



WENATCHEE CITY COUNCIL
Thursday, April 13, 2023
Wenatchee City Hall Council Chambers
301 Yakima Street
Wenatchee, WA 98801
AGENDA

*"To create community through responsive leadership and services for the citizens and visitors of the
Apple Capital of the World."*

4:45 p.m. Executive Session. Executive Session to consider the acquisition of real estate when public knowledge regarding such consideration would cause a likelihood of increased price. RCW 42.30.110(1)(b).

5:15 p.m. Regular Meeting

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

2. Citizen Requests/Comments

The "Citizen Comments" period is to provide the opportunity for members of the public to address the Council on any matter, including items on the agenda. Comments on public hearing items will be taken during the 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. Citizen comments will be limited to three minutes.

3. Consent Items:

- **Motion to approve agenda, vouchers, and minutes from previous meetings.**

Vouchers:

Claim checks #206946 through #207034 in the amount of \$537,269.62 for March 23, 2023
Wires #1584 and #1585 in the amount of \$53,812.64 for March 27, 2023
Claim checks #207035 through #207040 in the amount of \$60,166.81 for March 27, 2023
Claim checks #207041 through #207131 in the amount of \$833,876.49 for March 30, 2023
Claim checks #207145 through #207151 in the amount of \$13,425.68 for March 31, 2023
Wire #1586 in the amount of \$300.00 for March 31, 2023
Benefits/deductions in the amount of \$1,183,701.31 for March 31, 2023
Payroll distribution in the amount of \$587,993.66 for April 5, 2023
Payroll distribution in the amount of \$8,359.33 for April 5, 2023
Claim checks #207154 through #207206 in the amount of \$566,618.65 for April 6, 2023
Claim checks #207152 through #207153 in the amount of \$16,196.46 for April 6, 2023

- **Resolution No. 2023-07, reappointing Alan Beidler to the Board of Commissioners for the Housing Authority of Chelan County and the City of Wenatchee for a term ending April 21, 2026.**

4. Presentations

- Arbor Day Proclamation
- Stand Against Racism Proclamation
- Wenatchee Valley Senior Center Update
- Spirit of Wenatchee

5. Action Items

A. Salary Commission Ordinance

Presented by Director of Human Resources Kari Page

Action Requested: *Motion for City Council to adopt Ordinance No. 2023-04, revising the Wenatchee City Code to include a new chapter, known as Chapter 1.62, which creates a Salary Commission, provides for the duties thereof and the appointment of members thereto.*

B. Potential Donations to the Public Art Collection

Presented by Parks, Recreation & Cultural Services Director David Erickson

Action Requested: *Motion for City Council to accept the donation of the Bernard Hosey sculptures "Ironworks," "Sphere Pilot House," and "Slab Gate" from Judith Shulman and to add the sculptures to the Public Art Collection.*

C. Memorial Park Native Peoples Project Artist Agreements

Presented by Parks, Recreation & Cultural Services Director David Erickson

Action Requested: *Motion for City Council to approve the art agreements with Jud Turner, Kevin Pettelle, and Swede Albert for the Memorial Park Native Peoples Project.*

D. Art Maintenance Agreement with Washington State Department of Transportation and Interlocal Agreement with the Chelan County PUD for the Highway 2 Easy Street Roundabout

Presented by Parks, Recreation & Cultural Services Director David Erickson

Action Requested: *(1) Motion for City Council to approve the Highway 2 Easy Street Roundabout Art Maintenance Agreement with the Washington State Department of Transportation and authorize the Mayor to sign; and (2) Motion for City Council to approve the Interlocal Agreement between the City of Wenatchee and the Chelan County PUD No. 1 for hydropower public art and authorize the Mayor to sign.*

E. Interlocal Agreement for the Funding of a Regional Sports Complex Feasibility Study

Presented by Executive Services Director Laura Gloria

Action Requested: *Motion for City Council to approve the Interlocal Agreement for the Funding of a Regional Sports Complex Feasibility Study and authorize the Mayor's signature.*

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.

F. Wheeler Amended Development Agreement

Presented by Engineering Development Manager Emma Honeycutt and Public Works Director Rob Jammerman

Action Requested: *Motion for City Council to approve Resolution No. 2023-09, amending a Development Agreement between the City of Wenatchee and Roland E. "Sandy" Wheeler and Dianna G. Wheeler, and authorize the Mayor to sign the Development Agreement Amendment.*

7. Reports

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

8. Announcements

9. Close of Meeting

In compliance with the Americans with Disabilities Act, if you need special assistance to participate in this meeting, please contact the Mayor's office at (509) 888-6204 (TTY 711). Notification 72 hours prior to the meeting will enable the City to make reasonable arrangements to ensure accessibility to the meeting (28 CFR 35.102-35.104 ADA Title 1).



DRAFT

**WENATCHEE CITY COUNCIL
Thursday, March 16, 2023**

Wenatchee City Hall Council Chambers
301 Yakima Street
Wenatchee, WA 98801

MINUTES

"To create community through responsive leadership and services for the citizens and visitors of the Apple Capital of the World."

Present: Mayor Frank J. Kuntz; Councilmember Jose Cuevas, Councilmember Mike Poirier, Councilmember Top Rojanasthien (via phone), Councilmember Travis Hornby, Councilmember Mark Kulaas and Councilmember Keith Huffaker.

Staff Present: Executive Services Director Laura Gloria, City Attorney Danielle Marchant, IS Support Zach Steele, Finance Director Brad Posenjak, Parks, Recreation & Cultural Services Director David Erickson

5:15 p.m. Work Session

Discussion Items:

- A. Parks, Recreation and Open Space Comprehensive Plan Update – Parks, Recreation & Cultural Services Director David Erickson presented a Power Point Presentation and update of the Parks, Recreation and Open Space Comprehensive Plan, including goals, objectives and implementation for the updated plan.
- B. Councilmember Salaries/Salary Commission – Councilmember Kulaas opened the discussion recommending a better way for salary adjustments for the Mayor and Councilmembers through a salary commission. Human Resources Director Kari Page went over the draft ordinance establishing a Salary Commission. City Attorney Danielle Marchant also provided an overview of the statute. The Mayor and Councilmembers discussed. A Salary Commission will make it much more efficient to determine Councilmember salaries.

It was the consensus of the Council that there be a three-person Salary Commission (a quorum to be three members, and a majority two) to review at least annually the salaries of the Councilmembers.

- C. Councilmember Community Engagement – Councilmember Mike Poirier opened the discussion on community engagement. He would like to see the City Council more open

and transparent, and be more accessible to constituents. City Attorney Danielle Marchant said there is no reason Councilmembers could not hold a town hall meeting, but recommended not having a quorum for town hall meetings or other types of events (however, during an election year Councilmembers cannot promote themselves during official business). The Mayor's office is available to assist.

With nothing further to discuss the meeting closed at 6:12 p.m.

Frank J. Kuntz, Mayor

Attest:

Tammy L. McCord, City Clerk



WENATCHEE CITY COUNCIL
Thursday, March 23, 2023
Wenatchee City Hall Council Chambers
301 Yakima Street
Wenatchee, WA 98801

DRAFT

MINUTES

*"To create community through responsive leadership and services for the citizens and visitors
of the Apple Capital of the World"*

Present: Mayor Frank Kuntz; Councilmember Position 1 Jose Cuevas; Councilmember Position 3 Top Rojanasthien; Councilmember Position 4 Travis Hornby; Councilmember Position 5 Mark Kulaas; Councilmember At-Large "A" Linda Herald

Staff Present: Executive Services Director Laura Gloria; City Attorney Danielle Marchant; City Clerk Tammy Stanger; IS Support Tim McCord; Finance Director Brad Posenjak; Police Captain Brian Chance; City Engineer Jake Lewing; Community Development Director Glen DeVries; Facilities Manager Elisa Schafer; Senior Engineer-Utilities Jeremy Hoover; Public Works Director Rob Jammerman; Utility Planner Darci Mattioda; Deputy Public Works Director-Utilities Jessica Shaw

5:15 p.m. Regular Meeting

1. Call to Order, Pledge of Allegiance, and Roll Call. Mayor Frank J. Kuntz called the regular meeting to order at 5:15 p.m. Councilmember Travis Hornby led the Pledge of Allegiance. The excused absences of Councilmembers Keith Huffaker and Mike Poirier were noted for the record.

2. Citizen Requests/Comments. None.

3. Consent Items:

- *Motion to approve agenda, vouchers, and minutes from previous meetings.*

Vouchers:

Claim checks #206769 through #206816 in the amount of \$1,058,147.47 for March 2, 2023
Payroll distribution in the amount of \$7,266.90 for March 3, 2023

Claim Checks #206817 through #206900 in the amount of \$1,118,578.38 for March 9, 2023

Claim checks #206901 through #206907 in the amount of \$3,774.78 for March 16, 2023

Claim checks #206908 through #206945 in the amount of \$277,545.84 for March 16, 2023

Payroll distribution in the amount of \$443,005.00 for March 20, 2023

Payroll distribution in the amount of \$12,048.76 for March 31, 2023

Claim checks #206068 through #206080 (LEOFF 1) in the amount of \$29,469.80 for December 30, 2022

Claim checks #206410 through #206422 (LEOFF 1) in the amount of \$27,205.30 for January 31, 2023

Claim checks #206757 through #206768 (LEOFF 1) in the amount of \$18,790.39 for February 28, 2023

- *Motion for City Council to accept the work performed by the contractor, Hurst Construction, LLC, on the Maiden Lane Temporary Extension Project, City Project No. 2209, and further authorize the Mayor to sign the Final Contract Voucher.*

Motion by Councilmember Mark Kulaas to approve agenda, vouchers, and minutes from previous meetings and to accept the work performed by the contractor, Hurst Construction, LLC, on the Maiden Lane Temporary Extension Project, City Project No. 2209, and further authorize the Mayor to sign the Final Contract Voucher. Councilmember Travis Hornby seconded the motion. Motion carried (5-0).

4. Action Items

- A. Confluence Parkway Land Exchange Agreement between the Public Utility District No. 1 of Chelan County and the City of Wenatchee

Executive Services Director Laura Gloria presented the staff report and Power Point presentation. There are no additional changes to the agreement as the PUD has approved the agreement as presented.

Motion by Councilmember Travis Hornby for City Council to approve the Land Exchange Agreement with the Public Utility District No. 1 of Chelan County, in substantially similar form, and authorize the Mayor's signature. Councilmember Jose Cuevas seconded the motion. Motion carried (5-0).

- B. Amendment No. 14 to Service Agreement SA No. 10-182, between the Chelan County Public Utility District and the City of Wenatchee

Wenatchee Police Captain Brian Chance presented the staff report.

Motion by Councilmember Linda Herald for City Council to approve and authorize the Mayor's signature for Amendment No. 14 to Service Agreement SA No. 10-182 which reflects the chargeable overtime rates for police officers. Councilmember Top Rojanasthien seconded the motion. Motion carried (5-0).

- C. Confluence Parkway, Project #2201.1 – Supplement #1 to Agreement with Jacobs

City Engineer Jake Lewing presented the staff report.

Motion by Councilmember Top Rojanasthien for City Council to approve and authorize the Mayor to execute Supplement #1 with Jacobs for additional owner advisor services for the Confluence Parkway Project (Project No. 2201.1). Councilmember Travis Hornby seconded the motion. Motion carried (5-0).

- D. Amendment #1 to Contract with Osborn Consulting, Inc.

Community Development Director Glen DeVries presented the staff report.

Motion by Councilmember Linda Herald for City Council to authorize the Mayor to enter into an amended contract with Osborn Consulting, Inc. to develop construction plans, specifications, and estimates facilitating the placement of the 44 low barrier shelter units at the Wenatchee Rescue Mission. Councilmember Jose Cuevas seconded the motion. Motion carried (5-0).

- E. Lease Amendment with EV Charging Solutions, Inc. (EVCS) for a portion of property located at 2nd and Columbia

Facilities Manager Elisa Schafer presented the staff report. Council asked questions.

Motion by Councilmember Top Rojanasthien for City Council to approve the amended lease agreement with EVCS and authorize the Mayor's signature. Councilmember Mark Kulaas seconded the motion. Motion carried (5-0).

- F. Wastewater Treatment Plant Blower Building Improvements – Project No. 2106
Authorization to Award the Construction Contract to Apollo, Inc. and Amend the Project Budget

Senior Engineer-Utilities Jeremy Hoover presented the staff report. Council asked questions.

Motion by Councilmember Travis Hornby for City Council to award the contract for construction of the Wastewater Treatment Plant Blower Building Improvements – Project No. 2106 to Apollo, Inc. and authorize the Mayor to sign the construction contract on behalf of the City, and further authorize an amendment to the project budget. Councilmember Top Rojanasthien seconded the motion. Motion carried (5-0).

- G. License Agreement for Shared Scooter-Only Pilot Program – Bird Rides
Extension to Amendment to Interim Operating Agreement

Public Works Director Rob Jammerman presented the staff report and provided a handout showing last year's statistics/numbers from Bird.

Motion by Councilmember Mark Kulaas for City Council to authorize the Mayor to sign the extension agreement with Bird Scooters. Councilmember Jose Cuevas seconded the motion. Motion carried (5-0).

- H. The State of Washington Department of Ecology Water Quality Combined Financial Assistance Agreement WQC-2023-Wenatc-00054

Utility Planner Darci Mattioda presented the staff report. Council asked questions.

Motion by Councilmember Top Rojanasthien for City Council to approve the Department of Ecology Water Quality Combined Financial Assistance Agreement for the Pershing Street Stormwater Retrofit project and the Professional Service Agreement with CPH Consulting for the design of the project, and authorize the Mayor's signature. Councilmember Travis Hornby seconded the motion. Motion carried (5-0).

- I. The State of Washington Department of Ecology Water Quality Combined Financial Assistance Agreement WQC-2023-Wenatc-00076

Utility Planner Darci Mattioda presented the staff report.

Motion by Councilmember Top Rojanasthien for City Council to approve the Department of Ecology Water Quality Combined Financial Assistance Agreement for the Walla Walla Stormwater Outfall Retrofit project grant and authorize the Mayor's signature. Councilmember Travis Hornby seconded the motion. Motion carried (5-0).

- J. Drinking Water Testing for East Wenatchee Water District

Deputy Public Works Director-Utilities Jessica Shaw presented the staff report. Council asked questions.

Motion by Councilmember Travis Hornby for City Council to approve an Interlocal Agreement for water testing services for East Wenatchee Water District and authorize the Mayor's signature. Councilmember Mark Kulaas seconded the motion. Motion carried (5-0).

- K. Fourth Addendum to Temporary Water Right Mitigation Agreement

Deputy Public Works Director-Utilities Jessica Shaw presented the staff report.

Motion by Councilmember Linda Herald for City Council to approve the Fourth Addendum to the Temporary Water Right Mitigation Agreement with Crown Columbia Water Resources, LLC, and authorize the Mayor's signature. Councilmember Jose Cuevas seconded the motion. Motion carried (5-0).

- L. Opioid Settlement Documents Regarding Teva, Allergan, CVS, Walgreens, and Walmart

Finance Director Brad Posenjak presented the staff report.

Motion by Councilmember Mark Kulaas for City Council to authorize the Finance Director to sign any documents approved by the Mayor and the City Attorney to effectuate the opioid settlement with Teva, Allergan, CVS, Walgreens, and Walmart. Councilmember Linda Herald seconded the motion. Motion carried (5-0).

5. Reports

- a. Mayor's Report. The Mayor reported on the following:
1. He continues to monitor events in Olympia (aquatics center bill and transportation budget);
 2. The Confluence Parkway project is moving along.

3. He attended Rails & Ales and there were a lot of people. Some room for improvement for next year's event, but it was a great event.
4. He met with Microsoft last week and they are hosting an open house at Mission View Elementary regarding the planned data centers in Malaga.
5. He testified on March 14 to the House Rules Committee.
6. The Mayor participated in the St. Patrick's Day parade in his green suit and it was a blast!
7. He attended the Port breakfast this week and the Port is doing great work in our region with a lot of projects.
8. He met with the YMCA regarding a parking agreement.

b. Reports/New Business of Council Committees

Councilmember Mark Kulaas attended the Museum Board meeting this week where they continue working towards a capital campaign and re-do of the Museum and may be seeking a lease extension with the city to qualify for a historic credit. He also attended two Link Transit Board meetings where discussion continues around the 1/10th of 1 percent sales tax.

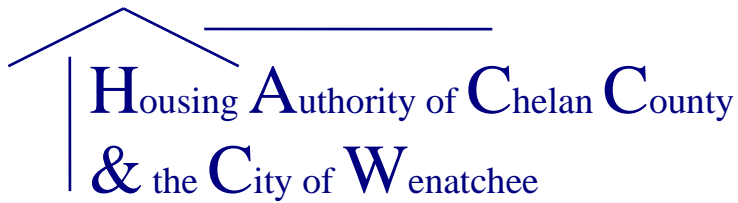
6. Announcements. Councilmember Top Rojanasthien announced that there is a professional basketball team in town, the Wenatchee Bighorns, and encouraged everyone to check it out.

7. Close of Meeting. With no further business, the meeting closed at 6:19 p.m.

Frank J. Kuntz, Mayor

Attest:

Tammy L. McCord, City Clerk



1555 S Methow St. • Wenatchee, WA 98801-9417 • (509) 663-7421 TDD Equipped • Fax (509) 663-4761

March 9, 2023

THE HONORABLE FRANK KUNTZ
CITY OF WENATCHEE
PO BOX 519
WENATCHEE WA 98807-0519

Dear Mayor Kuntz:

The purpose of this letter is to inform you that Alan Beidler's term on the Housing Authority Board of Commissioners will expire on April 21, 2023. I have spoken with Mr. Beidler and he has expressed his interest in remaining on the Housing Authority board. Please consider this letter a formal request for his re-appointment into a new three-year term, ending in April of 2026.

Alan, who currently holds the position of Vice-Chairperson, has served on the board since November of 2002. His history with the Agency and his knowledge of both the Housing Authority and real estate are instrumental to the board's successful operations. Alan has been very committed to this organization and we value his experience.

Thank you very much for your consideration of this reappointment. Please contact me should you have any questions.

Sincerely,

Alicia McRae

Alicia McRae
Executive Director

RESOLUTION NO. 2023-07

A RESOLUTION, reappointing a member to the Board of Commissioners for the Housing Authority of Chelan County and the City of Wenatchee for a term ending April 21, 2026.

WHEREAS, the City of Wenatchee is authorized to appoint two members to the Board of Commissioners (“Board”) for the or the Housing Authority of Chelan County and the City of Wenatchee (“Housing Authority”); and

WHEREAS, the City has previously appointed Alan Beidler to serve on the Board where his appointment expires on April 21, 2023; and

WHEREAS, Mr. Beidler has expressed a desire to be reappointed to the Board upon the expiration of his current term; and

WHEREAS, the Housing Authority has recommended Mr. Beidler for reappointment to the Board.

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF WENATCHEE HEREBY RESOLVES AS FOLLOWS:

Section 1. Reappointment. The City Council makes the following reappointment to the Board of Commissioners for the Housing Authority of Chelan County and the City of Wenatchee with a term as stated below:

<u>NAME & ADDRESS</u>	<u>TERM BEGINS</u>	<u>TERM EXPIRES</u>
Alan Beidler 1600 Jefferson St. Wenatchee, WA 98801	April 22, 2023	April 21, 2026

Section 2. Effective Date. This Resolution shall take effect upon adoption.

**PASSED BY THE CITY COUNCIL OF THE CITY OF
WENATCHEE** at a regular meeting thereof this ____ day of _____, 2023.


CITY OF WENATCHEE, a municipal corporation

By: _____
FRANK KUNTZ, Mayor

ATTEST:

By: _____
TAMMY STANGER
City Clerk

APPROVED AS TO FORM:

By:  _____
DANIELLE R. MARCHANT
City Attorney

Proclamation

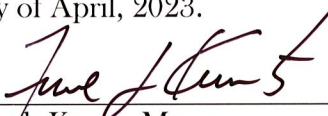
Of the City of Wenatchee, Washington

- WHEREAS,** The Greater Wenatchee Arbor Day Committee has distributed trees in North Central Washington for over 30 years, and
- WHEREAS,** Arbor Day celebrations have provided over 175,000 trees to be planted in our area, and
- WHEREAS,** trees, a renewable resource, cool our homes, clear the air and provide food and shelter for birds and beneficial insects, and
- WHEREAS,** planting trees beautifies our community and provides a healthy, happy family activity, and
- WHEREAS,** to help celebrate Arbor Day seedlings will be distributed by the Greater Wenatchee Arbor Day Committee.

Now Therefore, I, Frank J. Kuntz, Mayor of the City of Wenatchee, hereby proclaim April 22nd, 2023 as ARBOR DAY in the City of Wenatchee, and I urge all citizens to celebrate Arbor Day and to support efforts to protect our community forestry resources, and further, I urge all citizens to plant trees to gladden the heart and promote the well-being of this and future generations.



IN WITNESS WHEREOF, I have hereunto set my hand and caused the great seal of the City of Wenatchee to be affixed on this 13th day of April, 2023.



Frank Kuntz, Mayor



YWCA IS ON A MISSION

A Proclamation by the City of Wenatchee of Washington CITY RESOLUTION

WHEREAS, all residents regardless of race, creed, or ethnicity deserve to be treated with dignity, respect, compassion, and justice; and

WHEREAS, Wenatchee, WA residents value initiatives that will end race-based disparities and make the world a more equitable, inclusive, and dignified place for all to live; and

WHEREAS, the elimination of racism can be achieved only with the participation of all residents in dialogue, reflection, and action; and

WHEREAS, the City of Wenatchee of Washington supports YWCA NCW in its praiseworthy mission to eliminate racism, empower women, stand up for social justice, help families, and strengthen communities; and

WHEREAS, the City of Wenatchee proudly supports the Wenatchee Valley College and YWCA NCW in celebration of Stand Against Racism, to build community among those who work for racial justice and to raise awareness about the negative impact of institutional and structural racism in our communities.

BE IT RESOLVED, that the City of Wenatchee of Washington hereby declares April 27, 2023 as YWCA Stand Against Racism Day and encourages residents, local businesses, educators, and community and faith-based organizations to celebrate diversity and advocate for the elimination of racism.

BE IT FURTHER RESOLVED, that April 28 – April 30, 2023 is declared as YWCA Stand Against Racism Weekend.

Signed this 13th day of April, 2023.



City of Wenatchee

Frank J. Kuntz, Mayor



CITY COUNCIL AGENDA REPORT

TO: Frank Kuntz, Mayor
City Council

FROM: Kari Page, Director of Human Resources
Human Resources Department

MEETING DATE: April 13, 2023

- I. **SUBJECT**
Salary Commission Ordinance
- II. **ACTION REQUESTED**
Motion requested for the City Council to adopt Ordinance No. 2023-04 revising the Wenatchee City Code to include a new chapter, known as Chapter 1.62, which creates a Salary Commission, provides for the duties thereof and the appointment of members thereto.
- III. **OVERVIEW**
The Salary Commission will review, establish and adjust the salaries for the Councilmembers of the City of Wenatchee following RCW 35.21.015. The commission shall consist of three members. The mayor will appoint appropriate City staff to assist the commission.
- IV. **FISCAL IMPACT**
Salary Commission members shall serve without compensation.
- V. **ADMINISTRATIVE ROUTING**
Tammy McCord, City Clerk
Laura Gloria Executive Services Director

ORDINANCE NO. 2023-04

AN ORDINANCE, OF THE CITY OF WENATCHEE, WASHINGTON, REVISING THE WENATCHEE CITY CODE TO INCLUDE A NEW CHAPTER, KNOWN AS CHAPTER 1.62, WHICH CREATES A SALARY COMMISSION, PROVIDES FOR THE DUTIES THEREOF, AND THE APPOINTMENT OF MEMBERS THERETO.

WHEREAS, salaries for the City of Wenatchee Councilmembers are set by ordinance, which is adopted by the City Council; and

WHEREAS, RCW 35.21.015 authorizes the City Council to create a salary commission to make decisions regarding the salaries of Councilmembers; and

WHEREAS, a salary commission allows an independent body to set the salaries for the Councilmembers; and

WHEREAS, the City Council desires to create a salary commission composed of residents from the community to determine the salaries of the City of Wenatchee Councilmembers.

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

SECTION I

The Wenatchee City Code shall include Chapter 1.62, a new chapter, that is described in Exhibit A, which is attached hereto and incorporated herein by this reference.

SECTION II

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.

SECTION III

Upon approval of the City Attorney, the City Clerk and the code reviser are authorized to make necessary corrections to this Ordinance, including the correction of clerical errors; references to other local, state or federal laws, codes, rules or regulations; or ordinance numbering and section/subsection numbering.

SECTION IV

This Ordinance shall take effect thirty (30) days from and after its passage and publication as provided by law.

PASSED BY THE CITY COUNCIL OF THE CITY WENATCHEE,

at a regular meeting thereof, this _____ day of _____, 2023.

CITY OF WENATCHEE, a Municipal corporation

By: _____
FRANK J. KUNTZ, Mayor

ATTEST:

By: _____
TAMMY McCORD, City Clerk

Approved as to form:
OFFICE OF THE CITY ATTORNEY

By: _____
DANIELLE MARCHANT, City Attorney

EXHIBIT A

Chapter 1.62 SALARY COMMISSION

Sections:

- 1.62.010 Salary Commission Established.
- 1.62.020 Definitions.
- 1.62.030 Commission Member Qualifications.
- 1.62.040 Commission Member Terms.
- 1.62.050 Commission Duties.
- 1.62.060 Salary Schedule.
- 1.62.070 Open Meetings.
- 1.62.080 Referendum.

1.62.010 Salary Commission Established.

A Salary Commission is hereby established to review, establish, and adjust the salaries for the councilmembers of the city, and to exercise powers and to perform the duties established by RCW 35.21.015, as it now exists or is hereafter amended. The commission shall consist of three members, who shall serve without compensation. The mayor, or their designee, will appoint appropriate city staff to assist the commission.

1.62.020 Definitions.

For purposes of this chapter, the following terms shall be defined as stated below:

- (1) “Action” or “Final Action” has the same meaning as stated in RCW 42.30.020, as it now appears or is hereafter amended.
- (2) “City” means the City of Wenatchee.
- (3) “Commission” means the Salary Commission.
- (4) “Councilmember” means any elected or appointed member of the City Council for the City of Wenatchee.
- (5) “Mayor” means the elected or appointed mayor of the City of Wenatchee.

(6) “Meeting” has the same meaning as stated in RCW 42.30.020, as it now appears or is hereafter amended.

(7) “Plan documents” means the official documents, laws or regulations that detail the requirements to qualify for any insurance benefit (such as health, dental or life), any retirement benefit (such as a deferred compensation program), or any other employment benefit (such as a flexible spending account).

(8) “Quorum” means three members of the commission.

(9) “Salary” means any fixed compensation paid or provided periodically for work or services and includes, but is not limited to, wages or other monetary payments to the councilmembers (such as a city paid match to a deferred compensation plan), and insurance, retirement, or other employment benefits; provided that if any benefit has plan documents, the councilmembers must qualify under the plan documents to receive the benefit. This definition expressly excludes any expenses paid by the city, or reimbursed to a councilmember, for training or travel expenses.

1.62.030 Commission Member Qualifications.

(1) Members of the commission must be a resident of the city and a registered voter of Chelan County.

(2) No officer, official, or employee of the city or any of their immediate family members may serve as members of the commission. “Immediate family member” as used in this subsection means the parents, spouse, siblings, children, or dependent relatives of the officer, official or employee, whether or not living in the household of the officer, official or employee.

1.62.040 Commission Member Terms.

(1) Appointment. Members of the commission shall be appointed by the mayor subject to confirmation by the city council, in conformance with RCW 35.21.015 as it now exists or is hereafter amended. No member may be appointed to more than two terms on the commission, whether or not those terms are held consecutively.

(2) Terms. Members of the commission shall serve for a term of three years, except that the initial members shall be appointed for staggered terms as follows:

- (a) Position One: 1 year;
- (b) Position Two: 2 years; and
- (c) Position Three: 3 years.

(3) Removal. The mayor may remove members from the commission for cause. For cause includes:

- (a) A member's incapacity, incompetence, neglect of duty, or malfeasance in office;
- (b) A member is no longer qualified to serve pursuant to WCC 1.62.030.

(4) Vacancy. In the event of a vacancy in a position on the commission, the mayor shall appoint, subject to approval of the city council, a person to serve the unexpired portion of the term of the vacated position.

1.62.050 Commission Duties.

The commission shall have the following duties:

- (1) To review the salaries paid by the city to the councilmembers.
- (2) To study the relationship of salaries to the duties of the councilmembers.
- (3) To establish a written salary schedule that includes salaries for the councilmembers.

1.62.060 Salary Schedule.

(1) The chair of the commission shall file the salary schedule each year with the city clerk within three business days after it is established by the commission; provided that the filing occurs by the fifteenth day of October each year.

(2) Any increase or decrease in salary as stated in the salary schedule shall become effective and incorporated into the city budget without further action of the city council or the commission.

(3) Any salary increases as stated in the salary schedule shall be effective as to the councilmembers, regardless of their term of office. Unless otherwise authorized by the commission, salary increases shall take effect on the first day of January after the salary schedule is filed with the city clerk.

(4) Any salary decreases as stated in the salary schedule shall be effective as to incumbent councilmembers at the commencement of their next subsequent terms of office.

(5) The salary schedule that is filed with the city clerk shall supersede any other provision of state statute or city ordinance related to municipal budgets or the fixing of salaries, but only to the extent that the state statute or city ordinance is in conflict with the salary schedule.

1.62.070 Open Meetings.

- (1) The commission shall meet each year at noon on the second Tuesday in September at City Hall, where a chair of the commission shall be elected. The commission may also have additional meetings, as often as necessary, in order to establish the salary schedule.
- (2) Any meetings of the commission shall be subject to the Open Public Meetings Act, pursuant to Chapter 42.30 RCW, as the Act now appears or is hereafter amended.
- (3) A quorum must be present for the commission to hold a meeting.
- (4) The vote of two members of the commission shall be sufficient for action or final action of all matters for the commission.
- (5) The commission has the power and authority to adopt rules of procedure for its meetings.

1.62.080 Referendum.

- (1) Any salary increase or decrease established by the commission pursuant to this chapter shall be subject to referendum petition by the people of the city, in the same manner as a city ordinance, upon filing of a referendum petition with the city clerk within 30 days after filing of a salary schedule by the commission. In the event of the filing of a valid referendum petition, the salary increase or decrease shall not go into effect until approved by a vote of the people.
- (2) Referendum measures under this section shall be submitted to the voters of the city at the next following general or municipal election occurring 30 days or more after the petition is filed, and shall otherwise be governed by the provisions of the state constitution, or city charter, or the laws generally applicable to referendum measures.



CITY COUNCIL AGENDA REPORT

TO: Frank Kuntz, Mayor
City Council

FROM: David Erickson, Parks, Recreation and Cultural Services Director

MEETING DATE: April 13, 2023

I. SUBJECT

Potential Donations to the Public Art Collection

II. ACTION REQUESTED

Motion to accept the donation of the Bernard Hosey sculptures "Ironworks", "Sphere Pilot House", and "Slab Gate" from Judith Shulman and to add the sculptures to the Public Art Collection.

Motion to accept the donation of the Kevin Pettelle sculpture "Rozanne's Tango" from Beauty of Bronze in care of Adele Wolford and to add the sculpture to the Public Art Collection

III. OVERVIEW

As a result of a final settlement of an estate, an Eastern Washington Attorney has made available to donate several sculptures created by Twisp artist Bernard Hosey. Mr. Hosey's work can be seen in downtown Yakima, University Village in Seattle, Twisp, at the Tri-Cities Cancer Center in Kennewick, Washington and in various private collections as well as along the Loop Trail as the sculpture Pre-Math (at right) is currently in the City Collection. It is the donor's goal to have the sculptures placed on an area that they may be appreciated by the public. The sculptures would be donated however pick up, transport and installation would be the responsibility of the City.



The nine sculptures were presented at the March 21 Arts, Recreation and Parks Commission meeting for consideration and discussion. The list of nine was narrowed to the top six which were of a size that city crews would be able to retrieve and transport them.



Slab Gate



Sphere Pilot House



Ironworks

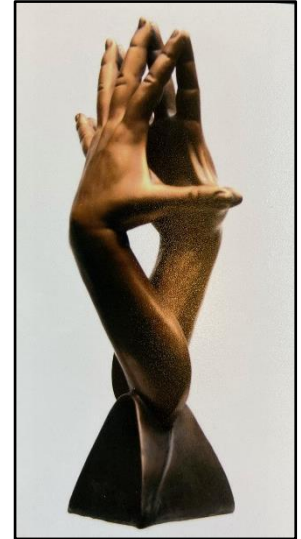
After a further discussion, the Commission reached consensus for accepting the donation of the sculptures "Ironworks", "Sphere Pilot House", and "Slab Gate". Staff continued to wrk with the

donor who is holding the three sculptures for the City. If acquired, potential locations for the installations include Hale Park, the end of the black bridge extension to help extend the collection further along the loop trail.

The second donation is courtesy of Adele Wolford and the Beauty of Bronze program. It is a bronze sculpture created by sculptor Kevin Pettelle. The piece features two human hands touching. The sculpture was completed in 2023 as a tribute to Rozanne Lind who was instrumental to the Beauty of Bronze program for many years until her passing in 2019. The sculpture measures 26" x 26" x 36".

The potential donation of the sculpture was presented at the March 21 Arts, Recreation and Parks Commission meeting for consideration and discussion. Following the discussion, the Commission unanimously recommended accepting the donation.

If accepted, Rozanne's Tango would be planned to be located at the Convention Center and replace Life's a Ball. Life's a Ball would move to Memorial Park and Heifer Head would move back to its previous location at 204 North Wenatchee Avenue.



Staff recommends acceptance as presented.

IV. FISCAL IMPACT

There would be fuel cost and staff time to travel, pick up and transport the Hosey sculptures. And creation of footings for re-installation. This is estimated to be less than \$2,000.

V. PROPOSED PROJECT SCHEDULE

If City Council approves the agenda item, staff would coordinate pick up. Installation would follow later this year or the near future as sites become available.

I. REFERENCE(S)

VII. ADMINISTRATIVE ROUTING

Tammy McCord, City Clerk
Laura Gloria, Executive Services Director
Brad Posenjak, Finance Director



CITY COUNCIL AGENDA REPORT

TO: Frank Kuntz, Mayor
City Council

FROM: David Erickson, Parks, Recreation and Cultural Services Director

MEETING DATE: April 13, 2023

I. SUBJECT

Memorial Park Native Peoples Project Artist Agreements

II. ACTION REQUESTED

Motion to approve the art agreements with Jud Turner, Kevin Pettelle and Swede Albert for the Memorial Park Native Peoples Project.

III. OVERVIEW

The Memorial Park Native Peoples Project has been underway since 2022. Full project background and design details are contained later in this agenda report.

Over the last six month through the design process which involved the Tribe, project details and costs have been refined. This project is broken four primary elements, the plaza, the interpretive sign elements and the two sculptures representing the past and present.

Staff prepared the conceptual plans for the interpretive signs and is working with engineers on finalizing the bid documents on the plaza portion. Three artists have been identified to complete the artistic portions of the project. To facilitate this work, art agreements have been prepared. They are standardized agreements used for previous art projects. The agreements have been reviewed by the Finance Committee and City Attorney and attached here for consideration.

With approval, due to production time the project would be completed in phases over the next two years.

IV. FISCAL IMPACT

The total cost including materials, labor, transport and installation for all three art installations is \$270,000 and split between 2023, 2024 and 2025.

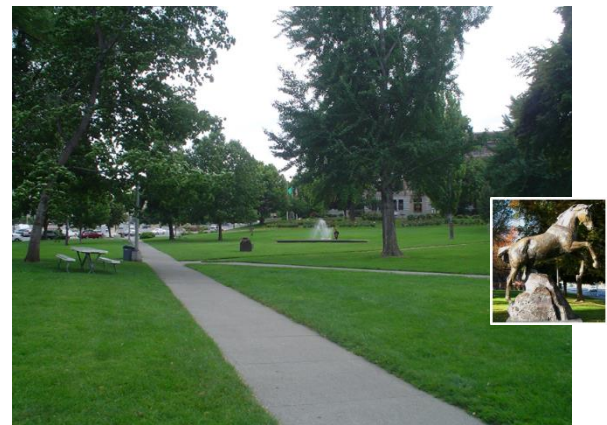
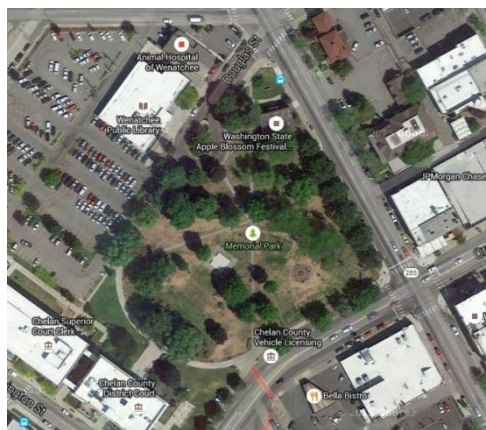
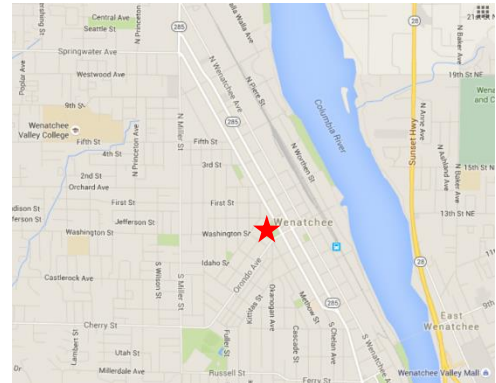
V. PROPOSED PROJECT SCHEDULE

If City Council approves the agenda item, final design would begin with installation to be completed by October 6, 2025.

I. REFERENCE(S)

PARK BACKGROUND

Memorial Park is located in the center of Wenatchee at 2 South Chelan Avenue. The 3.8-acre park is the oldest park in Wenatchee. It is bordered by the Chelan County Courthouse, Wenatchee Library and Orondo and Chelan Avenues. The park features large shade trees, the Mayor's Fountain, artwork and historic displays. The old Carnegie Library is located in the park. The park serves as the home to the Washington State Apple Blossom Festival along with other community functions.



MASTER PLAN UPDATE PROCESS

In 2015, the City undertook a 9 month long public involvement process that included workshops, meetings and a community survey to update the master plan for the park. From this, a plan was created that included replacing and upgrading lighting and electrical utilities, improving ADA access and walkways, creating an entrance to the park and adding a feature that recognizes the first people of Wenatchee. That feature is planned to be located at the confluence of the park walkway system and create a central focus to the park. At that time, the feature was contemplated to be an interactive fountain plaza of some type with seating. An excerpt with some example illustrations is at right. The fountain idea was later dropped due to construction and operational costs and other issues.

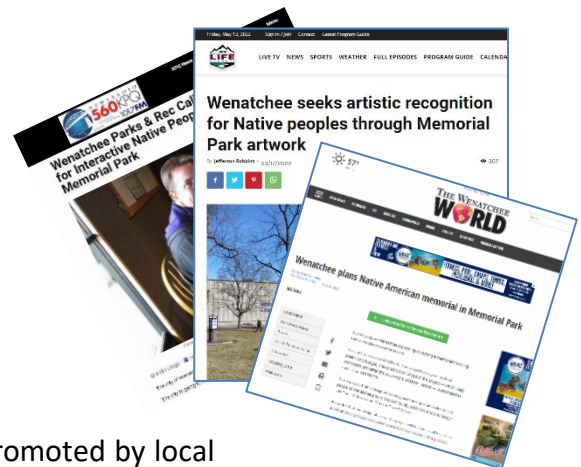


From 2016 through 2021 the project sat idle as other projects with dedicated funding were completed. Then, at the end of 2021, the City Council approved funding in the 2022 budget to begin to realize the project.

The goal of the project is to recognize the Wenatchi Tribe as the proud and vibrant first people that they were and still are.

THE DESIGN PROCESS

To solicit artists for the project, the City followed a Call to Artists Process. The draft Call to Artists for the project was prepared and presented at the February 2022 Arts, Recreation and Parks Commission meeting for review. Following this, a solicitation was distributed to over 475 artists and designers. It was also posted on the city website, social media page, provided to other artists, sent to the Colville Tribal Tribune, discussed at a variety of public meetings and also widely promoted by local radio, television and newspaper. The deadline to return submittals was May 13.



From this outreach, only one submittal was received from a design team. Although the number of submittals that were received was disappointing, the one that was provided was from a qualified team who had done similar work previously in the Spokane area. The Arts, Recreation and Parks Commission reviewed the qualifications of the team at their meeting of May 17, 2022 and based on this review, recommended their selection for the project. The selection was forwarded to City Council committees and the full Council who discussed the project and approved awarding the contract. One of the key

components of the project was that the design team was to complete outreach to the Tribe to solicit input to guide the design. This was to occur from June through October 2022. The designers were provided with contact information for both the community and Tribe, additional resource materials from the Museum as well as more detailed description of project goals:

“The overall general goal of the project is to recognize the p’squousa as the proud and vibrant people that they were and that they still are. Sculptures that possibly include adult and child figure digging camas root, or fishing, or a combination, a man and women facing toward Two Bears (Saddlerock). This might be viewed as “past tense” and artistically interesting, but would still like to somehow represent past, present and future in one not-too-complicated piece. Some other possible “elements” included: the Wenatchee/Columbia confluence; the geologic formations that are the subject of legends; stewards of natural resources; hunter, gatherer, fisher; life-like (yet not necessarily life size) figures in traditional and more current style of dress with visages of pride and strength.”

A community project kick-off meeting was conducted in the park in July 2022, however the design team did not attend and the project was also discussed at monthly public meetings. Apple Blossom staff was also consulted with. In November, the design team provided a concept plan to the City, however it became apparent that little to no outreach had been conducted. Following multiple conversations with the design team regarding their progress and to try to get them on track and encourage input, the City expressed their dissatisfaction with the direction of project, lack of tribal involvement and outreach, and failure to prioritize the project. The design team was released from their contract.

To keep the project moving forward, in November 2022, City staff took the prescribed goals of the project, and information gleaned from the Museum and online research, and generated possible design ideas for the project. The design ideas were refined into a unified concept (described below). Through additional research, the artwork of Colville tribal member, Smoker Marchand was located and it provided the inspiration for the central feature of the project and helped to bring the preliminary concept together. Staff reached out to Smoker, shared the project with him and asked if he would review the concept and if he would be interested in creating the sculpture for it. He reviewed the concept and expressed that he was excited about it. Unfortunately, he indicated his health would not allow him to participate in creating the sculpture. Staff asked if he had any protégés he could recommend, but sadly he passed away before he could reply.

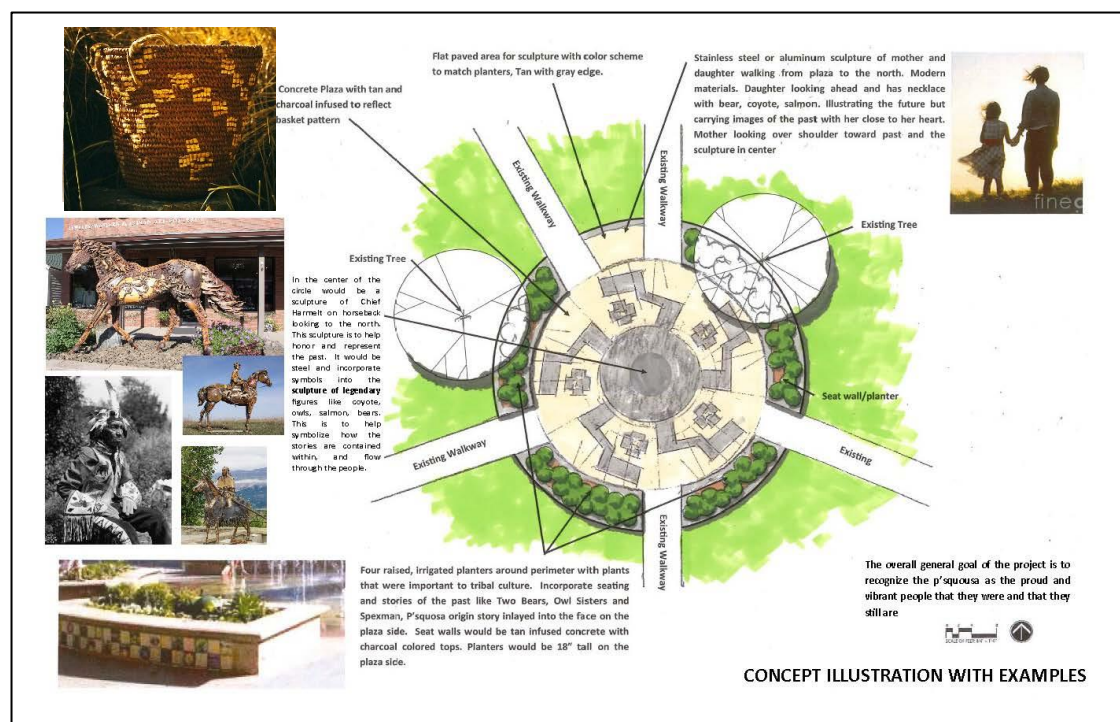
The concept was presented to City Council committees and Arts, Recreation and Parks Commission during their public meetings in November and again in January 2023 to see if the preliminary plan was on track with what they had envisioned. They indicated that it should move forward.

In January 2023, City staff reached out to the Colville Tribal Council to seek feedback about the project. Jarred Erickson replied and referred the project to Traditional Territory Advisor John Sirois. Mr. Sirois then met with City staff on February 1 to discuss the project and arranged to have the project presented at the February 14 Wenatchi Tribe Advisory Council meeting. The project was well received by the Advisory Council and they expressed their excitement about the concept and to see the project constructed. They also appreciated the outreach.

PRELIMINARY CONCEPT

The project creates a highly visible, centerpiece in Memorial Park. It provides opportunity for education, contemplation and beauty. The primary feature is a circular plaza, shaped to symbolize a basket used to collect and hold the stories/legends along with the traditional uses. The plaza would be twenty-feet-wide and located at the heart of the park at the confluence of the walkway system. The center of the plaza would be eight feet in diameter to allow for the installation of a large sculpture while maintaining a six-foot walkway around the center circle for pedestrian flow. The paving of the plaza is proposed to be colored similar to the basket with color infused into it and a heavy broom finished to mimic the rope texture of a basket. The plaza would be concrete for ease of maintenance and vandal resistance and colored in a basket pattern. A basket created by Wenatchi Tribal member and master basket weaver Bernadine Phillips was used for inspiration.

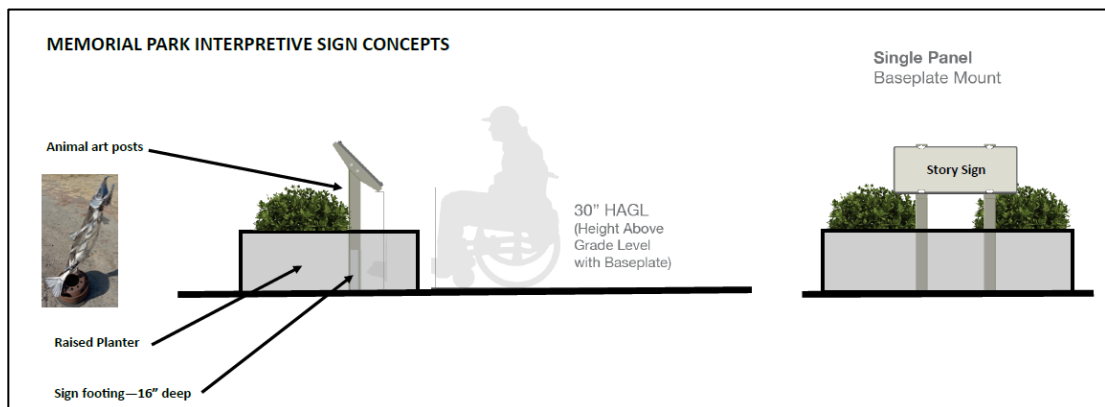
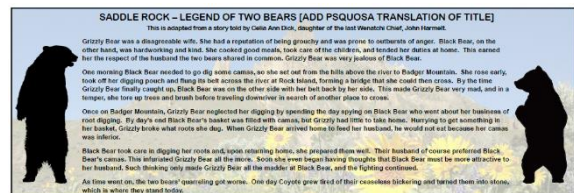
In the eight-foot diameter center of the circle would be a sculpture of Chief Harmelt on horseback looking toward the sculptures to the north. This sculpture is to help honor and represent the past. It would be steel and incorporate symbols into the sculpture (see examples) of legendary figures like coyote, sparrow hawk, salmon, bear from the stories



that are proposed to be incorporated into the planters. This is to help symbolize how the stories are contained within, and flow through the people.

Around the perimeter of the circular plaza between the walkways are proposed to be raised planters with seat walls. The planters would be 18" high to allow for seating both inside the plaza for educational or informal uses and also outside for park viewing. It will address slope issues around the plaza area. The walls of the planters would be colored concrete to evoke the feel of the rim of the basket. The planters are proposed to have plants that were important to the Tribe, if they are appropriate for the park setting and would grow successfully in this location. Plant identifier tags would be incorporated for additional educational value and also contain the plant names in the P'Squosa language. At the meeting with the Tribe, two people volunteered to help with this translation part of the project.

In four of the planter beds, would be four stories collected in the basket from the past like: Spexman, Owl Sisters, Two Bears, and Coyote Bringing Salmon to the Columbia to serve both as an educational and historical component. The stories would be simplified as needed address general public viewing. The stories would be located in an orientation toward the feature where the story took place. For example, while reading the story about Two Bears, the person would be facing toward Saddle Rock etc. The signs could include a QR code so that it can be linked to websites that would be created which contain the full story, additional detail or resources and/or video presentation of the stories. Staff met with the Museum as a resource for the stories



and reached out to another tribal member for additional input. The bases for the interpretive signs would contain artwork from the story. For example, the posts of two bears would be bears. A lead for a new Wenatchee tribal artist was provided at the February 1st meeting and contacted.

For construction, some utilities will need to be moved and possibly a tree removed and replaced in the area of the project to accommodate the plaza. Staff met with plaza project engineers on February 22 and they are preparing the final engineering and bid documents for the plaza.

On the northern segment of the plaza between the two walkways, there would not be a planter wall, but instead the concrete pattern would continue but be placed at the ground level. This would be to evoke the basket edge being dropped to allow the contents of the basket to flow out and exit. This would also create a platform to allow for the addition of a second sculpture. This sculpture would have a more contemporary feel and made of bronze. It would be of a mother and daughter, hand in hand, walking from the basket toward the future. They would be wind-blown. The mother would be looking over her shoulder toward the vestiges of the past. The daughter symbolizes the future. She would be sculpted wearing a necklace that has a coyote, bear, sparrow hawk and salmon to symbolize her carrying the legends of the past with her over her heart into the future.

From the Tribal meeting on the 14th two additional signs/plaques would be incorporated into the project – one sign to highlight who the tribe is, what they do, and that they are still there. Tribal member Wendell George is assisting with the preparation of the text and graphics for this sign. Staff is also working with the Leavenworth Museum with this portion of the project as they are just wrapping up a two-year process to create a similar display in Leavenworth. This sign would be incorporated onto the seat wall at an entrance to the plaza. The second sign would describe the concept behind the art installation.

The installation would also incorporate the P'Squosa language where feasible and appropriate.

NEXT STEPS

This project is broken down into several pieces.

The refinement process including the engineering of the plaza, preparing the plans to relocate the utilities that are present in the project area and preparing bid documents and updated cost estimate is underway. We hope to have the plaza portion ready to go out to bid in June with construction of that part of the project finished by October. We are anticipating that the current budget will cover the cost of the plaza and a portion of the artwork/interpretive signs.

Then, also from April through September, staff would continue to work with Mr. Sirois, Mr. George, Mr. Sam, Ms. Miller and others on finalizing the other details such as the stories, which plants should be installed, prepare the P'Squosa language information and develop the websites.

After the meeting on February 14th staff reached out and talked with the prospective artists that were identified for the project based on their style previous work. All expressed their interest and enthusiasm in participating. The artists are: Jud Turner (Chief Harmelt and Horse sculpture), Wenatchi Tribe member Swede Albert (interpretive sign bases) and Kevin Pattelle (mother and daughter sculpture). Staff and the artists have

had ongoing meetings and discussed the specific project element scopes. Draft agreements were prepared by staff and provided to the City Attorney for review.

Creation of the two primary sculptures will take a little longer than first hoped and won't be finished until 2025 if we move ahead with the agreements soon. The artists are also planning to work with the Tribe as the details of the sculptures are realized.

Finally, once the project is constructed and artwork is installed a dedication celebration would be conducted on October 13, 2025. Staff will work with Mr. Sirois and others as appropriate about what elements to include in this event to make sure it is memorable.

VII. ADMINISTRATIVE ROUTING

Tammy McCord, City Clerk
Laura Gloria Executive Services Director
Brad Posenjak, Finance Director



City of Wenatchee Parks, Recreation and Cultural Services

PO Box 519 • Wenatchee, Washington 98807 • (509) 888-3284 • www.wenatcheeva.gov

ARTIST COMMISSION AGREEMENT BETWEEN CITY OF WENATCHEE AND JUD TURNER

PROJECT: Memorial Park Native Peoples Project, Wenatchee, Washington

THIS ARTIST COMMISSION AGREEMENT (“Agreement”) is entered into by the City of Wenatchee, Washington hereinafter referred to as the “City” and Jud Turner, hereinafter referred to as the “Artist.” The City and the Artist are referred together as “parties” or individually as “party.”

I. RECITALS

WHEREAS, the City desires to retain Artist to perform the services as described in this Agreement as part of the Memorial Park Native Peoples Project; and

WHEREAS, the Artist has represented to the City that the Artist has the requisite training, skill, and experience necessary to perform the services;

NOW, THEREFORE, in consideration of the mutual promises set forth herein, it is agreed by and between the parties as follows:

II. AGREEMENT

1. SERVICES BY ARTIST

Artist shall perform the services described in the Scope of Services attached hereto as Attachment A, which is incorporated herein by this reference (“Services”). The Artist shall furnish all Services, labor and related equipment necessary to conduct and complete the Services.

It is recognized that the Artist may or will be performing similar services during the term of this Agreement for other parties; however, such performance of other services shall not conflict with or interfere with the Artist’s ability to perform the Services for the City. The Artist agrees to resolve any such conflicts of interest in favor of the City. The Artist confirms that it does not have a business interest or a close family relationship with any City official or employee who was, is, or will be involved in the Artist’s selection, negotiation, drafting, signing, administration, or evaluating the Artist’s performance.

2. PAYMENT

- A. The City shall pay Artist a total amount of \$100,000.00 for the Services, which includes all materials, fabrication, transport, installation, permits, taxes and fees related to Services. The payment schedule is outlined in Attachment A.
- B. All invoices shall be paid within thirty (30) days of receipt of the invoice and documentation of progress; provided that if the City objects to all or any portion of an invoice, it shall so notify the Artist of the same within fifteen (15) days from the date of receipt and shall pay that portion of the invoice not in dispute, and the parties shall immediately make every effort to settle the disputed portion.
- C. Except as otherwise provided in this Agreement, the Artist shall be solely responsible for the payment of any taxes imposed by any lawful jurisdiction as a result of the performance and payment of this Agreement.
- D. If the Services rendered do not meet the requirements of the Agreement, Artist will correct or modify the Services to comply with the Agreement. The City may withhold payment for such Services until the Services meet the requirements of the Agreement.

3. DISCRIMINATION AND COMPLIANCE WITH LAWS

- A. Artist agrees not to discriminate against any employee or applicant for employment or any other person in the performance of this Agreement because of race, creed, color, national origin, marital status, sex, age, disability, or other circumstance prohibited by federal, state, or local law or ordinance, except a bona fide occupational qualification.
- B. Artist shall comply with all federal, state and local laws and ordinances applicable to the Services to be done under this Agreement, including where applicable Wenatchee City Code.
- C. Violation of this Section 3 shall be a material breach of this Agreement and grounds for cancellation, termination or suspension of the Agreement by City, in whole or in part, and may result in ineligibility for further work for the City.

4. TERM AND TERMINATION OF AGREEMENT

- A. The Services performed under this Agreement shall be completed on or before October 13, 2025 (“Completion Date”). It is anticipated that the artwork will be installed no later than October 6, 2025. This Agreement shall remain in effect until the Completion Date and final payment for Services.
- B. The City reserves the right to terminate this Agreement at any time, with or without cause, upon thirty (30) days written notice to the Artist. Any such notice shall be given to the address specified in Section 11. In the event that this Agreement is terminated by the City without cause, a final payment shall be made to the Artist for all Services performed. No payment shall be made for any Services completed after thirty (30) days following receipt by the Artist of the notice to terminate. In the event that Services of the Artist are terminated by the City for cause, the amount to be paid shall be determined by the City with consideration given to the actual cost incurred by the Artist in performing the Services to the date of termination, the amount of Services originally required which would satisfactorily complete it to date of termination, whether that Service is in a form or type which is usable to the City at the time of termination, the cost of the City of employing another firm to complete the Services required, and the time which may be required to do so.

- C. Artist may terminate this Agreement for material breach upon thirty (30) day's prior written notice to the City; provided, however, that the notice shall identify the specific material breach; and provided, further that the City shall have the right to cure any alleged material breach within fifteen (15) days following receipt of such notice. Any such notice shall be given to the address specified in Section 11.

5. OWNERSHIP OF WORK PRODUCT

- A. Upon payment to the Artist by the City of all compensation due under this Agreement, copies of all data, reports, memoranda, studies, drawings, designs, maquettes/models and other documents developed, prepared and/or submitted under this Agreement, whether finished or not, shall become the property of the City, and shall be forwarded to the City to be used by the City as it sees fit.
- B. Any records, reports, information, data, or other documents or materials given to or prepared or assembled by the Artist under this Agreement, which the City requests to be kept as confidential, shall not be made available to any individual or organization by the Artist without prior written approval of the City.
- C. Upon final acceptance by the City, title and full ownership of the artwork, including any trademarks and copyrights, shall automatically pass to the City.

6. GENERAL ADMINISTRATION AND MANAGEMENT

The City of Wenatchee Parks, Recreation and Cultural Services Director shall be the City's representative and shall oversee all Services to be performed, coordinate all communications, review, coordinate approval with the Mayor and/or City Council and process all invoices, under this Agreement. Notwithstanding the foregoing, whenever under this Agreement City approval, authorization, waiver, instructions or determinations are required they shall be effective only when given by the Mayor.

7. CITY RESPONSIBILITIES

- A. The City will make available to the Artist at their request all pertinent technical and project data in the City's possession unless the City is prohibited by law or contractual agreement from disclosing such information.
- B. The City shall furnish information and approvals expeditiously to further the project.
- C. The City will work with the appropriate departments and contractors to facilitate installation of the artwork at the site, as needed.
- D. The City shall have the right to review and approve any subcontractors proposed by the Artist to be engaged on this project. Such approval will not be unreasonably withheld.

8. CHANGES IN SCOPE OF SERVICES

- A. The Artist shall present to the City in writing for further review and approval of any significant changes in the scope of the artwork including the design, color, size, material or texture of the artwork not permitted by or not in substantial conformity with the Artist's original proposal. A significant change would be in the design, color, size, material, texture or location on the site of the artwork which affects installation, scheduling, site preparation or maintenance of the artwork or the concept of the artwork as represented in the Artist's original proposal.

- B. The City may also request in writing changes in scope of the artwork, as well as performance or reporting standards to be performed under this Agreement. Such changes, including any increase or decrease in the amount of the Artist's payment, which are mutually agreed upon by the Artist and the City shall be incorporated in written amendments to this Agreement. No changes in scope, performance or reporting standards are to take effect until authorized, in writing, by both parties.
- C. The City may at any time require the Artist to make changes in the artwork to comply with applicable statutes and ordinances. The City may request changes for other reasons such as maintenance and safety considerations.
- D. In addition to the Services performed under the terms of this Agreement, the Artist may be requested by the City in writing to perform additional services. Nothing in this Agreement shall preclude such additional services. Payment for additional services shall be negotiated between the parties, however the terms of this Agreement shall otherwise apply. Should the parties mutually agree on the Artist's performance of additional services, the Artist shall not proceed with such additional services unless and until authorized in writing by the City. The City reserves the right to employ other artists or consultants to accomplish any additional services.

9. WARRANTIES

The Artist represents and warrants that:

- A. The artwork is solely the result of the artistic effort of the Artist;
- B. Except as otherwise disclosed in writing to the City, the artwork is unique, original and does not infringe on any copyright or trademark, or any other property or personal right;
- C. The artwork has not been accepted for sale elsewhere, nor has a substantial duplicate been so accepted;
- E. The artwork is free and clear of any liens from any source whatsoever, and there is no known adverse claim to the artwork;
- F. The artwork is not in the public domain;
- G. The execution and fabrication of the artwork will be performed in a professional and workmanlike manner;
- H. The artwork will be free of defects in material and workmanship, including any defects which cause or accelerate deterioration of the artwork;
- I. Reasonable maintenance of the artwork will not require procedures substantially in excess of those described in the maintenance recommendations to be submitted by the Artist hereunder.

The warranties described in this Section 9 shall survive for a period of three (3) years after the final acceptance of the artwork. The City shall give notice to the Artist of any observed breach with reasonable promptness. The Artist shall, at the request of the City and at no cost to the City, cure reasonably and promptly the breach of any such warranty which is curable by the Artist and which cure is consistent with professional conservation standards (including, for example, cure by means of repair or re-fabrication of the artwork).

10. REPRODUCTION

- A. In view of the intention that the artwork in its final dimension as art shall be unique, the Artist warrants that the artwork in its entirety will not substantially duplicate any other art works created by the Artist, including those which vary only in the size, color or materials of the final artwork, nor shall the Artist grant permission to others to do so except with written permission of the City.
- B. Artist warrants that it will not produce a substantially similar replica of the artwork, or allow others to do so on its behalf, without the prior written approval of City. This covenant shall continue in effect for a period consisting of the life of the Artist plus fifty (50) years after their death and shall be binding on Artist's successors, heirs and assigns. City understands and acknowledges that the Artist may use materials, themes, elements, concepts, dimensions, colors and shapes used in the artwork in other works of art produced by Artist and the use of similar materials, themes, elements, concepts, dimensions, colors and shapes in other works of art do not violate this Section 10 as long as the other works of art do not substantially replicate the artwork.
- C. All photographic, filmed or videotaped reproductions created by the City of the artwork shall identify the Artist and the title to the artwork.
- D. The Artist shall give a credit reading substantially, "original art commissioned by the City of Wenatchee" in any public showing of reproductions of the artwork under the Artist's control.
- E. The Artist waives any and all claims that might arise from any application of the Visual Artist's Rights Amendments to the Copyright Act of the United States, 17 USC §106 et. seq. (VARA).

11. NOTICES

All notices required to be given by either party to the other under this Agreement shall be in writing and shall be given in person or by certified mail, return receipt requested, to the addresses set forth below. Notice by mail shall be deemed given three (3) business days after the same is deposited in the United States mail, postage prepaid, addressed as provided below:

To City:
City of Wenatchee
Attn: Mayor
301 Yakima St.
P.O. Box 519
Wenatchee, WA 98807-0519

To Artist:
Jud Turner
3923 Cross Street
Eugene, Oregon 97402

With a copy to:
City of Wenatchee
Attn: Parks, Recreation &
Cultural Services Director
301 Yakima St.
P.O. Box 519
Wenatchee, WA 98807-0519

With a copy to:

12. HOLD HARMLESS

- A. Artist shall defend, indemnify and hold harmless the City, its officers, officials, employees, agents and volunteers from any and all costs, claims, injuries, damages, losses or suits, including all legal

costs and attorney's fees, arising out of or in connection with the performance of this Agreement, except for injuries and damages caused by the sole negligence of the City. The City's inspection or acceptance of any of the Artist's Services when completed shall not be grounds to avoid any of these covenants of indemnification. It is further specifically and expressly understood that the indemnification provided herein constitutes the Consultant's waiver of immunity under Title 51 RCW, solely for the purposes of this indemnification. **This waiver has been mutually negotiated by the parties.**

- B. Should a court of competent jurisdiction determine that this Agreement is subject to RCW 4.24.115 then, in the event of liability for damages arising out of bodily injury to persons or damages to property caused by or resulting from the concurrent negligence of the Artist and the City, its officers, officials, employees, agents and volunteers, the Artist's liability hereunder shall be only to the extent of the Artist's own negligence.
- C. The provisions of this Section 12 shall survive the expiration or termination of this Agreement.

13. INSURANCE

- A. The Artist shall procure and maintain, for the duration of this Agreement, insurance against claims for injuries to persons or damage to property that may arise from or in connection with the Artist's own work including the work of the Artist's agents, representatives, employees, sub-consultants or subcontractors.
- B. Before beginning the Services described in this Agreement, the Artist shall provide evidence, in the form of a Certificate of Insurance, of the following insurance coverage and limits (at a minimum):
 - 1. Business auto coverage for any auto no less than a \$1,000,000 each accident limit.
 - 2. Commercial general liability insurance no less than \$1,000,000 per occurrence with a \$1,000,000 aggregate. Coverage shall include, but is not limited to, contractual liability, products and completed operations, property damage, and employer's liability.
- C. The Artist is responsible for the payment of any deductible or self-insured retention that is required by any of the Artist's insurance. If the City is required to contribute to the deductible under any of the Artist's insurance policies, the Artist shall reimburse the City the full amount of the deductible.
- D. The City shall be named as an additional insured on the Artist's commercial general liability policy. This additional insured endorsement shall be included with evidence of insurance in the form of a Certificate of Insurance for coverage necessary in Section 13.B. The City reserves the right to receive a certified and complete copy of all of the Artist's insurance policies.
- E. If any of the policies of insurance required from the Artist are canceled or lapse, City may, at City's sole discretion, obtain substitute coverage at reasonable rates. City may deduct the cost of such coverage, plus ten percent (10%) for administrative charges, from any monies owing to the Artist.
- F. It is the intent of this Agreement that the Artist's insurance to be considered primary in the event of a loss, damage or suit. The City's own comprehensive general liability policy will be considered excess coverage in respect to the City. Additionally, the Artist's commercial general liability policy must provide cross-liability coverage as would be achieved under a standard ISO separation or insureds clause.

- G. The Artist shall request from their insurer a modification of the ACORD certificate to include language that notification will be given to the City for any cancellation, suspension or material change in the Artist's coverage.
- H. Insurance is to be placed with insurers with a current Bests' rating of A-XII or with an insurer acceptable to the City.
- I. Artist shall include all subcontractors as insured under his policy or shall require subcontractors to provide their own coverage. All coverage for subcontractors shall be subject to all of the requirements stated herein.

14. RISK OF LOSS

The Artist shall be responsible for care and protection of the artwork until final acceptance by the City and shall replace the artwork or repair and restore any damage sustained by the artwork prior to such final acceptance at no additional cost to the City. Final acceptance of the artwork shall be in writing, and risk of loss does not shift from the Artist to the City until the City issues final acceptance in writing.

15. RECORDS

The Artist shall keep all records related to this Agreement for a minimum period of three (3) years following final acceptance of the Services that the Artist is retained to perform, or termination of this Agreement, whichever occurs last. The Artist shall permit any authorized representative of the City, and any person authorized by the City for audit purposes, to inspect such records at all reasonable times.

The City is subject to the requirements of the Public Records Act, Chapter 42.56 RCW ("PRA"). All materials submitted by the Artist pursuant to this Agreement are subject to disclosure unless such materials are exempt from disclosure pursuant to the PRA. The burden of claiming an exemption from disclosure shall rest solely with the Artist. Any materials for which the Artist claims a privilege from disclosure shall be submitted marked as "Confidential" and accompanied by a statement from the Artist explaining the Artist's claim of exemption from disclosure. City will promptly notify the Artist of any requests made for disclosure of materials submitted under a claim of confidentiality. The Artist may, at the Artist's sole expense, take any appropriate actions to prevent disclosure of such material. The Artist specifically waives any claims against City related to disclosure of any materials required by the PRA.

16. VENUE, JURISDICTION AND APPLICABLE LAW

In the event that either party deems it necessary to institute legal action or proceedings to enforce any right or obligation under this agreement, the parties hereto agree that any such action shall be initiated in the Chelan County Superior Court of the State of Washington. The parties hereto agree that all questions shall be resolved by application of Washington law and that the parties to such action shall have the right of appeal from such decisions of the Superior Court in accordance with the laws of the State of Washington. Artist hereby consents to the personal jurisdiction of the Chelan County Superior Court of the State of Washington.

17. ASSIGNMENT

Neither City nor Artist shall assign, transfer or encumber any rights, duties or interests accruing from this Agreement without the express prior written consent of the other. This Agreement is made and entered into for the sole protection and benefit of the parties hereto. If the City gives its consent to any assignment, the terms of this Agreement shall continue in full force and effect and no further assignment shall be made without additional written consent. Subject to the foregoing, the rights and obligations

of the parties shall inure to the benefit of and be binding upon their respective successors in interest, heirs and assigns. No other person or entity shall have any right of action or interest in this Agreement based on any provision set forth herein.

18. FUTURE SUPPORT

City makes no commitment and assumes no obligations for the support of Artist’s activities except as set forth in this Agreement.

19. RELATIONSHIP OF PARTIES

The parties intend that an independent contractor-client relationship will be created by this Agreement. As the Artist is customarily engaged in an independently established trade which encompasses the specific service provided to the City hereunder, no agent, employee, representative or subconsultant of the Artist shall be or shall be deemed to be the employee, agent, representative or subconsultant of the City. In the performance of the Services, the Artist is an independent contractor with the ability to control and direct the performance and details of the Services, the City being interested only in the results obtained under this Agreement. None of the benefits provided by the City to its employees, including, but not limited to, compensation, insurance, and unemployment insurance are available from the City to the employees, agents, representatives, or subconsultants of the Artist. The Artist will be solely and entirely responsible for its acts and for the acts of its agents, employees, representatives and subconsultants during the performance of this Agreement. The City may, during the term of this Agreement, engage other independent contractors to perform the same or similar work that the Artist performs hereunder.

20. EXTENT OF AGREEMENT/MODIFICATION

This Agreement, together with attachments or addenda, represents the entire and integrated Agreement between the parties hereto and supersedes all prior negotiations, representations, or agreements, either written or oral. This Agreement may be amended, modified, or added to only by written instrument properly signed by both parties hereto. This Agreement shall be interpreted and construed as if equally drafted by all parties hereto.

IN WITNESS WHEREOF, the parties have executed this Agreement as of April 13, 2023.

ARTIST

CITY OF WENATCHEE

BY: _____
Jud Turner, Artist

BY: _____
Frank Kuntz, Mayor

ATTACHMENT A

SCOPE OF SERVICES

1. SERVICES BY ARTIST

The City is commissioning artwork for the Memorial Park Native Peoples Project located in Memorial Park at 2 South Chelan Avenue, Wenatchee Washington (“artwork”). In return for payment described in Section 2 of this Agreement, the Artist will perform the following services for the City:

- A. The Artist will design, fabricate, deliver and install the artwork. The proposed design of the artwork to be produced is described in Attachment B, “Artist’s Proposal.” The location (within the Memorial Park Native Peoples Project area) and final placement of the artwork shall be in accordance with the Attachment B, “Artist’s Proposal.” The colors, materials and finishes to be used in the finished artwork are fully described in Attachment B, “Artist’s Proposal.” Any significant changes to the artwork or design proposal as described must be reviewed and approved by the City’s Mayor, pursuant to Sections 6 and 8 in this Agreement.
- B. The Artist is to field verify all existing conditions that may affect their design proposal prior to commencing fabrication of the artwork. The City will not be responsible for additional costs incurred if artwork or location requires modifications for proper mounting/fit.
- C. Artist is to coordinate with City’s representative the schedule for installation of the artwork to avoid conflicting with other park uses.
- D. Artist will supply the Artist’s names and title of the artwork as Artist wishes it to appear in any documentation of the artwork.
- E. Artist will provide the following documentation:
 - (i) Diagrammatic, as-built drawings of the artwork, drawings should include all dimensions, methods of attachments, and materials;
 - (ii) Color digital photographs, which provide a record of structural detail such as where bolts are attached. These photos may be submitted when the project is at 100% completion;
 - (iii) Color digital photographs of fabrication status at the 1/3 and 2/3 level, completion prior to shipping and during installation;
 - (iv) Written documentation of the artwork, including a statement regarding the artwork and the sources of background material;
 - (v) A list of materials and finishes actually used in the completion of the artwork; and
 - (vi) Instructions for the following: Any special design features for maintenance of the artwork; Any special cleaning instructions; Maintenance and repair instructions; and Any special preservation features.

2. SITE SPECIFIC

It is the City's intent that the artwork will remain in the location specified in Section 1 of this Agreement. The artwork may be moved to another location should the City, in its sole discretion, deem it necessary for any reason. In the event of relocating the artwork, the City may notify the Artist who may be given the opportunity to move or supervise the moving of the artwork to ensure its safety.

3. PAYMENT SCHEDULE

Compensation shall be provided to the Artist upon submission of an invoice to the City and according to the following schedule.

First payment	\$20,000
Second Payment	\$30,000
Third Payment	\$30,000
Fourth Payment	\$20,000
TOTAL PAYMENTS	\$100,000

- A. The first payment (initial payment) will be paid within fifteen (15) days upon approval of the Agreement by City Council and execution of this Agreement by City and Artist;
- B. The second payment shall be paid within thirty (30) days of the City's contact receiving a progress report showing one-third completion of artwork. Proof of work in progress can be established with photographs and a written statement and sent via email to David Erickson at DErickson@wenatcheewa.gov or mailed to the City as provided for in Section 11 of the Agreement.
- C. The third payment shall be paid within thirty (30) days of the City's contact receiving a progress report showing two-thirds completion of artwork. Proof of work in progress can be established with photographs and a written statement and sent via email to David Erickson at DErickson@wenatcheewa.gov or mailed to the City as provided for in Section 11 of the Agreement.
- D. The fourth and final payment shall be paid within thirty (30) days of completion of installation on site; provided no claims by laborers or material-men have been filed, all taxes have been paid, any required releases have been received and the projects has been finally accepted by the City, and provided further that, Artist has provided the City with all the detailed drawings, documents, and instructions described in this Section 1.E, Scope of Services, and receipt of any other documents the City requires from the Artist.

ATTACHMENT B

ARTIST'S PROPOSAL

Proposal, Memorial Park Native Peoples Project, City of Wenatchee, WA, Conceptual Design

1. THE SETTING

The project creates a highly visible, centerpiece in Memorial in Wenatchee Washington to honor the Wenatchi Tribe. The primary feature is a circular plaza, shaped to symbolize a basket used to collect and hold the stories/legends along with the traditional uses. The plaza is twenty-feet-wide and located at the heart of the park at the confluence of the walkway system. The center of the plaza would be eight feet in diameter to allow for the installation of a large sculpture while maintaining a six-foot walkway around the center circle for pedestrian flow.

2. THE SCULPTURE

In the center of the circle is proposed to be a sculpture of Chief Harmelt on horseback oriented toward the north. This sculpture is to help honor and represent the past. It would be steel and incorporate symbols into the sculpture of legendary tribal figures like **coyote, sparrow hawk, salmon, bear** from the traditional stories of the Tribe. This is to help symbolize how the stories are contained within, and flow through the people.

3. PHYSICAL DESCRIPTION

The horse and rider sculpture, "Chief Harmelt on Horseback" will be fabricated from welded steel. The substructure of the sculpture will be 2"x2" square tube steel (new) with 0.25" wall thickness, which will support the weight of the surface materials and rider. This substructure will be covered with a surface of found objects, recycled materials (farm tools, hand tools, implements recognizable as what they originally were) all welded together. The style and appearance will closely represent realistic horse and human anatomy, and resemble the Artist's portfolio of previous work, and also the reference images supplied to the Artist in emails from 3/28/2023. The welding will be done using a Lincoln MP 210 MIG welder and steel wire, with redundant engineering and joints, and will be strong enough to withstand public contact and additional unforeseen weight, such as a person climbing onto the back of the sculpture (this is to be expected with public art). Some of the recycled materials can be items donated by the Community of Wenatchee residents - Artist will coordinate an opportunity for people to donate heirloom items such as old farm equipment which can be used for the sculpture and create a strong connection for people to feel that their family history is a literal part of the public art. Wenatchi Tribal members will be prioritized for inclusion of any items they wish to see used in the sculpture honoring their heritage. (Items need to be steel - if a magnet will stick to it, it's usable steel for this sculpture) The riders face be discussed with Tribal representatives to determine the level of realism and depiction of Chief Harmelt they desire - it may be cast in aluminum to achieve a high level of detail and realism if they want that, or it may be fabricated with found objects similar to the rest of the sculpture. The sculpture will be life-sized for both horse and rider. Inquiry will be made with Tribe members about the actual height and body type of Chief Harmelt (if known) to represent him as accurately as possible. The sculpture will be entirely one piece and weigh approximately 2000 pounds. It will be bolted and epoxied into the concrete base at the Park, and the installed in coordination with City. A large forklift or loader will be needed to move the sculpture from the transport trailer to the installation site.



City of Wenatchee Parks, Recreation and Cultural Services

PO Box 519 • Wenatchee, Washington 98807 • (509) 888-3284 • www.wenatcheeewa.gov

ARTIST COMMISSION AGREEMENT BETWEEN CITY OF WENATCHEE AND KEVIN PETTELLE

PROJECT: Memorial Park Native Peoples Project, Wenatchee, Washington

THIS ARTIST COMMISSION AGREEMENT (“Agreement”) is entered into by the City of Wenatchee, Washington hereinafter referred to as the “City” and Kevin Pettelle, hereinafter referred to as the “Artist.” The City and the Artist are referred together as “parties” or individually as “party.”

I. RECITALS

WHEREAS, the City desires to retain Artist to perform the services as described in this Agreement as part of the Memorial Park Native Peoples Project; and

WHEREAS, the Artist has represented to the City that the Artist has the requisite training, skill, and experience necessary to perform the services;

NOW, THEREFORE, in consideration of the mutual promises set forth herein, it is agreed by and between the parties as follows:

II. AGREEMENT

1. SERVICES BY ARTIST

Artist shall perform the services described in the Scope of Services attached hereto as Attachment A, which is incorporated herein by this reference (“Services”). The Artist shall furnish all Services, labor and related equipment necessary to conduct and complete the Services.

It is recognized that the Artist may or will be performing similar services during the term of this Agreement for other parties; however, such performance of other services shall not conflict with or interfere with the Artist’s ability to perform the Services for the City. The Artist agrees to resolve any such conflicts of interest in favor of the City. The Artist confirms that it does not have a business interest or a close family relationship with any City official or employee who was, is, or will be involved in the Artist’s selection, negotiation, drafting, signing, administration, or evaluating the Artist’s performance.

2. PAYMENT

- A. The City shall pay Artist a total amount of \$110,000.00 for the Services, which includes all materials, fabrication, transport, installation, permits, taxes and fees related to Services. The payment schedule is outlined in Attachment A.
- B. All invoices shall be paid within thirty (30) days of receipt of the invoice and documentation of progress; provided that if the City objects to all or any portion of an invoice, it shall so notify the Artist of the same within fifteen (15) days from the date of receipt and shall pay that portion of the invoice not in dispute, and the parties shall immediately make every effort to settle the disputed portion.
- C. Except as otherwise provided in this Agreement, the Artist shall be solely responsible for the payment of any taxes imposed by any lawful jurisdiction as a result of the performance and payment of this Agreement.
- D. If the Services rendered do not meet the requirements of the Agreement, Artist will correct or modify the Services to comply with the Agreement. The City may withhold payment for such Services until the Services meet the requirements of the Agreement.

3. DISCRIMINATION AND COMPLIANCE WITH LAWS

- A. Artist agrees not to discriminate against any employee or applicant for employment or any other person in the performance of this Agreement because of race, creed, color, national origin, marital status, sex, age, disability, or other circumstance prohibited by federal, state, or local law or ordinance, except a bona fide occupational qualification.
- B. Artist shall comply with all federal, state and local laws and ordinances applicable to the Services to be done under this Agreement, including where applicable Wenatchee City Code.
- C. Violation of this Section 3 shall be a material breach of this Agreement and grounds for cancellation, termination or suspension of the Agreement by City, in whole or in part, and may result in ineligibility for further work for the City.

4. TERM AND TERMINATION OF AGREEMENT

- A. The Services performed under this Agreement shall be completed on or before October 13, 2025 (“Completion Date”). It is anticipated that the artwork will be installed no later than October 6, 2025. This Agreement shall remain in effect until the Completion Date and final payment for Services.
- B. The City reserves the right to terminate this Agreement at any time, with or without cause, upon thirty (30) days written notice to the Artist. Any such notice shall be given to the address specified in Section 11. In the event that this Agreement is terminated by the City without cause, a final payment shall be made to the Artist for all Services performed. No payment shall be made for any Services completed after thirty (30) days following receipt by the Artist of the notice to terminate. In the event that Services of the Artist are terminated by the City for cause, the amount to be paid shall be determined by the City with consideration given to the actual cost incurred by the Artist in performing the Services to the date of termination, the amount of Services originally required which would satisfactorily complete it to date of termination, whether that Service is in a form or type which is usable to the City at the time of termination, the cost of the City of employing another firm to complete the Services required, and the time which may be required to do so.

- C. Artist may terminate this Agreement for material breach upon thirty (30) day's prior written notice to the City; provided, however, that the notice shall identify the specific material breach; and provided, further that the City shall have the right to cure any alleged material breach within fifteen (15) days following receipt of such notice. Any such notice shall be given to the address specified in Section 11.

5. OWNERSHIP OF WORK PRODUCT

- A. Upon payment to the Artist by the City of all compensation due under this Agreement, copies of all data, reports, memoranda, studies, drawings, designs, maquettes/models and other documents developed, prepared and/or submitted under this Agreement, whether finished or not, shall become the property of the City, and shall be forwarded to the City to be used by the City as it sees fit.
- B. Any records, reports, information, data, or other documents or materials given to or prepared or assembled by the Artist under this Agreement, which the City requests to be kept as confidential, shall not be made available to any individual or organization by the Artist without prior written approval of the City.
- C. Upon final acceptance by the City, title and full ownership of the artwork, including any trademarks and copyrights, shall automatically pass to the City.

6. GENERAL ADMINISTRATION AND MANAGEMENT

The City of Wenatchee Parks, Recreation and Cultural Services Director shall be the City's representative and shall oversee all Services to be performed, coordinate all communications, review, coordinate approval with the Mayor and/or City Council and process all invoices, under this Agreement. Notwithstanding the foregoing, whenever under this Agreement City approval, authorization, waiver, instructions or determinations are required they shall be effective only when given by the Mayor.

7. CITY RESPONSIBILITIES

- A. The City will make available to the Artist at their request all pertinent technical and project data in the City's possession unless the City is prohibited by law or contractual agreement from disclosing such information.
- B. The City shall furnish information and approvals expeditiously to further the project.
- C. The City will work with the appropriate departments and contractors to facilitate installation of the artwork at the site, as needed.
- D. The City shall have the right to review and approve any subcontractors proposed by the Artist to be engaged on this project. Such approval will not be unreasonably withheld.

8. CHANGES IN SCOPE OF SERVICES

- A. The Artist shall present to the City in writing for further review and approval of any significant changes in the scope of the artwork including the design, color, size, material or texture of the artwork not permitted by or not in substantial conformity with the Artist's original proposal. A significant change would be in the design, color, size, material, texture or location on the site of the artwork which affects installation, scheduling, site preparation or maintenance of the artwork or the concept of the artwork as represented in the Artist's original proposal.

- B. The City may also request in writing changes in scope of the artwork, as well as performance or reporting standards to be performed under this Agreement. Such changes, including any increase or decrease in the amount of the Artist's payment, which are mutually agreed upon by the Artist and the City shall be incorporated in written amendments to this Agreement. No changes in scope, performance or reporting standards are to take effect until authorized, in writing, by both parties.
- C. The City may at any time require the Artist to make changes in the artwork to comply with applicable statutes and ordinances. The City may request changes for other reasons such as maintenance and safety considerations.
- D. In addition to the Services performed under the terms of this Agreement, the Artist may be requested by the City in writing to perform additional services. Nothing in this Agreement shall preclude such additional services. Payment for additional services shall be negotiated between the parties, however the terms of this Agreement shall otherwise apply. Should the parties mutually agree on the Artist's performance of additional services, the Artist shall not proceed with such additional services unless and until authorized in writing by the City. The City reserves the right to employ other artists or consultants to accomplish any additional services.

9. WARRANTIES

The Artist represents and warrants that:

- A. The artwork is solely the result of the artistic effort of the Artist;
- B. Except as otherwise disclosed in writing to the City, the artwork is unique, original and does not infringe on any copyright or trademark, or any other property or personal right;
- C. The artwork has not been accepted for sale elsewhere, nor has a substantial duplicate been so accepted;
- E. The artwork is free and clear of any liens from any source whatsoever, and there is no known adverse claim to the artwork;
- F. The artwork is not in the public domain;
- G. The execution and fabrication of the artwork will be performed in a professional and workmanlike manner;
- H. The artwork will be free of defects in material and workmanship, including any defects which cause or accelerate deterioration of the artwork;
- I. Reasonable maintenance of the artwork will not require procedures substantially in excess of those described in the maintenance recommendations to be submitted by the Artist hereunder.

The warranties described in this Section 9 shall survive for a period of three (3) years after the final acceptance of the artwork. The City shall give notice to the Artist of any observed breach with reasonable promptness. The Artist shall, at the request of the City and at no cost to the City, cure reasonably and promptly the breach of any such warranty which is curable by the Artist and which cure is consistent with professional conservation standards (including, for example, cure by means of repair or re-fabrication of the artwork).

10. REPRODUCTION

- A. In view of the intention that the artwork in its final dimension as art shall be unique, the Artist warrants that the artwork in its entirety will not substantially duplicate any other art works created by the Artist, including those which vary only in the size, color or materials of the final artwork, nor shall the Artist grant permission to others to do so except with written permission of the City.
- B. Artist warrants that it will not produce a substantially similar replica of the artwork, or allow others to do so on its behalf, without the prior written approval of City. This covenant shall continue in effect for a period consisting of the life of the Artist plus fifty (50) years after their death and shall be binding on Artist's successors, heirs and assigns. City understands and acknowledges that the Artist may use materials, themes, elements, concepts, dimensions, colors and shapes used in the artwork in other works of art produced by Artist and the use of similar materials, themes, elements, concepts, dimensions, colors and shapes in other works of art do not violate this Section 10 as long as the other works of art do not substantially replicate the artwork.
- C. All photographic, filmed or videotaped reproductions created by the City of the artwork shall identify the Artist and the title to the artwork.
- D. The Artist shall give a credit reading substantially, "original art commissioned by the City of Wenatchee" in any public showing of reproductions of the artwork under the Artist's control.
- E. The Artist waives any and all claims that might arise from any application of the Visual Artist's Rights Amendments to the Copyright Act of the United States, 17 USC §106 et. seq. (VARA).

11. NOTICES

All notices required to be given by either party to the other under this Agreement shall be in writing and shall be given in person or by certified mail, return receipt requested, to the addresses set forth below. Notice by mail shall be deemed given three (3) business days after the same is deposited in the United States mail, postage prepaid, addressed as provided below:

To City:
City of Wenatchee
Attn: Mayor
301 Yakima St.
P.O. Box 519
Wenatchee, WA 98807-0519

To Artist:
Kevin Pettelle
PO Box 777
Sultan, WA 98294

With a copy to:
City of Wenatchee
Attn: Parks, Recreation &
Cultural Services Director
301 Yakima St.
P.O. Box 519
Wenatchee, WA 98807-0519

With a copy to:

12. HOLD HARMLESS

- A. Artist shall defend, indemnify and hold harmless the City, its officers, officials, employees, agents and volunteers from any and all costs, claims, injuries, damages, losses or suits, including all legal

costs and attorney's fees, arising out of or in connection with the performance of this Agreement, except for injuries and damages caused by the sole negligence of the City. The City's inspection or acceptance of any of the Artist's Services when completed shall not be grounds to avoid any of these covenants of indemnification. It is further specifically and expressly understood that the indemnification provided herein constitutes the Consultant's waiver of immunity under Title 51 RCW, solely for the purposes of this indemnification. **This waiver has been mutually negotiated by the parties.**

- B. Should a court of competent jurisdiction determine that this Agreement is subject to RCW 4.24.115 then, in the event of liability for damages arising out of bodily injury to persons or damages to property caused by or resulting from the concurrent negligence of the Artist and the City, its officers, officials, employees, agents and volunteers, the Artist's liability hereunder shall be only to the extent of the Artist's own negligence.
- C. The provisions of this Section 12 shall survive the expiration or termination of this Agreement.

13. INSURANCE

- A. The Artist shall procure and maintain, for the duration of this Agreement, insurance against claims for injuries to persons or damage to property that may arise from or in connection with the Artist's own work including the work of the Artist's agents, representatives, employees, sub-consultants or subcontractors.
- B. Before beginning the Services described in this Agreement, the Artist shall provide evidence, in the form of a Certificate of Insurance, of the following insurance coverage and limits (at a minimum):
 - 1. Business auto coverage for any auto no less than a \$1,000,000 each accident limit.
 - 2. Commercial general liability insurance no less than \$1,000,000 per occurrence with a \$1,000,000 aggregate. Coverage shall include, but is not limited to, contractual liability, products and completed operations, property damage, and employer's liability.
- C. The Artist is responsible for the payment of any deductible or self-insured retention that is required by any of the Artist's insurance. If the City is required to contribute to the deductible under any of the Artist's insurance policies, the Artist shall reimburse the City the full amount of the deductible.
- D. The City shall be named as an additional insured on the Artist's commercial general liability policy. This additional insured endorsement shall be included with evidence of insurance in the form of a Certificate of Insurance for coverage necessary in Section 13.B. The City reserves the right to receive a certified and complete copy of all of the Artist's insurance policies.
- E. If any of the policies of insurance required from the Artist are canceled or lapse, City may, at City's sole discretion, obtain substitute coverage at reasonable rates. City may deduct the cost of such coverage, plus ten percent (10%) for administrative charges, from any monies owing to the Artist.
- F. It is the intent of this Agreement that the Artist's insurance to be considered primary in the event of a loss, damage or suit. The City's own comprehensive general liability policy will be considered excess coverage in respect to the City. Additionally, the Artist's commercial general liability policy must provide cross-liability coverage as would be achieved under a standard ISO separation or insureds clause.

- G. The Artist shall request from their insurer a modification of the ACORD certificate to include language that notification will be given to the City for any cancellation, suspension or material change in the Artist's coverage.
- H. Insurance is to be placed with insurers with a current Bests' rating of A-XII or with an insurer acceptable to the City.
- I. Artist shall include all subcontractors as insured under his policy or shall require subcontractors to provide their own coverage. All coverage for subcontractors shall be subject to all of the requirements stated herein.

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The Artist shall be responsible for care and protection of the artwork until final acceptance by the City and shall replace the artwork or repair and restore any damage sustained by the artwork prior to such final acceptance at no additional cost to the City. Final acceptance of the artwork shall be in writing, and risk of loss does not shift from the Artist to the City until the City issues final acceptance in writing.

15. RECORDS

The Artist shall keep all records related to this Agreement for a minimum period of three (3) years following final acceptance of the Services that the Artist is retained to perform, or termination of this Agreement, whichever occurs last. The Artist shall permit any authorized representative of the City, and any person authorized by the City for audit purposes, to inspect such records at all reasonable times.

The City is subject to the requirements of the Public Records Act, Chapter 42.56 RCW ("PRA"). All materials submitted by the Artist pursuant to this Agreement are subject to disclosure unless such materials are exempt from disclosure pursuant to the PRA. The burden of claiming an exemption from disclosure shall rest solely with the Artist. Any materials for which the Artist claims a privilege from disclosure shall be submitted marked as "Confidential" and accompanied by a statement from the Artist explaining the Artist's claim of exemption from disclosure. City will promptly notify the Artist of any requests made for disclosure of materials submitted under a claim of confidentiality. The Artist may, at the Artist's sole expense, take any appropriate actions to prevent disclosure of such material. The Artist specifically waives any claims against City related to disclosure of any materials required by the PRA.

16. VENUE, JURISDICTION AND APPLICABLE LAW

In the event that either party deems it necessary to institute legal action or proceedings to enforce any right or obligation under this agreement, the parties hereto agree that any such action shall be initiated in the Chelan County Superior Court of the State of Washington. The parties hereto agree that all questions shall be resolved by application of Washington law and that the parties to such action shall have the right of appeal from such decisions of the Superior Court in accordance with the laws of the State of Washington. Artist hereby consents to the personal jurisdiction of the Chelan County Superior Court of the State of Washington.

17. ASSIGNMENT

Neither City nor Artist shall assign, transfer or encumber any rights, duties or interests accruing from this Agreement without the express prior written consent of the other. This Agreement is made and entered into for the sole protection and benefit of the parties hereto. If the City gives its consent to any assignment, the terms of this Agreement shall continue in full force and effect and no further assignment shall be made without additional written consent. Subject to the foregoing, the rights and obligations

of the parties shall inure to the benefit of and be binding upon their respective successors in interest, heirs and assigns. No other person or entity shall have any right of action or interest in this Agreement based on any provision set forth herein.

18. FUTURE SUPPORT

City makes no commitment and assumes no obligations for the support of Artist’s activities except as set forth in this Agreement.

19. RELATIONSHIP OF PARTIES

The parties intend that an independent contractor-client relationship will be created by this Agreement. As the Artist is customarily engaged in an independently established trade which encompasses the specific service provided to the City hereunder, no agent, employee, representative or subconsultant of the Artist shall be or shall be deemed to be the employee, agent, representative or subconsultant of the City. In the performance of the Services, the Artist is an independent contractor with the ability to control and direct the performance and details of the Services, the City being interested only in the results obtained under this Agreement. None of the benefits provided by the City to its employees, including, but not limited to, compensation, insurance, and unemployment insurance are available from the City to the employees, agents, representatives, or subconsultants of the Artist. The Artist will be solely and entirely responsible for its acts and for the acts of its agents, employees, representatives and subconsultants during the performance of this Agreement. The City may, during the term of this Agreement, engage other independent contractors to perform the same or similar work that the Artist performs hereunder.

20. EXTENT OF AGREEMENT/MODIFICATION

This Agreement, together with attachments or addenda, represents the entire and integrated Agreement between the parties hereto and supersedes all prior negotiations, representations, or agreements, either written or oral. This Agreement may be amended, modified, or added to only by written instrument properly signed by both parties hereto. This Agreement shall be interpreted and construed as if equally drafted by all parties hereto.

IN WITNESS WHEREOF, the parties have executed this Agreement as of April 13, 2023.

ARTIST

CITY OF WENATCHEE

BY: _____
Kevin Pettelle, Artist

BY: _____
Frank Kuntz, Mayor

ATTACHMENT A

SCOPE OF SERVICES

1. SERVICES BY ARTIST

The City is commissioning artwork for the Memorial Park Native Peoples Project located in Memorial Park at 2 South Chelan Avenue, Wenatchee Washington (“artwork”). In return for payment described in Section 2 of this Agreement, the Artist will perform the following services for the City:

- A. The Artist will design, fabricate, deliver and install the artwork. The proposed design of the artwork to be produced is described in Attachment B, “Artist’s Proposal.” The location (within the Memorial Park Native Peoples Project area) and final placement of the artwork shall be in accordance with the Attachment B, “Artist’s Proposal.” The colors, materials and finishes to be used in the finished artwork are fully described in Attachment B, “Artist’s Proposal.” Any significant changes to the artwork or design proposal as described must be reviewed and approved by the City’s Mayor, pursuant to Sections 6 and 8 in this Agreement.
- B. The Artist is to field verify all existing conditions that may affect their design proposal prior to commencing fabrication of the artwork. The City will not be responsible for additional costs incurred if artwork or location requires modifications for proper mounting/fit.
- C. Artist is to coordinate with City’s representative the schedule for installation of the artwork to avoid conflicting with other park uses.
- D. Artist will supply the Artist’s names and title of the artwork as Artist wishes it to appear in any documentation of the artwork.
- E. Artist will provide the following documentation:
 - (i) Diagrammatic, as-built drawings of the artwork, drawings should include all dimensions, methods of attachments, and materials;
 - (ii) Color digital photographs, which provide a record of structural detail such as where bolts are attached. These photos may be submitted when the project is at 100% completion;
 - (iii) Color digital photographs of fabrication status at the 1/3 and 2/3 level, completion prior to shipping and during installation;
 - (iv) Written documentation of the artwork, including a statement regarding the artwork and the sources of background material;
 - (v) A list of materials and finishes actually used in the completion of the artwork; and
 - (vi) Instructions for the following: Any special design features for maintenance of the artwork; Any special cleaning instructions; Maintenance and repair instructions; and Any special preservation features.

2. SITE SPECIFIC

It is the City's intent that the artwork will remain in the location specified in Section 1 of this Agreement. The artwork may be moved to another location should the City, in its sole discretion, deem it necessary for any reason. In the event of relocating the artwork, the City may notify the Artist who may be given the opportunity to move or supervise the moving of the artwork to ensure its safety.

3. PAYMENT SCHEDULE

Compensation shall be provided to the Artist upon submission of an invoice to the City and according to the following schedule.

First payment	\$20,000
Second Payment	\$15,000
Third Payment	\$20,000
Fourth Payment	\$40,000
Fifth Payment	\$15,000
TOTAL PAYMENTS	\$110,000

- A. The first payment (initial payment) will be paid within fifteen (15) days upon approval of the Agreement by City Council and execution of this Agreement by City and Artist;
- B. The second payment shall be paid within thirty (30) days of the City's contact receiving a progress report showing the completed design of the artwork.
- C. The third payment shall be paid within thirty (30) days of the City's contact receiving a progress report showing the enlargement of artwork.
- D. The fourth payment shall be paid within thirty (30) days prior to the foundry beginning.
- E. The fifth and final payment shall be paid within thirty (30) days of completion of installation on site; provided no claims by laborers or material-men have been filed, all taxes have been paid, any required releases have been received and the projects has been finally accepted by the City, and provided further that, Artist has provided the City with all the detailed drawings, documents, and instructions described in this Section 1.E, Scope of Services, and receipt of any other documents the City requires from the Artist.

ATTACHMENT B
Artist's Proposal / Scope of Work

Proposal, Memorial Park Native Peoples Project, City of Wenatchee, WA, Conceptual Design

1. THE SETTING

The project creates a highly visible, centerpiece in Memorial Park in Wenatchee Washington to honor the Wenatchi Tribe. The primary feature is a circular plaza, shaped to symbolize a basket used to collect and hold the stories/legends along with the traditional uses. The plaza is twenty-feet-wide and located at the heart of the park at the confluence of the walkway system.

2. THE SCULPTURE

In the northern segment of the plaza, between the two walkways is proposed to be a sculpture. This sculpture would have a contemporary feel and made of bronze. It would be of a mother and daughter of native ancestry, hand in hand, walking from the basket toward the future. They would be wind-blown. The mother would be looking over her shoulder toward the vestiges of the past and stories contained in the other elements in the plaza. The daughter symbolizes the future. She would be sculpted wearing a necklace that has a coyote, bear, owl and salmon charms on it to symbolize her carrying the legends of the past with her over her heart into the future. She would also be clutching two teddy bears.

3. PHYSICAL DESCRIPTION

The envisioned life size sculpture is of a young mother (approximately 5'-4" tall) of indigenous decent walking (striding) hand in hand with her 8-year-old daughter (approximately 40" tall). They are facing out of the plaza, location TBD. The mother is holding the child's left hand (with her right), while the mother is looking over her left shoulder into the plaza, her daughter looking forward.

The clothing would be of contemporary but not a datable fashion, skirt and blouse on the mother with shorts or skirt on the daughter, both figures barefoot. A slight wind/breeze from the front would be apparent on both figures.

The sculpture would weigh approximately 200 lbs. and cast in the highest-grade silicon bronze, finished with a traditional dark and light brown patina then sealed with a maintainable high carnauba wax buffed to gloss. It's mounting uses stainless steel threaded studs attached to at least 3 points located on bottom of the sculptures feet and can be installed after the plaza is completed. Assistance will be needed to lift and install the sculpture. The Artist will deliver the sculpture, guide and assist in the installation. All studies and concepts are available for review.

The Artist signature, sculpture's title and the date of the work will be located on a visible but none distracting area on the sculpture. Any additional verbiage or plaques are not included in this agreement.



City of Wenatchee Parks, Recreation and Cultural Services

PO Box 519 • Wenatchee, Washington 98807 • (509) 888-3284 • www.wenatcheewa.gov

ARTIST COMMISSION AGREEMENT BETWEEN CITY OF WENATCHEE AND SWEDE ALBERT

PROJECT: Memorial Park Native Peoples Project, Wenatchee, Washington

THIS ARTIST COMMISSION AGREEMENT (“Agreement”) is entered into by the City of Wenatchee, Washington hereinafter referred to as the “City” and Swede Albert, hereinafter referred to as the “Artist.” The City and the Artist are referred together as “parties” or individually as “party.”

I. RECITALS

WHEREAS, the City desires to retain Artist to perform the services as described in this Agreement as part of the Memorial Park Native Peoples Project; and

WHEREAS, the Artist has represented to the City that the Artist has the requisite training, skill, and experience necessary to perform the services;

NOW, THEREFORE, in consideration of the mutual promises set forth herein, it is agreed by and between the parties as follows:

II. AGREEMENT

1. SERVICES BY ARTIST

Artist shall perform the services described in the Scope of Services attached hereto as Attachment A, which is incorporated herein by this reference (“Services”). The Artist shall furnish all Services, labor and related equipment necessary to conduct and complete the Services.

It is recognized that the Artist may or will be performing similar services during the term of this Agreement for other parties; however, such performance of other services shall not conflict with or interfere with the Artist’s ability to perform the Services for the City. The Artist agrees to resolve any such conflicts of interest in favor of the City. The Artist confirms that it does not have a business interest or a close family relationship with any City official or employee who was, is, or will be involved in the Artist’s selection, negotiation, drafting, signing, administration, or evaluating the Artist’s performance.

2. PAYMENT

- A. The City shall pay Artist a total amount of \$60,000.00 for the Services, which includes all materials, fabrication, transport, installation, permits, taxes and fees related to Services. The payment schedule is outlined in Attachment A.
- B. All invoices shall be paid within thirty (30) days of receipt of the invoice and documentation of progress; provided that if the City objects to all or any portion of an invoice, it shall so notify the Artist of the same within fifteen (15) days from the date of receipt and shall pay that portion of the invoice not in dispute, and the parties shall immediately make every effort to settle the disputed portion.
- C. Except as otherwise provided in this Agreement, the Artist shall be solely responsible for the payment of any taxes imposed by any lawful jurisdiction as a result of the performance and payment of this Agreement.
- D. If the Services rendered do not meet the requirements of the Agreement, Artist will correct or modify the Services to comply with the Agreement. The City may withhold payment for such Services until the Services meet the requirements of the Agreement.

3. DISCRIMINATION AND COMPLIANCE WITH LAWS

- A. Artist agrees not to discriminate against any employee or applicant for employment or any other person in the performance of this Agreement because of race, creed, color, national origin, marital status, sex, age, disability, or other circumstance prohibited by federal, state, or local law or ordinance, except a bona fide occupational qualification.
- B. Artist shall comply with all federal, state and local laws and ordinances applicable to the Services to be done under this Agreement, including where applicable Wenatchee City Code.
- C. Violation of this Section 3 shall be a material breach of this Agreement and grounds for cancellation, termination or suspension of the Agreement by City, in whole or in part, and may result in ineligibility for further work for the City.

4. TERM AND TERMINATION OF AGREEMENT

- A. The Services performed under this Agreement shall be completed on or before October 13, 2025 (“Completion Date”). It is anticipated that the artwork will be installed no later than October 6, 2025. This Agreement shall remain in effect until the Completion Date and final payment for Services.
- B. The City reserves the right to terminate this Agreement at any time, with or without cause, upon thirty (30) days written notice to the Artist. Any such notice shall be given to the address specified in Section 11. In the event that this Agreement is terminated by the City without cause, a final payment shall be made to the Artist for all Services performed. No payment shall be made for any Services completed after thirty (30) days following receipt by the Artist of the notice to terminate. In the event that Services of the Artist are terminated by the City for cause, the amount to be paid shall be determined by the City with consideration given to the actual cost incurred by the Artist in performing the Services to the date of termination, the amount of Services originally required which would satisfactorily complete it to date of termination, whether that Service is in a form or type which is usable to the City at the time of termination, the cost of the City of employing another firm to complete the Services required, and the time which may be required to do so.

- C. Artist may terminate this Agreement for material breach upon thirty (30) day's prior written notice to the City; provided, however, that the notice shall identify the specific material breach; and provided, further that the City shall have the right to cure any alleged material breach within fifteen (15) days following receipt of such notice. Any such notice shall be given to the address specified in Section 11.

5. OWNERSHIP OF WORK PRODUCT

- A. Upon payment to the Artist by the City of all compensation due under this Agreement, copies of all data, reports, memoranda, studies, drawings, designs, maquettes/models and other documents developed, prepared and/or submitted under this Agreement, whether finished or not, shall become the property of the City, and shall be forwarded to the City to be used by the City as it sees fit.
- B. Any records, reports, information, data, or other documents or materials given to or prepared or assembled by the Artist under this Agreement, which the City requests to be kept as confidential, shall not be made available to any individual or organization by the Artist without prior written approval of the City.
- C. Upon final acceptance by the City, title and full ownership of the artwork, including any trademarks and copyrights, shall automatically pass to the City.

6. GENERAL ADMINISTRATION AND MANAGEMENT

The City of Wenatchee Parks, Recreation and Cultural Services Director shall be the City's representative and shall oversee all Services to be performed, coordinate all communications, review, coordinate approval with the Mayor and/or City Council and process all invoices, under this Agreement. Notwithstanding the foregoing, whenever under this Agreement City approval, authorization, waiver, instructions or determinations are required they shall be effective only when given by the Mayor.

7. CITY RESPONSIBILITIES

- A. The City will make available to the Artist at their request all pertinent technical and project data in the City's possession unless the City is prohibited by law or contractual agreement from disclosing such information.
- B. The City shall furnish information and approvals expeditiously to further the project.
- C. The City will work with the appropriate departments and contractors to facilitate installation of the artwork at the site, as needed.
- D. The City shall have the right to review and approve any subcontractors proposed by the Artist to be engaged on this project. Such approval will not be unreasonably withheld.

8. CHANGES IN SCOPE OF SERVICES

- A. The Artist shall present to the City in writing for further review and approval of any significant changes in the scope of the artwork including the design, color, size, material or texture of the artwork not permitted by or not in substantial conformity with the Artist's original proposal. A significant change would be in the design, color, size, material, texture or location on the site of the artwork which affects installation, scheduling, site preparation or maintenance of the artwork or the concept of the artwork as represented in the Artist's original proposal.

- B. The City may also request in writing changes in scope of the artwork, as well as performance or reporting standards to be performed under this Agreement. Such changes, including any increase or decrease in the amount of the Artist's payment, which are mutually agreed upon by the Artist and the City shall be incorporated in written amendments to this Agreement. No changes in scope, performance or reporting standards are to take effect until authorized, in writing, by both parties.
- C. The City may at any time require the Artist to make changes in the artwork to comply with applicable statutes and ordinances. The City may request changes for other reasons such as maintenance and safety considerations.
- D. In addition to the Services performed under the terms of this Agreement, the Artist may be requested by the City in writing to perform additional services. Nothing in this Agreement shall preclude such additional services. Payment for additional services shall be negotiated between the parties, however the terms of this Agreement shall otherwise apply. Should the parties mutually agree on the Artist's performance of additional services, the Artist shall not proceed with such additional services unless and until authorized in writing by the City. The City reserves the right to employ other artists or consultants to accomplish any additional services.

9. WARRANTIES

The Artist represents and warrants that:

- A. The artwork is solely the result of the artistic effort of the Artist;
- B. Except as otherwise disclosed in writing to the City, the artwork is unique, original and does not infringe on any copyright or trademark, or any other property or personal right;
- C. The artwork has not been accepted for sale elsewhere, nor has a substantial duplicate been so accepted;
- E. The artwork is free and clear of any liens from any source whatsoever, and there is no known adverse claim to the artwork;
- F. The artwork is not in the public domain;
- G. The execution and fabrication of the artwork will be performed in a professional and workmanlike manner;
- H. The artwork will be free of defects in material and workmanship, including any defects which cause or accelerate deterioration of the artwork;
- I. Reasonable maintenance of the artwork will not require procedures substantially in excess of those described in the maintenance recommendations to be submitted by the Artist hereunder.

The warranties described in this Section 9 shall survive for a period of three (3) years after the final acceptance of the artwork. The City shall give notice to the Artist of any observed breach with reasonable promptness. The Artist shall, at the request of the City and at no cost to the City, cure reasonably and promptly the breach of any such warranty which is curable by the Artist and which cure is consistent with professional conservation standards (including, for example, cure by means of repair or re-fabrication of the artwork).

10. REPRODUCTION

- A. In view of the intention that the artwork in its final dimension as art shall be unique, the Artist warrants that the artwork in its entirety will not substantially duplicate any other art works created by the Artist, including those which vary only in the size, color or materials of the final artwork, nor shall the Artist grant permission to others to do so except with written permission of the City.
- B. Artist warrants that it will not produce a substantially similar replica of the artwork, or allow others to do so on its behalf, without the prior written approval of City. This covenant shall continue in effect for a period consisting of the life of the Artist plus fifty (50) years after their death and shall be binding on Artist's successors, heirs and assigns. City understands and acknowledges that the Artist may use materials, themes, elements, concepts, dimensions, colors and shapes used in the artwork in other works of art produced by Artist and the use of similar materials, themes, elements, concepts, dimensions, colors and shapes in other works of art do not violate this Section 10 as long as the other works of art do not substantially replicate the artwork.
- C. All photographic, filmed or videotaped reproductions created by the City of the artwork shall identify the Artist and the title to the artwork.
- D. The Artist shall give a credit reading substantially, "original art commissioned by the City of Wenatchee" in any public showing of reproductions of the artwork under the Artist's control.
- E. The Artist waives any and all claims that might arise from any application of the Visual Artist's Rights Amendments to the Copyright Act of the United States, 17 USC §106 et. seq. (VARA).

11. NOTICES

All notices required to be given by either party to the other under this Agreement shall be in writing and shall be given in person or by certified mail, return receipt requested, to the addresses set forth below. Notice by mail shall be deemed given three (3) business days after the same is deposited in the United States mail, postage prepaid, addressed as provided below:

To City:
City of Wenatchee
Attn: Mayor
301 Yakima St.
P.O. Box 519
Wenatchee, WA 98807-0519

To Artist:
Swede Albert
PO Box 1195
Omak, Washington 98841

With a copy to:
City of Wenatchee
Attn: Parks, Recreation &
Cultural Services Director
301 Yakima St.
P.O. Box 519
Wenatchee, WA 98807-0519

With a copy to:

12. HOLD HARMLESS

- A. Artist shall defend, indemnify and hold harmless the City, its officers, officials, employees, agents and volunteers from any and all costs, claims, injuries, damages, losses or suits, including all legal

costs and attorney's fees, arising out of or in connection with the performance of this Agreement, except for injuries and damages caused by the sole negligence of the City. The City's inspection or acceptance of any of the Artist's Services when completed shall not be grounds to avoid any of these covenants of indemnification. It is further specifically and expressly understood that the indemnification provided herein constitutes the Consultant's waiver of immunity under Title 51 RCW, solely for the purposes of this indemnification. **This waiver has been mutually negotiated by the parties.**

- B. Should a court of competent jurisdiction determine that this Agreement is subject to RCW 4.24.115 then, in the event of liability for damages arising out of bodily injury to persons or damages to property caused by or resulting from the concurrent negligence of the Artist and the City, its officers, officials, employees, agents and volunteers, the Artist's liability hereunder shall be only to the extent of the Artist's own negligence.
- C. The provisions of this Section 12 shall survive the expiration or termination of this Agreement.

13. INSURANCE

- A. The Artist shall procure and maintain, for the duration of this Agreement, insurance against claims for injuries to persons or damage to property that may arise from or in connection with the Artist's own work including the work of the Artist's agents, representatives, employees, sub-consultants or subcontractors.
- B. Before beginning the Services described in this Agreement, the Artist shall provide evidence, in the form of a Certificate of Insurance, of the following insurance coverage and limits (at a minimum):
 - 1. Business auto coverage for any auto no less than a \$1,000,000 each accident limit.
 - 2. Commercial general liability insurance no less than \$1,000,000 per occurrence with a \$1,000,000 aggregate. Coverage shall include, but is not limited to, contractual liability, products and completed operations, property damage, and employer's liability.
- C. The Artist is responsible for the payment of any deductible or self-insured retention that is required by any of the Artist's insurance. If the City is required to contribute to the deductible under any of the Artist's insurance policies, the Artist shall reimburse the City the full amount of the deductible.
- D. The City shall be named as an additional insured on the Artist's commercial general liability policy. This additional insured endorsement shall be included with evidence of insurance in the form of a Certificate of Insurance for coverage necessary in Section 13.B. The City reserves the right to receive a certified and complete copy of all of the Artist's insurance policies.
- E. If any of the policies of insurance required from the Artist are canceled or lapse, City may, at City's sole discretion, obtain substitute coverage at reasonable rates. City may deduct the cost of such coverage, plus ten percent (10%) for administrative charges, from any monies owing to the Artist.
- F. It is the intent of this Agreement that the Artist's insurance to be considered primary in the event of a loss, damage or suit. The City's own comprehensive general liability policy will be considered excess coverage in respect to the City. Additionally, the Artist's commercial general liability policy must provide cross-liability coverage as would be achieved under a standard ISO separation or insureds clause.

- G. The Artist shall request from their insurer a modification of the ACORD certificate to include language that notification will be given to the City for any cancellation, suspension or material change in the Artist's coverage.
- H. Insurance is to be placed with insurers with a current Bests' rating of A-XII or with an insurer acceptable to the City.
- I. Artist shall include all subcontractors as insured under his policy or shall require subcontractors to provide their own coverage. All coverage for subcontractors shall be subject to all of the requirements stated herein.

14. RISK OF LOSS

The Artist shall be responsible for care and protection of the artwork until final acceptance by the City and shall replace the artwork or repair and restore any damage sustained by the artwork prior to such final acceptance at no additional cost to the City. Final acceptance of the artwork shall be in writing, and risk of loss does not shift from the Artist to the City until the City issues final acceptance in writing.

15. RECORDS

The Artist shall keep all records related to this Agreement for a minimum period of three (3) years following final acceptance of the Services that the Artist is retained to perform, or termination of this Agreement, whichever occurs last. The Artist shall permit any authorized representative of the City, and any person authorized by the City for audit purposes, to inspect such records at all reasonable times.

The City is subject to the requirements of the Public Records Act, Chapter 42.56 RCW ("PRA"). All materials submitted by the Artist pursuant to this Agreement are subject to disclosure unless such materials are exempt from disclosure pursuant to the PRA. The burden of claiming an exemption from disclosure shall rest solely with the Artist. Any materials for which the Artist claims a privilege from disclosure shall be submitted marked as "Confidential" and accompanied by a statement from the Artist explaining the Artist's claim of exemption from disclosure. City will promptly notify the Artist of any requests made for disclosure of materials submitted under a claim of confidentiality. The Artist may, at the Artist's sole expense, take any appropriate actions to prevent disclosure of such material. The Artist specifically waives any claims against City related to disclosure of any materials required by the PRA.

16. VENUE, JURISDICTION AND APPLICABLE LAW

In the event that either party deems it necessary to institute legal action or proceedings to enforce any right or obligation under this agreement, the parties hereto agree that any such action shall be initiated in the Chelan County Superior Court of the State of Washington. The parties hereto agree that all questions shall be resolved by application of Washington law and that the parties to such action shall have the right of appeal from such decisions of the Superior Court in accordance with the laws of the State of Washington. Artist hereby consents to the personal jurisdiction of the Chelan County Superior Court of the State of Washington.

17. ASSIGNMENT

Neither City nor Artist shall assign, transfer or encumber any rights, duties or interests accruing from this Agreement without the express prior written consent of the other. This Agreement is made and entered into for the sole protection and benefit of the parties hereto. If the City gives its consent to any assignment, the terms of this Agreement shall continue in full force and effect and no further assignment shall be made without additional written consent. Subject to the foregoing, the rights and obligations

of the parties shall inure to the benefit of and be binding upon their respective successors in interest, heirs and assigns. No other person or entity shall have any right of action or interest in this Agreement based on any provision set forth herein.

18. FUTURE SUPPORT

City makes no commitment and assumes no obligations for the support of Artist’s activities except as set forth in this Agreement.

19. RELATIONSHIP OF PARTIES

The parties intend that an independent contractor-client relationship will be created by this Agreement. As the Artist is customarily engaged in an independently established trade which encompasses the specific service provided to the City hereunder, no agent, employee, representative or subconsultant of the Artist shall be or shall be deemed to be the employee, agent, representative or subconsultant of the City. In the performance of the Services, the Artist is an independent contractor with the ability to control and direct the performance and details of the Services, the City being interested only in the results obtained under this Agreement. None of the benefits provided by the City to its employees, including, but not limited to, compensation, insurance, and unemployment insurance are available from the City to the employees, agents, representatives, or subconsultants of the Artist. The Artist will be solely and entirely responsible for its acts and for the acts of its agents, employees, representatives and subconsultants during the performance of this Agreement. The City may, during the term of this Agreement, engage other independent contractors to perform the same or similar work that the Artist performs hereunder.

20. EXTENT OF AGREEMENT/MODIFICATION

This Agreement, together with attachments or addenda, represents the entire and integrated Agreement between the parties hereto and supersedes all prior negotiations, representations, or agreements, either written or oral. This Agreement may be amended, modified, or added to only by written instrument properly signed by both parties hereto. This Agreement shall be interpreted and construed as if equally drafted by all parties hereto.

IN WITNESS WHEREOF, the parties have executed this Agreement as of April 13, 2023.

ARTIST

CITY OF WENATCHEE

BY: _____
Swede Albert, Artist

BY: _____
Frank Kuntz, Mayor

ATTACHMENT A

SCOPE OF SERVICES

1. SERVICES BY ARTIST

The City is commissioning artwork for the Memorial Park Native Peoples Project located in Memorial Park at 2 South Chelan Avenue, Wenatchee Washington (“artwork”). In return for payment described in Section 2 of this Agreement, the Artist will perform the following services for the City:

- A. The Artist will design, fabricate, deliver and install the artwork. The proposed design of the artwork to be produced is described in Attachment B, “Artist’s Proposal.” The location (within the Memorial Park Native Peoples Project area) and final placement of the artwork shall be in accordance with the Attachment B, “Artist’s Proposal.” The colors, materials and finishes to be used in the finished artwork are fully described in Attachment B, “Artist’s Proposal.” Any significant changes to the artwork or design proposal as described must be reviewed and approved by the City’s Mayor, pursuant to Sections 6 and 8 in this Agreement.
- B. The Artist is to field verify all existing conditions that may affect their design proposal prior to commencing fabrication of the artwork. The City will not be responsible for additional costs incurred if artwork or location requires modifications for proper mounting/fit.
- C. Artist is to coordinate with City’s representative the schedule for installation of the artwork to avoid conflicting with other park uses.
- D. Artist will supply the Artist’s names and title of the artwork as Artist wishes it to appear in any documentation of the artwork.
- E. Artist will provide the following documentation:
 - (i) Diagrammatic, as-built drawings of the artwork, drawings should include all dimensions, methods of attachments, and materials;
 - (ii) Color digital photographs, which provide a record of structural detail such as where bolts are attached. These photos may be submitted when the project is at 100% completion;
 - (iii) Color digital photographs of fabrication status at the 1/3 and 2/3 level, completion prior to shipping and during installation;
 - (iv) Written documentation of the artwork, including a statement regarding the artwork and the sources of background material;
 - (v) A list of materials and finishes actually used in the completion of the artwork; and
 - (vi) Instructions for the following: Any special design features for maintenance of the artwork; Any special cleaning instructions; Maintenance and repair instructions; and Any special preservation features.

2. SITE SPECIFIC

It is the City's intent that the artwork will remain in the location specified in Section 1 of this Agreement. The artwork may be moved to another location should the City, in its sole discretion, deem it necessary for any reason. In the event of relocating the artwork, the City may notify the Artist who may be given the opportunity to move or supervise the moving of the artwork to ensure its safety.

3. PAYMENT SCHEDULE

Compensation shall be provided to the Artist upon submission of an invoice to the City and according to the following schedule.

First payment	\$30,000
Second Payment	\$30,000
TOTAL PAYMENTS	\$60,000

- A. The first payment (initial payment) will be paid within fifteen (15) days upon approval of the Agreement by City Council and execution of this Agreement by City and Artist;
- B. The second and final payment shall be paid within thirty (30) days of completion of installation on site; provided no claims by laborers or material-men have been filed, all taxes have been paid, any required releases have been received and the projects has been finally accepted by the City, and provided further that, Artist has provided the City with all the detailed drawings, documents, and instructions described in this Section 1.E, Scope of Services, and receipt of any other documents the City requires from the Artist.

ATTACHMENT B

ARTIST'S PROPOSAL

Proposal, Memorial Park Native Peoples Project, City of Wenatchee, WA, Conceptual Design

1. THE SETTING

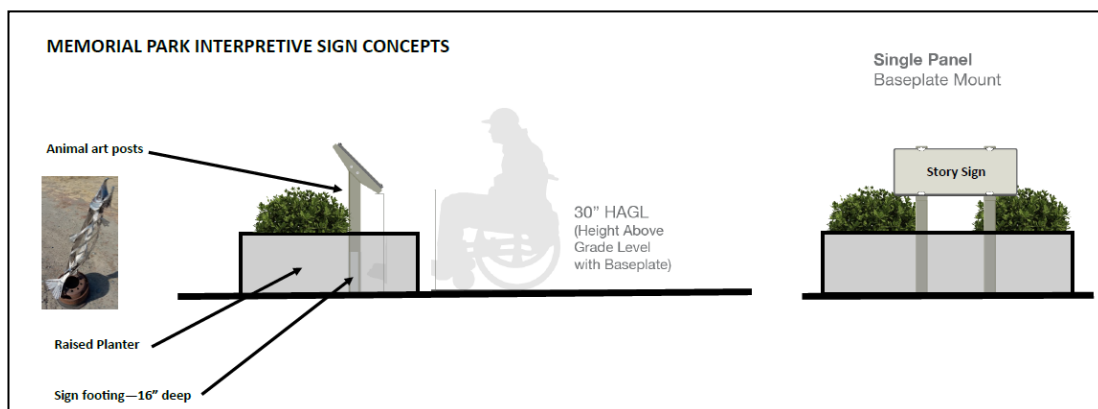
The project creates a highly visible, centerpiece in Memorial in Wenatchee Washington to honor the Wenatchi Tribe. The primary feature is a circular plaza, shaped to symbolize a basket used to collect and hold the stories/legends along with the traditional uses. The plaza is twenty-feet-wide and located at the heart of the park at the confluence of the walkway system.

Around the perimeter of the circular plaza between the walkways are proposed to be raised planters with seat walls. The planters would be 18" high to allow for seating both inside the plaza for educational or informal uses and also outside for park viewing. The walls of the planters will be colored concrete to evoke the feel of the rim of the basket.

Within the four planters would be interpretive signs of stories from the past like: Two Bears, Owl Sisters, Coyote Leading Salmon Up the River and Spexman to serve both as an educational and historical component. The stories would be located in an orientation toward the features where the story took place. For example, while reading the story about Two Bears, the person would be facing toward Saddle Rock etc.

2. THE SCULPTURE

These sculptures would serve as the bases for the interpretive signs. The sign base would be a rectangle that is 18 inches tall by 36 inches long to accommodate the attachment of the interpretive sign. The interpretive signs would be bolted to the base at the corners. This would be angled at approximately 30 degrees and connected to two structural posts. The posts would need to be 36 inches long so that the bottom 16 inches serves as a footing and is below the soil line of the planter. The area above the soil would contain artwork/images from the story to hold the sign. For example, the posts of two bears would be bears. The artwork could be placed in front of, or attached to the structural posts, but should be anchored to withstand vandalism. The four animals would be bear, coyote, salmon and sparrow hawk or other as proposed by the Artist and approved by the City. The story sign bases would be installed by the City following construction of the plaza. A preliminary concept is shown in the following illustration:



3. PHYSICAL DESCRIPTION

Each sign will consist of two metal columns measuring 36 inches tall, approximately 2 to 4 inches wide. These columns will be welded and attached at the bottom to stand 36 inches apart (width of sign). Out of the 36-inch height, 16 inches will be under ground and will be used as a base column with plate. The upper remaining exposed 20 inches of the column will incorporate the metal artwork and be used as a structural component to mount and hold the sign in place at 30 degrees for viewing. ½” angle iron steel will be used to fabricate the rectangle mounts for the sign to bolt to, measuring 36” wide by 18” tall. Each sculpture will be made using recycled and salvaged materials (metal), both found and fabricated. The sculptures will be permanently mounted to base columns as well as to the middle of sign mount at the top. Each sign (4) will have footings to make them freestanding until final permanent placement with concrete.



CITY COUNCIL AGENDA REPORT

TO: Frank Kuntz, Mayor
City Council

FROM: David Erickson, Parks, Recreation and Cultural Services Director

MEETING DATE: April 13, 2023

I. **SUBJECT**

Art Maintenance Agreement with Washington State Department of Transportation (WSDOT) and Interlocal Agreement with the Chelan County PUD for the Highway 2 Easy Street Roundabout

II. **ACTION REQUESTED**

Move approval of the Highway 2 Easy Street Roundabout Art Maintenance Agreement with the Washington State Department of Transportation and authorize the Mayor to sign.

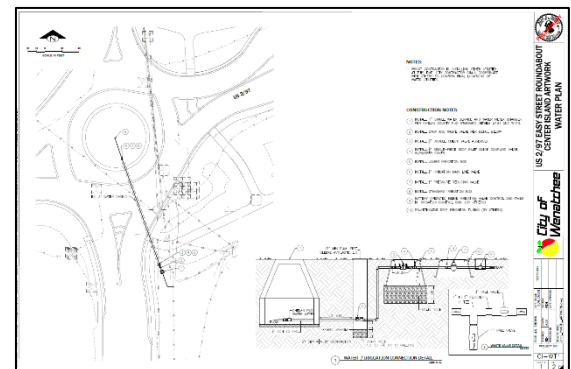
Move approval of the Interlocal Agreement between the City of Wenatchee and Chelan county PUD Number 1 for hydropower public art and authorize the Mayor to sign.

III. **OVERVIEW**

In late 2021, the Parks, Recreation and Cultural Services Department was tasked with the assignment of selecting an artist or team of artists to create and install a feature in the new Highway 2-Easy Street Roundabout. A Call to Artists was completed.

In May of 2022 artist CJ Rench was selected for the project and final design and fabrication commenced. Project coordination continued with WSDOT and the artist.

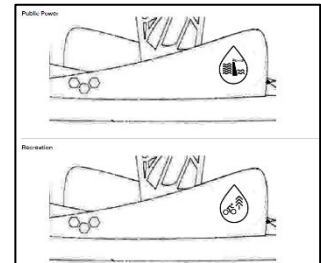
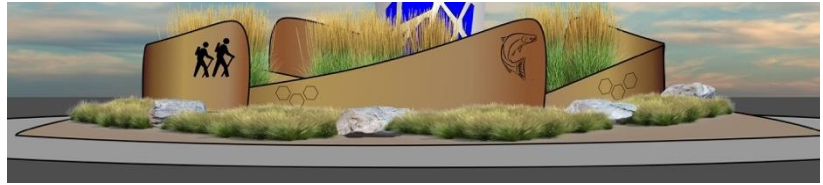
In 2023, the required public art plan was finalized and approved by WSDOT and the Federal Highway Administration. Utility plans were prepared and approved by WSDOT and permit applications submitted to the PUD. WSDOT put the roundabout project out to bid and awarded the construction contract in March. Construction is underway.



As the roundabout and portion of the utilities for the artwork are located within WSDOT right of way, a maintenance agreement that is prescribed by WSDOT is required.

A copy of the maintenance agreement is attached for consideration. It has been reviewed by the City Attorney.

The second agreement is an interlocal agreement with the Chelan County PUD for the same project. The City and PUD have been working cooperatively on the art installation project. A portion of the art installation include conceptualized turbine fins with laser cut images to represent the hydropower and other benefits of the region. Two early concept sketches are contained above and at right. In consideration of incorporating the images and turbine elements into the design, the PUD has agreed to provide funding and waive the water connection charges.



This agreement has also been reviewed by the City Attorney and is attached here for reference.

Staff recommends approval of both items.

IV. FISCAL IMPACT

The estimated annual maintenance budget for the roundabout is \$4,000 although quotes have not been received yet.

The PUD agreement would provide \$30,000 to the City and eliminate a \$15,835.79 expense.

V. PROPOSED PROJECT SCHEDULE

Construction is anticipated to occur through June 22.

VI. REFERENCE(S)

VII. ADMINISTRATIVE ROUTING

Tammy McCord, City Clerk
Laura Gloria, Executive Services Director
Brad Posenjak, Finance Director

**MAINTENANCE AGREEMENT
BETWEEN
WASHINGTON STATE DEPARTMENT OF TRANSPORTATION (GMB 1232)
AND
CITY OF WENATCHEE**

This Agreement is between the Washington State Department of Transportation, hereinafter "WSDOT," and the City of Wenatchee, hereinafter the "City" individually the "Party" and collectively the "Parties."

RECITALS

1. WSDOT planned the construction of US 2/97 Easy Street-Roundabout, hereinafter referred to as the "Project", and
2. The City developed the Public Art Plan (Highway 2/Easy Street Roundabout Project), executed 2/21/2023, attached hereto as Exhibit C, and
3. WSDOT and the City enter into this Maintenance Agreement to outline the division of maintenance responsibilities for this Project.

NOW THEREFORE, pursuant to RCW 47.28.140 the above recitals that are incorporated herein as if fully set forth below, and in consideration of the terms, conditions, covenants, and performances contained herein, and the attached Exhibits which are incorporated and made a part hereof, It Is Mutually Agreed as Follows:

1. COOPERATION

The Parties agree to work cooperatively to ensure that the right of way and any improvements are maintained so as to function as designed. The Parties shall meet on an as needed basis to discuss their respective maintenance obligations, the functioning of the improvements, and this Agreement.

2. PURPOSE

The purpose of this Agreement is to establish each Party's respective responsibilities for the maintenance of the subject property and any improvements.

3. PERIOD OF PERFORMANCE

This Agreement shall commence upon execution and shall remain in effect unless and until terminated by one or both Parties as set forth herein.

4. TERMINATION

4.1 If for any cause either Party does not fulfill in a timely and proper manner its obligations under this Agreement, or if either Party violates any of these terms and conditions, the aggrieved Party will give the other Party written notice of such failure or violation. The responsible Party will be given the opportunity to correct the violation or failure within 15 working days. If the failure or violation is not corrected, this Agreement may be terminated immediately by written notice of the aggrieved Party to the other.

4.2 WSDOT reserves the right to terminate this Agreement, in whole or in part, if WSDOT determines that there is a highway purpose that is incompatible with the improvements. If WSDOT determines the Agreement will need to be terminated in whole or in part, WSDOT shall provide the City with 90 calendar days written notice of the termination.

4.3 Upon termination of this Agreement for any reason, WSDOT shall determine if the improvements require removal. If WSDOT determines that the improvement must be removed, the City shall remove the improvements prior to the date of termination. If the City fails to remove the improvements, WSDOT shall remove the improvements and the City shall reimburse WSDOT for the actual direct and indirect cost of removal in accordance with Section 7.

5. CITY MAINTENANCE RESPONSIBILITIES

The City at its sole cost and expense shall maintain the landscaping and art features constructed by the Project as set forth in this Agreement. Maintenance of all features included in this Agreement shall hereinafter be referred to as "Work." The Work does not include any obligation to reconstruct or to make additions to Project. Any reconstruction or additional construction shall be negotiated in a separate agreement.

5.1 The City shall operate and maintain utilities that service the landscaping/art area as identified in Exhibit's A and B.

5.2 In the maintenance of the improvements, the City will comply with all applicable federal, state and local laws, rules, and regulations, and all permits issued with respect thereto, as they currently exist or as amended.

5.3 The City shall perform all Work in accordance with WSDOT Maintenance Manual standards M51-01.11, or any revisions thereto.

5.4 The City shall not perform any Work required under this Agreement in such a manner as to conflict with, impede or disrupt in any way WSDOT highway operation, construction, or maintenance, or interfere with or endanger the safety of the traveling public or pedestrians. The City shall conduct all traffic control required for the Work in a manner consistent with the Manual on Uniform Traffic Control Devices (MUTCD) and/or the WSDOT's Work Zone Traffic Control Guidance M54-44.

5.5 City Requested Work and Traffic Control.

5.5.1 At the time the City determines Work is necessary that will require placing traffic control devices on the state highway, the City shall provide written notice, with email being acceptable, to WSDOT's AREA MAINTENANCE SUPERINTENDENT including a description of proposed Work, plans and specification for the proposed Work (if available) and the proposed Traffic Control Plan/Procedures a minimum of 14 days prior to commencing the Work.

5.5.2 WSDOT will review and comment on the proposed Work or issue written approval within 10 days from receipt of the Traffic Control Plans.

5.5.3 Upon completion of the Work, the City shall notify WSDOT for final inspection and acceptance.

6. EMERGENCY MAINTENANCE OR REPAIR

6.1 Should a Party determine that any work that is responsibility of the other Party presents an immediate danger to the public or to the real property, facility, or operations, the Party will notify the responsible Party in writing with email being acceptable, and request that the responsible Party immediately address the emergency maintenance or repair problem, within one (1) working day of notification.

6.2 In the event that the responsible Party does not or cannot immediately perform the emergency maintenance or repair, the Party providing notice may perform the emergency maintenance or repair at the expense of the responsible Party.

6.3 The responsible Party shall be responsible for the actual direct and related indirect costs of the emergency maintenance or repair work. Reimbursement of the cost of the work shall be made in accordance with invoice and payment procedures set forth below.

7. FAILURE TO PERFORM MAINTENANCE AND EMERGENCY MAINTENANCE

7.1 WSDOT reserves the right to perform the Work required of the City on those segments of Project that lie within WSDOT owned access to the extent necessary for the safe operation and maintenance of the highway, should the City fail to perform the Work pursuant to this Agreement.

7.1.1 If the City fails to perform the Work required under this Agreement WSDOT will notify the City, in writing with email being acceptable, of the Work that must be completed, and the City shall perform the Work within thirty (30) calendar days. If the City does not perform the identified Work, WSDOT reserves the right to perform the Work in accordance with minimum WSDOT highway standards set forth in this agreement.

7.1.2 In the event WSDOT is required to perform any of the Work required to be performed by the City, the City shall reimburse WSDOT for its actual direct, and related indirect costs, for all Work performed on behalf of the City within thirty (30) days of the date of the invoice from WSDOT (the "Due Date"). In the event the City fails to make payment by the Due Date, the City will pay WSDOT interest on outstanding balances at the rate of twelve percent (12%) per annum, or the highest rate of interest allowable by law, whichever is greater. Interest shall be calculated from the Due Date to the date of payment.

7.1.3 If the City objects to all or any portion of an invoice, it shall notify WSDOT within twenty (20) calendar days from the date of receipt and shall pay only that portion of the invoice not in dispute. WSDOT and the City shall make every effort to settle the disputed portion, and if necessary utilize dispute resolution provided for herein. No interest shall be due on any portion of an invoice the City is determined not to owe following settlement between the Parties or completion of dispute resolution process.

8. RIGHT OF ENTRY

8.1 Each Party hereby grants to the other Parties a right of entry upon the real property for which the Party holds fee title as may be necessary to perform the Work required under this Agreement.

8.2 The granting of the right of entry pursuant to this agreement does not relieve the Party exercising the right of entry from obtaining all permits required to perform the Work required under this Agreement.

9. THIRD PARTY DAMAGE

9.1 The City shall be responsible for repairing all third-party damage to the improvements at City expense.

9.2 If WSDOT has information concerning third-party damages, it shall provide the information to the City as soon as practicable after WSDOT has knowledge of the damages.

10. ADMINISTRATION AND NOTICES

10.1 The Point of Contact (POC) identified for each Party shall be responsible for administering this Agreement.

POC for the City:

David Erickson- Director
City of Wenatchee Parks, Recreation & Cultural Services Dept.
301 Yakima Street
Wenatchee, WA 98801

POC for WSDOT:

Chris Keifenheim- ARA Engineering
WSDOT North Central Region
2830 Euclid Avenue, Bld. A
Wenatchee, WA 98801

10.2 Any notice, demand, or other communication required or permitted to be given under this Agreement or applicable law shall be effective only if it is in writing, email being acceptable, addressed to the applicable Party's designated POC as set forth herein.

10.3. The name and contact information of a POC may be updated by a Party in writing to the other Party. A change in the name and/or contact information of a POC shall not be considered an amendment to this Agreement.

11. ASSIGNMENT AND SUBCONTRACT

Except as otherwise provided herein, a Party to this Agreement shall not assign, delegate or transfer this Agreement or the obligations incurred hereunder, in whole or in part, by operation of law or otherwise, or subcontract for the management or operation of their respective responsibilities, or parts thereof, without the prior written consent of the other Party to this Agreement, which approval shall not be unreasonably withheld.

12. LEGAL RELATIONS

12.1 It is understood and agreed that this Agreement is solely for the benefit of the Parties hereto and gives no right to any other Party. No joint venture or partnership is formed as a result of this Agreement.

12.2 The Parties shall be deemed independent contractors for all purposes, and the employees of the Parties or any of their contractors, subcontractors, consultants, and the employees thereof, shall not in any manner be deemed to be employees of the other Party.

13. INDEMNIFICATION

13.1 Each Party to this Agreement will protect, defend, indemnify, and save harmless the other Party, its officers, officials, employees, and agents, while acting within the scope of their employment as such, from any and all costs, claims, judgments, and/or awards of damages (both to persons and property), arising out of, or in any way resulting from, each Party's negligent acts or omissions with respect to the provisions of this Agreement. Neither Party will be required to indemnify, defend, or save harmless the other Party if the claim, suit, or action for injuries, death, or damages (both to persons and property) is caused by the sole negligence of the other Party. Where such claims, suits, or actions result from the concurrent negligence of the Parties, their agents, officials or employees, and/or involve those actions covered by RCW 4.24.115, the indemnity provisions provided herein will be valid and enforceable only to the extent of the negligence of the indemnifying Party, its agents, officials or employees.

13.2 The Parties agree that their obligations under this section extend to any claim, demand, and/or cause of action brought by, or on behalf of, any of their officers, officials, employees or agents. For this purpose only, the Parties, by mutual negotiation, hereby waive, with respect to each other only, any immunity that would otherwise be available against such claims under the Industrial Insurance provisions of Title 51 RCW.

13.3 This indemnification and waiver will survive the termination of this Agreement.

14. DISPUTE RESOLUTION

The Parties shall work collaboratively to resolve disputes and issues arising out of, or related to, this Agreement. Disagreements shall be resolved promptly and at the lowest level of hierarchy. To this end, following the dispute resolution process shown below shall be a prerequisite to the filing of litigation concerning any dispute between the Parties:

A. The POC, as designated in this Agreement shall use their best efforts to resolve disputes and issues arising out of or related to this Agreement. The POCs shall communicate regularly to discuss the status of the tasks to be performed hereunder and to resolve any disputes or issues related to the successful performance of this Agreement. The POCs shall cooperate in providing staff support to facilitate the performance of this Agreement and the resolution of any disputes or issues arising during the term of this Agreement.

B. A Party's POC shall notify the other Party in writing of any dispute or issue that the POC believes may require formal resolution contained herein. The POCs shall meet within five (5) working days of receiving the written notice and attempt to resolve the dispute.

C. In the event the POCs cannot resolve the dispute or issue, the City, and WSDOT's Region Administrator, or their respective designees, shall meet and engage in good faith negotiations to resolve the dispute.

D. In the event the City and WSDOT's Region Administrator, or their respective designees, cannot resolve the dispute or issue, the City and WSDOT shall each appoint a member to a Dispute Board. These two members shall then select a third member not affiliated with either Party. The three-member board shall conduct a dispute resolution hearing that shall be informal and unrecorded. All expenses for the third member of the Dispute Board shall be shared equally by both Parties; however, each Party shall be responsible for its own costs and fees.

15. RECORDS AND AUDIT

All records related to the Work performed under this Agreement shall be held and kept available for inspection and audit for a period of six (6) years from the date of termination of this Agreement or any final payment authorized under this Agreement, whichever is later. Each Party shall have full access to and right to examine said records, during normal business hours and as often as it deems necessary. In the event of litigation or claim arising from the performance of this Agreement, the City and WSDOT agree to maintain the records and accounts until such litigation, appeal or claims are finally resolved. This section shall survive the termination of this Agreement.

16. GENERAL

16.1 Assurances. The Parties agree that all activity pursuant to this Agreement shall be in accordance with all applicable federal, State and local laws, rules, and regulations as they currently exist or as amended.

16.2 Interpretation. This Agreement shall be interpreted in accordance with the laws of the state of Washington. The titles to paragraphs and sections of this Agreement are for convenience only and shall have no effect on the construction or interpretation of any part hereof.

16.3 Amendments. This Agreement may be amended only by the mutual written agreement of the Parties executed by personnel authorized to bind each of the Parties.

16.4 Waiver. A failure by a Party to exercise its rights under this Agreement shall not preclude that Party from subsequent exercise of such rights and shall not constitute a waiver of any other rights under this Agreement unless stated to be such in writing signed by an authorized representative of the waiving Party and attached to the original Agreement.

16.5 All Writings Contained Herein. This Agreement contains all of the terms and conditions agreed upon by the Parties. No other understandings, oral or otherwise, regarding the subject matter of this Agreement shall be deemed to exist or to bind the Parties.

16.6 Venue. Venue of any action brought under this Agreement involving WSDOT shall be in Superior Court for Thurston County, State of Washington.

16.7 Severability. If any term or condition of this Agreement is held invalid, such invalidity shall not affect the validity of the other terms or conditions of this Agreement.

16.8 Authority to Bind. The signatories to this Agreement represent that they have the authority to bind their respective organizations to this Agreement.

16.9 Counterparts and Electronic Signature. This Agreement may be executed in counterparts or in duplicate originals. Each counterpart or each duplicate shall be deemed an original copy signed by each Party, for all purposes. Electronic signatures or signatures transmitted via e-mail in a "PDF" may be used in place of original signatures. Each Party intends to be bound by its electronic or "PDF" signature and is aware that the other Parties are relying on its electronic or "PDF" signature.

CONTRACT EXECUTION

IN WITNESS WHEREOF, the Parties hereto have executed this Agreement.

City of Wenatchee	Washington State Department of Transportation
By:	By:
Printed:	Printed:
Title:	Title:
Date:	Date:
Approved as to Form for City of Wenatchee	Approved as to Form for Washington State Department of Transportation

By:	By: <i>Mark Schumack</i>
Printed:	Printed: <i>MARK SCHUMACK</i>
Title:	Title: <i>Assistant Attorney General</i>
Date:	Date: <i>3/21/23</i>

**Public Art Plan
Highway 2 / Easy Street Roundabout Project
Signature Page - Section 950.06**

Project Engineer or a designee

Jackie Turner

Date

2/21/23

Region or HQ Landscape Architect

MATTHEW J. ROCHON

Date

February 16, 2023

State Bridge and Structures Architect

Date

Region Traffic Engineer

Date

Region Local Programs Engineer

Date

Region Administrator or designee

Date

PROJECT OVERVIEW

In late 2021, the City of Wenatchee Parks, Recreation and Cultural Services Department was tasked by the Mayor's Office with the assignment of selecting an artist or team of artists to create and install an art feature in the planned Highway 2-Easy Street Roundabout.

It was the goal and desire of the City of Wenatchee to create a feature within the transportation corridor that provides visual interest and represents the Wenatchee valley at this gateway to the community. The enhancement was proposed to be integrated into the roundabout for aesthetic purposes and to provide visual interest along the roadway. The goal is to make a unique statement about the community character, and create a positive public response that will last over time.

A Call to Artists solicitation was prepared and distributed on November 15, 2021 to over 200 individuals and design firms from the small works roster. It was also posted on the City website and advertised in the local print and via electronic media.

From this, four submittals were received from qualified artists by the January 3, 2022 deadline. An evaluation committee consisting of City staff and Arts, Recreation and Parks Commission members reviewed and scored the submittals. Based on relevant experience, technical ability, collaboration, and communication, the field was narrowed to the top three candidates by the evaluators. The three were notified of their advancement to the next round on January 11, 2022 and were invited to prepare two concepts each for the project.

The concepts were due on March 4, 2022. Once received, they were posted online and available for review and comment by the public from March 7-15, 2022. The comment period was announced through local radio, newspaper and television outlets, posted on a number of social media and websites and also provided to WSDOT and Chelan County PUD staff. Comments that were received or posted in online forums were collected and evaluation packets were provided to an Evaluation Committee. Persons invited to participate on the Evaluation Committee included representatives from the Chelan County PUD, WSDOT, Arts, Recreation and Parks Commission and City of Wenatchee (Engineering, Mayors Office and Parks, Recreation and Cultural Services (PRCS) Departments). The artists presented their concepts and answered questions from the Evaluation Committee at the March 15, 2022 Arts, Recreation and Parks Commission meeting. That meeting was open to the public and also broadcast.



From the presentations, additional public comments received and scores based on the evaluation criteria (budget, maintenance, theme, quality, materials, permanence, site appropriateness, schedule), the Committee ranked the submissions. Evaluation scores and comments received were again tabulated and provided to the City Council Finance Committee and Public Works Committee at their meetings of March 24, 2022 and April 5, 2022.

At their meeting of March 24, 2022, the Finance Committee remanded the project back to the Evaluation

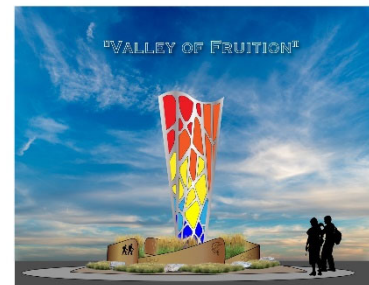
Committee for additional discussion and to provide a formal recommendation.

On April 18, 2022 staff met with WSDOT and Federal Highway Administration representatives to discuss the design and the approval process.

The Evaluation Committee and Arts, Recreation and Parks Commission members discussed the project again at their meeting of April 19, 2022. That meeting was open to the public and also broadcast. After the continued discussion of:

- whether or not to include art in the roundabout,
- having landscaping only
- and the pros and cons of each of the five proposed concepts,

The Evaluation Committee and Commission unanimously recommended the selection of the Valley of Fruition concept created by artist CJ Rench with the understanding that the concept would need to be refined (colors, planting plan, turbine images, elevation etc.) during the next several months. The artist was also supportive of incorporating a sculpted apple tree to replace the center feature as an homage to the tree fruit industry and had considered including that in their initial proposal.



The recommendation was presented at the Finance Committee meeting of April 28, 2022 and the Public Works Committee meeting on May 3, 2022. Both Committees were unanimously supportive of the selection and the apple tree element.



At the May 12, 2022 City Council meeting they discussed the concept. Following the discussion, the City Council unanimously approved the selection of the artist CJ Rench and the Valley of Fruition concept for artwork in the roundabout with the suggested modification of swapping the center feature for a representation of a fruit tree from public comments received, the ag industry history of the valley, and the proximity of the intersection to the Apple Commission headquarters and several major fruit packing businesses.

From May through October 2022 the artist prepared the engineering for the artwork. City staff conducted monthly check-in meetings with the artist. A copy of the plans and engineering calculations are attached.

A budget request to provide for the construction and contracted maintenance of the artwork and roundabout was approved through the City of Wenatchee budget process. In 2023, when the project is being constructed, a request for bids process is planned to be undertaken to obtain the contracted services. The preliminary scope of work is suggested to include quarterly cleaning and pruning with emergency call outs as needed to address emergent issues. This will be refined once the final plans are approved and the amenity constructed. As part of the design of the art feature, the artist is required to provide maintenance specifications for the feature.

ADDRESSING 950.05 CRITERIA FOR PUBLIC ART

1. Whether public art resulted from the specific recommendation(s) of a planning level study.

- a. The public art was commissioned by the City of Wenatchee in 2021-22. The project is funded with a combination of 1% for Art fund and the City of Wenatchee General fund, Water Department. The total cost is estimated at \$225,000. The project helps to meet several goals and objectives contained in the Art Component of the City of Wenatchee Parks, Recreation and Open Space adopted by City Council in 2017.

2. Subject of the recommended art.

- a. The work has two major components: the symbolic apple tree and landscaping. The sculpted apple tree is an homage to the rich history of the tree fruit industry in the valley. The landscape feature is in the form of spiral to represent the direction of water that flows through the turbines of the local dams and symbolize the important role the hydroelectric power plays in the community.

3. Visibility: Art visible from the main line must contribute to corridor continuity and the view from the road. Art visible to the community or adjacent to the neighborhood side of a structure may have more flexibility in design than that visible from the main line.

- a. The artwork will be located in the center island of the Highway 2 Easy Street roundabout. The feature is designed with attributes that are reflective of the community – apple tree sculpture, low maintenance landscaping and turbine fins that are symbolic of the hydro electric dams in the area.

4. Safety and security: Public art must not negatively impact safety nor create an attractive nuisance.

- a. The public art is made of stainless steel and engineered to withstand the rigors of the location. Plant material is to be low maintenance and drought tolerant to withstand the location. The Chelan PUD completed a power line sway analysis to ensure that the sculpture would not create any conflicts with the PUD power system and the sculpture was deemed to have no impacts. The tree sculpture is situated offset to the south of the center of the roundabout per the suggestion of WSDOT to help ensure that the potential of a vehicle crashing through the center of the roundabout would be less likely to run into it. The posted speed limit at the US 2/97/Easy Street intersection is 45 mph. Per Design Manual exhibit 1600-3, the clear zone requirement is 17'. The artwork will be outside of the roundabout clear zone. The project will stripe a grooved plastic yellow edge line on the HMA surface approximately 4 inches away from the Modified RAB Truck Apron Cement Conc Curb and Gutter (MRCG). At the narrowest, the distance between MRCG and the back of the Roundabout Central Island Cement Conc. Curb (RCIC) is 21'-4". The artwork is in the central area created by the RCIC. We are working collaboratively with the PUD on this project.

5. Potential for traffic distraction: Proposed art must not distract motorists. It must be appropriate for the speed and angle at which it will be viewed.

- a. The public art will be placed in the in the center island of the roundabout. Per the suggestion of WSDOT the sculpture is offset to the south of the center to reduce the potential for damage from crashing vehicles. It was designed by following the criteria set forth in chapter 950. The placement was selected following a meeting with WSDOT and FHA staff in 2022 to allow the best visibility for drivers and pedestrians, while not interfering with needed sight distance for drivers making turning or merging movements. It will also serve as a welcoming feature for the City of Wenatchee by those passing into town or through to destinations unknown.

6. Scale and context compatible with the surrounding landscape and land use.

- a. The sculpture is approximately 20' tall and 16' wide at the widest area. The plan is to place the sculpture off set to the South east of center of the roundabout center. The location was determined through comments received from WSDOT during the design process. The roundabout also features hardy, low growing shrubbery, decorative rock. A copy of the plans is included later in this document. The roundabout is located on the north end of Wenatchee. Adjoining property uses to the two-lane roundabout include grass right of way areas with car lot, undeveloped space, park n ride lot, trail connections and walkway to a shopping mall adjoining it.

7. Contribution of the art to community character.

- a. It was the goal and desire of the City of Wenatchee to create a feature within the transportation corridor that provides visual interest and represents the Wenatchee valley at this gateway to the community. The enhancement was proposed to be integrated into the roundabout for aesthetic purposes and to provide visual interest along the roadway. The goal is to make a unique statement about the community character, and create a positive public response that will last over time.

8. Impact of the proposed art on social, cultural, and environmental features.

- a. The apple tree sculpture proposed for the roundabout is representative of the ag industry history of the valley, and the proximity of the intersection to the Washington State Apple Commission headquarters and several major fruit packing businesses.

9. In general, WSDOT would not approve the addition of art on a historic structure or within an ecologically sensitive area.

- a. N/A

10. Compliance with applicable laws, such as the Scenic Vistas Act and 23 CFR 752, Landscape and Roadside Development.

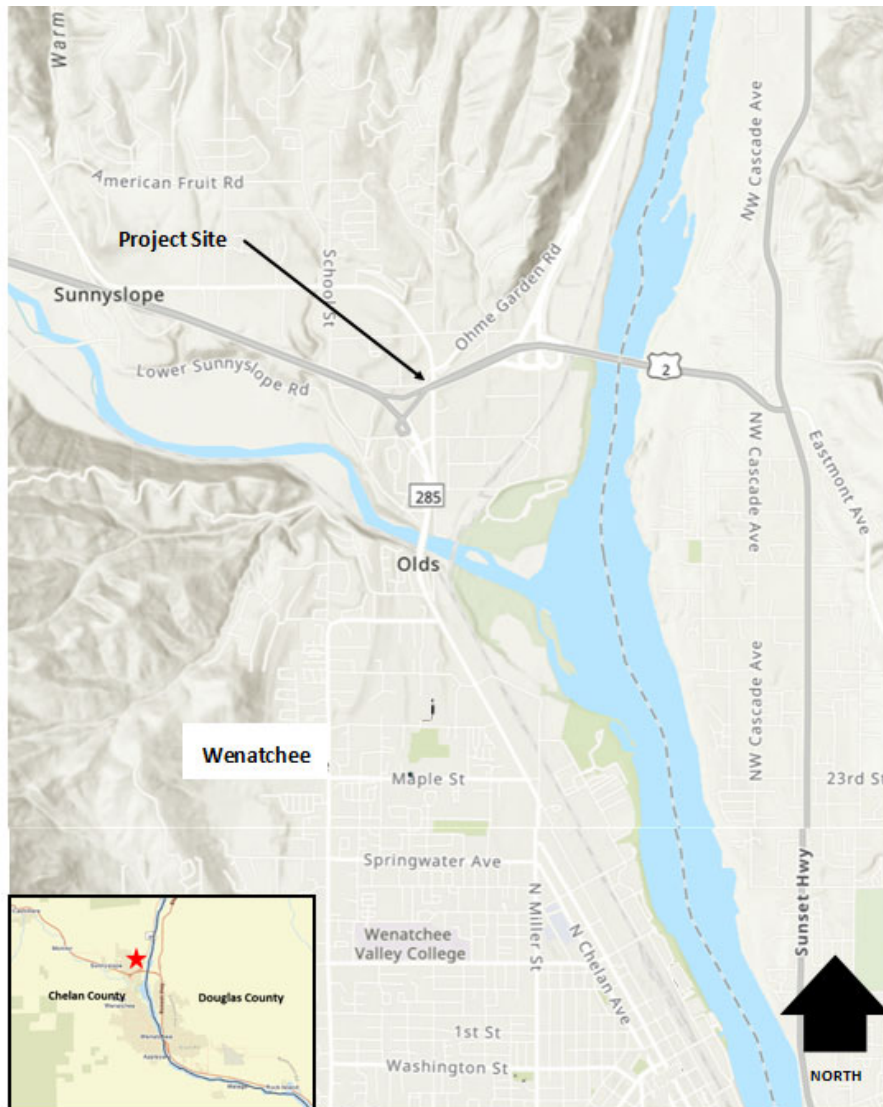
- a. N/A

11. Demonstrated responsible use of tax dollars and enhanced public trust in WSDOT judgment.

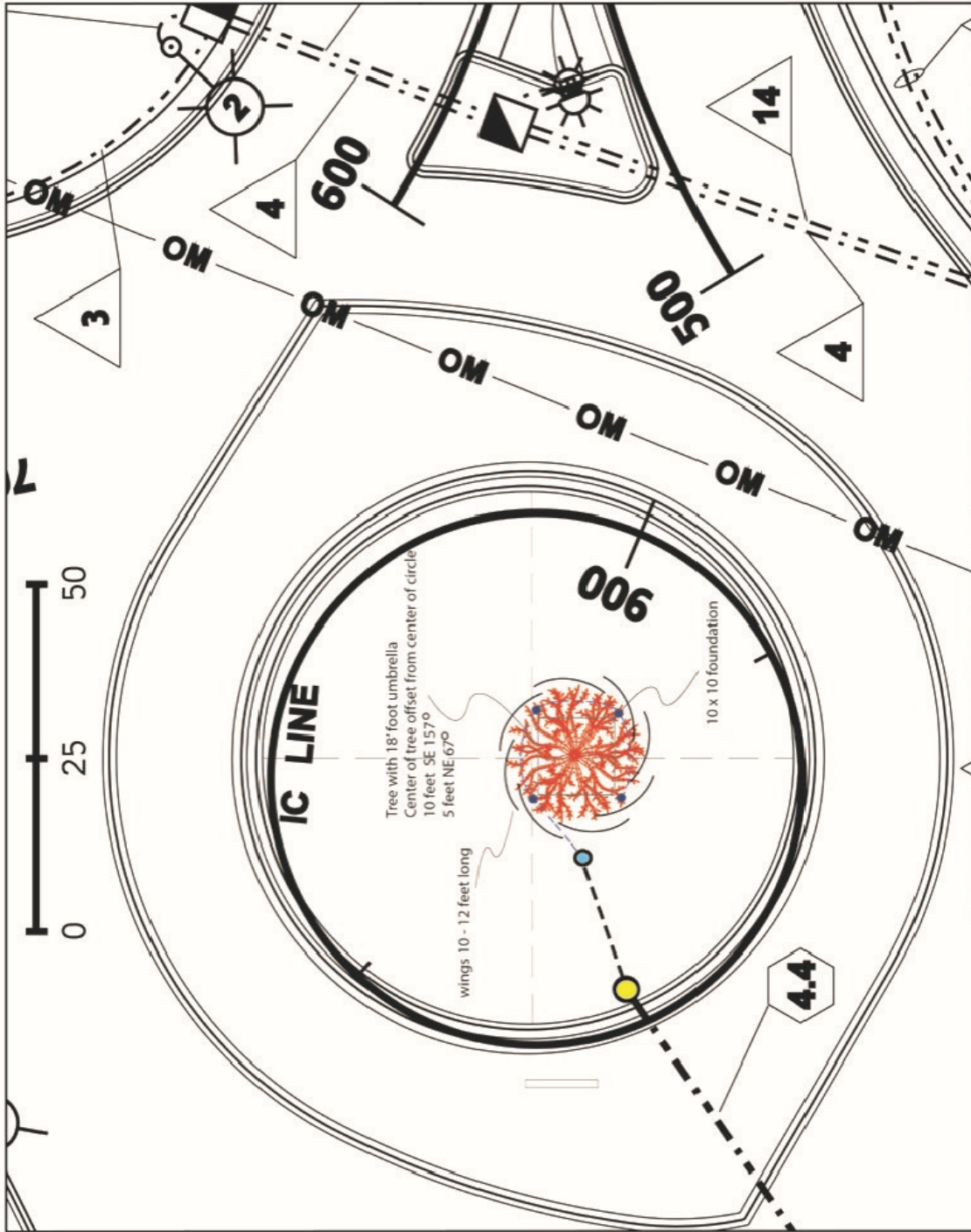
- a. The concept for the sculpture was created through a competitive public engagement process by a sculptor commissioned by the City of Wenatchee. Along with residents and visitors to the valley, the process included input by City of Wenatchee professional staff, Chelan County PUD, City Arts, Recreation and Parks Commission. The work was reviewed and approved by the PUD and also City Commissions and. The installation is a priority project of the Mayor and City Council and they have budgeted general and arts fund dollars necessary to complete the project.

LOCATION OF THE PROPOSED ART

The location of the proposed artwork is in the center of the roundabout located at the intersection of Highway 2 and Easy Street in Wenatchee.







4 low voltage uplights set at each corner of the foundation and at the entrances to the round -about
 30W Warm White LED Flood Light
 Low Voltage 12V 24V 36V 48V 60V DC
 AC Watt 9.8"L x 1.1"W x 6.2"H

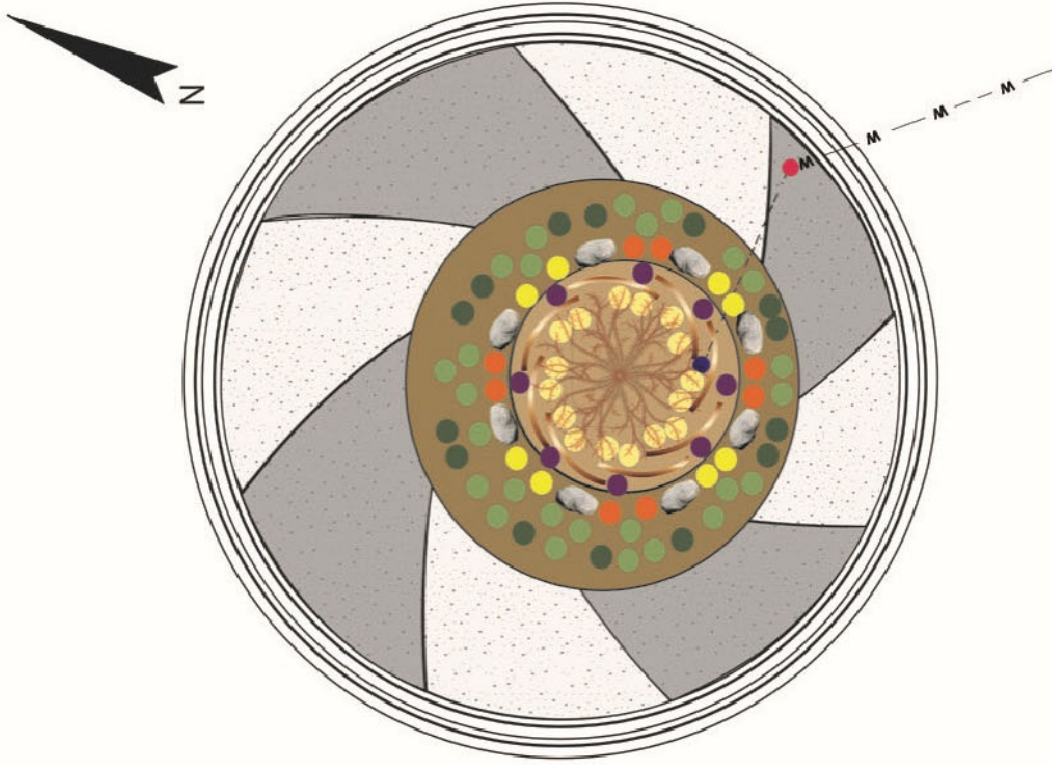
- existing electrical stub out.
- low voltage transformer
- low voltage uplight
- low voltage line

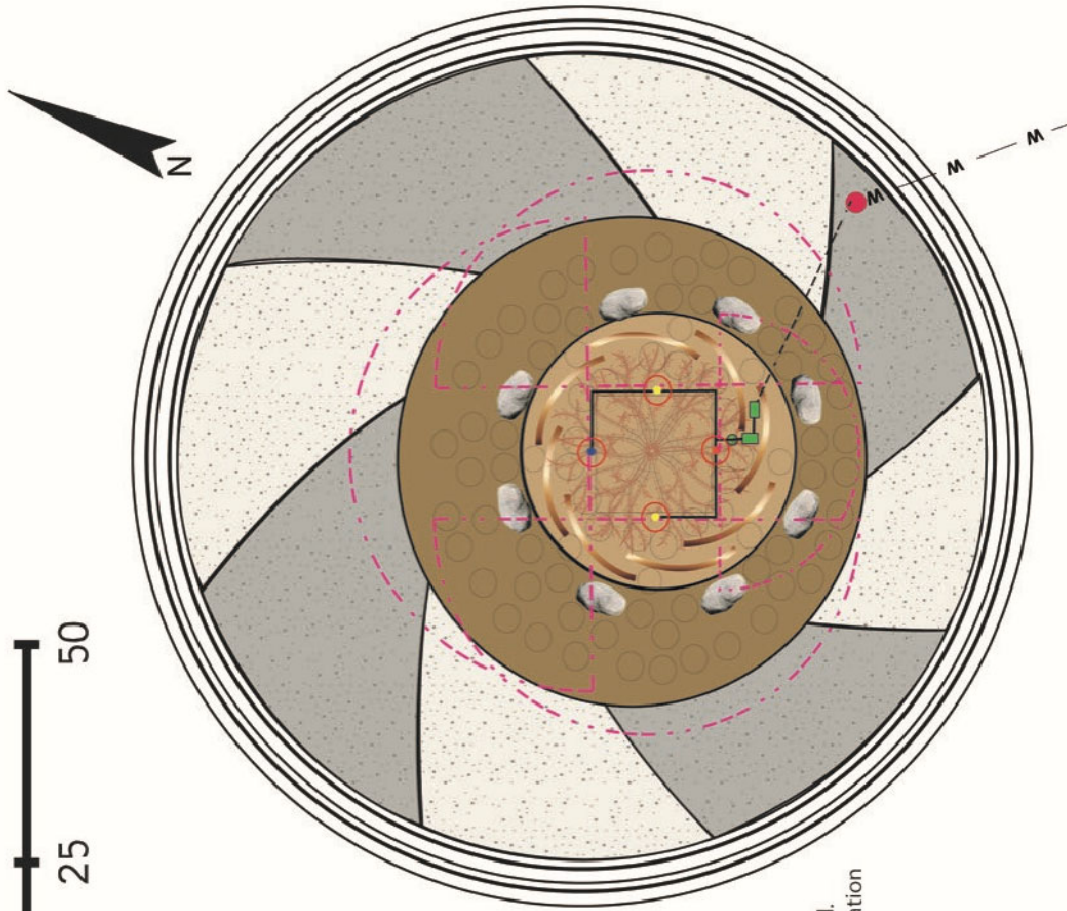


- aggregate
- aggregate
- soil / 40 foot circle
- soil / 25 foot circle
- ⌋ core ten fins
- main irrigation valve
- backflow preventor hidden
- Sandberg's bluegrass, bluebunch wheatgrass, bear grass 2-4 feet tall
- lavender 2- 3 feet tall
- bunch grass 1-2m feet tall
- echinecea 2-3 feet tall
- feather grass 3-5 feet tall
- rudebeckia 2-3 feet tall

Planting guide

The design allows.
 Various colors year-round while maintaining full view of artwork.
 Similar flow as proposed model.
 Native pollinator plants.
 Other plant will be included with direction from local experts.

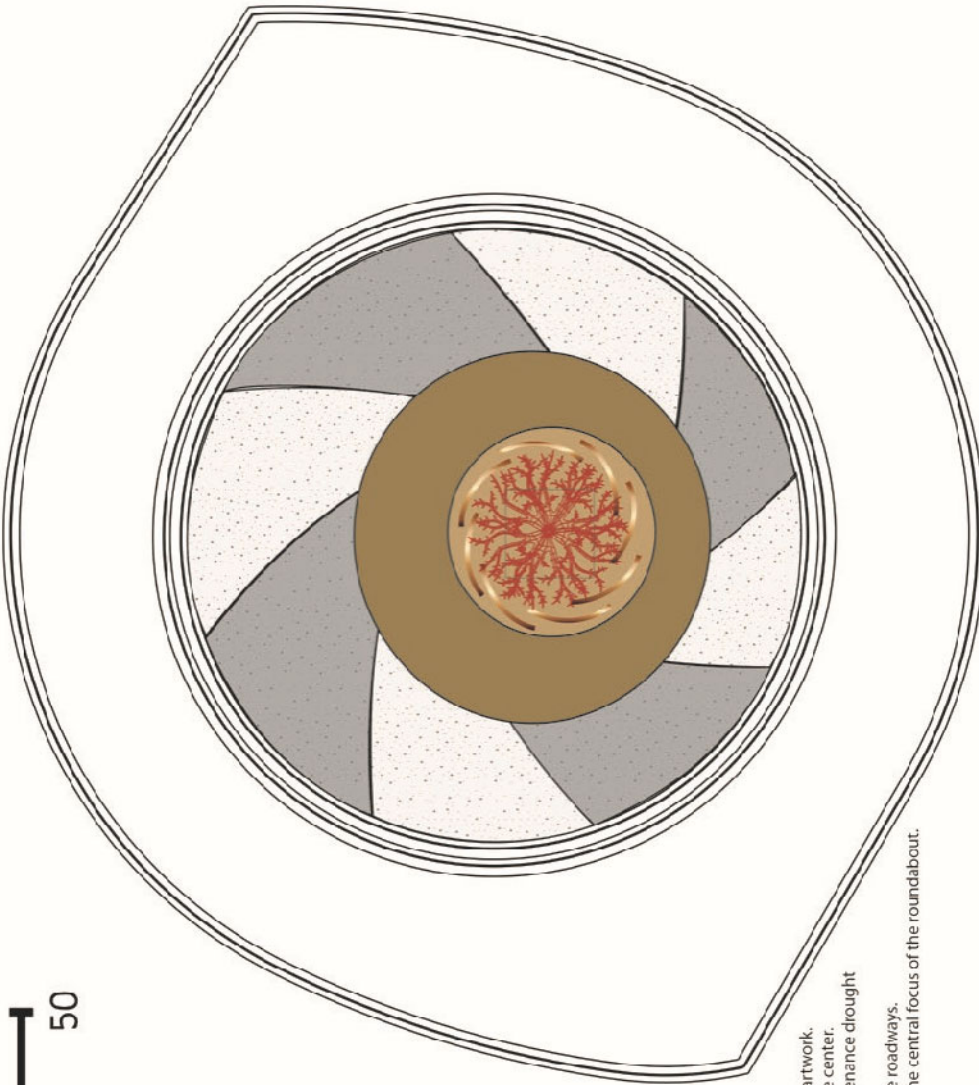




- aggregate
- aggregate
- soil / 40 foot circle
- soil / 25 foot circle
- core ten fins
- main irrigation valve
- single valve with / bluetooth NODE controller
- master valve / blow out
- double check valve / pressure reducer
- 12 inch riser 40 foot range
- 12 inch riser 30 foot range
- 12 inch riser 20-30 foot range
- Spray range

Irrigation Plan


The design allows.
 A simple layout for long term maintenance that hits everything planted.
 A simple 4 head arrangement that can be tucked up against the foundation to be better protected.
 A single valve that is Bluetooth controllable from 40 feet.
 The maintenance people can control from their truck.
 A single blow out valve for easier winter maintenance.




- aggregate
- aggregate
- soil / 40 foot circle
- soil / 25 foot circle

Soil and Aggregate Plan

The design allows:
A larger buffer between active traffic and the artwork.
Follows and flows with the artwork with-in the center.
Allows areas for native & pollinator low maintenance drought resistant plantings.
Areas for maintenance trucks to park off active roadways.
The artwork will be seen and continue to be the central focus of the roundabout.



ALYSON STRAIN
REGISTERED PROFESSIONAL ENGINEER
NO. 27424
WWW.AEENGINEERING.COM



PUBLIC SCULPTURE
WENATCHEE, WA

GENERAL NOTES
SCULPTURE ELEVATION
& FOOTING

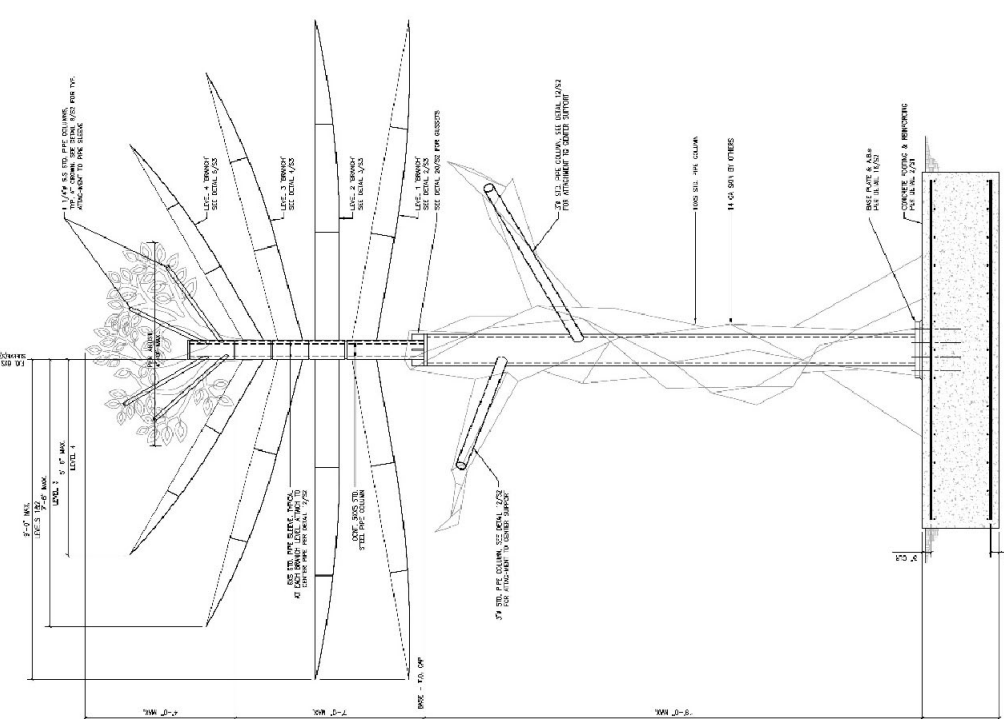
S1
PROJECT
2315.00

GENERAL NOTES & DESIGN CRITERIA

A. ALL DIMENSIONS SHALL CONFORM TO THE 2015 INTERNATIONAL BUILDING CODE (IBC) AND AIA.



B. DESIGN CRITERIA:

- A. ROOF RAIN LOAD: 40 PSF, DIVIDED 8 WIND CATEGORY 1 STRUCTURE
- B. DESIGN WIND SPEED: 80 MPH, DIVIDED 8 WIND CATEGORY 1 STRUCTURE
- C. DESIGN WIND EXPOSURE: B
- D. DESIGN WIND CATEGORY: B
- E. DESIGN WIND EXPOSURE: B
- F. DESIGN WIND CATEGORY: B
- G. DESIGN WIND EXPOSURE: B
- H. DESIGN WIND CATEGORY: B
- I. DESIGN WIND CATEGORY: B
- J. DESIGN WIND CATEGORY: B
- K. DESIGN WIND CATEGORY: B
- L. DESIGN WIND CATEGORY: B
- M. DESIGN WIND CATEGORY: B
- N. DESIGN WIND CATEGORY: B
- O. DESIGN WIND CATEGORY: B
- P. DESIGN WIND CATEGORY: B
- Q. DESIGN WIND CATEGORY: B
- R. DESIGN WIND CATEGORY: B
- S. DESIGN WIND CATEGORY: B
- T. DESIGN WIND CATEGORY: B
- U. DESIGN WIND CATEGORY: B
- V. DESIGN WIND CATEGORY: B
- W. DESIGN WIND CATEGORY: B
- X. DESIGN WIND CATEGORY: B
- Y. DESIGN WIND CATEGORY: B
- Z. DESIGN WIND CATEGORY: B



SCULPTURE ELEVATION / FOOTING SECTION
1/8" = 1'-0"

SCULPTURE FOOTING PLAN
1/8" = 1'-0"

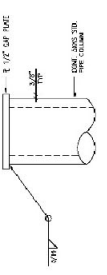



PUBLIC SCULPTURE
 WENATCHEE, WA

SCULPTURE DETAILS
 AT TRUNK

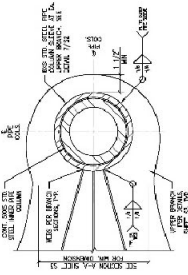
PROJECT: 22315.00
 SHEET: S2

NOT USED



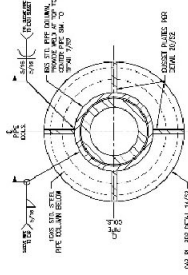
1 CENTER SUPPORT COLUMN CAP

NOT USED



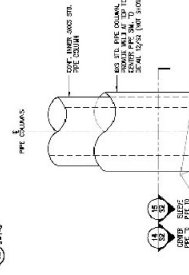
2 UPPER BRANCH AT PIPE SLEEVE

NOT USED




3 SUPPORT SLEEVE AT TRUNK

NOT USED



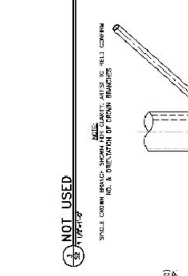
4 CENTER SUPPORT COL. AT TRUNK

NOT USED



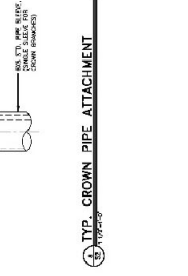
5 SINGLE CROWN BRANCH

NOT USED



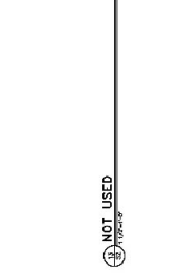
6 TYP. CROWN PIPE ATTACHMENT

NOT USED




7 UPPER BRANCH ATTACHMENT

NOT USED



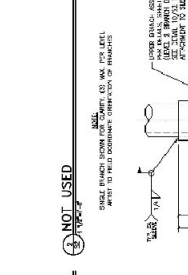
8 LOWER BRANCH PIPE COL. ATTACHMENT

NOT USED



9 COLUMN BASE PLATE TO FOOTING

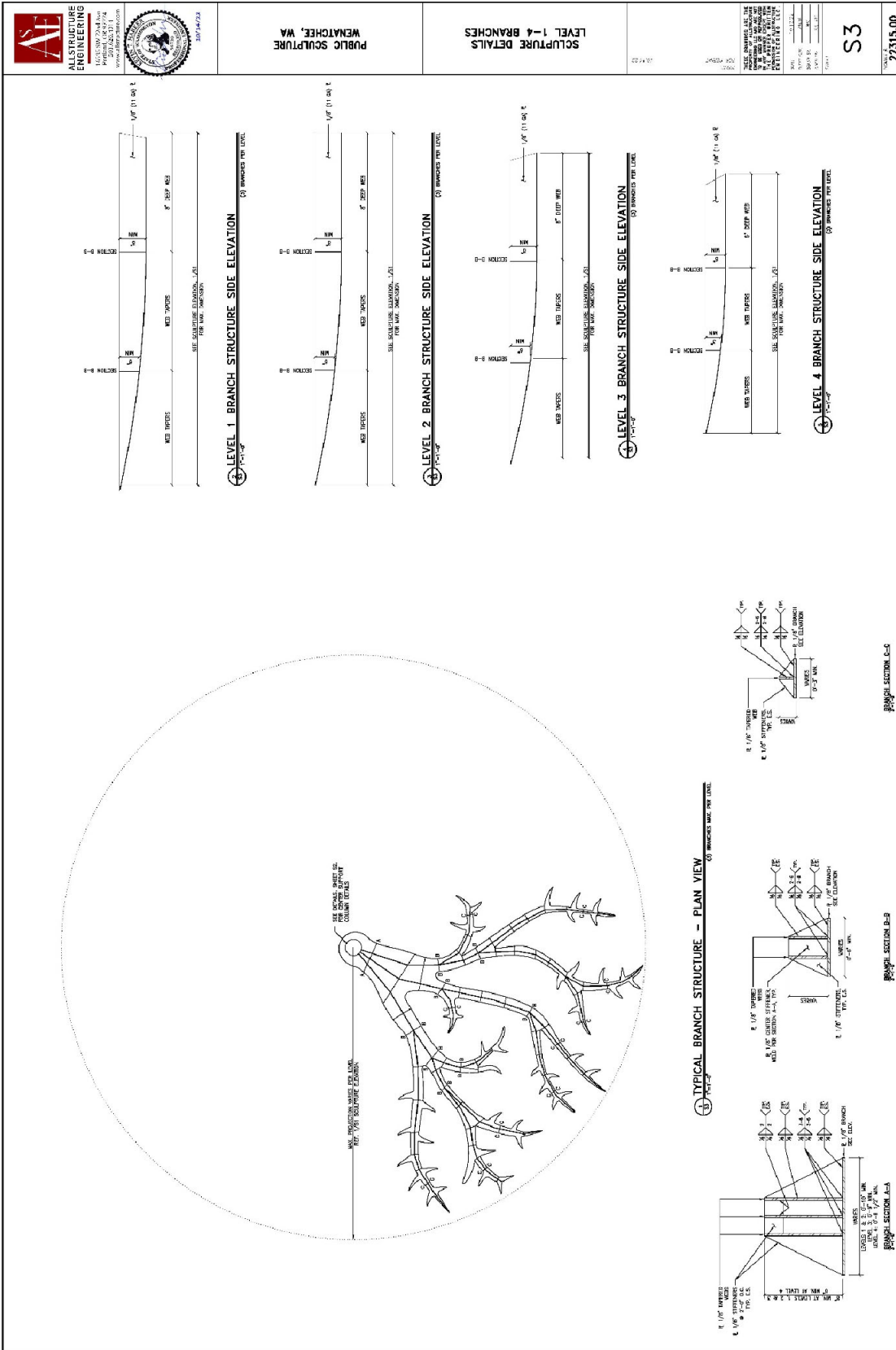
NOT USED



10 COLUMN BASE PLATE DETAIL

14-10276-000019-1-000-01-1

14-10276-000019-1-000-01-1



ALL STRUCTURE ENGINEERING
1400 SUNDY DRIVE
WENATCHEE, WA 98806
PH: 509.825.7774
WWW.ALLSTRUCTURE.COM



PUBLIC SCULPTURE
WENATCHEE, WA

SCULPTURE DETAILS
LEVEL 1-4 BRANCHES

DATE: 4/13/23
BY: JEP

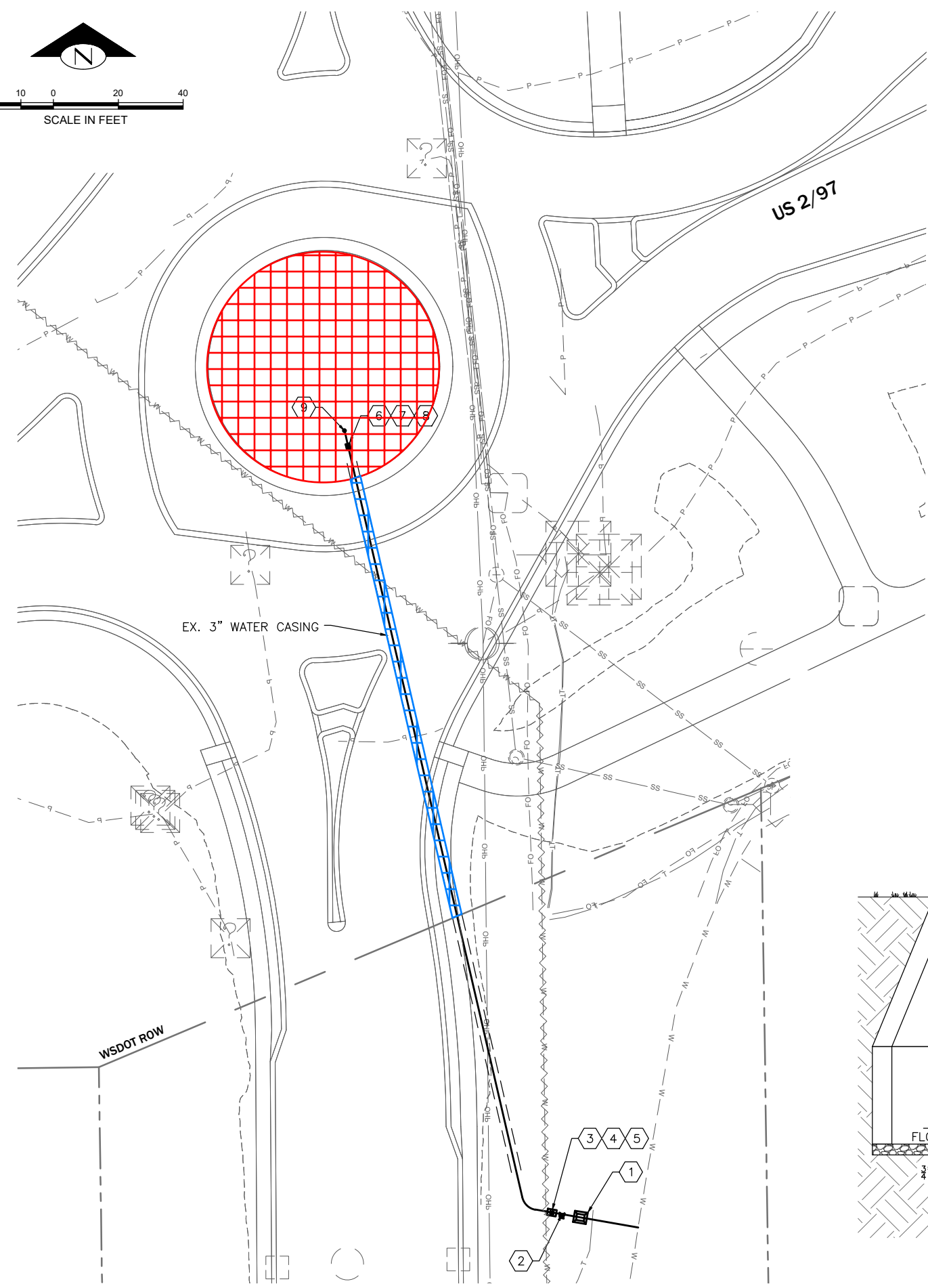
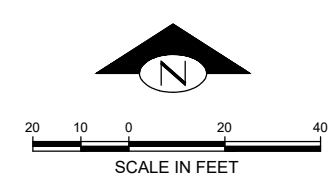
THIS DRAWING IS THE PROPERTY OF ALL STRUCTURE ENGINEERING. IT IS TO BE USED ONLY FOR THE PROJECT AND SITE SPECIFICALLY IDENTIFIED HEREON. IT IS NOT TO BE REPRODUCED, COPIED, OR TRANSMITTED IN ANY FORM OR BY ANY MEANS, WITHOUT THE WRITTEN PERMISSION OF ALL STRUCTURE ENGINEERING.

S3
NO. 22315.00

ENGINEERING CALCULATIONS ATTACHED SEPARATELY



EXHIBIT A




NOTES:

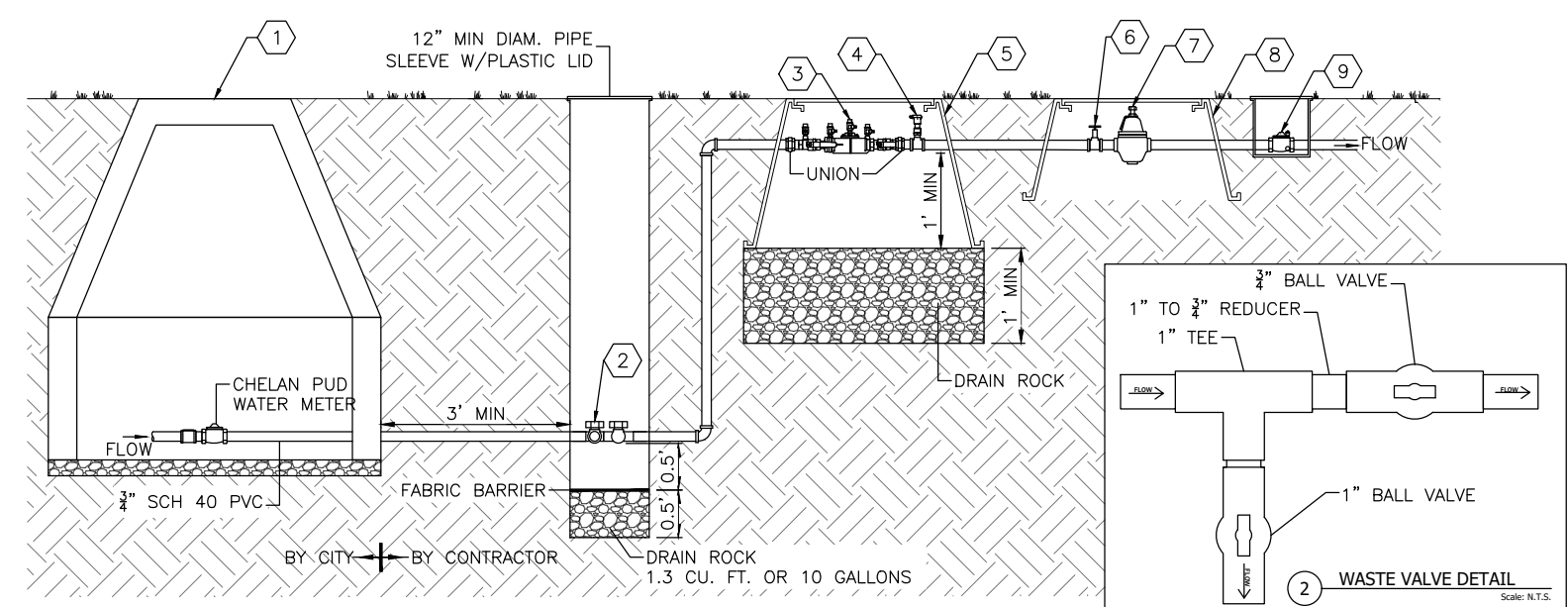
1. WSDOT CONTRACTOR IS INSTALLING OTHER UTILITIES AT THIS TIME. CITY CONTRACTOR SHALL COORDINATE WITH OTHERS TO CONFIRM FINAL LOCATIONS OF WATER UTILITIES.

CONSTRUCTION NOTES:

1. INSTALL 1" SINGLE WATER SERVICE AND WATER METER CHAMBER PER CHELAN COUNTY PUD STANDARD DETAILS W101 AND W113.
2. INSTALL STOP AND WASTE VALVE PER DETAIL BELOW
3. INSTALL 3/4" DOUBLE CHECK VALVE ASSEMBLY.
4. INSTALL 3/4" SINGLE-PIECE BODY INLET QUICK COUPLING VALVE W/RUBBER COVER.
5. INSTALL JUMBO IRRIGATION BOX.
6. INSTALL 3/4" IRRIGATION MAIN LINE VALVE
7. INSTALL 3/4" PRESSURE REDUCING VALVE.
8. INSTALL STANDARD IRRIGATION BOX.
9. BATTERY OPERATED INLINE IRRIGATION VALVE CONTROL AND TIMER IN IRRIGATION CONTROL BOX. (BY OTHERS)
10. POLYETHYLENE DRIP IRRIGATION TUBING (BY OTHERS)

 **LANDSCAPE/ART AREA TO BE MAINTAINED BY CITY OF WENATCHEE**

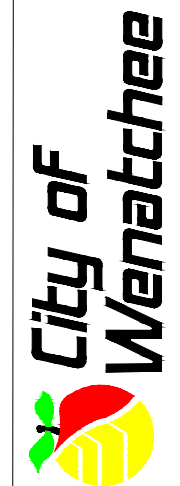
 **WATER LINE & CASING TO BE MAINTAINED BY CITY OF WENATCHEE**



1 WATER / IRRIGATION CONNECTION DETAIL
Scale: N.T.S.

Feb 21, 2023 - 2:54pm rhamon X:\Engineering\City Projects\2021 Projects\2111 - Easy Street Sewer Relocation\CAD\02-Design Drawings\B-Sheets\2111_P-UTIL_ARTWORK.dwg Layout Name: IR1

**US 2/97 EASY STREET ROUNDABOUT
CENTER ISLAND ARTWORK
WATER PLAN**



SCALE:	AS SHOWN	DATE DRAWN:	2/9/2023	REVISIONS
DESIGNED BY:	REH	CHECKED BY:	REH	
APPROVED BY:		DATE APPROVED:		
DRAWING NAME:	2111_P-UTIL_ARTWORK.dwg			
PROJECT NO.:	CI-WT1			
SHEET	1	OF	2	



EXHIBIT B

LEGEND:

		TYPE 1 JUNCTION BOX, WSDOT STD. PLAN J-40.10
		CONDUIT
		LIGHT STANDARD

GENERAL NOTES:

1. THE LOCATION OF ALL CONDUIT AND JUNCTION BOXES ON THIS PLAN ARE FOR GRAPHICAL PRESENTATION ONLY. FINAL LOCATIONS SHALL BE DETERMINED BY THE CONTRACTOR AND APPROVED BY THE ENGINEER IN THE FIELD.

CONSTRUCTION NOTES:

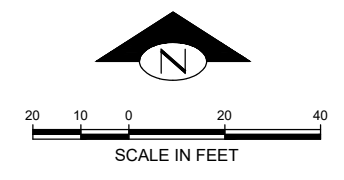
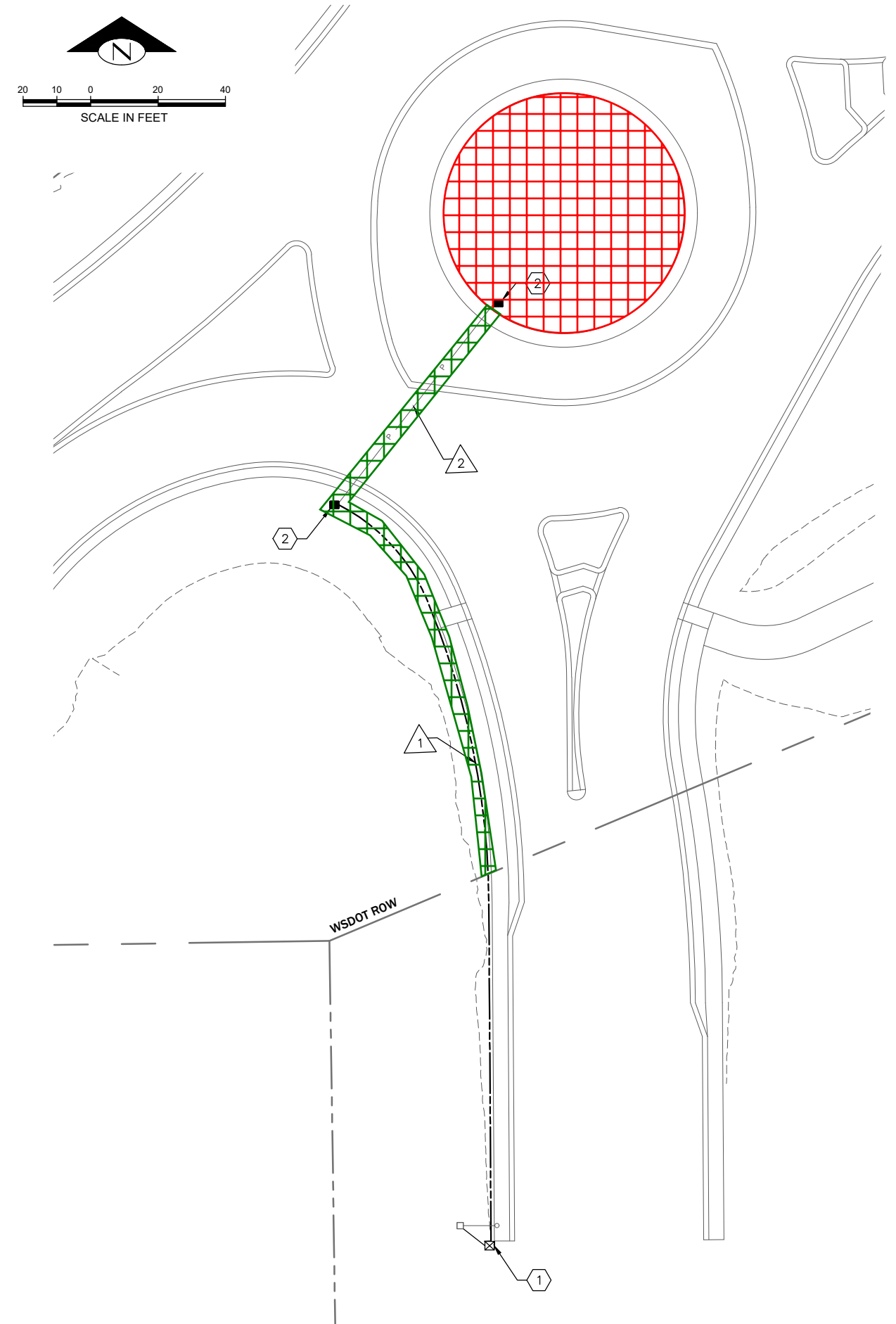
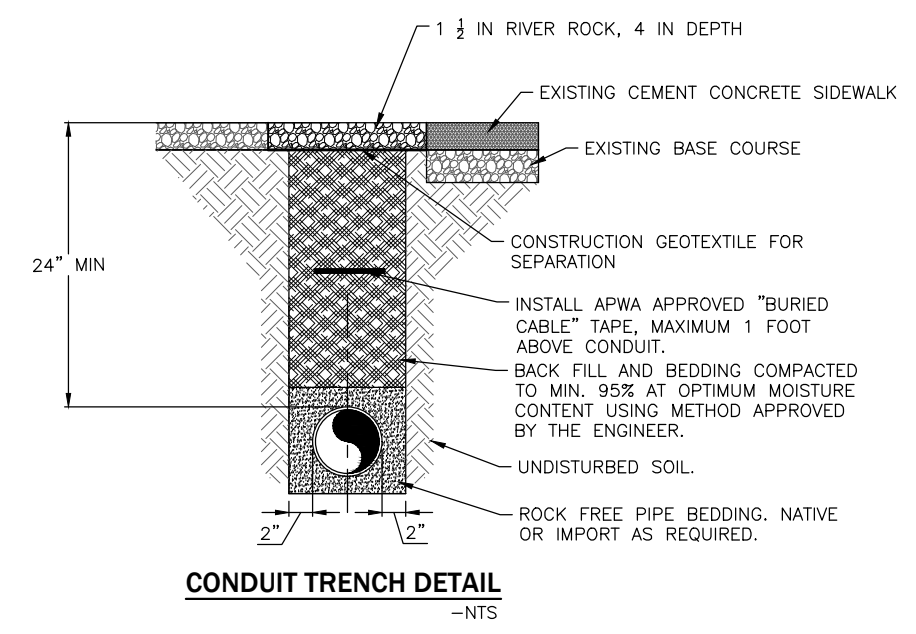
1. CONNECT NEW WIRING TO EXISTING POWER THROUGH THE EXISTING JUNCTION BOX. COMPLETE ALL REQUIRED SPLICING TO MAINTAIN THE EXISTING SYSTEM.
2. INSTALL TYPE 1 JUNCTION BOX WITH LOCKING LID PER WSDOT STANDARD PLAN J-40.10. JUNCTION BOX SHALL BE INSTALLED OVER EXISTING CONDUIT ENDS.

WIRING SCHEDULE

	CONDUIT SIZE	LUM/PWR
1	2" PVC	2-#8 1-#8 GRND
2	EX. 2"	2-#8 1-#8 GRND

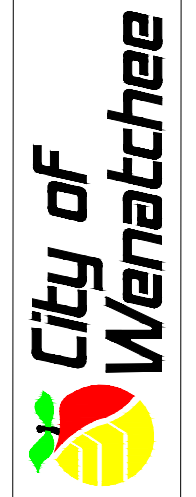
LANDSCAPE/ART AREA TO BE MAINTAINED BY CITY OF WENATCHEE

BURRIED POWER, CONDUIT AND JUNCTION BOXES TO BE MAINTAINED BY CITY OF WENATCHEE



Feb 21, 2023 - 2:53pm rhamon X:\Engineering\City Projects\2021 Projects\2111 - Easy Street Sewer Relocation\CAD\02-Design Drawings\B-Sheets\2111_P-UTIL_LUMINAIRE.dwg Layout Name: IL1

**US 2/97 EASY STREET ROUNDABOUT
CENTER ISLAND ARTWORK
ELECTRICAL PLAN**



SCALE: AS SHOWN	DATE DRAWN: 2/9/2023	DESIGNED: REH	DRAWN: AJS	CHECKED: REH	DATE APPROVED:
PROJECT NO.	CI-IL1				
SHEET	2	OF	2	DRAWING NAME: 2111_P-UTIL_LUMINAIRE.dwg	

**INTERLOCAL AGREEMENT
BETWEEN
CITY OF WENATCHEE
AND
CHELAN COUNTY PUD NO. 1
FOR
HYDROPOWER PUBLIC ART**

THIS INTERLOCAL AGREEMENT (“Agreement”) is made and entered into the last date below, by and between the City of Wenatchee (“City”), a municipal corporation, and the Chelan County Public Utility District No. 1 (“District”), a municipal corporation. The City and District are sometimes referred to individually as a “party” or together as the “parties”, as follows:

WHEREAS, the parties are public agencies as defined in the Interlocal Cooperation Act (Chapter 39.34 RCW), and they wish to enter into an agreement pursuant to the Interlocal Cooperation Act; and

WHEREAS, the Washington State Department of Transportation will be installing a large roundabout at the intersection of Easy Street and Highway 2, which is in the boundaries of the City; and

WHEREAS, the City was afforded an opportunity to incorporate public art into the roundabout to create an iconic focal point for the community and region; and

WHEREAS, the City issued a “call for artists – request for qualifications” in late-2021 and included as a possible theme the incorporation of hydropower, outdoor recreation and other themes central to the community and District operations; and

WHEREAS, the District agreed to participate in the request for qualification process, provided limited funding for artist honorariums, and served on the City’s selection committee; and

WHEREAS, the selected design incorporates hydropower through a variety of design elements including, but not limited to, eight turbine blades and iconic imagery incorporated into the turbine blades; and

WHEREAS, the District desires to support the project by covering a proportional share of the design, fabrication, installation, maintenance and related costs of the art installation; and

WHEREAS, the parties acknowledge that this Agreement is for the mutual benefit of the parties.

NOW, THEREFORE, the parties agree as follows:

1. Purpose.

The purpose of the Agreement is to provide for the continued cooperation of the parties for the design, fabrication, installation, and construction of the roundabout art project, including elements that directly relate to public power, hydropower and related community benefit including parks and recreational and similar efforts (“Project”).

2. Administration.

2.1 No separate legal or administrative entity is created by this Agreement.

2.2 For purposes of RCW 39.34.030(4)(a), the co-administrators of this Agreement shall be the City’s Director of the Parks, Recreation & Cultural Services Department, and the District’s Managing Director of District Services.

2.3 The following shall be the parties’ authorized representatives and contact persons for administration of this Agreement and any notices required by this Agreement shall be provided to:

To City:
City of Wenatchee
Attn: Mayor
301 Yakima St.
Wenatchee, WA 98801

To District:
Chelan PUD, Attn: Justin Erickson
327 N. Wenatchee Ave.
Wenatchee, WA 98807

With a copy to:

City of Wenatchee
Attn: Director of the Parks,
Recreation & Cultural
Services Department
301 Yakima St.
Wenatchee, WA 98801

With a copy to:
N/A

3. Duration and Termination.

3.1 This Agreement shall become effective upon:

3.1.1 Full execution by the parties; and

3.1.2 Posting of this Agreement with the each of the parties websites as provided for in RCW 39.34.040.

3.2. This Agreement shall remain in effect until the completion of the Project (expected mid-2023) or until terminated as provided for herein, whichever occurs first.

3.3 Either party may terminate the Agreement by giving thirty (30) days written notice thereof to the other party.

3.4 Notice of intent to terminate this Agreement shall be served personally or by certified mail, return receipt requested, postage prepaid. Notice shall be effective starting on the date of the receipt. If service is done by certified mail, receipt shall be deemed to have occurred on the third business day after mailing.

4. Responsibilities of the Parties.

4.1 The City is responsible for the following:

4.1.1 Leading the Project and all permit and contractual obligations with the selected artist, contractors, subcontractor(s), and the Washington State Department of Transportation.

4.1.2 Ongoing maintenance of the art installation, including landscaping and related signage and interpretive elements. The primary elements of the public art are anticipated to be highly durable and have an expected lifespan of over 20 years.

4.1.3 Maintaining the art and related features and landscaping in a condition similar to other comparable public spaces such as City parks and gateways.

4.1.4 Incorporating a series of hydropower elements into the public art including the proposed turbine-style blades around the base of the installation, and the laser-cut icon imagery submitted by the District.

4.2 The District is responsible for the following:

4.2.1 Participating in the planning process and provide graphic art associated with public power/hydropower, recreational, natural and other scenes as requested by the City.

4.2.2 As part of its financial contribution to the Project, District will waive related water service fees associated with water supply line cost, connection fees and the system development cost/fee. The total fee estimate is \$15,835.79, and the District acknowledges that the actual fee may be higher or lower based on actual costs.

4.2.3 Paying \$20,000.00 to the City within thirty (30) days of Agreement execution to cover a proportionate share of related administrative, artist, permit, design and fabrication and installation expenses incurred by the City in support of the Project.

4.2.4 Paying an additional \$10,000.00 to the City within thirty (30) days of Agreement execution to cover a portion of ongoing landscaping and operational and maintenance expenses.

5. Financing, Budget and Expenses.

No separate budget or financing method is created by this Agreement.

6. Property.

6.1 The parties do not anticipate acquiring jointly-owned personal or real property under this Agreement.

6.2 Any personal property of a party used in the performance of this Agreement in the possession of the other party shall be returned to the owner promptly upon completion of each requested task that utilized the property.

7. Maintenance and Audit of Records.

7.1 Each party shall maintain books, records, documents and other materials relevant to its performance under this Agreement (collectively “Records”).

7.2 Records shall be subject to inspection, review and audit by either party, the Washington State Auditor’s Office, or any other entity as required by law.

7.3 Each party shall retain all such Records for the longest applicable retention period under federal and Washington law. The retention period shall be tolled during the pendency of any claims or suits related in any way to this Agreement and any Records for which a party has custody or responsibility shall not be destroyed or purged until final resolution of all claims or lawsuits.

8. Legal Relations.

8.1 The parties agree that the District’s relation to the City shall be at all times under this Agreement as an independent contractor. Employees of District are and will remain employees of District. Employees of the City are and will remain employees of City.

8.2 The City agrees to defend, indemnify, and hold harmless the District and its agents from and against claims, damages, losses, and expenses, including, but not limited to, attorney’s fees and costs and expenses, arising out of or resulting from its performance of this Agreement, except for injuries and damages caused by the actions of the District.

8.3 The District agrees to defend, indemnify, and hold harmless the City and its agents from and against claims, damages, losses, and expenses, including, but not limited to, attorney's fees and costs and expenses, arising out of or resulting from its performance of this Agreement, except for injuries and damages caused by the actions of the City.

8.4 The indemnification obligation of each party 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 parties expressly waive the protection afforded by such laws. **The foregoing waiver and indemnification obligations have been mutually negotiated.**

8.5 This Agreement is made and entered into for the sole benefit of the parties, and the parties intend that no other person or entity shall be a direct or indirect beneficiary of this Agreement.

9. Enforcement.

9.1 In the event a dispute arises regarding any matter addressed in or related to this Agreement, the parties agree that before taking any court action or seeking any other legal remedy, the parties' authorized contact persons listed in Section 2.3, or their authorized designees, will participate in a good faith in-person negotiation to resolve any such dispute.

9.2 If any legal action, arbitration or other proceeding is brought for the enforcement of this Agreement, or because of an alleged dispute, breach, default or misrepresentation in connection with any of the provisions of this Agreement, each party shall pay its own attorney's fees incurred in that action, arbitration or other proceeding.

9.3 The Chelan County Superior Court shall be the sole and proper venue for any and all court actions brought to enforce or interpret the provisions of this Agreement.

9.4 This Agreement shall be governed exclusively by the laws of the State of Washington.

10. Applicable Laws.

The parties, in performance of the work under this Agreement, shall abide by all applicable local, state and federal laws, regulations, and requirements.

11. Interpretation.

11.1 This Agreement has been submitted to the scrutiny of the parties and their legal counsel, if desired, and it shall be given a fair and reasonable interpretation in accordance its words, without consideration or weight given to its being drafted by any party or its legal counsel.

11.2 Nothing contained in this Agreement shall be interpreted or construed to permit the assignment by either party of any rights or obligations in this Agreement and such assignment is expressly prohibited without the prior written consent of the other party.

12. Waiver of Breach.

The waiver by either party of the breach of any provision of this Agreement by the other party must be in writing and shall not operate or be construed as a waiver of any subsequent breach by such other party.

13. Recitals.

The recitals in the preamble to this Agreement are incorporated by this reference and are a part of this Agreement.

14. Severability.

In the event any term, provision, or condition of this Agreement or application thereof to any person or circumstance is held invalid, such invalidity shall not affect other terms, provisions, conditions, or applications of this Agreement which shall be given effect without the invalid term, provision, condition, or application. To this end, the terms, provisions and conditions of this Agreement are declared severable.

15. Entire Agreement.

15.1 This Agreement contains all the terms and conditions agreed upon by and between the parties.

15.2 This Agreement may be executed simultaneously or in counterparts each of which shall be deemed an original, but all of which shall be identical and constitute one and the same agreement. The date upon which the last of both of the parties have executed a counterpart of this Amendment shall be the “date of mutual execution” hereof.

15.3 No other understandings, oral or otherwise, regarding the subject matter of this Agreement shall be deemed to exist or to bind any of the parties hereto.

15.4 Any modification of this Agreement must be in writing and executed by both parties.

15.5 This Agreement shall be binding upon the parties, their successors and assigns.

[Signatures appear on the next page.]

IN WITNESS WHEREOF, the parties hereby have executed this Agreement on the dates below.

CITY OF WENATCHEE:

CHELAN COUNTY PUBLIC UTILITY
DISTRICT NO. 1:

By: _____
Frank Kuntz, Mayor

By: _____
Justin Erickson, Managing Director

Date: _____

Date: _____



CITY COUNCIL AGENDA REPORT

TO: Frank Kuntz, Mayor
City Council

FROM: Laura Gloria, Executive Services Director
Mayor's Office

MEETING DATE: April 13, 2023

I. SUBJECT

Interlocal Agreement for the Funding of a Regional Sports Complex Feasibility Study

II. ACTION REQUESTED

Motion requested for the City Council to approve the Interlocal Agreement for the Funding of a Regional Sports Complex Feasibility Study and authorize the Mayor's signature

III. OVERVIEW

The purpose of the proposed Interlocal Agreement for the Funding of a Regional Sports Complex Feasibility Study (Agreement) is to facilitate a multi-phase study to evaluate the feasibility of a constructing a multisport complex in the region, and to fairly allocate the costs between the Participating Entities. This Agreement does not extend to the implementation of the feasibility study. The feasibility study cost is \$300,000 and the Participating Agencies agree to contribute the following funding amounts:

Participating Entity	Max. Contribution
Greater Wenatchee PFD	\$100,000
Chelan County	\$ 50,000
Douglas County	\$ 50,000
City of Wenatchee	\$ 40,000
City of East Wenatchee	\$ 30,000
CDRPA	\$ 30,000

IV. FISCAL IMPACT

Per the Agreement, the City would contribute \$40,000 from the general fund.

VI. REFERENCE(S)

1. Interlocal Agreement for the Funding of a Regional Sports Complex Feasibility Study

VII. ADMINISTRATIVE ROUTING

Tammy McCord, City Clerk
Brad Posenjak, Finance Director

Chelan Douglas Regional Port Authority
One Campbell Parkway, Suite A
East Wenatchee, WA 98802

INTERLOCAL AGREEMENT FOR THE FUNDING OF A REGIONAL SPORTS COMPLEX FEASIBILITY STUDY

This Interlocal Agreement (“Agreement”) is entered into this _____ day of _____, 2023, by and between the CITY OF WENATCHEE, a municipal corporation of the State of Washington (“Wenatchee”), CITY OF EAST WENATCHEE, a municipal corporation of the State of Washington (“East Wenatchee”), the GREATER WENATCHEE PUBLIC FACILITIES DISTRICT, a municipal corporation of the State of Washington (the “PFD”), CHELAN COUNTY, a municipal corporation of the State of Washington, DOUGLAS COUNTY, a municipal corporation of the State of Washington, and the CHELAN DOUGLAS REGIONAL PORT AUTHORITY, a not-for-profit corporation organized under the laws of the State of Washington (the “CDRPA”) (known individually as Party or collectively as Participating Entities) for the purposes sharing costs to conduct a feasibility study for the Regional Sports Complex.

RECITALS

WHEREAS, the Interlocal Cooperation Act, RCW 39.34, authorizes public agencies to enter into agreements with one another for cooperative action. The Participating Entities qualify as public agencies for purposes of RCW 39.34; and

WHEREAS, the Participating Entities desire to work together on the following described project for the benefit of the region. CDRPA is serving as the lead agency to conduct a feasibility study to evaluate the suitability of a regional sports complex. Each of the Participating Entities desire to contribute funding toward to cost of the feasibility study; and

WHEREAS, the Participating Entities desire to have the CDRPA perform certain administrative functions on their behalf to achieve cost efficiencies and economies of scale; and

WHEREAS, the CDRPA will administer the Agreement by entering into a contract with a consultant to perform the feasibility study as detailed herein this Agreement; and

WHEREAS, the total combined amount of funding to be contributed to the feasibility study by the Participating Entities is \$300,000.00, with individual shares itemized herein this Agreement; and

WHEREAS, through this Agreement, the Participating Entities desire to proceed with the Regional Sports Complex feasibility study and to fairly allocate the cost between them; and

WHEREAS, for the mutual benefit of the Participating Entities and to conserve public funds, it is convenient and economical for the Participating Entities to enter into this Agreement.

AGREEMENT

NOW, THEREFORE, in consideration of the terms that this Agreement contains, the Participating Entities agree as follows:

1. Term. This Agreement shall become effective upon the full execution by the Participating Entities and recording with the Chelan County and Douglas County Auditors; or, alternatively, the posting of this Agreement to each Party's website. It shall terminate upon completion of the feasibility study, or no later than June 30, 2024.

2. Administration of Agreement.

2.1. No separate legal or administrative entity is created by this Agreement.

2.2. Jim Kuntz, CDRPA CEO, or his designee, shall administer this Agreement. The authorized representative of each Participating Entity designated in Section 2.3 below shall be responsible to report to their respective governing body.

2.3. The following shall be the Participating Entities' authorized representatives and contact persons for administration of this Agreement and any notices required by this Agreement shall be provided to:

CITY OF WENATCHEE Attn: Mayor 31 Yakima Street Wenatchee, WA 98801	CITY OF E. WENATCHEE Attn: Mayor 271 9 th Street NE East Wenatchee, WA 98802	PFD Attn: President 1300 Walla Walla Ave Wenatchee, WA 98801
CHELAN COUNTY Attn: Commissioners 401 Washington St., Wenatchee, WA 98801	DOUGLAS COUNTY Attn: Commissioners 203 S. Rainier Street Waterville, WA 98858	CDRPA Attn: CEO 1 Campbell Parkway, Ste A East Wenatchee, WA 98802

3. Purpose. The purpose of this Agreement is to facilitate a multi-phase study to evaluate the feasibility of a constructing a multisport complex in the region, and to fairly allocate the costs between the Participating Entities. This Agreement does not extend to the implementation of the feasibility study.

4. Payment for Feasibility Study.

4.1. The Participating Entities have authorized the CDRPA to seek qualifications and delegated a subcommittee to assist in the consultant selection process. The CDRPA has estimated a cost of \$300,000.00 for the study. The Participating Entities agree to share a portion of the costs in the following amounts:

Participating Entity	Max. Contribution
Greater Wenatchee PFD	\$100,000
Chelan County	\$ 50,000
Douglas County	\$ 50,000
City of Wenatchee	\$ 40,000
City of East Wenatchee	\$ 30,000
CDRPA	\$ 30,000

4.2. The cost sharing limitations set forth in Section 4.1, above, shall not be exceeded without the written authorization of all Participating Entities.

4.3. The CDRPA shall be responsible for making payment to the contracted consultant upon the contract terms. The CDRPA will invoice each Participating Entity quarterly pro-rata during the term of the contract. The Participating Entities shall each pay their established share within 30 days of invoice. Payment(s) not made within 30 days of invoice shall accrue interest at the rate of 12% per annum.

5. Property. The Participating Entities do not anticipate acquiring jointly-owned personal or real property under this Agreement.

6. Financing, Budget and Expenses. No separate budget or financing method is created by this Agreement.

7. Maintenance and Audit of Records.

7.1. Each Party shall maintain books, records, documents and other materials relevant to its performance under this Agreement.

7.2. These records shall be subject to inspection, review and audit by either Party, the Washington State Auditor's Office, or any other entity as required by law.

7.3. Each Party shall retain all such books, records, documents and other materials for the longest applicable retention period under federal and Washington State law.

8. Legal Relations.

8.1. The Participating Entities are separate and independent governmental entities in all respects. Nothing in this Agreement shall be construed as creating any other relationship between the Participating Entities.

8.2. Each Participating Entity agrees to defend, indemnify, and hold harmless the other Parties and its agents from and against claims, damages, losses, and expenses, including, but not limited to, attorney's fees and costs and expenses, arising out of or resulting from its performance of this Agreement, except for injuries and damages caused by the actions of the entity being indemnified.

8.3. Nothing in this Agreement shall be construed to permit anyone other than the Participating Entities and their successors to rely upon the covenants and agreements contained in this Agreement, nor to give any such third party a cause of action, as a third-party beneficiary or otherwise, on account of any nonperformance of the provisions of this Agreement.

9. Enforcement.

9.1. In the event a dispute arises regarding any matter addressed in or related to this Agreement, the Participating Entities agree that before taking any court action or seeking any other legal remedy, the Participating Entities' authorized contact persons listed in Section 2.3, or their authorized designees, will participate in a good faith in-person negotiation to resolve any such dispute.

9.2. If any legal action, arbitration or other proceeding is brought for the enforcement of this Agreement, or because of an alleged dispute, breach, default or misrepresentation in connection with any of the provisions of this Agreement, each Party shall pay its own attorney's fees incurred in that action, arbitration or other proceeding.

10. Authority. Each person signing this Agreement has the full authority to execute this Agreement and to bind the party on behalf of which he/she signed.

11. Applicable Law. The laws of the State of Washington shall govern this Agreement and all questions relating to it.

12. Venue. Venue of any action arising out of this Agreement shall be exclusively in a court of competent jurisdiction in Chelan County, Washington.

13. Counterparts. This Agreement may be executed in multiple counterparts, each of which shall be deemed an original and all of which together shall be deemed one and the same document.

14. Recitals. The recitals in the preamble to this Agreement are incorporated by this reference and are a part of this Agreement.

15. Assignment. Nothing contained in this Agreement shall be interpreted or construed to permit the assignment by the Participating Entities of any rights or obligations in this Agreement and such assignment is expressly prohibited without the prior written consent of the other Participating Entities.

16. Posting of the Agreement. Pursuant to RCW 39.34.040, this Agreement shall be recorded with the Chelan County Auditor and the Douglas County Auditor or posted to each Party's website.

17. Applicable Laws. The Participating Entities, in performance of the work under this Agreement, shall abide by all applicable local, state and federal laws, regulations, and requirements.

18. Interpretation.

18.1. This Agreement has been submitted to the scrutiny of the Participating Entities and their legal counsel, if desired, and it shall be given a fair and reasonable interpretation in accordance its words, without consideration or weight given to its being drafted by any Party or its legal counsel.

18.2. In the event any term, provision, or condition of this Agreement or application thereof to any person or circumstance is held invalid, such invalidity shall not affect other terms, provisions, conditions, or applications of this Agreement which shall be given effect without the invalid term, provision, condition, or application. To this end, the terms, provisions and conditions of this Agreement are declared severable.

19. Waiver of Breach. The waiver by either Party of the breach of any provision of this Agreement by the other Party must be in writing and shall not operate or be construed as a waiver of any subsequent breach by such other Party.

20. Entire Agreement. This Agreement constitutes the entire agreement between the Participating Entities relating to the regional sports complex feasible study. Any modification of the Agreement or additional obligation assumed by the Participating Entities in connection with the Agreement shall be binding only if evidenced in writing and signed by all Participating Entities. This Agreement shall be binding upon the Participating Entities, their successors and assigns.

DATED this _____ day of _____, 2023.

(signature)

(printed or typed name)

NOTARY PUBLIC, State of Washington

My Commission Expires _____

STATE OF WASHINGTON)

)

ss.

County of Chelan)

)

I certify that I know or have satisfactory evidence that Tiffany Gering is the person who appeared before me and said person acknowledged that she signed this instrument, on oath stated that she is authorized to execute the instrument and acknowledged it as the Commissioner of Chelan County, to be the free and voluntary act of such party for the uses and purposes mentioned in the instrument.

DATED this _____ day of _____, 2023.

(signature)

(printed or typed name)

NOTARY PUBLIC, State of Washington

My Commission Expires _____

DATED this _____ day of _____, 2023.

(signature)

(printed or typed name)

NOTARY PUBLIC, State of Washington

My Commission Expires _____

STATE OF WASHINGTON)

)

ss.

County of Douglas)

)

I certify that I know or have satisfactory evidence that Marc Straub is the person who appeared before me and said person acknowledged that she signed this instrument, on oath stated that she is authorized to execute the instrument and acknowledged it as the Commissioner of Douglas County, to be the free and voluntary act of such party for the uses and purposes mentioned in the instrument.

DATED this _____ day of _____, 2023.

(signature)

(printed or typed name)

NOTARY PUBLIC, State of Washington

My Commission Expires _____



CITY COUNCIL AGENDA REPORT

TO: Frank Kuntz, Mayor
City Council

FROM: Emma Honeycutt, Engineering Development Manager
Rob Jammerman, Public Works Director

MEETING DATE: April 13, 2023

I. SUBJECT

Resolution 2023-09 approving an amendment to the Development Agreement between the City of Wenatchee and Roland and Dianna Wheeler (Wheeler).

II. ACTION REQUESTED

Staff recommends the City Council pass Resolution 2023-09 amending the Development Agreement between the City of Wenatchee and the Wheelers, and authorize the Mayor to sign the Development Agreement Amendment.

III. OVERVIEW

The City of Wenatchee entered in to a Development Agreement with Roland and Dianna Wheeler in 2020. This agreement outlined the conditions placed upon the Wheelers for development of a three-lot Short Plat subdivision at 2013 Maple Street. The conditions included dedication of right-of-way for the Short-Plat development. In addition to the required dedication, the Wheeler's also voluntarily dedicated, additional right-of-way in order to construct the Maple Street Improvements project and lessen the impact of the street widening on a neighboring property across the street. The Development Agreement also required a cash payment by the Wheelers to the City of \$46,970, which was to cover their proportionate share of street frontage improvements across their parcel.

When the City initially negotiated the Development Agreement, the right-of-way land valuation that was assumed in the original Development Agreement turned out to be low when compared to the values that the City paid other property owners along Maple Street.

Last, the Capital project resulted in the Wheelers' existing carport being rendered unusable, and a new facility had to be built; the loss of the carport was not included in the Development Agreement

The Wheelers, the City Attorney, and City Staff agree that amending the Development Agreement to account for these discrepancies and reducing the cash contribution to zero is fair.

IV. FISCAL IMPACT

The City received the right-of-way dedication from the Wheelers via Quit Claim in 2020 at no charge. The fund for the Maple Street Improvements Capital Project, which was the Foothills Streets Fund 309, has already been fully spent closed out and no further funds are due.

V. PROPOSED PROJECT SCHEDULE

NA

VI. REFERENCE(S)

Exhibit – Wheeler Parcel Photo
Resolution 2023-09 (proposed)
Notice of Public Hearing
Development Agreement between the City of Wenatchee and Wheeler (original)

VII. ADMINISTRATIVE ROUTING

Tammy McCord, City Clerk
Laura Gloria, Executive Services Director
Jake Lewing, City Engineer

2013 Maple Street - Wheeler Parcel



RESOLUTION NO. 2023-09

A RESOLUTION of the City of Wenatchee amending a development agreement between the City of Wenatchee and Roland E. “Sandy” Wheeler and Dianna G. Wheeler.

WHEREAS, the City of Wenatchee (“City”) and Roland E. “Sandy” Wheeler and Dianna G. Wheeler (“Wheelers”) entered into a development agreement that was approved by the City Council pursuant to Resolution 2020-04 (“Development Agreement”); and

WHEREAS, pursuant to the Development Agreement, the Wheelers dedicated right of way to the City. The dedication was completed by Quit Claim Deed recorded September 30, 2020 at Chelan County Auditors File No. 2525993; and

WHEREAS, in addition to the right of way dedication, the Development Agreement provided for a payment by Wheeler to the City of \$46,970 in lieu of their financial participation in the Maple Street improvements in mitigation of the Wheeler’s intended Short Plat; and

WHEREAS, the cash contribution was based on the City’s estimate of value for the Wheeler right of way dedication which turned out to be low; and

WHEREAS, the Maple Street improvements resulted in the Wheeler’s existing car port being rendered unusable; and as a result, the Wheelers had to build a new shelter for their vehicles; and

WHEREAS, the Wheelers and the City agree that reducing the Wheeler’s cash contribution for the Maple Street improvements to zero would be fair and appropriate; and

WHEREAS, the Wheelers and the City would like to amend the Development Agreement in accordance with the proposed amendment that is attached hereto as Exhibit A; and

WHEREAS, a duly advertised public hearing was held before the City Council on April 13, 2023, regarding the proposed amendment to the Development Agreement.

NOW THEREFORE THE CITY COUNCIL OF THE CITY OF WENATCHEE, WASHINGTON, HEREBY RESOLVES AS FOLLOWS:

Section 1. Recitals. The foregoing recitals are incorporated herein by this reference and made part of this Resolution.

Section 2. Amendment. The City Council approves the Amendment to the Development Agreement and authorizes the Mayor to sign the Amendment. The Amendment is attached hereto as Exhibit A and is incorporated herein by this reference.

Section 3. Effective Date. This Resolution shall take effect upon adoption.

ADOPTED by the City Council of the City of Wenatchee, Washington, this 13th day of April, 2023.

CITY OF WENATCHEE,
a Municipal Corporation

By: _____
FRANK KUTNZ, Mayor

ATTEST:

By: _____
TAMMY McCORD, City Clerk

APPROVED AS TO FORM:
OFFICE OF THE CITY ATTORNEY

By: _____
DANIELLE R. MARCHANT, City Attorney

Exhibit A
Amendment to the Development Agreement

Return Address:
Steve D. Smith
Davis, Arneil Law Firm, LLP
617 Washington Street
Wenatchee, WA 98801

**AMENDMENT TO
DEVELOPMENT AGREEMENT
BETWEEN THE
CITY OF WENATCHEE
AND
WHEELER**

Reference numbers of related documents: 2525992

Grantors:

1. WHEELER, Roland (Sandy) and Dianna

Grantees:

1. CITY OF WENATCHEE

Legal Description:

1. Ptn. NW ¼ of SE ¼, Sec. 32, T23N, R20 EWM, Chelan County, Washington
2. Additional legal description is on pages 1-2 of document

Assessor's Property Tax Parcel Account Number(s): 23-20-32-420-650

I. Background

1.1 Prior Instrument. Development Agreement Between the City of Wenatchee and Wheeler recorded September 30, 2020, at Chelan County Auditor's File Number 2525992 (the "Development Agreement").

1.2 Grantor. Roland E. (Sandy) Wheeler and Dianna G. Wheeler, husband and wife (the "Wheeler").

1.3 Grantee. The City of Wenatchee, a municipal corporation of the state of Washington ("City").

AMENDMENT TO DEVELOPMENT AGREEMENT

Page 1

WNTCA PW: SNWH (7078)

2. Recitals.

2.1 Pursuant to the Development Agreement, the Wheelers dedicated right of way to the City. The dedication was completed by Quit Claim Deed recorded September 30, 2020 at Chelan County Auditors File No. 2525993.

2.2 In addition to the right of way dedication, the Development Agreement provided for a payment by Wheeler to the City of \$46,970 in lieu of their financial participation in the Maple Street improvements in mitigation of the Wheeler's intended Short Plat.

2.3 The cash contribution was based on the City's estimate of value for the Wheeler right of way dedication which turned out to be low. Also, the Maple Street improvements resulted in the Wheeler's existing car port being rendered unusable. As a result, Wheelers had to build a new shelter for their vehicles.

2.4 The Wheelers and the City agree that reducing the Wheeler's cash contribution for the Maple Street improvements to zero would be fair and appropriate.

3. Amendment.

The Development Agreement shall be, and hereby is, amended as follows:

“4. Payment. Wheelers shall be obligated to pay the City zero dollars (\$0) prior to obtaining final approval of the Short Plat for their proportionate share of the Maple Street sewer main. The Wheeler property will not be subject to a local facilities charge under WCC 4.08.036(2).

5. In Lieu. The right of way dedication is in lieu of and shall relieve Wheelers from any further obligation to participate in the Maple Street improvements in mitigation of the Short Plat.”

4. Full Force and Effect.

Except as modified herein, the Development Agreement shall remain in full force and effect.

DATED this _____ day of _____, 2023.

(signature)

(printed or typed name)

NOTARY PUBLIC, State of Washington

My Commission Expires _____

Notice of Public Hearing

**NOTICE OF PUBLIC HEARING RE:
AMENDMENT TO DEVELOPMENT AGREEMENT**

NOTICE IS HEREBY GIVEN that Thursday, the 13th day of April, 2023, at the hour of 5:15 o'clock p.m. of said date, or as soon thereafter as the matter may be heard, has been fixed as the time and place for public hearing upon the issue of an Amendment to Development Agreement between the City of Wenatchee and Roland E. (Sandy) Wheeler and Dianna G. Wheeler, relating to property located at 2013 Maple Street, Wenatchee, Chelan County, Washington. A copy of the original Development Agreement recorded September 30, 2020, at Chelan County Auditors File No. 2525992, and proposed Amendment to Development Agreement may be requested by contacting the City Clerk.

The hearing shall be held in the City Council Chambers at Wenatchee City Hall, 301 Yakima Street, Wenatchee, Washington, at which time all interested persons may appear and voice their approval or disapproval of said amended development agreement.

DATED this 20th day of March, 2023. CITY OF WENATCHEE Tammy L. Stanger, City Clerk
Phone: 509-888-6204 Email: cityclerk@wenatcheewa.gov

Original Development Agreement

Return Address:
Steve D. Smith
Davis, Arneil Law Firm, LLP
617 Washington Street
Wenatchee, WA 98801

DEVELOPMENT AGREEMENT BETWEEN THE CITY OF WENATCHEE AND WHEELER

Reference numbers of related documents: n/a

Grantors:

1. WHEELER, Roland (Sandy) and Dianna

Grantees:

1. CITY OF WENATCHEE

Legal Description:

1. Ptn. NW ¼ of SE ¼, Sec. 32, T23N, R20 EWM, Chelan County, Washington
2. Additional legal description is on pages 1-2 of document

Assessor's Property Tax Parcel Account Number(s): 23-20-32-420-650

THIS DEVELOPMENT AGREEMENT ("Agreement") is entered into by and between the City of Wenatchee, a Washington municipal corporation ("City") and Roland E. "Sandy" Wheeler and Dianna G. Wheeler, husband and wife ("Wheelers"). The City and Wheelers may hereafter be collectively referred to as the "Parties" or individually as a "Party."

RECITALS:

A. Wheelers are the owners of certain real property located at 2013 Maple Street, Wenatchee, Chelan County, Washington, legally described on Exhibit "A" attached hereto and incorporated herein by this reference ("the Property").

B. Wheelers are applying to the City for approval of a short plat of the Property into three lots (“the Short Plat”).

C. As a condition of approval of the Short Plat, the City requires that Wheelers dedicate right of way to the City and installation of approximately 235 feet of half-street improvements along the Property frontage on Maple Street. In lieu of installing the street improvements, Wheelers have agreed to dedicate right of way as shown on the legal description and drawing attached hereto as Exhibit “B”. In addition, the City requires that the Wheelers pay to the City the sum of \$46,970 prior to obtaining final approval of the Short Plat and recording thereof. The right of way dedication and the cash payment shall relieve the Wheelers from any further obligation to participate in the Maple Street improvements in mitigation of the impacts of the Short Plat.

D. Any and all utility extension costs necessary to serve the Short Plat shall be at Wheelers’ expense.

E. The City is negotiating a development agreement with Triad Maple, LLC (“Triad”) that is anticipated to have a provision requiring Triad to complete the Maple Street improvements fronting Wheelers’ Short Plat and to the West thereof. The City makes no representations or guaranties, and the Wheelers are relying on no such representations, as to when the improvements to Maple Street will be made.

AGREEMENT:

NOW, THEREFORE, in consideration of partial satisfaction of the conditions of approval of Wheelers’ Short Plat application the City and Wheelers agree as follows:

1. Recitals. The foregoing recitals shall be and hereby are incorporated in this Agreement as if set forth in full herein.

2. Ownership. Wheelers warrant that they are the owners of the real property described in Exhibit “A” and that they have the full and complete authority to enter into this Agreement with the City for the purposes set forth herein.

3. Dedication. Wheelers agree to immediately dedicate to the City a portion of the Property for public right of way as described and shown on Exhibit “B” attached hereto. Title to the right of way shall be conveyed by Wheelers to the City as right of way by statutory warranty deed free and clear of all defects and encumbrances not materially impacting the intended use of the public

If to Wheelers: Sandy and Dianna Wheeler
2013 Maple Street
Wenatchee, WA 98801

8. City Reservation of Rights. The City reserves the authority under RCW 36.70B.170 (4) and WAC 365-196-845 (17) (e) to impose new or different regulations, to the extent required by the federal or state governments, or by a serious threat to public health and safety.

9. Binding Effect. This Agreement shall be binding upon the successors and assigns of the Parties hereto, shall be recorded with the Chelan County Auditor, and shall run with the Property.

10. Construction. The Parties agree that this Agreement has been negotiated and drafted with input from all Parties, and that in any controversy, dispute or contest over the meaning, interpretation, validity or enforceability of this Agreement there shall be no inference, presumption or conclusion drawn whatsoever against any Party by virtue of that Party having drafted this Agreement or any portion thereof.

11. Jurisdiction and Venue. Jurisdiction and venue for any action to enforce the provisions of this Agreement shall be in Superior Court of Chelan County, Washington, or in the Superior Court of Douglas County, Washington.

12. Attorney's Fees. In the event it is necessary for any Party to utilize the services of an attorney to enforce any of the terms of this Agreement, each Party shall pay its own costs and attorneys' fees incurred therein.

13. Severability. Any provision of this Agreement which shall prove invalid, void or illegal shall in no way affect, impair or invalidate any other provision hereof, and the remaining provisions hereof shall nevertheless remain in full force and effect.

14. Effective Date. The Effective Date of this Agreement shall be the effective date of the Ordinance passed by the City Council approving this Agreement.

DATED this 13th day of August, 2020.

CITY OF WENATCHEE

By 
FRANK J. KUNTZ, Mayor

EXHIBIT "A"

The Northerly 35 acres of the Southeast quarter of the Northwest quarter of the Southeast quarter of Section 32, Township 23 North, Range 20 East of the Willamette Meridian, Chelan County, Washington, lying Easterly of the right of way of Wenatchee Reclamation District Canal,

EXCEPT the Northerly 15 feet and Easterly 15 feet thereof for road right of way,

EXCEPT any portion there of lying within the Southerly 205.00 feet of said Southeast quarter of the Northwest quarter of the Southeast quarter, said 205.00 feet being measured along the Easterly line of said subdivision,

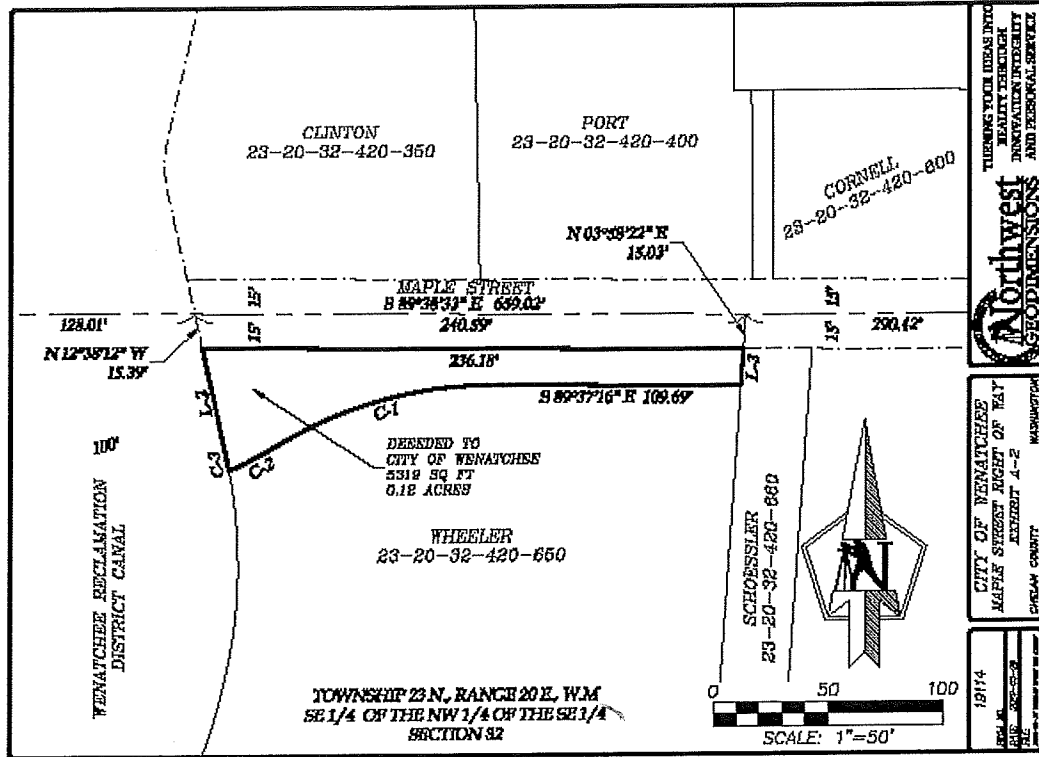
AND EXCEPT therefrom that portion of the foregoing described parcel of land; A parcel of land located in the Southeast quarter of the Northwest quarter of the Southeast quarter of Section 32, Township 23 North, Range 20 East of the Willamette Meridian, Chelan County, Washington, more particularly described as follows;

Commencing at the Northeast corner of the Northwest quarter of the Southeast quarter of Section 32, a 5/8 iron pin, from which the Southeast quarter corner of said Section 32, a found 5/8" iron pin in monument case at the intersection of Mulberry lane and Western Avenue, bears South 89°42'45" East (Washington State Department of Highways bearing datum on the East line of the Southeast quarter of said Section 32) 1319.14 feet; thence South 0°32'20" East along the East line of said Northwest quarter of the Southeast quarter of Section 32 for 661.31 feet to a 5/8" iron pin, said pint being the Northeast corner of the Southeast quarter of the Northwest quarter of the Southeast quarter of said Section 32; thence continuing South 0°32'20" East along said line 456.31 feet to a 5/8 iron pin, from which the Southeast corner of said Southeast quarter of the Northwest quarter of the Southeast quarter bears South 0°32'20" East 205.00 feet; thence North 89°35'15" West 106.49 feet on a line parallel to the South line of said subdivision to a 5/8 iron pin and the True Point of Beginning of this description; thence continuing North 89°35'15" West 260.96 feet; thence North 5°34'30" East 213.49 feet; thence South 79°21'06" East 20.77 feet; thence North 24°19'4.3" East 41.74 feet, the foregoing four points being 5/8 iron pins; thence North 3°56'02" East 194.22 feet to 5/8" iron pin on the Southerly right-of-way line of Upper Maple Street; thence South 89°39'00" East on a line parallel to the North line of said Southeast quarter of the Northwest quarter of the Southeast quarter and along said right-of-way line for 30.06 feet; thence South 3°56'02" North 201.49 feet; thence South 24°1.9" 43" West 39.83 feet; thence South 79°21'06" East 38.83 feet; thence South 48°45'09" East 97.21 feet; thence South 16°17'47" East 55.18 feet, the foregoing six points begin 5/8 iron pins; thence South 37°52'58" East 102.11 feet to the True Point of Beginning.

EXHIBIT "B"

A portion of the Southeast quarter of the Northwest quarter of the Southeast quarter, Section 32, Township 23 North, Range 20 E. W.M., CHELAN, Washington described as follows;
The distances of this description are in grid. Multiply by a combined scale factor of 1.00002958 to derive ground distances.

Beginning at the Northeast corner of the Southeast quarter of the Northwest quarter of the Southeast quarter, said Section 32, thence North $89^{\circ}38'33''$ West along the North line of the subdivision of said Section 32 a distance of 290.42 feet; thence South $03^{\circ}58'22''$ West a distance of 15.03 feet to a point on the Southerly right of way of Maple Street, a rebar and the True Point of Beginning; thence North $89^{\circ}38'33''$ West along the Southerly right of way of said Maple Street a distance of 236.18 feet to a point on the easterly boundary of Wenatchee Reclamation District Canal; thence South $12^{\circ}38'12''$ East along the westerly right of way of said Wenatchee Reclamation District Canal a distance of 46.48 feet; thence 7.90 feet continuing along said right of way through a tangent curve right with a radius of 225.00 feet, a central angle of $02^{\circ}00'39''$, with a chord bearing of South $11^{\circ}37'53''$ East, and a chord distance of 7.90 feet; thence 26.18 feet leaving said right of way through a non-tangent curve left having a radius of 225.00 feet, a central angle of $06^{\circ}40'04''$, with a chord bearing of North $62^{\circ}40'59''$ East, and a chord distance of 26.17 feet; thence 94.78 feet through a reverse curve right with a radius of 175.00 feet, a central angle of $31^{\circ}01'47''$, with a chord bearing of North $74^{\circ}51'50''$ East, and a chord distance of 93.62 feet; thence South $89^{\circ}37'16''$ East a distance of 109.69 feet; thence North $03^{\circ}58'22''$ East a distance of 15.92 feet to the True Point of Beginning.



Line Table			Curve Table					
Line #	Length	Direction	Curve	Length	Radius	Delta	Course	Chord
L-2	45.48	S12°38'12"E	C-1	94.78	159.00	31°21'49"	S 74°21'40" W	50.62
L-3	15.92	N3°58'22"W	C-2	26.18	225.06	6°40'54"	N 62°40'59" E	25.17
			C-3	7.90	225.06	2°00'28"	N 11°07'12" W	7.90

TURNING YOUR IDEAS INTO
 REALITY THROUGH
 PROFESSIONAL SURVEYING
 AND DESIGN SERVICES

Northwest
 SURVEYING & DESIGN

CITY OF WENATCHEE
 MAPLE STREET, RIGHT OF WAY
 ALTERNATE 4-3
 CHELAN COUNTY WASHINGTON

19114
 PLAN
 2023-02-08
 FILE