative, fraternal, non-profit, or otherwise and the United States or any instrumentality thereof.

“Professional Health Care Service.” “Professional Health Care Service” includes, but is not limited to, the diagnosis, treatment, and prevention of disease, illness, injury, and other physical and mental impairments in human beings. It includes, but is not limited to, allied health, obstetrics, medicine, nursing, optometry, pharmacy, psychology, and other health professions. It also includes, but is not limited to, services and products provided and dispensed in primary care, secondary or specialist care, tertiary care, hospice care, home care, hospital care, surgical care and emergency care.

“Retailing.” “Retailing” means the activity of engaging in making sales at retail and is reported under the retailing classification.

“Retail Service.” “Retail service” shall include the sale of or charge made for personal, business, or professional services including amounts designated as interest, rents, fees, admission, and other service emoluments however designated, received by persons engaging in the following business activities:

- (1) Amusement and recreation services including but not limited to golf, pool, billiards, skating, bowling, swimming, bungee jumping, ski lifts and tows, basketball, racquet ball, handball, squash, tennis, batting cages, day trips for sightseeing purposes, and others, when provided to consumers. “Amusement and recreation services” also include the provision of related facilities such as basketball courts, tennis courts, handball courts, swimming pools, and charges made for providing the opportunity to dance. The term “amusement and recreation services” does not include instructional lessons to learn a particular activity such as tennis lessons, swimming lessons, or archery lessons.
- (2) Abstract, title insurance, and escrow services;
- (3) Credit bureau services;
- (4) Automobile parking and storage garage services;
- (5) Landscape maintenance and horticultural services but excluding (i) horticultural services provided to farmers and (ii) pruning, trimming, repairing, removing, and clearing of trees and brush near electric transmission or distribution lines or equipment, if performed by or at the direction of an electric utility;

- (6) Service charges associated with tickets to professional sporting events; and
- (7) The following personal services: Physical fitness services, tanning salon services, tattoo parlor services, steam bath services, turkish bath services, escort services, and dating services.
- (8) The term shall also include the renting or leasing of tangible personal property to consumers and the rental of equipment with an operator.

"Sale," "casual or isolated sale." (1) "Sale" means any transfer of the ownership of, title to, or possession of, property for a valuable consideration and includes any activity classified as a "sale at retail," "retail sale," or "retail service." It includes renting or leasing, conditional sale contracts, leases with option to purchase, and any contract under which possession of the property is given to the purchaser but title is retained by the vendor as security for the payment of the purchase price. It also includes the furnishing of food, drink, or meals for compensation whether consumed upon the premises or not.

(2) "Casual or isolated sale" means a sale made by a person who is not engaged in the business of selling the type of property involved on a routine or continuous basis.

"Sale at retail," "retail sale." (1) "Sale at retail" or "retail sale" means every sale of tangible personal property (including articles produced, fabricated, or imprinted) to all persons irrespective of the nature of their business and including, among others, without limiting the scope hereof, persons who install, repair, clean, alter, improve, construct, or decorate real or personal property of or for consumers, other than a sale to a person who presents a resale certificate under RCW 82.04.470 and who:

- (a) Purchases for the purpose of resale as tangible personal property in the regular course of business without intervening use by such person; or
- (b) Installs, repairs, cleans, alters, imprints, improves, constructs, or decorates real or personal property of or for consumers, if such tangible personal property becomes an ingredient or component of such real or personal property without intervening use by such person; or
- (c) Purchases for the purpose of consuming the property purchased in producing for sale a new article of tangible personal property or substance, of which such property becomes an ingredient or component or is a chemical used in processing, when the primary purpose of such chemical is to create a chemical reaction directly through contact with an ingredient of a new article being produced for sale; or
- (d) Purchases for the purpose of consuming the property purchased in producing ferrosilicon which is subsequently used in producing magnesium for sale, if the primary purpose of such property is to create a chemical reaction directly through contact with an ingredient of ferrosilicon; or
- (e) Purchases for the purpose of providing the property to consumers as part of competitive telephone service, as defined in RCW 82.04.065. The term shall include every sale of tangible personal property which is used or consumed or to be used or consumed in the performance of any activity classified as a "sale at retail" or "retail sale" even though such property is resold or utilized as provided in (a), (b), (c), (d), or (e) of this subsection following such use.
- (f) Purchases for the purpose of satisfying the person's obligations under an extended warranty as defined in subsection (7) of this section, if such tangible personal property replaces or becomes an ingredient or component of property covered by the extended warranty without intervening use by such person.

(2) "Sale at retail" or "retail sale" also means every sale of tangible personal property to persons engaged in any business activity which is taxable under 5.112.050(1)(a).

- (3) "Sale at retail" or "retail sale" shall include the sale of or charge made for tangible personal property consumed and/or for labor and services rendered in respect to the following:
- (a) The installing, repairing, cleaning, altering, imprinting, or improving of tangible personal property of or for consumers, including charges made for the mere use of facilities in respect thereto, but excluding charges made for the use of coin-operated laundry facilities when such facilities are situated in an apartment house, rooming house, or mobile home park for the exclusive use of the tenants thereof, and also excluding sales of laundry service to nonprofit health care facilities, and excluding services rendered in respect to live animals, birds and insects;
 - (b) The constructing, repairing, decorating, or improving of new or existing buildings or other structures under, upon, or above real property of or for consumers, including the installing or attaching of any article of tangible personal property therein or thereto, whether or not such personal property becomes a part of the realty by virtue of installation, and shall also include the sale of services or charges made for the clearing of land and the moving of earth excepting the mere leveling of land used in commercial farming or agriculture;
 - (c) The charge for labor and services rendered in respect to constructing, repairing, or improving any structure upon, above, or under any real property owned by an owner who conveys the property by title, possession, or any other means to the person performing such construction, repair, or improvement for the purpose of performing such construction, repair, or improvement and the property is then reconveyed by title, possession, or any other means to the original owner;
 - (d) The sale of or charge made for labor and services rendered in respect to the cleaning, fumigating, razing or moving of existing buildings or structures, but shall not include the charge made for janitorial services; and for purposes of this section the term "janitorial services" shall mean those cleaning and caretaking services ordinarily performed by commercial janitor service businesses including, but not limited to, wall and window washing, floor cleaning and waxing, and the cleaning in place of rugs, drapes and upholstery. The term "janitorial services" does not include painting, papering, repairing, furnace or septic tank cleaning, snow removal or sandblasting;
 - (e) The sale of or charge made for labor and services rendered in respect to automobile towing and similar automotive transportation services, but not in respect to those required to report and pay taxes under chapter 82.16 RCW;
 - (f) The sale of and charge made for the furnishing of lodging and all other services, except telephone business and cable service, by a hotel, rooming house, tourist court, motel, trailer camp, and the granting of any similar license to use real property, as distinguished from the renting or leasing of real property, and it shall be presumed that the occupancy of real property for a continuous period of one month or more constitutes a rental or lease of real property and not a mere license to use or enjoy the same. For the purposes of this subsection, it shall be presumed that the sale of and charge made for the furnishing of lodging for a continuous period of one month or more to a person is a rental or lease of real property and not a mere license to enjoy the same;
 - (g) The installing, repairing, altering, or improving of digital goods for consumers;
 - ~~((g))~~ (h) The sale of or charge made for tangible personal property, labor and services to persons taxable under (a), (b), (c), (d), (e), (f), and (g) of this subsection when such sales or charges are for property, labor and services which are used or consumed in whole or in part by such persons in the performance of any activity defined as a "sale at retail" or "retail sale" even though such property, labor and services may be resold after such use or consumption. Nothing contained in this subsection shall be construed to modify subsection (1) of this section and nothing contained in subsection (1) of this section shall be construed to modify this subsection.

(4) "Sale at retail" or "retail sale" shall also include the providing of competitive telephone service to consumers.

(5) (a) "Sale at retail" or "retail sale" shall also include the sale of prewritten software other than a sale to a person who presents a resale certificate under RCW 82.04.470, regardless of the method of delivery to the end user. For purposes of this subsection (5)(a) the sale of the sale of prewritten computer software includes the sale of or charge made for a key or an enabling or activation code, where the key or code is required to activate prewritten computer software and put the software into use. There is no separate sale of the key or code from the prewritten computer software, regardless of how the sale may characterized by the vendor or by the purchaser.

The term "sale at retail" or "retail sale" does not include the sale of or charge made for:

(i) Custom software; or

(ii) The customization of prewritten software.

(b)(i) The term also includes the charge made to consumers for the right to access and use prewritten computer software, where possession of the software is maintained by the seller or a third party, regardless of whether the charge for the service is on a per use, per user, per license, subscription, or some other basis.

(ii)(A) The service described in (b)(i) of this subsection 5 includes the right to access and use prewritten software to perform data processing.

(B) For purposes of this subsection (b)(ii) "data processing" means the systematic performance of operations on data to extract the required information in an appropriate form or to convert the data to usable information. Data processing includes check processing, image processing, form processing, survey processing, payroll processing, claim processing, and similar activities.

(6) "Sale at retail" or "retail sale" shall also include the sale of or charge made for labor and services rendered in respect to the building, repairing, or improving of any street, place, road, highway, easement, right of way, mass public transportation terminal or parking facility, bridge, tunnel, or trestle which is owned by a municipal corporation or political subdivision of the state, the State of Washington, or by the United States and which is used or to be used primarily for foot or vehicular traffic including mass transportation vehicles of any kind. (Public road construction)

(7) "Sale at retail" or "retail sale" shall also include the sale of or charge made for an extended warranty to a consumer. For purposes of this subsection, "extended warranty" means an agreement for a specified duration to perform the replacement or repair of tangible personal property at no additional charge or a reduced charge for tangible personal property, labor, or both, or to provide indemnification for the replacement or repair of tangible personal property, based on the occurrence of specified events. The term "extended warranty" does not include an agreement, otherwise meeting the definition of extended warranty in this subsection, if no separate charge is made for the agreement and the value of the agreement is included in the sales price of the tangible personal property covered by the agreement.

(8) "Sale at retail" or "retail sale" shall also include the sale of or charge made for labor and services rendered in respect to the constructing, repairing, decorating, or improving of new or existing buildings or other structures under, upon, or above real property of or for the United States, any instrumentality thereof, or a county or city housing authority created pursuant to chapter 35.82 RCW, including the installing, or attaching of any article of tangible personal property therein or thereto, whether or not such personal property becomes a part of the realty by virtue of installation (government contracting).

(9) "Sale at retail" or "retail sale" shall not include the sale of services or charges made for the clearing of land and the moving of earth of or for the United States, any instrumentality thereof, or a county or city housing authority. Nor shall the term include the sale of services or charges

made for cleaning up for the United States, or its instrumentalities, radioactive waste and other byproducts of weapons production and nuclear research and development. [This should be reported under the service and other classification.]

(10) "Sale at retail" or "retail sale" shall not include the sale of or charge made for labor and services rendered for environmental remedial action. [This should be reported under the service and other classification.]

(11) "Sale at retail" or "retail sale" shall also include the following sales to consumers of digital goods, digital codes, and digital automated services:

- (a) Sales in which the seller has granted the purchaser the right of permanent use;
- (b) Sales in which the seller has granted the purchaser a right of use that is less than permanent;
- (c) Sales in which the purchaser is not obligated to make continued payment as a condition of the sale; and
- (d) Sales in which the purchaser is obligated to make continued payment as a condition of the sale.

A retail sale of digital goods, digital codes, or digital automated services under this subsection 5(11) includes any services provided by the seller exclusively in connection with the digital goods, digital codes, or digital automated services, whether or not a separate charge is made for such services.

For purposes of this subsection, "permanent" means perpetual or for an indefinite or unspecified length of time. A right of permanent use is presumed to have been granted unless the agreement between the seller and the purchaser specifies or the circumstances surrounding the transaction suggest or indicate that the right to use terminates on the occurrence of a condition subsequent.

(12) "Sale at retail" or "retail sale" shall also include the installing, repairing, altering, or improving of digital goods for consumers.

"Sale at wholesale," "wholesale sale." "Sale at wholesale" or "wholesale sale" means any sale of tangible personal property, digital goods, digital codes, digital automated services, prewritten computer software, or services described in section 5(11), which is not a retail sale, and any charge made for labor and services rendered for persons who are not consumers, in respect to real or personal property and retail services, if such charge is expressly defined as a retail sale or retail service when rendered to or for consumers. Sale at wholesale also includes the sale of telephone business to another telecommunications company as defined in RCW 80.04.010 for the purpose of resale, as contemplated by RCW 35.21.715.

"Services." Those activities that do not fall within one of the other tax classifications of the City, i.e. manufacturing, wholesaling and retailing.

"Taxpayer." "Taxpayer" means any "person", as herein defined, liable for the collection of any tax or fee under this chapter, or who engages in any business or who performs any act for which a tax or fee is imposed by this chapter.

"Value proceeding or accruing." "Value proceeding or accruing" means the consideration, whether money, credits, rights, or other property expressed in terms of money, a person is entitled to receive or which is actually received or accrued. The term shall be applied, in each case, on a cash receipts or accrual basis according to which method of accounting is regularly employed in keeping the books of the taxpayer.

"Value of products." (1) The value of products, including by-products, extracted or manufactured, shall be determined by the gross proceeds derived from the sale thereof whether

such sale is at wholesale or at retail, to which shall be added all subsidies and bonuses received from the purchaser or from any other person with respect to the extraction, manufacture, or sale of such products or by-products by the seller.

(2) Where such products, including by-products, are extracted or manufactured for commercial or industrial use; and where such products, including by-products, are shipped, transported or transferred out of the City, or to another person, without prior sale or are sold under circumstances such that the gross proceeds from the sale are not indicative of the true value of the subject matter of the sale; the value shall correspond as nearly as possible to the gross proceeds from sales in this state of similar products of like quality and character, and in similar quantities by other taxpayers, plus the amount of subsidies or bonuses ordinarily payable by the purchaser or by any third person with respect to the extraction, manufacture, or sale of such products. In the absence of sales of similar products as a guide to value, such value may be determined upon a cost basis. In such cases, there shall be included every item of cost attributable to the particular article or article extracted or manufactured, including direct and indirect overhead costs. The Director may prescribe rules for the purpose of ascertaining such values. (3) Notwithstanding subsection (2) above, the value of a product manufactured or produced for purposes of serving as a prototype for the development of a new or improved product shall correspond to (a) the retail selling price of such new or improved product when first offered for sale; or (2) the value of materials incorporated into the prototype in cases in which the new or improved product is not offered for sale.

“Wholesaling.” “Wholesaling” means engaging in the activity of making sales at wholesale, and is reported under the wholesaling classification.

5.112.050 Imposition of the tax - tax or fee levied. (1) Except as provided in subsection (2) of this section, there is hereby levied upon and shall be collected from every person a tax for the act or privilege of engaging in business activities within the City, whether the person’s office or place of business be within or without the City. The tax shall be in amounts to be determined by application of rates against gross proceeds of sale, gross income of business, or value of products, including by-products, as the case may be, as follows:

(a) Upon every person engaging within the City in any non-profit professional health care service; as to such persons, the amount of tax on account of such activities shall be equal to the gross income of the business multiplied by the rate of two tenths of one percent (.2%); provided that the tax shall not exceed the sum of \$600,000 in any one year.

(2) The gross receipts tax imposed in this section shall not apply to any person whose gross proceeds of sales, gross income of the business, and value of products, as the case may be, from all activities conducted within the City during any calendar year is equal to or less than \$20,000,000, or is equal to or less than \$5,000,000 during any quarter if on a quarterly reporting basis.

5.112.060 [RESERVED]

5.112.070 Multiple activities credit when activities take place in one or more cities with eligible gross receipt taxes.

(1) Persons who engage in business activities that are within the purview of two (2) or more subsections of 5.112.050 shall be taxable under each applicable subsection.

(2) Notwithstanding anything to the contrary herein, if imposition of the City's tax would place an undue burden upon interstate commerce or violate constitutional requirements, a taxpayer shall be allowed a credit to the extent necessary to preserve the validity of the City's tax, and still

apply the City tax to as much of the taxpayer's activities as may be subject to the City's taxing authority.

(3) To take the credit authorized by this section, a taxpayer must be able to document that the amount of tax sought to be credited was paid upon the same gross receipts used in computing the tax against which the credit is applied.

5.112.075 Deductions to prevent multiple taxation of manufacturing activities and prior to January 1, 2008, transactions involving more than one city with an eligible gross receipts tax.

(1) Amounts subject to an eligible gross receipts tax in another city that also maintains nexus over the same activity. For taxes due prior to January 1, 2008, a taxpayer that is subject to an eligible gross receipts tax on the same activity in more than one jurisdiction may be entitled to a deduction as follows:

(a) A taxpayer that has paid an eligible gross receipts tax, with respect to a sale of goods or services, to a jurisdiction in which the goods are delivered or the services are provided may deduct an amount equal to the gross receipts used to measure that tax from the measure of the tax owed to the City.

(b) Notwithstanding the above, a person that is subject to an eligible gross receipts tax in more than one jurisdiction on the gross income derived from intangibles such as royalties, trademarks, patents, or goodwill shall assign those gross receipts to the jurisdiction where the person is domiciled (its headquarters is located).

(c) A taxpayer that has paid an eligible gross receipts tax on the privilege of accepting or executing a contract with another city may deduct an amount equal to the contract price used to measure the tax due to the other city from the measure of the tax owed to the City.

(2) Person manufacturing products within and without. A person manufacturing products within the City using products manufactured by the same person outside the City may deduct from the measure of the manufacturing tax the value of products manufactured outside the City and included in the measure of an eligible gross receipts tax paid to the other jurisdiction with respect to manufacturing such products.

5.112.076 Assignment of gross income derived from intangibles.

Gross income derived from the sale of intangibles such as royalties, trademarks, patents, or goodwill shall be assigned to the jurisdiction where the person is domiciled (its headquarters is located).

5.112.077 Allocation and apportionment of income when activities take place in more than one jurisdiction.

Effective January 1, 2008, gross income, other than persons subject to the provisions of chapter 82.14A RCW, shall be allocated and apportioned as follows:

(1) Gross income derived from all activities other than those taxed as service or royalties under 5.112.050 (a) shall be allocated to the location where the activity takes place.

(2) In the case of sales of tangible personal property, the activity takes place where delivery to the buyer occurs.

(3) In the case of sales of digital products, the activity takes place where delivery to the buyer occurs. The delivery of digital products will be deemed to occur at:

(a) The seller's place of business if the purchaser receives the digital product at the seller's place of business;

(b) If not received at the seller's place of business, the location where the purchaser or the purchaser's donee, designated as such by the purchaser, receives the digital product,

including the location indicated by instructions for delivery to the purchaser or donee, known to the seller;

(c) If the location where the purchaser or the purchaser's donee receives the digital product is not known, the purchaser's address maintained in the ordinary course of the seller's business when use of this address does not constitute bad faith;

(d) If no address for the purchaser is maintained in the ordinary course of the seller's business, the purchaser's address obtained during the consummation of the sale, including the address of a purchaser's payment instrument, if no other address is available, when use of this address does not constitute bad faith; and

(e) If no address for the purchaser is obtained during the consummation of the sale, the address where the digital good or digital code is first made available for transmission by the seller or the address from which the digital automated service or service described in RCW 82.04.050 (2)(g) or (6)(b) was provided, disregarding for these purposes any location that merely provided the digital transfer of the product sold.

(4) If none of the methods in subsection 5.112.077(3) for determining where the delivery of digital products occurs are available after a good faith effort by the taxpayer to apply the methods provided in subsections 5.112.077(3)(a) through 5.112.077(3)(e), then the city and the taxpayer may mutually agree to employ any other method to effectuate an equitable allocation of income from the sale of digital products. The taxpayer will be responsible for petitioning the city to use an alternative method under this subsection 5.112.077(4). The city may employ an alternative method for allocating the income from the sale of digital products if the methods provided in subsections 5.112.077(3)(a) through 5.112.077(3)(e) are not available and the taxpayer and the city are unable to mutually agree on an alternative method to effectuate an equitable allocation of income from the sale of digital products.

(5) For purposes of subsections 5.112.077(3)(a) through 5.112.077(3)(e), the following definitions apply:

(a) "Digital automated services," "digital codes," and "digital goods," have the same meaning as in RCW 82.04.192;

(b) "Digital products" means digital goods, digital codes, digital automated services, and the services described in RCW 82.04.050(2)(g) and (6)(c); and

(c) "Receive" has the same meaning as in RCW 82.32.730.

(6) Gross income derived from activities taxed as services and other activities taxed under 5.112.050 (a) shall be apportioned to the city by multiplying apportionable income by a fraction, the numerator of which is the payroll factor plus the service-income factor and the denominator of which is two.

(a) The payroll factor is a fraction, the numerator of which is the total amount paid in the city during the tax period by the taxpayer for compensation and the denominator of which is the total compensation paid everywhere during the tax period. Compensation is paid in the city if:

(i) The individual is primarily assigned within the city;

(ii) The individual is not primarily assigned to any place of business for the tax period and the employee performs fifty percent or more of his or her service for the tax period in the city; or

(iii) The individual is not primarily assigned to any place of business for the tax period, the individual does not perform fifty percent or more of his or her service in any city and the employee resides in the city.

(b) The service income factor is a fraction, the numerator of which is the total service income of the taxpayer in the city during the tax period, and the denominator of which is the total service income of the taxpayer everywhere during the tax period. Service income is in the city if the customer location is in the city.

(c) Gross income of the business from engaging in an apportionable activity must be excluded from the denominator of the service income factor if, in respect to such activity, at least some of the activity is performed in the city, and the gross income is attributable under (b) of this

subsection (6) to a city or unincorporated area of a county within the United States or to a foreign country in which the taxpayer is not taxable. For purposes of this subsection (6)(c), "not taxable" means that the taxpayer is not subject to a business activities tax by that city or county within the United States or by that foreign country, except that a taxpayer is taxable in a city or county within the United States or in a foreign country in which it would be deemed to have a substantial nexus with the city or county within the United States or with the foreign country under the standards in RCW 35.102.050 regardless of whether that city or county within the United States or that foreign country imposes such a tax.

(d) If the allocation and apportionment provisions of this subsection (b) do not fairly represent the extent of the taxpayer's business activity in the city, the taxpayer may petition for or the tax administrators may require, in respect to all or any part of the taxpayer's business activity, if reasonable:

- (i) Separate accounting;
- (ii) The exclusion of any one or more of the factors;
- (iii) The inclusion of one or more additional factors that will fairly represent the taxpayer's business activity in the city; or
- (iv) The employment of any other method to effectuate an equitable allocation and apportionment of the taxpayer's income.

(e) The party petitioning for, or the tax administrator requiring, the use of any method to effectuate an equitable allocation and apportionment of the taxpayer's income pursuant to subsection (d) of this subsection (6) must prove by a preponderance of the evidence:

- (i) That the allocation and apportionment provisions of this subsection (6) do not fairly represent the extent of the taxpayer's business activity in the city; and
- (ii) That the alternative to such provision is reasonable.

The same burden of proof shall apply whether the taxpayer is petitioning for, or the tax administrator is requiring, the use of an alternative, reasonable method to effectuate an equitable allocation and apportionment of the taxpayer's income.

(f) If the tax administrator requires any method to effectuate an equitable allocation and apportionment of the taxpayer's income, the tax administrator cannot impose any civil or criminal penalty with reference to the tax due that is attributable to the taxpayer's reasonable reliance solely on the allocation and apportionment provisions of this subsection (6).

(g) A taxpayer that has received written permission from the tax administrator to use a reasonable method to effectuate an equitable allocation and apportionment of the taxpayer's income shall not have that permission revoked with respect to transactions and activities that have already occurred unless there has been a material change in, or a material misrepresentation of, the facts provided by the taxpayer upon which the tax administrator reasonably relied in approving a reasonable alternative method.

(7) The definitions in this subsection apply throughout this section.

(a) "**Apportionable income**" means the gross income of the business taxable under the service classifications of a city's gross receipts tax, including income received from activities outside the city if the income would be taxable under the service classification if received from activities within the city, less any exemptions or deductions available.

(b) "**Business activities tax**" means a tax measured by the amount of, or economic results of, business activity conducted in a city or county within the United States or within a foreign country. The term includes taxes measured in whole or in part on net income or gross income or receipts. "Business activities tax" does not include a sales tax, use tax, or a similar transaction tax, imposed on the sale or acquisition of goods or services, whether or not denominated a gross receipts tax or a tax imposed on the privilege of doing business.

(c) "**Compensation**" means wages, salaries, commissions, and any other form of remuneration paid to individuals for personal services that are or would be included in the individual's gross income under the federal internal revenue code.

(d) "**Customer**" means a person or entity to whom the taxpayer makes a sale or renders services or from whom the taxpayer otherwise receives gross income of the business.

(e) "**Customer location**" means the following:

(i) For a customer not engaged in business, if the service requires the customer to be physically present, where the service is performed.

(ii) For a customer not engaged in business, if the service does not require the customer to be physically present:

(A) The customer's residence; or

(B) If the customer's residence is not known, the customer's billing/mailling address.

(iii) For a customer engaged in business:

(A) Where the services are ordered from;

(B) At the customer's billing/mailling address if the location from which the services are ordered is not known; or

(C) At the customer's commercial domicile if none of the above are known.

(f) "**Individual**" means any individual who, under the usual common law rules applicable in determining the employer-employee relationship, has the status of an employee of that taxpayer.

(g) "**Primarily assigned**" means the business location of the taxpayer where the individual performs his or her duties.

(h) "**Service-taxable income**" or "**service income**" means gross income of the business subject to tax under either the service or royalty classification.

(i) "**Tax period**" means the calendar year during which tax liability is accrued. If taxes are reported by a taxpayer on a basis more frequent than once per year, taxpayers shall calculate the factors for the previous calendar year for reporting in the current calendar year and correct the reporting for the previous year when the factors are calculated for that year, but not later than the end of the first quarter of the following year.

(8) Assignment or apportionment of revenue under this Section shall be made in accordance with and in full compliance with the provisions of the interstate commerce clause of the United States Constitution where applicable.

5.112.078 [RESERVED]

5.112.090 Exemptions.

(1) **Public utilities.** This chapter shall not apply to any person in respect to a business activity with respect to which tax liability is specifically imposed under the provisions of Chapter 5.84 WCC.

(2) **Investments - dividends from subsidiary corporations.** (a) This chapter shall not apply to amounts derived by persons, other than those engaging in banking, loan, security, or other financial businesses, from investments or the use of money as such, and also amounts derived as dividends by a parent from its subsidiary corporations.

(3) **Insurance business.** This chapter shall not apply to amounts received by any person who is an insurer or their appointed insurance producer upon which a tax based on gross premiums is paid to the state pursuant to RCW 48.14.020, and provided further, that the provisions of this subsection shall not exempt any bonding company from tax with respect to gross income derived from the completion of any contract as to which it is a surety, or as to any liability as successor to the liability of the defaulting contractor.

(4) **Employees.**

(a) This chapter shall not apply to any person in respect to the person's employment in the capacity as an employee or servant as distinguished from that of an independent contractor.

For the purposes of this subsection, the definition of employee shall include those persons that are defined in the Internal Revenue Code, as hereafter amended.

(b) A booth renter is an independent contractor for purposes of this chapter.

(5) **Amounts derived from sale of real estate.** This chapter shall not apply to gross proceeds derived from the sale of real estate. This, however, shall not be construed to allow an exemption of amounts received as commissions from the sale of real estate, nor as fees, handling charges, discounts, interest or similar financial charges resulting from, or relating to, real estate transactions. This chapter shall also not apply to amounts received for the rental of real estate if the rental income is derived from a contract to rent for a continuous period of thirty (30) days or longer.

(6) **Mortgage brokers' third-party provider services trust accounts.** This chapter shall not apply to amounts received from trust accounts to mortgage brokers for the payment of third-party costs if the accounts are operated in a manner consistent with RCW 19.146.050 and any rules adopted by the director of financial institutions.

(7) **Amounts derived from manufacturing, selling or distributing motor vehicle fuel.** This chapter shall not apply to the manufacturing, selling, or distributing motor vehicle fuel, as the term "motor vehicle fuel" is defined in RCW 82.36.010 and exempt under RCW 82.36.440, provided that any fuel not subjected to the state fuel excise tax, or any other applicable deduction or exemption, will be taxable under this chapter.

(8) **Amounts derived from liquor, and the sale or distribution of liquor.** This chapter shall not apply to liquor as defined in RCW 66.04.010 and exempt in RCW 66.08.120.

(9) **Casual and isolated sales.** This chapter shall not apply to the gross proceeds derived from casual or isolated sales.

(10) **Accommodation sales.** This chapter shall not apply to sales for resale by persons regularly engaged in the business of making retail sales of the type of property so sold to other persons similarly engaged in the business of selling such property where (1) the amount paid by the buyer does not exceed the amount paid by the seller to the vendor in the acquisition of the article and (2) the sale is made as an accommodation to the buyer to enable the buyer to fill a bona fide existing order of a customer or is made within fourteen days to reimburse in kind a previous accommodation sale by the buyer to the seller.

(11) **Taxes collected as trust funds.** This chapter shall not apply to amounts collected by the taxpayer from third parties to satisfy third party obligations to pay taxes such as the retail sales tax, use tax, and admission tax.

5.112.100 Deductions. In computing the license fee or tax, there may be deducted from the measure of tax the following items:

(1) **Receipts from tangible personal property delivered outside the State.** In computing tax, there may be deducted from the measure of tax under retailing or wholesaling amounts derived from the sale of tangible personal property that is delivered by the seller to the buyer or the buyer's representative at a location outside the State of Washington.

(2) **Cash discount taken by purchaser.** In computing tax, there may be deducted from the measure of tax the cash discount amounts actually taken by the purchaser. This deduction is not allowed in arriving at the taxable amount under the extracting or manufacturing classifications with respect to articles produced or manufactured, the reported values of which, for the purposes of this tax, have been computed according to the "value of product" provisions.

(3) **Credit losses of accrual basis taxpayers.** In computing tax, there may be deducted from the measure of tax the amount of credit losses actually sustained by taxpayers whose regular books of account are kept upon an accrual basis.

(4) **Constitutional prohibitions.** In computing tax, there may be deducted from the measure of the tax amounts derived from business which the City is prohibited from taxing under the Constitution of the State of Washington or the Constitution of the United States.

(5) Receipts from the Sale of Tangible Personal Property and Retail Services Delivered Outside the City but Within Washington. Amounts included in the gross receipts reported on the tax return derived from the sale of tangible personal property delivered to the buyer or the buyer's representative outside the City but within the State of Washington may be deducted from the measure of tax under the retailing, retail services, or wholesaling classification.

(6) Interest on investments or loans secured by mortgages or deeds of trust. In computing tax, to the extent permitted by Chapter 82.14A RCW, there may be deducted from the measure of tax by those engaged in banking, loan, security or other financial businesses, amounts derived from interest received on investments or loans primarily secured by first mortgages or trust deeds on non-transient residential properties.

5.112.120 Tax part of overhead.

It is not the intention of this chapter that the taxes or fees herein levied upon persons engaging in business be construed as taxes or fees upon the purchasers or customer, but that such taxes or fees shall be levied upon, and collectible from, the person engaging in the business activities herein designated and that such taxes or fees shall constitute a part of the cost of doing business of such persons.

5.112.130 Severability Clause.

If any provision of this chapter or its application to any person or circumstance is held invalid, the remainder of the chapter or the application of the provision to other persons or circumstances shall not be affected.

SECTION TWO

REFERENDUM

This Ordinance shall be in full force and effect on April 1, 2020, unless a referendum petition is filed pursuant to this section. The referendum procedure shall be as follows:

1. Within seven (7) days after the approval of this Ordinance, a referendum petition, if any, must be filed with the City Clerk.
2. Within ten (10) days of said filing, the City Clerk shall confer with the petitioner concerning the form and style of the petition and shall issue the petition an identification number and shall issue an accurate, concise and positive ballot title from the Chelan County Auditor.

3. The petitioner shall have thirty (30) days in which to secure the signatures of not less than fifteen percent (15%) of the registered voters of the City, as of the last municipal general election, upon petition forms which shall contain the ballot title and the full text of the measure to be referred.
4. The City Clerk shall verify the sufficiency of the signatures on the petition and if sufficient valid signatures are properly submitted, shall certify the referendum measure to the next election ballot within the City or at a special election ballot as provided pursuant to RCW 35.17.260 (2).

SECTION THREE

EFFECTIVE DATE

This Ordinance shall take effect on April 1, 2020, unless a referendum petition is filed pursuant to Section Two of this Ordinance. If the petitioner of a referendum petition does not secure the required signatures as set forth in Section Two above, then this Ordinance shall become effective immediately upon the expiration of the thirty (30) day period to gather signatures as set forth in Section Two above or April 1, 2020, whichever is later. If a referendum election is held and the referendum is not approved by the voters as required by law, then this Ordinance shall become effective immediately after the election results are verified by the City Clerk, or April 1, 2020, whichever is later.

PASSED BY THE CITY COUNCIL OF THE CITY OF WENATCHEE this _____ day of _____, 2019.

CITY OF WENATCHEE, a municipal corporation

By _____
FRANK KUNTZ, Mayor

ATTEST:

By _____
TAMMY L. STANGER, City Clerk

APPROVED:

By _____
STEVE D. SMITH, City Attorney

City review of B&O tax exemption makes sense

THE OLYMPIAN - THE OLYMPIAN

August 07, 2014 12:00 AM

<https://www.bellinghamherald.com/opinion/article22240977.html>

Thurston County cities struggle to balance budgets and maintain existing levels of service every year, even after the official end of the Great Recession. A slow recovery has squeezed consumer spending and pinched the sales tax revenue on which the cities heavily rely.

Other state of Washington cities, facing the same financial problems, have shored up city coffers by closing a Business and Occupation tax exemption for large not-for-profit medical systems. This strategy has raised millions of dollars of new revenue for Bellingham and Tacoma.

The City of Olympia is considering a similar measure to eliminate all or some portion of Providence St. Peter Hospital's B&O tax exemption. It will be a topic of discussion at next week's city finance committee meeting.

Other cities have found that it makes sense to remove the exemption for a variety of reasons. One of the most compelling justifications is that the not-for-profit medical systems have been slowly eliminating previous sources of municipal B&O tax revenue.

Medical systems such as Providence have acquired formerly private health care clinics and other Medical systems such as Providence have acquired formerly private health care clinics and other facilities that paid B&O tax, bringing them under their non-taxable shield. As a result, the city has lost significant tax revenue without diminishing the demand for municipal services.

In Bellingham, the city lost \$350,000 a year when Peace Health St. Hospital Medical Center took over Madrona Medical in 2007 and North Cascade Cardiology in 2011. By applying the city's 0.44 percent B&O tax rate to Peace Heath starting next January, Bellingham will raise about \$1.2 million annually.

Tacoma expects to receive about \$5.5 million this year by removing the exemption for the MultiCare and Franciscan health systems and applying its full 0.4 percent rate.

Olympia's B&O tax rate of 0.2 percent for medical businesses is lower than those cities. Bellingham and Tacoma have higher rates because they were imposed before the state recently capped local B&O taxes.

Removing St. Peter's tax exemption would level the playing field, so that all of the city's health care providers provide the same support to local government. Capital Medical Center, a for-profit hospital on the west side, has paid B&O tax since it opened in January of 1985.

It's expected that hospital supporters will argue that St. Peter provides a high level of the community's

It's expected that hospital supporters will argue that St. Peter provides a high level of the community's charity care. In 2013, it offered \$23.3 million in free and discounted care to uninsured and underinsured people. But those expenses will decline as the federal Affordable Care Act extends coverage to more lower-income people.

If the City Council removes the hospital's tax exemption, we hope they don't sweep all of it into the city's general fund. We'd prefer they allocate a majority of the revenue to funding new permanent supportive housing projects that can help people who are homeless get off the streets and out of the woods, and provide them with physical and mental health care, and recovery from addiction. That would also do alot to reduce St. Peter's emergency room charity care burden.

Olympia removes B&O tax exemption for Providence St. Peter Hospital

BY ANDY HOBBS - STAFF WRITER

October 15, 2014 01:04 PM

<https://www.theolympian.com/news/local/article26084014.html>

The Olympia City Council voted unanimously Tuesday to remove an exemption to the business and occupation tax for large non-profit organizations – most notably, Providence St. Peter Hospital.

City officials say the extra money is needed to provide core services such as police, fire protection, roads and building maintenance. Providence officials estimate the B&O tax exemption is worth \$375,000.

The tax is effective Nov. 1, and applies to religious and non-profits with a gross annual income exceeding \$30 million. The council approved the tax on a first and final reading Tuesday, [but the proposal has long been simmering in the city's Finance Committee](#) as a way to generate more money for municipal services.

Hospital officials and supporters pleaded the council to reconsider. Several commenters at Tuesday's meeting defended the hospital's 127-year history of serving local health and medical needs.

"The city has always recognized the importance of a thriving community charity," said Susan Hettinger, hospital community board member, who asked the council to consider long-term consequences. "If you impose this tax, I fear it's only a matter of time before other non-profits are hit with the tax."

Providence CEO Medrice Coluccio urged the council to try the hospital's "partnership model" and revisit the tax at another time. The model refers to a proposed partnership in which the hospital would fund a range of programs using money that would otherwise go toward the B&O tax.

Suggestions from the hospital included a mobile triage program that could respond to mental health crises in downtown Olympia, according to a memo, or providing a nurse for the city jail. Another suggestion was an investment in transitional housing for the chronically homeless.

“It’s in the best interest of our community and the City of Olympia to be partners together and not tax your hospital,” Coluccio told the council. “This will set a precedent.”

The hospital is the largest private-sector employer in Thurston County with about 1,700 jobs, according to the county’s Economic Development Council.

Providence serves a five-county area and has grown significantly over the years by absorbing various for-profit medical practices, said Councilman Steve Langer, who was once employed in the hospital’s chemical dependency unit.

“It’s really gone corporate, if you will, compared to what it was,” Langer said Tuesday.

In an effort to generate more revenue, Tacoma and Bellingham have also removed B&O tax exemptions for non-profit health systems. Olympia’s current B&O tax rate – two-tenths of 1 percent – is about half of what Tacoma and Bellingham charges. At that rate, a business pays \$2,000 for every \$1 million in revenue.

The total impact of the new ordinance is difficult to determine, according to a city staff report, because state law does not allow the city to analyze financial records of non-profit organizations.

At Tuesday’s meeting, Mayor Stephen Buxbaum said the ordinance will close a tax loophole and address a steadily eroding tax base.

“We need a less regressive tax system,” he said. “We also need to provide core services to our citizens.”

**Local business (B&O) tax rates
Effective January 1, 2019**

City	Phone #	Manufacturing rate	Retail rate	Services rate	Wholesale rate	Threshold	
						Quarterly	Annual
Aberdeen	(360) 533-4100	0.002	0.003 e	0.00375 e	0.003 e	\$5,000	\$20,000
Algona	(253) 833-2897	0.00045	0.00045	0.00045	0.00045	\$10,000	\$40,000
Bainbridge Island	(206) 780-8668	0.001	0.001	0.001	0.001		\$150,000
Bellevue	(425) 452-6851	0.001496	0.001496	0.001496	0.001496		\$160,000
Bellingham	(360) 778-8010	0.0017	0.0017	0.0044 e	0.0017	\$5,000	\$20,000
Bremerton	(360) 473-5311	0.0016	0.00125	0.002	0.0016		\$160,000
Burien	(206) 241-4647	0.001	0.001	0.001	0.001		\$200,000
Cosmopolis	(360) 532-9230	0.002	0.002	0.002	0.002	\$5,000	\$20,000
Darrington	(360) 436-1131	0.00075	0.00075	0.00075	0.00075		\$20,000
Des Moines	(206) 878-4595	0.002	0.002	0.002	0.002		\$50,000
DuPont	(253) 964-8121	0.001	0.001	0.001	0.001	\$5,000	\$20,000
Everett	(425) 257-8610	0.001	0.001	0.001	0.001	\$5,000	\$20,000
Everson	(360) 966-3411	0.002			0.002		\$1,000,000
Granite Falls**	(360) 691-6441					\$5,000	\$20,000
Hoquiam	(360) 532-5700	0.002	0.002	0.002	0.002	\$5,000	\$20,000
Illwaco	(360) 642-3145	0.002	0.002	0.002	0.002		\$20,000
Issaquah	(425) 837-3054	0.0012	0.0012	0.0015	0.0012	\$25,000	\$100,000
Kelso	(360) 423-0900	0.001	0.001	0.002	0.001		\$20,000
Kenmore	(425) 398-8900	0.002 *				\$5,000	
Kent	(253) 856-6266	0.00046	0.00046	0.00152	0.00152	\$62,500	\$250,000
Lacey	(360) 491-3214		0.001	0.002		\$5,000	\$20,000
Lake Forest Park	(206) 368-5440	0.002	0.002	0.002	0.002	\$5,000	
Long Beach	(360) 642-4421	0.002	0.002	0.002	0.002	\$5,000	
Longview	(360) 442-5040	0.001	0.001	0.002	0.001		\$20,000
Lyman****	(360) 826-3033	0.002	0.002	0.002	0.002	\$5,000	\$20,000
Mercer Island	(206) 275-7783	0.001	0.001	0.001	0.001		\$150,000
North Bend	(425) 888-1211	0.002	0.002	0.002	0.002	\$5,000	
Ocean Shores	(360) 289-2488	0.002	0.002	0.002	0.002	\$5,000	\$20,000
Olympia	(360) 753-8327	0.001	0.001	0.002	0.001	\$5,000	\$20,000
Pacific	(253) 929-1100	0.002	0.002	0.002	0.002	\$5,000	\$20,000
Port Townsend****	(360) 385-2700	0.002	0.002	0.002	0.002	\$0	\$100,000
Rainier	(360) 446-2265	0.002	0.002	0.002	0.002	\$5,000	
Raymond	(360) 942-3451	0.002	0.002	0.002	0.002	\$5,000	\$20,000
Renton****	(425) 430-6400	0.00085	0.00050	0.00085	0.00085		\$500,000
Roy	(253) 843-1113	0.001	0.002	0.002	0.001	\$5,000	\$20,000
Ruston	(253) 759-3544	0.00110	0.00153	0.00200	0.00102	\$5,000	\$20,000
Seattle***	(206) 684-8484	0.00222 v	0.00222 v	0.00427 v	0.00222 v		\$100,000
Shelton	(360) 426-4491	0.001	0.001	0.001	0.001	\$5,000	\$20,000
Shoreline*****	(206) 801-2324	0.001	0.001	0.002	0.001		\$500,000
Snoqualmie	(425) 888-1555	0.0015	0.0015	0.0015	0.0015	\$5,000	
South Bend	(360) 875-5571	0.001	0.002	0.002	0.002	\$5,000	
Tacoma	(253) 591-5252	0.00110	0.00153	0.00400 e	0.00102		\$250,000
Tenino	(360) 264-2368	0.002	0.002	0.002	0.002	\$5,000	\$20,000
Tumwater	(360) 754-5855	0.001	0.001	0.002	0.001	\$5,000	\$20,000
Westport	(360) 268-0131	0.0025 e	0.005 e	0.005 e	0.0025 e	\$5,000	
Yelm	(360) 458-3244	0.001	0.002	0.002	0.001	\$5,000	

(v) = voter approved increase above statutory limit

(e) = rate higher than statutory limit because rate was effective prior to January 1, 1982 (i.e., grandfathered).

*Kenmore's B&O tax applies to heavy manufacturing only.

**Granite Falls repealed its B&O tax for all businesses other than extracting.

***Seattle changed its rates effective January 1, 2018.

****Port Townsend and Renton changed the minimal threshold in 2018

*****Shoreline implemented its B&O tax effective January 1, 2019.

*****Lyman rates went into effect in 2017 with billings starting in December.

*****Blaine will implement a B&O tax effective January 1, 2020.

NOTE: Tax rates may apply to businesses categories other than those above. Thresholds are subject to change. Exemptions, deductions, or other exceptions may apply in certain circumstances. Contact the city finance department for more information.

**AGENDA REPORT
COMMUNITY DEVELOPMENT DEPARTMENT**

TO: Wenatchee City Council

FROM: Community Development Staff

SUBJECT: WCC 10.72 – Nonconforming signs – Billboard amortization.

DATE: December 9, 2019 HEARING DATE: December 12, 2019

I. OVERVIEW

The Planning Commission will hold a public hearing on December 11, 2019 on the proposed amendments in Chapter 10.72.050 Nonconforming signs that would establish a 6 year amortization timeframe for billboards.

The attached staff report provides additional detail and information regarding the public process, the amendments and public comments received to date.

II. ACTION REQUESTED

Conduct a public hearing on the Planning Commission recommendation. Given the short time turnaround, City staff drafted an ordinance in advance that would adopt the amendments as presented to the Planning Commission.

Draft Motion:

I move to adopt the revisions to the Wenatchee City Code as represented in Ordinance No. 2019-51 adopting amendments to Chapter 10.70.050 Nonconforming signs of the Wenatchee City Code that would establish a 6 year amortization period for billboard signs.

III. FISCAL IMPACT

No known fiscal impacts can directly be attributed to the proposed ordinances and resolution.

IV. ATTACHMENTS

1. Ordinance No. 2019-51 adopting amendments to Title 10
2. City staff report and attachments dated December 4, 2019 (includes some public comments and the sign survey)
3. Additional public comment submitted

ORDINANCE NO. 2019-51

Attachment A

AN ORDINANCE, amending and restating Chapter 10.72 “Nonconforming uses, structures and lots” of the Wenatchee City Code.

WHEREAS, the City Council enters the following Findings of Fact:

1. The City of Wenatchee has adopted the Wenatchee Urban Area Comprehensive Plan and a series of sub-area comprehensive plans pursuant to the Growth Management Act (GMA), RCW Chapter 36.70A, which cover the Wenatchee Urban Growth Area and all incorporated areas within the City of Wenatchee, that have been found to be consistent with each other and with the adopted GMA plans of the adjoining jurisdictions.
2. The City of Wenatchee Planning Commission is responsible for long range planning matters and providing implementation recommendations to assure compliance with the Growth Management Act for the City of Wenatchee Urban Growth Area in coordination with Chelan County and within the incorporated boundaries of the City of Wenatchee. These measures include updates and amendments to the comprehensive plan; development regulations, environmental regulations, and any other rules, actions or regulations deemed necessary to implement the Growth Management Act.
3. RCW Chapters 36.70 and 36.70A authorize the adoption of development regulations.
4. Section 10.04.020 Purpose of the Wenatchee Zoning Code identifies the purposes of the title as to promote the public health, safety, and general welfare; to assist in the implementation of the Wenatchee urban area comprehensive plan; to comply with the Growth Management Act; and to comply with the provisions and objectives of Chapter 44, Laws of Washington, 1935, as amended, and Chapter 17, Laws of 1990, First Extraordinary Session, as amended.
5. The Planning Commission conducted two public open houses on June 25, 2019 and August 21, 2019.

6. The Planning Commission conducted one public workshop on the proposed revisions on November 20, 2019.
7. The City of Wenatchee issued a determination of non-significance on November 19, 2019 and provided copies of the environmental documents to the Department of Ecology SEPA Register.
8. The City of Wenatchee and Chelan County issued a joint notice of the public 60 day review and comment period, and public hearing dates on November 19, 2019 which was published in the Wenatchee World.
9. On November 19, 2019, the City of Wenatchee provided formal notice to the Washington State Department of Commerce of the intent to adopt amendments to the Wenatchee City Code with a request for expedited review, pursuant to RCW 36.70A.106. Additional notices were provided to local and regional agencies for the review and comment periods/environmental determinations.
10. Public comments submitted during the comment period were reviewed by the Planning Commission and included in the official record.
11. On December 11, 2019, the City of Wenatchee Planning Commission conducted an advertised public hearing. The Planning Commission entered into the record the files on this amendment, accepted public testimony, and deliberated the merits of the proposal.
12. The City of Wenatchee Planning Commission has reviewed the entire record and public testimony as it relates to the proposed amendments to the Wenatchee City Code.
13. The City conducted a sign survey and invited the community to respond. The English version was online August 2-14, 2019 and the Spanish version was online August 6-18, 2019. The survey received a total of 498 respondents (492 English and 6 Spanish).

14. The written comments to the survey included community reference to reduce the amount of sign clutter including billboards, encouraged less signs, no new pole signs, and beautifying the entrance to the city, particularly the North Wenatchee Avenue corridor.
15. The State Scenic Vistas Act, Chapter 47.42 RCW, provides certain protections to billboards located within the jurisdiction of that Act.
16. Billboards are defined in Section 10.50.030, WCC (adopted by Ord 2019-50 on December 5, 2019) as a type of large permanent sign designed or used for high-visibility display of sign copy which is typically not associated with the property upon which the sign is placed. Billboards typically have a wood or steel structure with a single face or double face oriented to major traffic routes. Billboards are larger than permitted pole signs and may include catwalks.
17. GOAL 1 in the Community Design and Healthy Communities Element: GATEWAYS -- Improve the visual appeal and navigability of Wenatchee by enhancing gateways into the city, its districts and neighborhoods. *The amortization of non-conforming billboard signs serves to improve the visual appeal and navigability of the community.*
18. Goal 1, Policy 1 in the Community Design and Healthy Communities Element: Develop visually attractive and identifiable gateways at primary entrances to the city using a combination of streetscape, signage, and building orientation to create memorable community entries. *The amortization of non-conforming billboard signs will over time result in a more attractive gateways to the community.*
19. Goal 6 in the Community Design and Healthy Communities Element: Dark Sky Design, Policy 6: All signs and lighting (including for streets, buildings, parking areas, and signs) should be designed so that they perform their function without being unduly disruptive to the visual appeal of the area. *The amortization of existing digital billboards and non-conforming off-site signs would further the intent of this policy.*
20. GOAL 7 in the Community Design and Healthy Communities Element: Aesthetics -- Identify opportunities to improve the visual aesthetics of the community. *Community responses to the survey*

indicated a desire to improve the visual aesthetics of the community through removal of non-conforming billboard signs.

21. Goal 7, Policy 4 in the Cultural and Historic Resources Element: Review sign standards to determine priorities on the amortization of nonconforming signage. Opportunities are available to improve the signage code to better meet community advertising needs while improving the cumulative visual impacts of signage. *The primary purpose of the code revision is to amortize out non-conforming billboard signs. The amortization timeframe balances out the community desire to enhance the gateways to the city and reduce sign clutter with property owner rights to obtain a financial return on their investment.*

22. The City has a history of enacting land use regulations placing limitations on off-site signs and billboards and ultimately prohibiting them:
 - a. The City adopted zoning standards, permitting new off-site signs in the General Commercial by Ord 2720 on June 21, 1988.
 - b. The City initiated a moratorium on off-site signs by Ord 3017 on November 9, 1993.
 - c. The City extended the moratorium on off-site signs by Ord 3046 on January 11, 1994.
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 - e. The City adopted off-site sign standards in the General Commercial district by Ord 3069 on July 19, 1994.
 - f. The City extended the moratorium on off-site signs until September 21, 1994 by Ord 3073 which was signed on June 7, 1994.
 - g. The City initiated a 180 day moratorium on off-site signs by Ord 2005-04 on January 27, 2005.
 - h. The City extended off-site sign moratorium by Ord 2005-19 on July 14, 2005.
 - i. The City prohibits off-site signs in the General Commercial and Industrial districts and establishes non-conforming standards for off-site signs by Ord 2005-22 on September 22, 2005.
 - j. Off-site signs are prohibited in the community by Ord 2007-34 on October 12, 2007.

23. Billboards legally in existence since the adoption of Ordinance 2007-34 have been determined to be legally non-conforming signs.

24. New off-site billboard signs have been prohibited in the City of Wenatchee since the enactment of Ordinance 2007-34.
25. The Washington Supreme Court has directly addressed nonconforming uses and amortization of uses in many cases such as *City of Univ. Place v. McGuire*, 144 Wn.2d 640, 648–49, 30 P.3d 453 (2001), *Rhod-Azalea & 35th, Inc. v. Snohomish Cty.*, 136 Wn.2d 1, 9, 959 P.2d 1024 (1998), *Northend Cinema, Inc. v. City of Seattle*, 90 Wn.2d 709, 722, 585 P.2d 1153 (1978), and *Seattle v. Martin*, 54 Wn.2d 541, 342 P.2d 602 (1959).
26. Courts have consistently recognized that nonconforming uses are subject to subsequently enacted reasonable police power regulations. See *Goldblatt v. Town of Hempstead*, 369 U.S. 590, 82 S.Ct. 87 (1962).
27. “The policy of zoning legislation is to phase out a nonconforming use.” *Anderson v. Island County*, 81 Wn.2d 312, 323, 501 P.2d 594 (1972). Nonconforming uses are not favored, and may be extinguished, either after a period of nonuse **or a reasonable amortization period allowing the owner to recoup on investment.** *Rhod–A–Zalea*, 136 Wn.2d at 7, 959 P.2d 1024; see also *Choi v. City of Fife*, 60 Wn. App. 458, 803 P.2d 1330. (Emphasis added.)
28. In *Seattle v. Martin*, 54 Wn.2d 541, 342 P.2d 602 (1959) the WA Supreme Court recognized the power of a municipality to require termination of nonconforming uses within a reasonable period of time. The Court adopted a balancing test to determine the reasonableness of the termination period – that test is whether the harm or hardship to the user outweighs the benefit to the public to be gained from termination of the use.
29. Legally non-conforming off-site billboards have been able to recoup 12 years of financial benefit since the City adopted Ord 2007-34 on October 12, 2007.
30. The amortization of non-conforming off-site signs and billboards within 6 years is a reasonable timeframe that adequately balances the harm or hardship to the billboard owner and the benefit to the public gained from the termination of the non-conforming billboards and off-site signs.
31. The amortization of non-conforming off-site signs and billboards within 6 years is a reasonable timeframe for owners to recoup

additional remaining financial value on their investment while balancing the community desire for their removal.

32. An amortization period of 6 years together with the 12 years of legal non-conforming use since the prohibition of offsite signs on October 12, 2007 is a reasonable amortization period.
33. An analysis of building permits issued for off-site signs or billboards indicates that the average age as being at least 20 years.
34. Off-site non-conforming billboards have been annexed into the City since the enactment of Ordinance 2007-34. These off-site non-conforming billboards were subject to the same non-conforming regulations as those legally established in city limits as of the enactment of Ordinance 2007-34. Historic building permit information is not immediately available to determine the age of the signs.
35. Pursuant to RCW 36.70A.370 and following the guidelines prepared by the Washington State Attorney General pursuant to RCW 36.70A.370, the proposed amendments were reviewed by City Staff to assure that adoption of the changes will not result in an unconstitutional taking of property. It was determined that amortizing non-conforming billboards did not prevent other viable economic uses of the properties; no fundamental property attribute was destroyed, derogated or implicated; the minimum period of 18 years of use mitigates the financial impact to the owners and does not unfairly disrupt the owners' investment expectations; and the new amortization code advances a legitimate city interest to implement and accomplish the goals of its Comprehensive Plan.

WHEREAS, the City Council makes the following Conclusions of Law:

1. The procedural and substantive requirements of the State Environmental Policy Act have been complied with.
2. The procedural requirements of RCW 36.70A have been complied with.
3. The proposed amendments are consistent with the Chelan County Countywide Planning Policies and the City of Wenatchee Urban Area Comprehensive Plan.
4. The proposed amendments are consistent with the requirements of Revised Code of Washington, and the Washington Administrative Code.

5. The proposed amendments have been reviewed and processed in accordance with the requirements of Title 10 Zoning, Title 12 Environmental Protection, and Title 13 Administration of Development Regulations of the City of Wenatchee Code.

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF WENATCHEE, WASHINGTON, do ordain as follows:

SECTION I
Findings and Conclusions

The recitals set forth above are hereby adopted as the City Council's Findings of Fact and Conclusions of Law in support of this Ordinance. If any Finding of Fact is deemed more appropriately a Conclusion of Law, or if any Conclusion of Law is deemed more appropriately a Finding of Fact, they are hereby adopted as such.

SECTION II

Chapter 10.72 "Nonconforming uses, structures and lots" shall be and hereby is amended and restated as set forth on Exhibit "A" attached hereto.

SECTION III

The provisions of this Ordinance are declared to be separate and severable. The invalidity of any clause, sentence, paragraph, section or portion of this Ordinance, or the invalidity of the application thereof to any person or circumstances shall not affect the validity of the remainder of this Ordinance, or the validity of its application to other persons or circumstances.

SECTION IV

A summary of this ordinance will be published in the official newspaper of the City of Wenatchee and shall be in full force and effect thirty (30) days after passage and publication as provided by law.

PASSED BY THE CITY COUNCIL OF THE CITY OF WENATCHEE, at a regular hearing thereof, this _____ day of December, 2019.

CITY OF WENATCHEE, a municipal corporation

By _____
FRANK J. KUNTZ, Mayor

ATTEST:

By _____
TAMMY L. STANGER, City Clerk

APPROVED:

By _____
STEVE D. SMITH, City Attorney

EXHIBIT "A"

Chapter 10.72 NONCONFORMING USES, STRUCTURES AND LOTS

Sections:

- 10.72.010 Intent and purpose.
- 10.72.020 Nonconforming uses.
- 10.72.030 Nonconforming structures.
- 10.72.040 Nonconforming lots.
- 10.72.050 Nonconforming signs.

10.72.050 Nonconforming signs.

(1) With the exception of billboards, code requirements applicable to nonconforming on and offsite signs are addressed in Section 10.50.150 Legal nonconforming signs, WCC. Billboards are not a permitted use under Chapter 10.50 Signs, WCC. Legally established billboard in existence at the time of adoption of this ordinance are considered nonconforming signs subject to the provisions of Section 10.72.050(2), WCC.

(2) Billboard sign amortization. Notwithstanding any other provisions of this Title, an existing nonconforming billboard may continue to be used for a period of six years after January 20, 2020. No structural alterations may be made after January 20, 2020, and the said billboards must be brought into conformity by removal before six years after January 20, 2020. The City may elect not to apply any provisions of this section if the removal of a billboard would require the city to pay compensation under any federal, state or other law, including RCW Chapter 47.42.

~~(1) Off-Site Signs.~~

~~(a) Off-site signs in existence on the date of adoption of the ordinance codified in this section, which were constructed, erected or maintained in compliance with all previous regulations, shall be regarded as nonconforming signs which may be continued, maintained and altered by changing the sign face or message, but shall not be allowed to change sign type, such as but not limited to the addition or changing of "effects," and shall not be allowed to increase in size, height or any other manner.~~

~~(b) Off-site signs in existence on the date of adoption of the ordinance codified in this section, which were constructed, erected or maintained in compliance with all previous regulations, which are destroyed by an act of God or accident may be replaced; provided, that the replaced sign meets the standards set forth in subsection (1)(c) of this section.~~

~~(c) Off-site signs in existence on the date of adoption of the ordinance codified in this section, which were constructed, erected or maintained in compliance with all previous regulations, may be moved or relocated on the same parcel of land when development of the property by the property owner requires relocation; provided, however, that the replacement sign conforms to the provisions of WCC 10.50.170 and the following standards:~~

~~(i) The new off-site sign shall be no greater in size (height and area) than the replaced sign;~~

- ~~(ii) The new off-site sign shall be similar in construction to the replaced sign (e.g., electronic versus painted, single face or double faced or V-type);~~
- ~~(iii) No off-site sign is located within 500 lineal feet of another off-site sign;~~
- ~~(iv) No off-site sign is located within 300 lineal feet of a residential zone;~~
- ~~(v) No off-site sign is located within 300 lineal feet of, or oriented to be viewed from, those areas known as Riverfront Park, Walla-Walla Point Park, or Confluence Park, or as the same are subsequently known;~~
- ~~(vi) Off-site signs shall be limited in size to 300 square feet, including the frame area;~~
- ~~(vii) Maximum height of off-site signs shall be 30 feet above grade, measured from the base of the sign support;~~
- ~~(viii) The new off-site sign shall not contain any new "effects."~~

~~(2) On-Site Signs.~~

- ~~(a) An on-site sign which is legally nonconforming as of the effective date of the ordinance codified in this title by reason of restrictions on height, required setbacks or other requirements concerning on-site signs may be continued so long as it remains otherwise lawful.~~
- ~~(b) A nonconforming on-site sign shall not be altered, extended, enlarged, or otherwise physically changed in any manner that would have the effect of increasing its amount or degree of nonconformity.~~
- ~~(c) A nonconforming on-site sign destroyed by any cause to an extent exceeding 50 percent of its cost of replacement using new materials shall only be replaced with an on-site sign conforming to the provisions of this title.~~
- ~~(d) Nothing in this title shall be deemed to prevent the normal maintenance and repair of a nonconforming on-site sign or its restoration to a safe condition when declared to be unsafe by any official charged with protecting the public safety. (Ord. 2010-03 § 1 (Exh. A); Ord. 2007-34 § 2 (Exh. A))~~

Attachment B

TO: City of Wenatchee Planning Commission
FROM: City of Wenatchee Community Development Staff
DATE: December 4, 2019
RE: Staff Report: amendments to Section 10.72.050 Nonconforming signs of the Wenatchee City Code

I. REQUESTED ACTIONS

Conduct a public hearing and formulate a recommendation to the City Council on the proposed amendments to the Wenatchee City Code (WCC) attached as Exhibit A to Section 10.72.050 Nonconforming signs.

II. ENVIRONMENTAL REVIEW

The City of Wenatchee has determined the proposed amendments to the Wenatchee City Code (WCC) will not have probable significant adverse impacts on the environment. The City of Wenatchee has issued a determination of non-significance (DNS). Notice of the environmental determination for the proposed amendments to the Wenatchee City Code was made on November 19, 2019.

III. PUBLIC PROCESS

The City has engaged in an open and ongoing public process to gather information and comment from the public, the development community, reviewing and commenting public agencies, the planning commission, and the City Council. The public process included:

- a website devoted to the amortization of billboards that included the draft materials, meeting notices, and additional information about the process;
- A community sign preference survey that received nearly 500 responses. Survey results are included in Exhibit C;
- A workshop with the planning commission on November 20, 2019.

Preceding this code process, the City has been working on a major update and overhaul of the sign standards in Chapter 10.50 WCC. While the topic of billboards was brought up during the sign code update, the amortization of billboards is being reviewed through a separate process. Some of the information from the sign code update is applicable to this process as well, including the sign survey. The Planning Commission held a public hearing and unanimously recommended that the City Council adopt the updates. The Council hearing is scheduled for December 5, 2019.

IV. AGENCY AND PUBLIC COMMENTS:

All public comments received by the city and a comment response matrix are included as Exhibit B.

V. COMPREHENSIVE PLAN GOALS AND POLICIES

The Wenatchee Urban Area Plan, Planning to Blossom 2037, is a planning and visioning document to ensure that growth and development in the urban area is consistent with the goals of the Washington State Growth Management Act (RCW 36.70A) and done in an orderly and efficient pattern. The plan has been revised and updated to reflect the growth of the community, the development patterns, and the changing environment. The plan includes numerous goals and policies that support the effort to review and update the sign regulations pertinent to the visual appeal, navigability, and . The following goals and policies are from the plan and form the basis of the updated development codes:

Applicable Policies from the Community Design and Healthy Communities Element

- GOAL 1: GATEWAYS -- Improve the visual appeal and navigability of Wenatchee by enhancing gateways into the city, its districts and neighborhoods.
- Goal 1, Policy 1: Develop visually attractive and identifiable gateways at primary entrances to the city using a combination of streetscape, signage, and building orientation to create memorable community entries.
- Goal 6: Dark Sky Design, Policy 6: All signs and lighting (including for streets, buildings, parking areas, and signs) should be designed so that they perform their function without being unduly disruptive to the visual appeal of the area.
- GOAL 7: Aesthetics -- Identify opportunities to improve the visual aesthetics of the community.
- Goal 7, Policy 4: Review sign standards to determine priorities on the amortization of nonconforming signage. Opportunities are available to improve the signage code to better meet community advertising needs while improving the cumulative visual impacts of signage.

VI. PROJECT ANALYSIS

The general purposes of the zoning code are identified in WCC 10.04.020 Purpose: *The general purposes of this title are to promote the public health, safety, and general welfare; to assist in the implementation of the Wenatchee urban area comprehensive plan;* to comply with the Growth Management Act; and to comply with the provisions and objectives of Chapter 44, Laws of Washington, 1935, as amended, and Chapter 17, Laws of 1990, First Extraordinary Session, as amended. In accordance with Chapter 35A.63 RCW, all territory within the corporate limits of the city of Wenatchee shall be classified according to the districts set out in WCC 10.06.015. (emphasis added)

The updates to the zoning code in Title 10 meet the first two purposes in WCC 10.04.020 – the promote the public health, safety, and general welfare and to assist in

the implementation of the Wenatchee urban area comprehensive plan, particularly Goal 7, Policy 4 of the Community Design and Healthy Communities Element.

The proposed amendments to the City Code would establish an amortization date, six (6) years from the effective date of an ordinance signed by the City Council, by which all existing nonconforming billboard signs would need to be removed. All billboards in existence at the time of the ordinance could continue to exist, without any structural alterations, until the amortization date of January 20, 2026. At such time, the billboards would need to be brought into conformance with the code by being removed.

The draft code also allows the City to not implement this timeline where the removal of the billboard requires the city to pay compensation under any federal, state, or other law including the Scenic Vistas Act in 47.42, RCW.

The City of Wenatchee has a history of enacting land use regulations placing limitations on off-site signs and billboards and ultimately prohibiting them. Below is a timeline of ordinances adopted by the city regarding off-site signs:

- a. The City adopted zoning standards, permitting new off-site signs in the General Commercial by Ord 2720 on June 21, 1988.
- b. The City initiated a moratorium on off-site signs by Ord 3017 on November 9, 1993.
- c. The City extended the moratorium on off-site signs by Ord 3046 on January 11, 1994.
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- j. Off-site signs are prohibited in the community by Ord 2007-34 on October 12, 2007.

The Community Development Department has worked closely with the city attorney on the legal basis and the rationale for the six (6) year amortization timeframe. The legal basis for the amortization of billboards is included in suggested findings 23 – 28. The rationale for the 6 year amortization period of six (6) years, as determined by the city attorney, is included in suggested findings 29 – 35.

VII. Staff recommendation

Staff recommends **Approval** of the draft revisions to the Wenatchee City Code in Chapter 10.72 Nonconforming Signs, as attached in Exhibit A, based upon the suggested findings of fact and conclusions of law in section VIII of the staff report.

VIII. SUGGESTED FINDINGS OF FACT AND CONCLUSIONS OF LAW

Suggested Findings of Fact:

1. The City of Wenatchee has adopted the Wenatchee Urban Area Comprehensive Plan and a series of sub-area comprehensive plans pursuant to the Growth Management Act (GMA), RCW Chapter 36.70A, which cover the Wenatchee Urban Growth Area and all incorporated areas within the City of Wenatchee, that have been found to be consistent with each other and with the adopted GMA plans of the adjoining jurisdictions.
2. The City of Wenatchee Planning Commission is responsible for long range planning matters and providing implementation recommendations to assure compliance with the Growth Management Act for the City of Wenatchee Urban Growth Area in coordination with Chelan County and within the incorporated boundaries of the City of Wenatchee. These measures include updates and amendments to the comprehensive plan; development regulations, environmental regulations, and any other rules, actions or regulations deemed necessary to implement the Growth Management Act.
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10. Public comments submitted during the comment period were reviewed by the Planning Commission and included in the official record.
11. On December 11, 2019, the City of Wenatchee Planning Commission conducted an advertised public hearing. The Planning Commission entered into the record the files on this amendment, accepted public testimony, and deliberated the merits of the proposal.
12. The City of Wenatchee Planning Commission has reviewed the entire record and public testimony as it relates to the proposed amendments to the Wenatchee City Code.
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14. The written comments to the survey included community reference to reduce the amount of sign clutter including billboards, encouraged less signs, no new pole signs, and beautifying the entrance to the city, particularly the North Wenatchee Avenue corridor.
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20. GOAL 7 in the Community Design and Healthy Communities Element: Aesthetics -- Identify opportunities to improve the visual aesthetics of the community. *Community responses to the survey indicated a desire to improve the visual aesthetics of the community through removal of non-conforming billboard signs.*
21. Goal 7, Policy 4 in the Cultural and Historic Resources Element: Review sign standards to determine priorities on the amortization of nonconforming signage. Opportunities are available to improve the signage code to better meet community advertising needs while improving the cumulative visual impacts of signage. *The primary purpose of the code revision is to amortize out non-conforming billboard signs. The amortization timeframe balances out the community desire to enhance the gateways to the city and reduce sign clutter with property owner rights to obtain a financial return on their investment.*
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 - t. Off-site signs are prohibited in the community by Ord 2007-34 on October 12, 2007.
23. Billboards legally in existence since the adoption of Ordinance 2007-34 have been determined to be legally non-conforming signs.
24. New off-site billboard signs have been prohibited in the City of Wenatchee since the enactment of Ordinance 2007-34.
25. The Washington Supreme Court has directly addressed nonconforming uses and amortization of uses in many cases such as *City of Univ. Place v. McGuire*, 144 Wn.2d 640, 648–49, 30 P.3d 453 (2001), *Rhod-Azalea & 35th, Inc. v. Snohomish Cty.*, 136 Wn.2d 1, 9, 959 P.2d 1024 (1998), *Northend Cinema, Inc. v. City of Seattle*, 90 Wn.2d 709, 722, 585 P.2d 1153 (1978), and *Seattle v. Martin*, 54 Wn.2d 541, 342 P.2d 602 (1959).
26. Courts have consistently recognized that nonconforming uses are subject to subsequently enacted reasonable police power regulations. See *Goldblatt v. Town of Hempstead*, 369 U.S. 590, 82 S.Ct. 87 (1962).
27. “The policy of zoning legislation is to phase out a nonconforming use.” *Anderson v. Island County*, 81 Wn.2d 312, 323, 501 P.2d 594 (1972). Nonconforming uses are not favored, and may be extinguished, either after a period of nonuse **or a reasonable amortization period allowing the owner to recoup on investment.** *Rhod-A-Zalea*, 136 Wn.2d at 7, 959 P.2d 1024; see also *Choi v. City of Fife*, 60 Wn. App. 458, 803 P.2d 1330. (Emphasis added.)
28. In *Seattle v. Martin*, 54 Wn.2d 541, 342 P.2d 602 (1959) the WA Supreme Court recognized the power of a municipality to require termination of nonconforming uses within a reasonable period of time. The Court adopted a balancing test to determine the reasonableness of the termination period – that test is whether the harm or hardship to the user outweighs the benefit to the public to be gained from termination of the use.
29. Legally non-conforming off-site billboards have been able to recoup 12 years of financial benefit since the City adopted Ord 2007-34 on October 12, 2007.

30. The amortization of non-conforming off-site signs and billboards within 6 years is a reasonable timeframe that adequately balances the harm or hardship to the billboard owner and the benefit to the public gained from the termination of the non-conforming billboards and off-site signs.
31. The amortization of non-conforming off-site signs and billboards within 6 years is a reasonable timeframe for owners to recoup additional remaining financial value on their investment while balancing the community desire for their removal.
32. An amortization period of 6 years together with the 12 years of legal non-conforming use since the prohibition of offsite signs on October 12, 2007 is a reasonable amortization period.
33. An analysis of building permits issued for off-site signs or billboards indicates that the average age as being at least 20 years.
34. Off-site non-conforming billboards have been annexed into the City since the enactment of Ordinance 2007-34. These off-site non-conforming billboards were subject to the same non-conforming regulations as those legally established in city limits as of the enactment of Ordinance 2007-34. Historic building permit information is not immediately available to determine the age of the signs.
35. Pursuant to RCW 36.70A.370 and following the guidelines prepared by the Washington State Attorney General pursuant to RCW 36.70A.370, the proposed amendments were reviewed by City Staff to assure that adoption of the changes will not result in an unconstitutional taking of property. It was determined that amortizing non-conforming billboards did not prevent other viable economic uses of the properties; no fundamental property attribute was destroyed, derogated or implicated; the minimum period of 18 years of use mitigates the financial impact to the owners and does not unfairly disrupt the owners' investment expectations; and the new amortization code advances a legitimate city interest to implement and accomplish the goals of its Comprehensive Plan.

Suggested Conclusions of Law:

1. The procedural and substantive requirements of the State Environmental Policy Act have been complied with.
2. The procedural requirements of RCW 36.70A have been complied with.
3. The proposed amendments are consistent with the Chelan County Countywide Planning Policies and the City of Wenatchee Urban Area Comprehensive Plan.
4. The proposed amendments are consistent with the requirements of Revised Code of Washington, and the Washington Administrative Code.

5. The proposed amendments have been reviewed and processed in accordance with the requirements of Title 10 Zoning, Title 12 Environmental Protection, and Title 13 Administration of Development Regulations of the City of Wenatchee Code.
-

Exhibit A: Draft revisions dated December 4, 2019
Exhibit B: Public comments
Exhibit C: Sign code survey results

EXHIBIT "A"

Chapter 10.72 NONCONFORMING USES, STRUCTURES AND LOTS

Sections:

- 10.72.010 Intent and purpose.
- 10.72.020 Nonconforming uses.
- 10.72.030 Nonconforming structures.
- 10.72.040 Nonconforming lots.
- 10.72.050 Nonconforming signs.

10.72.050 Nonconforming signs.

(1) With the exception of billboards, code requirements applicable to nonconforming on and offsite signs are addressed in Section 10.50.150 Legal nonconforming signs, WCC. Billboards are not a permitted use under Chapter 10.50 Signs, WCC. Legally established billboard in existence at the time of adoption of this ordinance are considered nonconforming signs subject to the provisions of Section 10.72.050(2), WCC.

(2) Billboard sign amortization. Notwithstanding any other provisions of this Title, an existing nonconforming billboard may continue to be used for a period of six years after January 20, 2020. No structural alterations may be made after January 20, 2020, and the said billboards must be brought into conformity by removal before six years after January 20, 2020. The City may elect not to apply any provisions of this section if the removal of a billboard would require the city to pay compensation under any federal, state or other law, including RCW Chapter 47.42.

~~(1) Off-Site Signs.~~

~~(a) Off-site signs in existence on the date of adoption of the ordinance codified in this section, which were constructed, erected or maintained in compliance with all previous regulations, shall be regarded as nonconforming signs which may be continued, maintained and altered by changing the sign face or message, but shall not be allowed to change sign type, such as but not limited to the addition or changing of "effects," and shall not be allowed to increase in size, height or any other manner.~~

~~(b) Off-site signs in existence on the date of adoption of the ordinance codified in this section, which were constructed, erected or maintained in compliance with all previous regulations, which are destroyed by an act of God or accident may be replaced; provided, that the replaced sign meets the standards set forth in subsection (1)(c) of this section.~~

~~(c) Off-site signs in existence on the date of adoption of the ordinance codified in this section, which were constructed, erected or maintained in compliance with all previous regulations, may be moved or relocated on the same parcel of land when development of the property by the property owner requires relocation; provided, however, that the replacement sign conforms to the provisions of WCC 10.50.170 and the following standards:~~

~~(i) The new off-site sign shall be no greater in size (height and area) than the replaced sign;~~

- ~~(ii) The new off-site sign shall be similar in construction to the replaced sign (e.g., electronic versus painted, single face or double faced or V-type);~~
- ~~(iii) No off-site sign is located within 500 lineal feet of another off-site sign;~~
- ~~(iv) No off-site sign is located within 300 lineal feet of a residential zone;~~
- ~~(v) No off-site sign is located within 300 lineal feet of, or oriented to be viewed from, those areas known as Riverfront Park, Walla-Walla Point Park, or Confluence Park, or as the same are subsequently known;~~
- ~~(vi) Off-site signs shall be limited in size to 300 square feet, including the frame area;~~
- ~~(vii) Maximum height of off-site signs shall be 30 feet above grade, measured from the base of the sign support;~~
- ~~(viii) The new off-site sign shall not contain any new "effects."~~

~~(2) On-Site Signs.~~

- ~~(a) An on-site sign which is legally nonconforming as of the effective date of the ordinance codified in this title by reason of restrictions on height, required setbacks or other requirements concerning on-site signs may be continued so long as it remains otherwise lawful.~~
- ~~(b) A nonconforming on-site sign shall not be altered, extended, enlarged, or otherwise physically changed in any manner that would have the effect of increasing its amount or degree of nonconformity.~~
- ~~(c) A nonconforming on-site sign destroyed by any cause to an extent exceeding 50 percent of its cost of replacement using new materials shall only be replaced with an on-site sign conforming to the provisions of this title.~~
- ~~(d) Nothing in this title shall be deemed to prevent the normal maintenance and repair of a nonconforming on-site sign or its restoration to a safe condition when declared to be unsafe by any official charged with protecting the public safety. (Ord. 2010-03 § 1 (Exh. A); Ord. 2007-34 § 2 (Exh. A))~~

From: [Parker Outdoor Inc](#)
To: [Matthew Parsons](#)
Cc: [Stephen Neuenschwander](#); [Glen DeVries](#)
Subject: Re: Public Hearing on Sign Code Update
Date: Tuesday, December 3, 2019 10:20:11 PM

Exhibit B

CAUTION: This email originated from outside of the City of Wenatchee. Do not click links or open attachments unless you recognize the sender and know the content is safe.

Matthew,

Good evening, as a billboard operator I would suggest that you remove the proposal in the code to ban and amortize out billboards in the City.

The City is setting itself up for very expensive lawsuits. Even though I do not operate billboards in the City it would be in the best interest of the City to leave that portion of the Code unchanged. I attended a meeting several months ago and found that the suggestions to the Code to be the same suggestions this firm has proposed for most of the other cities that have hired them. For example monument signs everywhere would cause a traffic hazard for accessing the ROW. Whereas , Pole signs do not. They intend to eliminate pole signs in the City, bad idea. Just a thought a bit late I suppose.

Thanks

[Brad Sourbeer](#)
[President](#)
[Parker Outdoor, Inc.](#)
[Cell: 509-264-9610](#)
[Office: 509-888-6633](#)
[Fax: 509-888-6631](#)
[www.parkeroutdoorinc.com](#)

-----Original Message-----

From: Matthew Parsons <MParsons@WenatcheeWA.Gov>
Cc: Stephen Neuenschwander <SNeuenschwander@WenatcheeWA.Gov>; Glen DeVries <GDeVries@WenatcheeWA.Gov>
Sent: Tue, Dec 3, 2019 3:54 pm

Subject: Public Hearing on Sign Code Update

Good afternoon,

A public hearing on the proposed sign code update is on the agenda for the December 5 meeting of the Wenatchee City Council. The meeting starts at 5:15PM and will be held in the City Council Chambers at Wenatchee City Hall which is located at 301 Yakima St in Wenatchee on the second floor. The agenda and agenda packet can be downloaded from the following webpage:

<https://www.wenatcheewa.gov/Home/Components/Calendar/Event/10540/35?backlist=%2fhome>

The portion of the agenda packet specific to the sign code update can be downloaded at the following address: <https://www.wenatcheewa.gov/home/showdocument?id=22349> The text of the proposed code can be found on pages 10-58 of this portion of the agenda packet.

I encourage you to attend the hearing and share your thoughts on the proposed code amendments with the City Council during the public hearing.

Please let me know if you have any questions.

Thank you

Matt Parsons, AICP

Senior Planner

Community Development Department
City of Wenatchee



1350 McKittrick St., PO Box 519

Wenatchee WA, 98807-0519

Phone: (509) 888-3253 | Fax: (509) 888-3201

Email: MPARSONS@wenatcheewa.gov

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Exhibit C

Wenatchee Sign Code Update Online Survey Summary

August 2019

Overview

Following in-person surveys at a June sign code public open house and stakeholder group meeting, the sign code team developed an online version of the survey. The online version focused on the most critical sign issues which will benefit from the general public's feedback. It had eight multiple-choice questions and one written-comment opportunity.

The English version was online August 2-14 and the Spanish version was online August 6-18. The survey drew a total of 498 respondents (492 English and 6 Spanish). Of those respondents, 159 submitted written comments.

Key Findings

Close to 500 surveys were completed, making it clear that signs are an important topic for both the community's visual character and its economic development. The following are the key findings from the quantitative survey questions:

Strong Preference

- Nonconforming pole signs should be phased out (amortized)
- Signs with multiple businesses should have a limited amount of entries or minimum letter size
- Digital signs should have a minimum dwell time and prohibit video
- Monument signs should be subject to design standards
- Signs should have a limited amount of information based on the speed limit

General Preference

- New pole signs should be prohibited on North Wenatchee Avenue
- There should be an incentive for dark-colored monument signs

Slight Preference

- Channel letter signs may be acceptable in Downtown

Quantitative Data

* There were four answer choices for most questions. The score in the survey summary table is an average of the results, with the following basis:

- 1) Great idea/high priority (2 points)
- 2) Good idea (1 point)
- 3) Neutral/unsure (0 points)
- 4) Bad idea (-1 points) [*Note: Previous in-person surveys were given -1.5 points for this answer.*]

Colors are used to emphasize the level of preference for each of the concepts referenced in the survey questions, base on the scoring averages.

Average Score Color Coding		
Color	Average Score	Preference
Dark Green	>1.25	Strong Preference
Medium Green	1.00-1.25	
Light Green	0.50-0.99	General Preference
Yellow	0-0.49	Slight Preference
Red	<0	Negative

Survey Summary												
Question	Average Score*	Results Chart										
Pole Signs												
I. Should NEW pole signs be prohibited on North Wenatchee Avenue?	0.93	<table border="1"> <caption>Survey Results for Pole Signs Question</caption> <thead> <tr> <th>Response Category</th> <th>Percentage</th> </tr> </thead> <tbody> <tr> <td>Great idea / high priority</td> <td>~42%</td> </tr> <tr> <td>Good idea</td> <td>~25%</td> </tr> <tr> <td>Neutral / unsure</td> <td>~18%</td> </tr> <tr> <td>Bad idea</td> <td>~15%</td> </tr> </tbody> </table>	Response Category	Percentage	Great idea / high priority	~42%	Good idea	~25%	Neutral / unsure	~18%	Bad idea	~15%
Response Category	Percentage											
Great idea / high priority	~42%											
Good idea	~25%											
Neutral / unsure	~18%											
Bad idea	~15%											
Monument Signs												

Survey Summary												
Question	Average Score*	Results Chart										
2. Should monument signs be subject to design standards?	1.10	<table border="1"> <caption>Results Chart Data for Question 2</caption> <thead> <tr> <th>Response Category</th> <th>Percentage</th> </tr> </thead> <tbody> <tr> <td>Great idea / high priority</td> <td>40%</td> </tr> <tr> <td>Good idea</td> <td>40%</td> </tr> <tr> <td>Neutral / unsure</td> <td>8%</td> </tr> <tr> <td>Bad idea</td> <td>12%</td> </tr> </tbody> </table>	Response Category	Percentage	Great idea / high priority	40%	Good idea	40%	Neutral / unsure	8%	Bad idea	12%
Response Category	Percentage											
Great idea / high priority	40%											
Good idea	40%											
Neutral / unsure	8%											
Bad idea	12%											
3. Should signs with dark-colored backgrounds be encouraged?	0.85	<table border="1"> <caption>Results Chart Data for Question 3</caption> <thead> <tr> <th>Response Category</th> <th>Percentage</th> </tr> </thead> <tbody> <tr> <td>Great idea / high priority</td> <td>32%</td> </tr> <tr> <td>Good idea</td> <td>33%</td> </tr> <tr> <td>Neutral / unsure</td> <td>22%</td> </tr> <tr> <td>Bad idea</td> <td>13%</td> </tr> </tbody> </table>	Response Category	Percentage	Great idea / high priority	32%	Good idea	33%	Neutral / unsure	22%	Bad idea	13%
Response Category	Percentage											
Great idea / high priority	32%											
Good idea	33%											
Neutral / unsure	22%											
Bad idea	13%											
Sign Clutter												
4. Should the amount of information allowed on signs be proportional to the posted speed limit?	1.07	<table border="1"> <caption>Results Chart Data for Question 4</caption> <thead> <tr> <th>Response Category</th> <th>Percentage</th> </tr> </thead> <tbody> <tr> <td>Great idea / high priority</td> <td>40%</td> </tr> <tr> <td>Good idea</td> <td>37%</td> </tr> <tr> <td>Neutral / unsure</td> <td>15%</td> </tr> <tr> <td>Bad idea</td> <td>8%</td> </tr> </tbody> </table>	Response Category	Percentage	Great idea / high priority	40%	Good idea	37%	Neutral / unsure	15%	Bad idea	8%
Response Category	Percentage											
Great idea / high priority	40%											
Good idea	37%											
Neutral / unsure	15%											
Bad idea	8%											
5. Should signs used by multiple businesses limit the number of names or require a minimum letter size?	1.27	<table border="1"> <caption>Results Chart Data for Question 5</caption> <thead> <tr> <th>Response Category</th> <th>Percentage</th> </tr> </thead> <tbody> <tr> <td>Great idea / high priority</td> <td>48%</td> </tr> <tr> <td>Good idea</td> <td>40%</td> </tr> <tr> <td>Neutral / unsure</td> <td>5%</td> </tr> <tr> <td>Bad idea</td> <td>8%</td> </tr> </tbody> </table>	Response Category	Percentage	Great idea / high priority	48%	Good idea	40%	Neutral / unsure	5%	Bad idea	8%
Response Category	Percentage											
Great idea / high priority	48%											
Good idea	40%											
Neutral / unsure	5%											
Bad idea	8%											
Downtown Sign Lighting												

Survey Summary												
Question	Average Score*	Results Chart										
6. Should the Downtown lighting standards be updated to also prohibit channel letter signs?	0.48	<table border="1"> <caption>Results Chart for Question 6</caption> <thead> <tr> <th>Response</th> <th>Percentage</th> </tr> </thead> <tbody> <tr> <td>Great idea / high priority</td> <td>20%</td> </tr> <tr> <td>Good idea</td> <td>25%</td> </tr> <tr> <td>Neutral / unsure</td> <td>35%</td> </tr> <tr> <td>Bad idea</td> <td>20%</td> </tr> </tbody> </table>	Response	Percentage	Great idea / high priority	20%	Good idea	25%	Neutral / unsure	35%	Bad idea	20%
Response	Percentage											
Great idea / high priority	20%											
Good idea	25%											
Neutral / unsure	35%											
Bad idea	20%											
Digital Signs												
7. Should digital signs have a minimum image time and prohibit video?	1.14	<table border="1"> <caption>Results Chart for Question 7</caption> <thead> <tr> <th>Response</th> <th>Percentage</th> </tr> </thead> <tbody> <tr> <td>Great idea / high priority</td> <td>48%</td> </tr> <tr> <td>Good idea</td> <td>28%</td> </tr> <tr> <td>Neutral / unsure</td> <td>15%</td> </tr> <tr> <td>Bad idea</td> <td>9%</td> </tr> </tbody> </table>	Response	Percentage	Great idea / high priority	48%	Good idea	28%	Neutral / unsure	15%	Bad idea	9%
Response	Percentage											
Great idea / high priority	48%											
Good idea	28%											
Neutral / unsure	15%											
Bad idea	9%											
Nonconforming Pole Signs												
8. What is your preferred approach for nonconforming pole signs?	N/A	<table border="1"> <caption>Results Chart for Question 8</caption> <thead> <tr> <th>Option</th> <th>Percentage</th> </tr> </thead> <tbody> <tr> <td>Option A - NO CHANGE</td> <td>15%</td> </tr> <tr> <td>Option B - NEW BUSINESS REQUIREMENT</td> <td>25%</td> </tr> <tr> <td>Option C - PHASE OUT</td> <td>60%</td> </tr> </tbody> </table>	Option	Percentage	Option A - NO CHANGE	15%	Option B - NEW BUSINESS REQUIREMENT	25%	Option C - PHASE OUT	60%		
Option	Percentage											
Option A - NO CHANGE	15%											
Option B - NEW BUSINESS REQUIREMENT	25%											
Option C - PHASE OUT	60%											

Written Comments

There were 159 written comments submitted (159 English and zero Spanish). Key themes from the comments are the following:

- Wenatchee has a significant amount of sign clutter, particularly from tall signs and billboards and particularly on North Wenatchee Avenue. The clutter is over-stimulating and makes navigation difficult. The suggested changes would help improve community aesthetics.
- Billboards should be phased out.

- Concern that small businesses in multi-tenant centers will have less visibility with lower monument signs and/or a limited number of business entries on shared signs.
- Concern that monument signs obstruct sightlines and create traffic safety hazards.
- Some businesses may need financial incentives/assistance to improve the quality of their signs (e.g. tax credit, permit fee waiver, etc.). Monument signs are very expensive. There is a concern of unreasonable burdens on businesses that give the community its character and diversity.
- Concern that different businesses have different sign needs, and that uniformity may not necessarily be desired.
- Dark background signs may be a challenge for the visually-impaired (due to lower contrast).
- Video signs should be banned to reduce distracted driving, especially with too-bright signs at night.
- Illuminated and digital signs should be a maximum brightness at night, perhaps even with a cutoff time.
- Historic signs need to be considered, and some should be preserved.
- Concern about costs of planting street trees and blocking businesses' existing signs.
- Some businesses have an abundance of temporary signs. Sandwich board and flag signs need to be addressed.
- Concern with abundance of political signs.
- Directional/wayfinding signs and street name signs are poorly placed throughout the city.

The complete set of written comments is listed below, in no particular order. Comments are shown as originally submitted, except that personally-identifiable information has been removed.

#	Written Comment
1	Sign code updates seem like it should be a low priority focus compared to other more important issues.
2	I am glad the city is looking at this issue. I would love to see the most restrictions taken on businesses when it comes to their signs. I prefer to see dark background signs, none of which are on poles. Please take drastic measures to begin controlling the massive clutter of signs, even in town too. People will find where they need to go, massive signs are obsolete.
3	Large/tall signs and billboards are an eye sore on Wenatchee
4	I'm very happy that we are visiting this issue. I have heard for years that people visiting our town, approaching from the north have a very poor first impression, largely due to the signs. Much of Wenatchee is ugly building, ugly sign, ugly parking lot -- three things that cause a community to lose it's charm and general appeal.
5	Thank you for addressing this challenging topic. The North corridor is the entrance to our beautiful valley for many tourists and residents and should, not only function well (legible signage), but also promote an aesthetic appeal we are all proud of. Poor, distracting or chaotic signage plays a very large role into consumer perception and behavior. The current state of our North end signage may be pushing consumers AWAY from these businesses. I suspect their

#	Written Comment
	business may increase if their signage was legible, high quality with better placement. Thank you!
6	Great ideas overall. Thanks for your work on this very important issue! Our valley is beautiful but the signs are an eye-sore!
7	Some of these suggestions seem like they might make it hard for a new business, or a smaller business, to be seen. For example, I worry about smaller, local businesses in shopping centers who won't have their businesses on signs if the number of businesses on a sign is limited.
8	Nonconforming pole signs need to be aggressively addressed if the city appearance is to be improved.
9	Plant trees, but care for them properly. Electronic signs should go they distract drivers. We have enough clutter everywhere. Less is better.
10	I love this idea! Get did of all the ugly signs and beautify the main streets of Wenatchee!
11	Regarding the dark or light background: concern regarding legibility for those that are visually impaired (color contrast). Something to keep in mind.
12	Please consider accessibility when making decisions. Some changes, such as the suggestion to only allow signs with dark backgrounds, may be inaccessible to folks with low-vision. Please also consult local agencies on safety considerations related to wind and fire.
13	No
14	Thank you.
15	Impose a family/morality code for large visible signage. Billboards for recreational marijuana, AIDS medication, anti-abortion, sex shops, etc are not really things that should be imposed on young children. I'm all for freedom of speech and legal businesses, but don't want it in my face on giant billboards.
16	distracting signs are a safety hazard, in addition to the clutter they present. thanks for taking this on.
17	limit the amount of sandwich boards allowed on sidewalks or walkways.
18	We have a seriously overabundant supply of all types of temporary signs, all over town - some businesses have as many as five or six sail-type signs advertising products or services in addition to their main signage. I would propose that all temporary signs be connected to the sides of the establishment. The business still has the opportunity to advertise but you can take a huge bite out of the clutteriness and overkill of temporary a-frame type, sail-type signs, banners and 'stick in the ground type signs, and they are all right next to the street - sidewalk. This calls for consideration of safety and dangerous distractions taking our attention away from our driving. Thank You This sign code update was sorrowfully needed. I hope we stand strong in making updates that will fit with our vision for the future of Wenatchee.
19	I think that phasing our pole signs would make a big difference in the look and feel of our city.
20	It would make a great deal of difference to our town and presentation to change N Wenatchee Ave in these ways

#	Written Comment
21	Had not heard of trees to be placed on any part of the avenue. Seems like a terrible waste of money and I feel bad for existing businesses who may have their signage blocked.
22	Mix of all types such as on Chelan and Mission Streets, such as single pole, double pole, monument or wall, chosen at discretion of property tenant, is far better than all of one thing. The idea is to make attracting customer easy and profitable. Different types of businesses require different types of signage. A gas station is different from a barber shop is different from a hotel, which is different from a pizzeria, which is different from a clothing store, which is different from a non-profit, which is different from professional offices.
23	Additional way-finding signage for Pybus Market. Way-finding signs directing drivers to underpasses when train is parked in front of Pybus.
24	The Wenatchee Valley geography and surrounding landscape is beautiful but many of the commercial areas in the city are a cluttered mess. Specifically, North Wenatchee Ave, the gateway to Wenatchee, is a horrible eyesore. I am strongly in favor of limiting the signs. In addition, I would like to see all "video" signs banned entirely.
25	Signage is critical for patrons. Ability to light up signs would be great.
26	The signs in Wenatchee are dated, ugly and everywhere. I think it is vital that the city takes measures to restrict signs and remove old tacky signs. It reflects badly on our city. I also don't like all of the Cannabis as you enter the city. They send the wrong message. If Leavenworth can be ultra restrictive to preserve their town then we can certainly take stronger measures to enhance the look of ours town. Right now it's a mess. When we have visitors come visit us they tell us how ugly it is coming down Wenatchee Avenue. I am pro business but I am glad the city is taking measures to fix this. It's doing the responsible thing and will help businesses in the long run. I think the city and business community needs to work together to make this happen. The businesses should have some financial incentives to do it also. Thank you for taking steps in the right direction. 😊
27	I am concerned with the minimum wage increases coming, this kind of budget expense could force a business out of town. I understand the need. I like the idea. I just worry we will se more and more business leave Wenatchee.
28	Thank you - signs are the worst blight on our city.
29	Make the street signs easier to read. Place them out so they are closer to the main road so they can be seen before you drive right up to them.
30	These changes will improve the look of Wenatchee considerably.
31	More trees, less signs, please!!
32	Thank you for working to keep the Wenatchee Valley a beautiful place to live.
33	the huge billboards are very ugly and should also be phased out as well and not allowed to be put back up.
34	Neutral Colors. Not so many bright colors. It makes it look tacky like we are at the circus or vegas.

#	Written Comment
35	<p>The image of a city comes from an amalgam of sources; the business district(s), the residential district(s) and the nature of the Green areas, Parks and Recreation.</p> <p>To me a forest of Pole signs shout out "We are a prosperous City, good economy lost of jobs. That is a good thing. Pole signs do not pose the safety hazard that Monument signs present. Monument signs can block egress and ingress to parking lots OR may block the actual business sought to be advertised. Planting trees along a business district is a bad idea from many points: Damage to infrastructure by roots, falling limbs and leaf clogged drains. The potential economic loss alone militates against planting trees. Dollars used to maintain those trees could be better used in the green areas of the city. On the whole I am opposed to a change in the sign ordinance that puts ascetics over safety.</p> <p>Also, in the event that an existing sign is damaged whether or not it is natural damage (wind storm etc) of man made damage, the sign should be able to be repaired to its former configuration. It would amount to an unlawful taking to do otherwise. Thank you for your consideration.</p>
36	Non Conforming signs can interfere with vehicles, sight pulling out to attempt to get on road or side streets. Conforming signs will take up too much space...
37	Phase out signage option is good if you make a new business coming in replace the sign right away (as in option 2.
38	It will take a long time to change the "sign culture" in Wenatchee. Signage is expensive especially being a "one horse town". Maybe there could be some kind of incentive put in place. Also, I believe large address numbers are important especially in lots with multiple businesses.
39	I hope the signage changes are made. North Wenatchee Ave is such an eyesore.
40	N/A
41	It would be nice if there was a central place that small business's could hang banners for a period of time and it rotate monthly, but meet the city requirements. As there are many small business's that cant afford a sign on the road or dont have space for it due to location and building
42	Thank you for improving the appearance and identification of Wenatchee businesses, especially on both sides and ends of Wenatchee Avenue.
43	Like Leavenworth, be aggressive about better signs and the community will look better!
44	Put directional signs at a different height than business signs and put up directional signs to railroad underpasses PLEASE.. Also, signs showing where riverfront park is, public market, post office etc.
45	This will make a huge difference to the visual appeal of Wenatchee.
46	I think this is a great idea. I come from a community where signage is strictly mandated and it makes for a visually appealing community. When I moved here it felt like stimulation overload and disjointed.

#	Written Comment
	Also, I like the idea of the incentivized black background, just not that they can be bigger if they don't have a white background.
47	What about billboards? Anything change there?
48	Thank you for letting The People voice their opinion!
49	Phasing out the non conforming pole signs would be a major improvement for the city of Wenatchee! We are all for it!
50	I think it's great to look at the codes and update them. N. Wenatchee Ave is an eyesore. That said, costly signs disadvantage small businesses. Please don't put an unreasonable burden on local, independent businesses that give our community precious character and diversity.
51	THANK YOU so so so much for addressing this! It would make our city so much more attractive and safe to make these improvements. Wenatchee Ave is the gateway to our city and it does not make a good impression on visitors. Plus, as a North Wenatchee resident I have to drive by the ugliness every day twice a day on my way to work. THANK YOU THANK YOU!
52	THANK YOU for making this a priority! Driving into Wenatchee is such an eye sore - so happy to see our community caring about and respecting its aesthetics. It would also seem a theory that with GPS and Google, these giant signs are less necessary. Good work, City of Wenatchee!!
53	<p>The City of Wenatchee should immediately change the inaccurate Spanish signs at the Dog Park near the walking bridge.</p> <p>It appears a person, who is not fluent in Spanish used Google translate for the signs. WRONG!!!</p> <p>The Spanish sign when read, is actually encouraging people to smoke tobacco and marijuana.</p> <p>This is absurd. It is unbelievable that the City of Wenatchee has the lack of supervision, and employees who are truly bilingual to accurately provide translation skills when needed. If the City does not have such employees; contracting a real person who is certified in the Spanish should be a high priority.</p> <p>This will make a good story in the WenatcheeWorld, as the City is considering sign code updating. I expect the signs to be taken down by the end of this week.</p> <p>Thank you for your service.</p>
54	Your choices for some questions are two part with only one answer.
55	Please help clean up the visual entry to our town!!!!
56	Phasing out all pole signs in Wenatchee over the next five years would make a HUGE difference in the aesthetics of our city. We need to work on creating a sense of charm and character in this town, especially considering our huge potential as a tourist destination. Strict sign codes and phasing out the existing pole signs is the way to go!!

#	Written Comment
57	No
58	I think it would be good to remove the signs for any business that is not operational. I think it is a good idea to get control of the sign issue, but it will increase costs for the businesses, which will not be popular. As a person who isn't from Wenatchee but travels there regularly, I find all the signs distracting and confusing because there are so many of them and it makes things hard to find with the clutter.
59	It would be interesting and relevant to know the costs (both monetary and in city employee time) associated with updating and enforcing new sign code standards.
60	Is there any regulation that can support proximity to the right of way. Often times signs are right against the sidewalk or prove to be a pedestrian barrier. Can this be addressed with this code update?
61	Lower signs will make it difficult to see oncoming traffic. Why are you spending money to plant trees??? Have you been down Idaho, Oregon, Franklin, and all the other potholed streets? How about you address those before imposing other expensive and unnecessary ventures? Smaller, local businesses would be significantly impacted financially if forced to replace poles. Local business owners already give enough money to the city that claims to support them, but then tries to transform Wenatchee into Seattle, making it financially impossible for our own to stay in business. The dark background example you showed is not that easy to read compared to the white background. When you say "the city wants to know your thoughts", who exactly is it that came up with the ideas?
62	This is the best idea so far...decrease clutter and increase aesthetics with new signs and nice landscaping! Only comment would be to go all in with the phase out option otherwise all the good work will go unnoticed to most. Thanks for addressing this issue!!
63	I would hope there was/is a plan to engage local business as while resident may have a vision may of the option explored will have an economic impact to current and future business. Little discussion was asked about billboards and there use/placement.
64	Glad this is being worked on. The signs coming into town are an eye sore
65	DO NOT allow any signs or ANYTHING that blocks or impedes driver visibility entering and exiting roadway or intersections.
66	Make all the signage come down and make them redo to monument type! Our city looks so trashy with all of the signs - it looks like a free-for-all. The reader boards should be banned altogether - that's worse than texting and driving. Distracted driving at its best.
67	allow a process for approval of variances
68	Restrict video signs (see ug cashcarry on North side) from using blinding white background at night, and blue/red background as it confuses drivers to be LEO.
69	Thank you for doing this!
70	Nothing about sign code, but what about some trees for South Wenatchee Avenue? And how about enforcing codes in South Wenatchee?

#	Written Comment
71	Looks boujee
72	Keep our community how it's been with signs. Many times upgrading communities has had detrimental consequences.
73	Sounds like the city is trying to get every business to conform and all signs be the same. What about the whole diversity movement, does that not apply to signs too? I would say the city needs to address the cheap "homemade" plywood painted signs that some businesses have. There needs to be some guidelines and standards and the signs look professional.
74	Digital signs should also have clear photos, video, writing that can be easily seen and read. Many have a blurry look to them, and that is nuisance.
75	they should be staggered in visibility as some are not readable till you are right there and that is too late
76	North Wenatchee Avenue looks horrible due to sign pollution. Anything and everything the city can do to reduce and prevent this type of pollution is highly appreciated.
77	Thrilled that this issue is being addressed. Visited Banff, Canada years ago - they already knew how to do signs.
78	Wenatchee AVE desperately needs a sign clean up!
79	<p>1. I wouldn't offer an incentive that gives businesses the opportunity to use a bigger sign if they use a dark background; I would work to make dark backgrounds part of the code with the phase out model, but there could be exemptions for franchise owners who also have certain requirements.</p> <p>2. I wouldn't actually vary the amount of information on a sign based on the speed limit; I would have it all be based on a high speed limit as less is always more when driving.</p> <p>3. Instead of signs and billboards having a minimum time for each message to be displayed, I would personally phase out all signs that have revolving messages.</p>
80	The brightness of any lit sign needs to be at a maximum standard so as not to blind drivers at night.
81	I really wish we'd spend our tax-payers money on ACTUAL community problems (like mental health, homelessness) than on how a damn sign looks outside a TAX-PAYING establishment. Who cares if people are dying, as long as Wenatchee Ave. looks uniform for our tourists! :) As long as you're wasting money on stupid proposals like this, you'll never get a vote on a tax increase/retention from me. Do better with OUR money!
82	Safety is priority. Aesthetics is a sentiment. Free speech is a right. Take each of your ideas and plans and see what category they fit in to. Furthermore, tax dollars pay the bills and your salary. Perhaps not limiting the possibility of sales from lack of visibility should be paramount. Sales=tax dollars. Plain and simple. Thank you for your consideration.
83	The pole signs and digital signs on North Wenatchee Ave are a major distraction in an already congested and dangerous area. This area should be a priority.

#	Written Comment
84	<p>The photos used in the survey were chosen to skew the results in favor of the City's preferences. For example: in the downtown channel letter photos, the photos shown were not depicting downtown architecture. The photos were representative of strip mall signage, which is clearly not the look or feel of the downtown corridor. There are several types of lighting that can be used in channel letters and the main styles were not represented including reverse lit channel letters which is a very classy style. I believe the results from this survey will be incomplete and biased.</p> <p>While the design requirement suggestions for monument signs are visually appealing, they are very expensive and may not be afforded easily by small, local businesses. I believe this will show preference to franchises over local, family businesses.</p> <p>The more restrictive the code, the more difficult to manage. Is the City prepared to take on more administrative responsibility in this area?</p> <p>How does the City foster positive relationships with the businesses that drive the economics of our town? Is a more restrictive sign code going to help or hinder relationships and City trust?</p>
85	<p>On the first slide, you should define the difference between a pole sign and a monument sign for those of us who did not know. I am reluctant to add regulations/additional fees to businesses trying to start up, or take away iconic signage/recognition from existing long-standing businesses.</p>
86	<p>Stop trying to gentrify Wenatchee and start focusing on issues that actually matter and impact low-income communities. We have a housing crisis, invest your efforts in that. The sign code is to attract more tourism and affluent folk which we do not need.</p>
87	<p>I am glad to see this issue finally being addressed</p>
88	<p>Enforce any new signage regulations wit in one year of the regulation. If the old sign is not changed then take the prerogative to remove it at the one year date. Don't let the old signage keep remaining in place.</p>
89	<p>With how people drive around here businesses will pay a lot of money for fancy new signs only to have idiot drivers run them over....</p>
90	<p>I'm glad you are doing this. I think Wenatchee Avenue looks cluttered and unappealing. Updating the code and implementation of it will beautify the city.</p>
91	<p>All signs need to look professional.</p>
92	<p>Changing of the piles as little as 8t may seem could cost people their business or not being able to hire people. Signage and things are quite expensive. Yes it would be nice to have it more legible but it should not be forced. Maybe if their was an incentive or help but not required.</p>
93	<p>Super bright digital signs very distracting, ie, bright sign on URM is almost blinding at night.</p>
94	<p>I think the lower signs are a great option! They look nicer and I feel they are safer being at eye level for drivers.</p>

#	Written Comment
95	The LED signs need to have a brightness restriction and maybe required to be Turned off during certain hours of the night.
96	Yes. I support an update to the Wenatchee sign code, to phase out nonconforming signs. The business climate of Wenatchee will be the better for it.
97	Business owners need more say in what and how they represent themselves. Sky drones with drone on top of sign looked awesome. Cant base entire decision on vehicle access. For example new taco time sign blocks views of on coming traffic, a pole sign would be safer. 2nd, at some point older signs could become historic, and the design standard of this decade with low signs and brick borders might now work with an APP based culture, which is forthcoming.
98	Put limits in the size. Such as Harbour Freight is too massive and tacky.
99	New signs block the views when you are trying to enter into traffic. There should be requirements, just like in residential areas that give a clear view of all posted street signs, speed limit, stop signs, etc. As well as a clear view of vehicles. Focus there before taking more money from businesses in our area.
100	good idea
101	I like where the City of Wenatchee is heading in regards to it adding class to and cleaning up it's appears to the visiting and existing person.
102	Update street name signs and make the clear and visible alot of the street name signs can not be seen till your about to pass them due to how old they are and alot of them are being blocked by trees and bushes. It would be nice to have them replaced with more visible signs.
103	Do away with the 20% white space allowed over the max area allowed. It's confusing and can be taken advantage of once the sign is initially allowed
104	You wanna pass new laws you should be passing new laws to expand our freedom. Not restrict it.
105	Save Marts big Semi advertising Beautyrest should be removed. Its ugly, plus when trying to turn it blocks the view to see if traffic is coming, big hazard. There are signs advertising a business x blocks ahead. Its confusing because you think it is the location of the business when it is still x blocks ahead. Also, it adds to the clutter.
106	I am glad this is being looked into- it would really make wenatchee look nice if these suggestions were implemented!
107	Hopefully another survey will address other sign options like flag signs and sandwich board
108	Would these changes include sign clutter in construction zones?
109	I find all the signs VERY distracting as a driver. N. Wenatchee Ave looks so bad with all the signs. A improved code will help .
110	I'm so glad that this has finally come up for discussion. Entering Wenatchee from either the north or south, our city presents itself as one, long, cluttered strip mall. The only exception being a few nice blocks downtown, but as most visitor traffic enters from the north, a huge

#	Written Comment
	percentage of tourists don't make it that far. The addition of trees and the reduction of signage will make a huge difference. First impressions have been ignored for much too long.
111	Certain signs are part of Wenatchee's character and should be left in place. However some design options such as dark backgrounds would be a great idea.
112	Seems pointless to enforce.
113	Limit or prohibit reader boards
114	There should be something in the code about minimizing light pollution, but still lighting the signs at night.
115	I'm so glad you're making changes. North Wenatchee Avenue is so ugly and garish with its clutter of brightly colored signs and little greenery. These changes you are asking about would be a very welcome change and make our city's northern entrance much more inviting.
116	Focus on safety for the traveling public and pedestrians, not micromanaging businesses.
117	<p>Why is it businesses must conform to your sign codes, and banner bans</p> <p>But those running for political office who contribute nothing get exceptions?</p> <p>Stop with the regulations, policies, and rules. Havn't the dems in Olympia made it hard enough?</p>
118	Pole signs are easier for my eyes to see while I'm driving, and do not block my vision when turning onto Wen Ave from a driveway. I am against any signs that diminish the view of traffic from business driveways when turning onto Wen Ave. Design standards for signs should ensure the view of traffic is not diminished from the current signs.
119	The city has nothing better to do with time and money than to micromanage free enterprise?
120	Wenatchee is hideous. Look at issaquah for a guide to development better city planning and beautification. They have low eye level signs, requirements for how buildings look, mediums in the roads filled with trees. It's a growing city, but still attractive. Wenatchee will not attract new business looking like it does.
121	If painted, keep fresh
122	Our current signage and billboards when you come into town gives the avenue a cheap appearance.
123	Businesses need to be seen and to be found. They do this through signage. Don't plant a bunch of trees on North Wenatchee Avenue! Don't make new businesses tear down perfectly good pole signs when they move in to a new spaces that already have one. There are already height and size restrictions, and the ideas on limiting the amount of messaging on a particular sign are good. I don't want to drive the length of Wenatchee Avenue 20-30 years from now and have all the signs look the same. Individuality and "non-conformity" are not bad things!
124	Personally think it's a good idea. One that is long overdue. Happy to take part in this survey. Thanks.
125	Appreciate that you are taking a look at changing the sign code. North Wenatchee Avenue looks cluttered and trashy.

#	Written Comment
126	The high concentration of businesses and their giant ugly signs along N. Wenatchee Ave makes our town look like an ugly non-stop strip mall. It is the first impression that many people get of Wenatchee and it's terrible. I would be delighted to see some improvements made!!
127	The clutter of signs in Wenatchee do make our community "junk" looking.
128	Eliminate ALL digital signs
129	Very happy to hear that someone is addressing this issue. When returning to Wenatchee, one can't help but be impressed by the beautiful area we live in...that is, until you hit the avenue. Not to single them out, but does Harbor Freight really need a sign that can be read from two miles away? This signage blight needs to go!
130	Glad you are looking at this. Looking forward to what North Wenatchee Avenue will look like in the future.
131	Thank you for asking for input.
132	I appreciate that Wenatchee is addressing this issue. I don't want Wenatchee Ave to look like Aurora Avenue in ten years.
133	North Wenatchee Ave is the gateway to the city. Make it look nice. Make Wenatchee proud.
134	The flag signs by starbucks in north wenatchee block the view of oncoming traffic. Flags should be moved further back
135	Please consider the after dark light pollution so we can once again enjoy the stars.
136	Prohibit all digital signs. North Wenatchee is a blight with all of the signage. It is a terrible "welcome" to our sweet town. We look like a seedy stripmall
137	<p>Downtown signage code should include basic design standards portable signage like A-frame message boards. Currently there are both good and bad example of them downtown. Advertisement signage written in sharpie marker should be replaced, as it is not professional. Updating and enforcing signage codes will make Wenatchee a more welcoming and inviting place for both locals and tourists.</p> <p>I myself have experience on signage development both in grad school and professionally at an architecture firm. I would love to see Wenatchee design a cohesive signage code.</p>
138	This is something that should not involve government regulation, but needs to remain at the discretion of the business which needs to determine what works best for that business.
139	traffic signs are far to heavy, blended in and unreadable along the same sample areas. On portions of Wen Ave, Western, etc. there are traffic signs of one reason or another every 30-50 feet.
140	The signs throughout town are a terrible distraction, and they make our town less appealing. I have been waiting for years for a change!
141	This is just hoop jumping. You will do what you are expected to do. We must look like Bellevue.
142	If a phase out of pole signs is chosen everyone will wait until they are forced to do it because of the cost. This will be a contentious issue in the business community. Perhaps combine the two

#	Written Comment
	concepts - new businesses who acquire a property with a nonconforming sign are given 5 years to replace the sign. This would help new businesses who are already facing a lot of costs upfront. Perhaps some sort of tax or fee credit could be offered to encourage early compliance.
143	Street tress while attractive are an additional expense to purchase,install and irrigate, where will that money come from? Street trees will block visual cues to drivers looking for a business. Street trees will have no appeal in winter. Street trees will contribute to clogged catch basins and their maintenance. Please do not install street trees.
144	Thanks for doing this survey. The signage in our town really is out of control and a blight on our community.
145	Thank you for addressing this. I think the signage on Wenatchee Ave is an eye sore.
146	It is about time. The entrance to our city is embarrassing because of the inordinate amount of signs lining Wenatchee Ave.
147	"Digital" signs are a huge distraction to drivers and should not be allowed. Distracted driving causes crashes. Thank your interest in public opinion regarding this issue.
148	Putting signs at same height and close together causes traffic to slow down to read signs possibly causing rear end accidents.
149	What about window signage
150	I am embarrassed for the view that visitors first see when they enter Wenatchee via N Wenatchee Ave. I am deeply disturbed that the beautiful view of the scenery is marred by the trashy appearance of all of the uncontrolled signage.
151	Banners should be temporary. There are several businesses around town that are using banners as permanent signs. Businesses should not be allowed to fly banners longer than 6 months during the year.
152	LEAVE THEM ALONE
153	Businesses need exposure from their signage. More restrictions and regulations leave less choices for businesses to stand out. Please don't plant unnecessary sign-blocking trees on North Wenatchee Ave in order to force everyone into compliance.
154	Continue street tree requirement, have signs be placed considering the tree locations.
155	Hopefully this will help clean up the clutter of signs on North Wenatchee Avenue and make for a nice entrance to our city. Thank you!
156	My biggest gripe is seemingly the barely or unregulated repulsive proliferation of political signs which utterly destroy the neighborhood they are in. Hate them.
157	Monument signs should not be the only option because they can cause major blind spots for drivers pulling in and out of businesses.
158	Encourage good design with quality materials. Differentiate districts. What about sandwich boards and temporary signs?

#	Written Comment
159	Signs should be accessible for persons with low visual ability. Light background with contrasting lettering is most common.

From: [Stephen Neuenschwander](#)
To: [Matthew Parsons](#)
Subject: FW: Proposed Billboard Sign Amortization - City of Code Section 10.72.050
Date: Thursday, December 5, 2019 7:36:25 AM
Attachments: [Wenatchee-01 \(12.4.19\).pdf](#)

For the record.

From: Vanessa Martinez <vanessa.martinez@streamkim.com>
Sent: Wednesday, December 4, 2019 5:07 PM
To: Stephen Neuenschwander <SNeuenschwander@WenatcheeWA.Gov>
Cc: Theodore Stream <ted.stream@streamkim.com>; Nour Rizvi <nour.rizvi@streamkim.com>; 'dhalliday@lamar.com' <dhalliday@lamar.com>; 'nschreibeis@lamar.com' <nschreibeis@lamar.com>
Subject: Proposed Billboard Sign Amortization - City of Code Section 10.72.050

CAUTION: This email originated from outside of the City of Wenatchee. Do not click links or open attachments unless you recognize the sender and know the content is safe.

Good evening,

Attached please find correspondence in the above-referenced matter sent on behalf of Ted Stream. Original to follow via overnight delivery.

Thank you,

Vanessa Martinez

Legal Assistant to Ted Stream, Robert Hicks and Nour Rizvi

Stream Kim Hicks Wrage & Alfaro, PC
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Attachment C

December 4, 2019

VIA EMAIL (sneuenschwander@wenatcheewa.gov)
ORIGINAL BY OVERNIGHT MAIL

Planning Division
City of Wenatchee
1350 McKittrick Street, Suite A
Wenatchee, WA 98801

Re: Proposed Billboard Sign Amortization - City Code Section 10.72.050

Dear Honorable Members of the Planning Commission and City Council:

This office represents The Lamar Company, LLC (“Lamar”) with respect to the legal nonconforming billboards located in the City of Wenatchee (“City”). As you may know, Lamar is a national outdoor advertising company that was founded in 1902. Lamar provides outdoor advertising opportunities on billboards (including both static and digital billboards) with inventory of signs located throughout the county – 25 of which are currently located within the City limits.

As a threshold matter, Lamar is vehemently against the proposed Section 10.72.050 the Wenatchee City Code (“Proposed Ordinance”), which requires that legal nonconforming signs be removed within five (5) years of the Code’s effective date. The City’s purported amortization schedule is an unlawful taking as it does not constitute just compensation. Instead, the Proposed Ordinance violates the most basic sensibilities of the United States Constitution and places a “subjective value” of our billboards at a mere worth of 5 years – a price that is woefully undervalued and certainly not “just”. The Proposed Ordinance would merely reallocate highly valued property to lower valued use with, seizing Lamar’s property and business, something that runs afoul of recognized law. These arguments are bolstered by courts decisions that have recognized that an amortization scheme for sign removal has nothing to do with the fair market value nor does it constitute just compensation. *See* enclosed letter from the US Department of Transportation Federal Highway Administration specifically rejecting the theory that an amortization scheme is lawful and noting that just compensation in cash is required under federal law. *See also* supporting letters from various government officials rejecting amortization schemes.

Planning Division
City of Wenatchee
December 4, 2019
Page 2

In addition to the unconstitutionality of the Proposed Ordinance, adopting such an amortization schedule would for sure harm the City's competitive and thriving business community by thwarting advertising options. Advertising on billboards has been proven to be a cost-effective means to encourage business. The Proposed Ordinance would strip this means from the community, making it more difficult for local businesses to thrive. Billboards fulfill part of the overall economic success of a business and should remain in the City with reasonable regulations. Continued efforts by the City to remove legal nonconforming signs without proper payment will result in the City exposing itself to claims for inverse condemnation.

In addition, it is a mistake to believe the amortization proposal can be used to remove billboards in the City over time, since the majority of the billboards located within the City are adjacent to the National Highway System and thereby subject to the provisions of the Federal Highway Beautification Act. Federal law would of course preempt any contradictory local decisions.

We would ask the City of Wenatchee to reconsider and cease all efforts to take private property without just compensation. If not, Lamar would have no choice but to enforce its rights in a court of law.

Very truly yours,



Theodore K. Stream, of
STREAM KIM HICKS
WRAGE & ALFARO, PC

TKS:nar
Enclosures

cc: Client *(via email)*
Wendi Loup *(via email)*
Anna Bager, OAAA President & CEO *(via email)*

COPY



U.S. Department
of Transportation
Federal Highway
Administration

Wisconsin Division

Highpoint Office Park
567 D'Onofrio Drive, Suite 100
Madison, Wisconsin 53719-2844
608-829-7500

July 8, 2004

IIDA-WI

Mr. Frank J. Busalacchi, Secretary
Wisconsin Department of Transportation
4802 Sheboygan Avenue, Room 120B
Madison, WI 53707-7916

Attention: Mr. David Vieth, Director
Bureau of Highway Operations

Subject: City of Greenfield 1998 Signboard Ordinance
and Inquiry from Clear Channel Outdoor, Inc.

Dear Secretary Busalacchi:

It has come to our attention that the City of Greenfield passed a City ordinance on July 21, 1998 that provides for the removal of all off-premise signs (19 structures) using an "amortization period" that would allow the off-site/premise billboards to continue for a period of twelve years after the effective date of the City ordinance before removal is required. As we understand the City's ordinance, all outdoor advertising signs that are not in compliance with the new billboard ordinance would have to be brought into compliance or removed. We also understand that there are no provisions in the ordinance for cash compensation for billboards that may be removed in the future as a result of the ordinance.

We understand the City's vision and strategies to beautify Greenfield, and we support the City's efforts to provide for effective control of outdoor advertising; however, we would be remiss if we did not notify you and the City of the possible violations of federal statutes, including possible consequences thereof, should the City effect their amortization ordinance of the billboards adjacent to the federal-aid primary system (FAP). For purposes of outdoor advertising control, the FAP is defined under Section 131(t) of 23 U.S.C.

Section 131(g) of Title 23 U.S.C. requires that "just compensation shall be paid upon the removal of any outdoor advertising sign, display, or device lawfully erected under State law and not permitted under subsection (C) of this section, whether or not removed pursuant to or because of

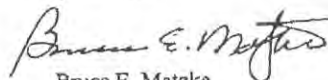
2

this section." In other words, the 1965 Beautification Act requires the payment of cash compensation for the taking or removal of any sign. Cash compensation for the taking or removal of a lawfully erected outdoor advertising sign is required under Section 131(g) regardless of the classification of the sign as real estate or personal property.

In summary and in consideration of the aforementioned 1965 Act cash compensation requirements, FHWA would look to the City and/or the State to provide for the required cash compensation upon the removal of any legal billboards along the FAP routes through Greenfield. We hope that all parties can work together to assure that state and federal billboard control laws are not compromised or violated.

In the event Greenfield causes the removal of signs subject to control under 23 U.S.C 131(g) without payment of just compensation, FHWA would look to the WisDOT to provide the required cash compensation. Failure of the City and/or the State to pay cash compensation would subject WisDOT to the 10% penalty of future apportioned Section 104 highway funds. Accordingly, we suggest that you address this potential problem with the City of Greenfield.

Sincerely,



Bruce E. Matzke
Division Administrator

2

Governor Jeb Bush (R) letter upon signing Anti-amortization Law

April 4, 2002
The Honorable Katherine Harris
Secretary of State
PL 02 The Capitol
Tallahassee, Florida 32399

Dear Secretary Harris:

I hereby transmit to you with my signature Committee Substitute for House Bill 715, an act relating to transportation. Committee Substitute for House Bill 715, among other issues, provides a mechanism for the removal of billboards in Florida's counties and cities.

Over the last 20 years, local communities have launched road beautification programs intended to remove what many consider to be the blight of billboards in our communities. Under this bill, localities may still continue with that process. The issue the bill seeks to address, however, is how localities are to compensate billboard owners for damages that result in the takings of these billboards. The bill also seeks to balance two fundamental governing principles – that we should whenever possible allow local governments to govern their own affairs, and that Floridians should be protected in their private property from government takings.

In this particular bill, these principles appear to compete. Local communities seeking to remove billboards have employed a compensation policy called amortization. Under this policy, billboard owners would be allowed to keep their billboards intact for a predetermined period of time, established by the locality, in order to recoup as much of their investment as possible.

Upon expiration of this time period, localities could then force the removal of the billboards without paying compensation to the billboard owners. Localities believe this is an appropriate means for compensation. On the other hand, billboard owners see forced removal of their property much like the forced removal of a business or a home. The takings of a business or a home would trigger a different compensation mechanism known as “just compensation” – localities would have to pay the fair market value of the property taken, rather than waiting for a period of time and then taking the property without compensation.

Hence, the issue: Localities seek to utilize amortization in order to remove billboards without having to expend taxpayer dollars, while billboard owners desire to be paid fair market value for the takings of their property.

This issue is especially difficult since I am a firm believer in both local control and property rights. I also believe that CS/House Bill 715, while not perfect, strikes an adequate balance between important principles.

First, this bill seeks to avoid the thorny issue of compensation altogether by first promoting the relocation of billboards. Unlike earlier legislative amendments on this issue, this legislation provides for a negotiation and arbitration process designed to encourage relocation of a billboard as a first remedy. In fact, many billboard owners would prefer to have their billboards relocated.

This is evidenced by the fact that already many agreements between billboard owners and localities are settled by relocation. In CS/House Bill 715, billboard owners and localities are encouraged to negotiate for relocation. If those negotiations fail, a process for non-binding arbitration is established. Only if arbitration fails to yield a satisfactory resolution does the requirement for just compensation take effect.

Second, this bill does not prohibit localities from passing ordinances banning all future billboards going forward. Rather it deals only with existing billboards and how they should be removed. It also still permits amortization as a negotiation tool for communities. There is nothing in this bill that prevents communities from offering a longer amortization in lieu of just compensation – in fact, some commentaries on this subject suggest amortization is a more lucrative form of compensation for billboard owners. If that is the case, an individual billboard owner may still agree to an amortization period in place of fair market value, if he or she finds that will be a more appropriate form of compensation.

Third, the legislation specifically recognizes by exemption existing billboard agreements between billboard owners and localities, as well as communities with amortization periods completed that are in litigation with billboard owners as of January 1, 2001. These two exceptions alone would exempt a good many communities, including some of Florida's largest counties and cities, from the impact of this bill.

Fourth, the requirement for just compensation for billboard removal in this country is the rule, not the exception. Already, the State of Florida pays just compensation when it seeks to remove billboards. In 39 other states, the law provides for just compensation. In addition, the bill is consistent with the federal government policy that provides just compensation for the removal of billboards on all federal-aid highways.

Fifth, the bill would treat billboard owners and billboard tenants as we treat other property owners and other business tenants. Instead of suggesting that a billboard is property that is less deserving of protection against government takings, this bill would level the playing field, treating billboards as we would treat a leased or owned restaurant or a gas station that is removed by government to advance a public

purpose. There is no priority interest given to billboard owners; there is no change in eminent domain law.

Sixth, the payment of just compensation by counties and cities is not necessarily prohibitive. In editorials around the state opposing this legislation, it is often remarked that paying just compensation will bankrupt cities or force them to abandon their beautification programs. While the cost of removing billboards may be hard to quantify, the Florida Department of Transportation's (DOT) own experience in billboard removal has been fairly reasonable. For example, in a random survey by DOT of its eminent domain proceedings with billboards, it found that in only seven cases of the 33 proceedings surveyed, billboard owners were compensated at an amount greater than \$100,000 for signs located in heavy urban areas and along major interstates. About half of the eminent domain settlements resulted in compensation of less than \$50,000.

Finally, the bill is the product of a two-year negotiation process. When this issue arose a number of years ago, I asked my office to initiate discussions between both the billboard owners and local governments. While these meetings failed to yield consensus, it did have the effect of moderating the initial legislative proposals – proposals that did not include exemptions, clarification that the bill applies only to “lawfully erected” signs, and an arbitration process designed to encourage relocation. Nevertheless, the version of the proposal now under consideration did go through ten committee hearings over the last two years, was debated five times before the full House and five times before the full Senate, and has passed the Legislature not once, but twice.

Some opponents of this legislation suggest that the bill is unfair because billboards for tax purposes are valued as tangible personal property, and that may be less than the valuation of the billboard for eminent domain purposes. Although this issue is irrelevant to the bill since property tax appraisals cannot by law be considered in eminent domain proceedings, it is important to point out that property appraisers in valuing a billboard may consider cost, market and income approaches. In reality, however, our research has found that many counties rely solely on cost at their discretion. The Legislature in its wisdom recognized the need to review valuation of signs by calling on the Office of Program Policy Analysis and Government Accountability (OPPAGA) to study the value of offsite signs in relation to the valuation of other commercial properties for ad valorem tax purposes, including a comparison of tax valuations from other states.

In sum, CS/House Bill 715 protects the rights of property owners while still allowing local governments the latitude to remove or relocate billboards. Under the bill, localities can still use their home rule power to remove a billboard. If they choose, localities may now remove billboards immediately, without having to wait for years. Or, they may offer relocation or amortization as a settlement. Their existing agreements with billboard owners are still honored. It allows for the continuation of court cases in progress before January 1, 2001, and it preserves all existing and future ordinances not in conflict with the just compensation provisions of the law.

CS/House Bill 715 also stands for something in which I strongly believe. As a conservative, it is my opinion that we must always be wary of the government taking or regulating away the use of property, tangible or real, whether direct or indirect. It should not be something taken lightly, and it should not be something made too easy. The taking, whether direct or indirect, of private property is serious business. It should require extraordinary effort on the part of government to effectuate. Imagine a government that could amortize your home or your business as a means of taking your property? Such a failure of the checks and balances of government power would be pernicious. Similarly, we, as a people, do not deserve the further diminishment of our rights by marginalizing how government compensates us when it does actually utilize its extraordinary power to take property.

For these reasons, and due to the bill's attempt to balance the rights of cities and counties with the rights of property owners, I hereby approve CS/House Bill 715.

Sincerely,
Jeb Bush
JB/pan
Attachment

Governor Bill Owens (R) letter upon signing Anti-amortization Law

STATE OF COLORADO
EXECUTIVE CHAMBERS
136 State Capitol
Denver, Colorado 80203-1792
Phone (303) 866-2471
June 11, 2003

Ms.Carolynne White
Staff Attorney
Colorado Municipal League
1144 Sherman Street
Denver, CO 80203

Dear Ms. White:

Thank you for writing to me to express your concerns about recent property rights legislation passed by the General Assembly. It is good to know of your views on this important subject.

I am aware that a number of local government officials are concerned about the impacts of two bills in particular on their ability to condemn or amortize properties. House Bill 1089 allows property owners to be reimbursed for legal costs incurred during a successful challenge of a condemnation authority's offer of property acquisition, but only if the court awarded the owner a settlement amounting to more than 130 percent of the last written offer by the authority. Senate Bill 251 prohibits a local government from enacting or enforcing an ordinance that requires a nonconforming property use that was lawful at the time of its inception to be terminated or eliminated by amortization.

As you may know, I signed both H.B. 1089 and S.B. 251 into law on June 7, 2003. As a strong supporter of the rights of private property owners, I believe that condemning authorities must adhere literally to the “just compensation” clause of the Fifth Amendment to the U. S. Constitution. Furthermore, “just compensation” should include any reimbursement of costs incurred by the property owner in pursuing his or her constitutional rights. H.B. 1089 was drafted with the intention of ensuring this right to property owners who would otherwise be victims of “low ball” offers by condemning authorities. S.B. 251, in a similar manner, is meant to ensure that property owners are properly compensated for any change in property use codes by a local government.

Although we may disagree about the merits of these new laws, I appreciate hearing your views on this legislation. I look forward to working with you in the future on issues affecting local governments.

Sincerely,

Bill Owens
Bill Owens Governor

The Federal Highway Administration (FHWA) has stated that Just Compensation is cash compensation

After the Highway Beautification Act was amended in 1978, to require just compensation for takings, FHWA headquarters sent the following clearly worded memo to its regional offices:

“Question: Are we to measure the value of ‘just compensation’ without regard to the remaining economic life of the sign under establishment of amortization periods?”

“Answer: The March 6, 1979, opinion coupled with clear legislative history of the 1978 amendments, indicate that the Congress intended to completely reject amortization for signs affected.”

(FHWA memo signed by G. B. Saunders, Chief, Real Property Acquisition Division, dated May 30, 1979)

South Carolina DOT Letter to City of Myrtle Beach

SCDOT LEGAL DIV
South Carolina
Department of Transportation

August 1, 2003

VIA FACSIMILE -(843) 918-1028

The Honorable Mark S. McBride
Mayor, City of Myrtle Beach
Post Office Box 2468
Myrtle Beach, SC 29578-2468

*Re: Ten Percent (10%) Reduction in Federal-aid Highway Funding Due to Unlawful
Removal of Signs Subject to Highway Advertising Control Act*

Dear Mayor McBride:

Based upon statements made by Lyle H. Kershner, on behalf of the City of Myrtle Beach, in a recent deposition in the Clear Channel Outdoor vs. City of Myrtle Beach, etal (City) lawsuit, it appears that the City may not be aware of the ramifications that its sign removal ordinance could have on Federal-aid highway funding in this State. The City's sign removal ordinance provides that billboards, permitted by the SCDOT pursuant to the Highway Advertising Control Act (S.C. Code Ann. §57-25-110- et seq. (1991, as amended), can be removed through an amortization scheme. By letters dated November 29, 1999 and July 25, 2001, the SCDOT has previously notified the City that it is SCDOT's and Federal Highway Administration's (FHWA's) position that the City's sign removal ordinance, because it allows amortization rather than compensation, violates federal law. These letters also informed the City that federal highway funds to this State were in jeopardy of being reduced if the City continued in its efforts to remove the signs by amortization.

I am advised by SCDOT's attorney that Federal and State law specifically requires compensation upon the removal of a state permitted sign. I am further advised that FHWA takes the position that amortization is not compensation and therefore, to allow the City's ordinance would not be considered "effective control" of these signs under federal law. As I understand it, Federal law allows the FHWA to penalize the State for failing to effectively control signs. Specifically, federal law provides that "[F]ederal-aid highway funds shall be reduced by amounts equal to 10 per centum of the amounts which would otherwise be apportioned to such State under section 104 of this title, until Such time as such State shall provide for such effective control." 23 USC §131 (b)

The reduction of federal-aid highway funding is s serious matter that impacts the State at all levels of government. If this stiff penalty is imposed, highway

improvements, which benefit the City and Horry County, will be impacted. While the City may be under the impression that the federal penalty will not affect it, I assure you the long-range transportation needs of your community, as well as those of Horry County, will be affected. These federal funds are used not only to supplement City projects, but also are used toward County projects, bridge repair and replacement projects, resurfacing projects, enhancement projects and safety projects in your community. Therefore, I am forwarding a copy of this letter to the Waccamaw Regional Council of Governments Waccamaw COG) and the Grand Strand Area Transportation Study (GSATS) to advise them of potential impacts to their future federal funding and transportation needs if the City maintains its course of action.

We would like to discuss this matter with you in an effort to prevent the loss of federal funding to the City and Horry County. The SCDOT is available at your convenience. We ask that you advise us of the earliest date that you are available so that the meeting can be confirmed.

I appreciate your prompt attention to this matter.

Sincerely,

Don Freeman
State Highway Engineer

/bmw

cc: Honorable Thomas Keegan, GSATS
Mayor James Kirby, Waccamaw
COG
C. Kenneth Thompson, Waccamaw Regional Planning & Dev. Council
All Commissioners
Robert L. Lee, FHWA Division Administrator
Linda McDonald, Chief Counsel

December 9, 2019

Planning Division

City of Wenatchee

RE: Billboard removal

As an owner of an outdoor billboard I urge you to consider the benefits of retaining these structures designed to benefit the economic well-being of a local regional economy.

The ability to advertise and promote business is a critical element in supporting and maintaining a viable regional economy.

All signs in an urban setting require regulation and oversight but not elimination.

Typically these signs were permitted and constructed according to applicable city codes and regulations. Now by simply saying they are now non-conforming does not seem to be a viable argument to justify removal.

These are expensive structures and require maintenance and upkeep as any structure and represent a viable business enterprise.

These signs which advertise and promote many local businesses and entities should be seen as opportunities for business exposure and enhanced economic viability.

Please consider all elements of this important decision.

Dennis Johnson

1512 Anton Pl

Wenatchee WA