



Vancouver City Council

Anne McEnerny-Ogle, Mayor

Sarah J. Fox • Bart Hansen • Kim D. Harless

Erik Paulsen • Diana H. Perez • Ty Stober

City Council Meeting Agenda February 5, 2024

In accordance with the Open Public Meetings Act (OPMA), the Vancouver City Council meeting will be open to in-person attendance. Options for viewing and/or participating in the meeting remotely will also be accommodated (see details below). The City Council will be attending this meeting in person.

All City Council workshops and meetings are broadcast (live closed captioning available) on www.cvtv.org, CVTV cable channels 23 / HD 323, and on the City's Facebook page, www.facebook.com/VancouverUS.

Public testimony will be accepted regarding any matter on the agenda below. ***Advance registration will be required (see details below).***

Unless otherwise announced by the Presiding Officer, each speaker may testify once for up to three minutes under each public testimony opportunity below and will be asked to provide their name and city of residence for the record.

Testimony will be accepted in the following manner:

- **Written comments submitted in advance**

Comments may be sent to council@cityofvancouver.us until 12:00 p.m. February 5. Comments will be compiled and sent to the City Council and entered into the record.

- **In-person or remote testimony during the meeting**

Register in-person at City Hall. In-person registration is open until 6:30 p.m. on February 5. Instructions will be provided on-site.

Register to testify online. Online registration is open until 12:00 p.m. on February 5.

Visit the following website for more information and to register:

<https://www.cityofvancouver.us/departments/mayor-city-council/> under Public Participation, or call the City Manager's Office at (360) 487-8600.

Further instructions for accessing the virtual meeting (for remote testimony) will be provided upon registration.

Upon request, printouts of agenda materials will be provided, including large print.

WORKSHOPS: 4:00-5:00 p.m.

Vancouver City Hall - Council Chambers - 415 W 6th Street, Vancouver WA

Equity and Inclusion Update

(Approximately 1 hour)

Alicia Sojourner, Diversity, Equity and Inclusion Director, 360-487-8618

**EXECUTIVE SESSION RE: PENDING AND POTENTIAL
LITIGATION (RCW 42.30.110) (1.25 HR)**

COUNCIL DINNER/ADMINISTRATIVE UPDATES (6:15-6:30 PM)

REGULAR COUNCIL MEETING

6:30 PM

Vancouver City Hall - Council Chambers - 415 W 6th Street, Vancouver WA

Pledge of Allegiance

Call to Order and Roll Call

Governor's Award Ceremony

Approval of Minutes

Minutes - January 8, 2024

Community Communications

This is the place on the agenda where the public is invited to speak to Council regarding any matter on the Agenda not already scheduled for Public Hearing. (Separate instructions are provided for offering testimony on Public Hearing when applicable.) This includes the option to testify about Workshops. Members of the public addressing Council are requested to give their name and city of residence for the audio record. Speakers are to limit their testimony to a total of three minutes for all items combined.

Consent Agenda (Items 1-9)

The following items will be passed by a single motion to approve all listed actions and resolutions. There will be no discussion on these items unless requested by Council. If discussion is requested, the item will be moved from the Consent Agenda and considered separately - after the motion has been made and passed to approve the remaining items.

1. Bid Award for SE 17th St Outfall Improvements per Bid #23-42

Staff Report: 021-24

Request: On 2/5/2024, award a construction contract for the SE 17th St Outfall Improvements project to the lowest responsive and responsible bidder, Jeffries Company of Woodland, Washington, USA at their bid price of \$424,375.00, and authorize the City Manager or designee to execute the same.

Aron Rice, Civil Engineer, 360-487-7170

2. 2024 Fourth Plain Blvd Curb Ramps – E Reserve St to NE Andresen Rd

Staff Report: 022-24

Request: On February 5, 2024, award a construction contract for the 2024 Fourth Plain Blvd Curb Ramps – E Reserve St to NE Andresen Rd project to the lowest responsive and responsible bidder, and authorize the City Manager or his designee to sign a contract with Grade Werks Excavating, LLC, Battle Ground, WA at their bid price of \$1,037,985.00, which includes Washington State sales tax.

Chris Sneider, Senior Civil Engineer, 360-487-8239

3. Approval of Purchasing Authority for Annual Asphaltic Concrete from Lakeside Industries, Inc.

Staff Report: 023-24

Request: Approve purchasing authority related to the Clark County Contract #2729 with Lakeside Industries, Inc. in an amount not to exceed \$1,200,000 through July 25, 2027.

Ryan Miles, Engineering Program Manager, 360-487-7708

4. Increase purchasing on Sourcewell Contract 12201-SCA for Hydro Excavator Truck

Staff Report: 024-24

Request: Authorize the City Manager or their designee to approve purchases under C-101548: Sourcewell 101221-SCA for the life of the contact with SWS Equipment up to the current authorized budget.

5. Interlocal Agreement with Clark County - Whatley Pit

Staff Report: 025-24

Request: Authorize City Manager to approve, sign, and execute the attached 2024 Interlocal Agreement.

Brian Potter, Operations Superintendent, 360-487-8323

6. Washington Department of Commerce Climate Planning Grant 2023-25 Award

Staff Report: 026-24

Request: Authorize the City Manager or designee to execute an interlocal agreement with Commerce to accept Climate Planning Grant funds from Commerce and take any and all action necessary to enforce the terms thereof.

Rebecca Small, Senior Policy Analyst, 360-487-8601; Rebecca Kennedy, Deputy Community Development Director, 360-487-7896

7. Fourth Plain Commons Condominium Agreement approval

Staff Report: 027-24

Request: Approve Condominium Declaration for Fourth Plain Commons Condominium, Articles of Incorporation of 2200 Norris Condominium Association and Bylaws of 2200 Norris Condominium Association, and authorize the City Manager or designee to execute the Declaration, Articles of Incorporation and Bylaws.

Shannon Williams, Senior Planner, 360-487-7898; Becky Rude, Assistant City Attorney, 360-487-8513

8. Termination of Boldyn Networks Right-of-Way Franchise

Staff Report: 028-24

AN ORDINANCE terminating the 10-year franchise previously granted to Boldyn Networks, formerly known as Mobilitie, LLC ("Boldyn"), authorizing the construction, operation, and maintenance of its telecommunication facilities ("Facilities") in the City of Vancouver's ("City") Public Ways; providing for severability; and setting an effective date.

Request: On February 5, 2024, approve ordinance on first reading, setting date of second reading and public hearing for February 26, 2024.

*Aaron Lande, Program and Policy Development Manager,
360-487-8612; Cary Driskell, Assistant City Attorney*

9. Approval of Claim Vouchers

Request: Approve claim vouchers for February 5, 2024.

Public Hearings (Item 10)

The following item(s) are scheduled for public hearing. Members of the public addressing Council are requested to give their name and city of residence for the audio record. Unless otherwise announced by the Presiding Officer, speakers are to limit their testimony to three minutes for each public hearing.

10. Multi-Family Tax Exemption- Waterfront Port of Vancouver Block 1

Staff Report: 029-24

A RESOLUTION of the City Council of the City of Vancouver approving a development agreement with Boz Port Block 1 Owner LLC (Applicant) for an 8-year limited property tax exemption for market rate housing, providing a public benefit contribution, and green building elements, for the property located at 440 Columbia Way, Vancouver, WA 98660 (Exhibit A).

Request: On February 5, 2024, following a public hearing, adopt a resolution authorizing the City Manager, or designee, to execute a multi-family housing limited property tax exemption certificate and take any and all action necessary to enforce the terms thereof.

Bryan Monroe, Associate Housing Project Coordinator, 360-487-7958

Communications

A. From the Council

B. From the Mayor

C. From the City Manager

Adjournment

City Hall is served by C-TRAN. Route information and schedules are available online at www.c-tran.com. You also may reach C-TRAN at (360) 695-0123 for more information on times, fares, and routes.

Anyone needing language interpretation services or accommodations with a disability at a Vancouver City Council meeting may contact the City Manager's staff at (360) 487-8600

(Voice/TTY 487-8602). Assistive listening devices and live Closed Captioning are available for the deaf, hard of hearing and general public use. Please notify a staff person if you wish to use one of the devices. Every attempt at reasonable accommodation will be made. To request this agenda in another format, please also contact the phone numbers listed above.



Item #

TO: Mayor and City Council

FROM: Eric Holmes, City Manager

DATE: 2/5/2024

SUBJECT Equity and Inclusion Update

ATTACHMENTS:

▣ Presentation



CITY OF
Vancouver
WASHINGTON

Equity & Inclusion Update

Nikki Chen, Business Partner

Jen Dugger Spalding, ADA Coordinator

Alicia Sojourner, Director

Office of Equity and Inclusion / City Manager's Office

February 5, 2024

Meet the Team



Diana

Project Coordinator

Supporting all equity and inclusion programs within the City.



Nikki

Business Partner

Supporting Public Works, Fire, and Police.



Jen

ADA Coordinator

Supporting disability justice and access within the City.



Alicia

Director

Supporting equity and inclusion strategic direction.



Office of Equity & Inclusion

Vision, Mission, and City's Strategic Priorities

Vision

An Equable Vancouver: "Where Every Person Achieves Success Together."

Mission

"Fostering Inclusivity, Advancing Equity, & Building a Thriving Vancouver for All."

City Strategic Priorities

- Climate & Natural Systems
- Culture & Heritage
- Economic Opportunity
- High Performing Government
- Housing & Human Needs
- Safe & Prepared Community
- Transportation & Mobility
- Vibrant & Distinct Neighborhood





Advancing Equity & Inclusion within the Strategic Priorities



Advancing

**Culture & Heritage
Economic Opportunity
High Performing Government
Housing & Human Needs
Safe & Prepared Community
Transportation & Mobility
Vibrant & Distinct Neighborhood**

with Community

- Regional Disaster Preparedness Organization – Equity
- IBR – Equity
- Latino Leadership Northwest
- The Foundation
- Amerigroup
- Latino Community Resource Group
- Northwest Public Employees Diversity Conference
- C-Tran
- Evergreen & Vancouver Public Schools
- Faith Communities
- Vancouver Farmers Market



Advancing **Culture & Heritage** **High Performing Government** **Safe & Prepared Community** **Vibrant & Distinct Neighborhood** with Community

The Neighborly Summer of Inclusion is designed to create dedicated time and space to build more effective inclusionary habits with your neighbors, friends, family, and City through

- learning
- exploring
- reflecting
- challenging ourselves to advance inclusion



Advancing

Culture & Heritage
Economic Opportunity
High Performing Government
Housing & Human Needs
Safe & Prepared Community
Vibrant & Distinct Neighborhood

with Community

The first **Wellness Fair** provided immigrant communities with information on health insurance and community resources. Many attendees shared that it was their first time at City Hall!



Advancing

**Climate & Natural Systems
Culture & Heritage
Economic Opportunity
High Performing Government
Housing & Human Needs
Safe & Prepared Community
Transportation & Mobility
Vibrant & Distinct Neighborhood**

with Staff



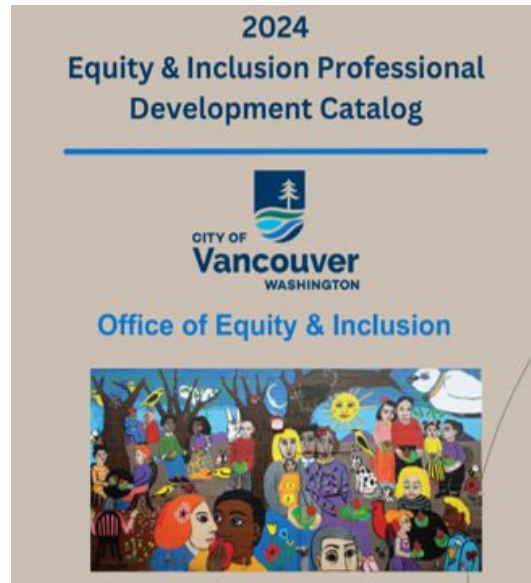
The fellowship's ultimate goal is to eliminate inequities and bring positive change to the City of Vancouver and the Southwest Washington Region, making Vancouver a leader in equity and inclusion.



Advancing

**Climate & Natural Systems
Culture & Heritage
Economic Opportunity
High Performing Government
Housing & Human Needs
Safe & Prepared Community
Transportation & Mobility
Vibrant & Distinct Neighborhood**

with Staff



All staff are required to advance equity and inclusion by developing skills to support the City's strategic priorities.



Advancing

Climate & Natural Systems
Culture & Heritage
Economic Opportunity
High Performing Government
Housing & Human Needs
Safe & Prepared Community
Transportation & Mobility
Vibrant & Distinct Neighborhood

with City Departments

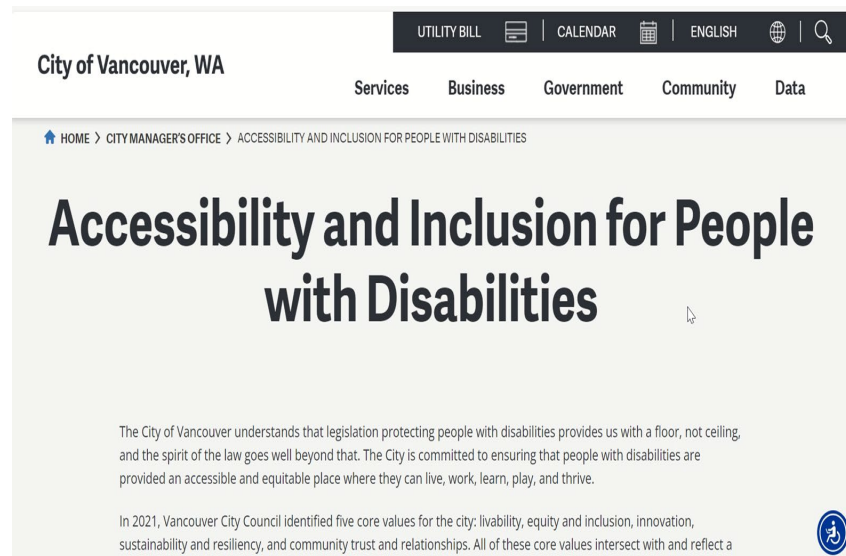
- Comprehension Plan
- 30X30 Initiative
- Equitable Engagement
- Wellness program initiatives
- Performance evaluations
- Climate youth leadership program
- Learning and development
- Bridging opportunity gaps for deeper engagement



Advancing

Climate & Natural Systems
Culture & Heritage
Economic Opportunity
High Performing Government
Housing & Human Needs
Safe & Prepared Community
Transportation & Mobility
Vibrant & Distinct Neighborhood

for All



Advancing High Performing Government Safe & Prepared Community for All



Emergency Evacuation Chairs

Locations:

- City Hall
- Firstenberg Community Center
- Marshall Community Center
- The Water Resource Education Center





Moving Forward

Advancing Strategic
Priorities in 2024



Advancing

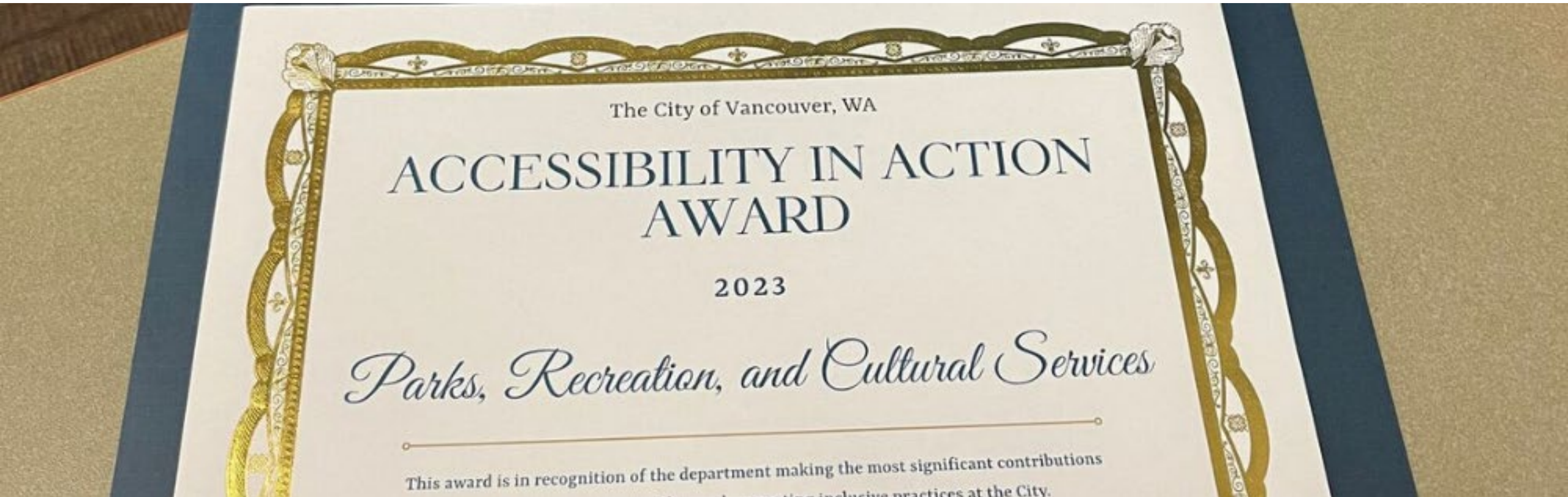
**Climate & Natural Systems
Culture & Heritage
Economic Opportunity
High Performing Government
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Vibrant & Distinct Neighborhood**

in 2024

- Language Access Plan
- Safe Place
- EmpowerYouth “City Hall Youth Take Over”
- Build relationships with community leaders
- Community Learning
- Boards & Commissions
- Increase department Equity Action Teams
- Mental Health PW
- ADA Self-assessment / ADA Transition Plan
- Data tool evaluate and measure EI programs
- Ongoing Professional Development
- Youth Climate Program
- JEDI Fellowship Cohort 2
- Equity & Inclusion Toolbox
- Community partnerships
- Ongoing staff equity and inclusion programs (Safe Zone, Employee Resource Groups, Equity Workgroups, New Hire Orientation)



Questions?





Item #

TO: Mayor and City Council

FROM: Eric Holmes, City Manager

DATE: 2/5/2024

SUBJECT Minutes - January 8, 2024

Action Requested

Approve the meeting minutes of January 8, 2024.

ATTACHMENTS:

- January 8, 2024 Meeting Minutes



City Council Meeting Minutes

Vancouver City Hall | Council Chambers | 415 W. 6th St.
PO Box 1995 | Vancouver, WA 98668-1995
cityofvancouver.us

Anne McEnerny-Ogle, Mayor • Bart Hansen • Ty Stober • Erik Paulsen • Sarah J. Fox • Diana H. Perez • Kim D. Harless

January 8, 2024

5:45 p.m. EXECUTIVE SESSION RE: PERSONNEL (RCW 42.30.110(1)(f) (30 minutes)

The Council entered executive session from 5:45-6:15 p.m. for the purpose of discussing Personnel.

COUNCIL DINNER / ADMINISTRATIVE UPDATES

COUNCIL REGULAR MEETING

This meeting was conducted as a hybrid meeting with in person and remote viewing and participation over video conference utilizing a GoToMeeting platform. Members of the public were invited to view the meeting in person, via the live broadcast on www.cvtv.org and CVTV cable channels 23 or HD 323, or on the City's Facebook page, www.facebook.com/VancouverUS. Public access and testimony on Consent Agenda items and under the Community Forum were also facilitated in person and via the GoToMeeting conference call.

Vancouver City Council meeting minutes are a record of the action taken by Council. To view the CVTV video recording, including presentations, testimony and discussion, for this meeting please visit: https://www.cvtv.org/vid_link/36177?startStreamAt=0&stopStreamAt=6147 Electronic audio recording of City Council meetings are kept on file in the office of the City Clerk for a period of six years.

Pledge of Allegiance

Call to Order and Roll Call

The regular meeting of the Vancouver City Council was called to order at 6:30 p.m. by Mayor McEnerny-Ogle. This meeting was conducted as a hybrid meeting, including both in person and remotely over video conference.

Present: Councilmembers Harless, Perez, Fox, Stober, Hansen, and Mayor McEnerny-Ogle

Absent: Councilmember Paulsen

Motion by Councilmember Hansen, seconded by Councilmember Fox, and approved unanimously to excuse Councilmember Paulsen.

Councilmember Harless was remote for the meeting.

Approval of Minutes

Minutes - March 27, 2023

Motion by Councilmember Stober, seconded by Councilmember Hansen, and carried unanimously to approve the meeting minutes of March 27, 2023.

Minutes - June 12, 2023

Motion by Councilmember Hansen, seconded by Councilmember Stober, and carried unanimously to approve the meeting minutes of June 12, 2023.

Minutes - September 25, 2023

Motion by Councilmember Fox, seconded by Councilmember Perez, and carried unanimously to approve the meeting minutes of September 25, 2023.

Minutes - November 27, 2023

Motion by Councilmember Hansen, seconded by Councilmember Stober, and carried unanimously to approve the meeting minutes of November 27, 2023.

Minutes - December 4, 2023

Motion by Councilmember Perez, seconded by Councilmember Stober, and carried unanimously to approve the meeting minutes of December 4, 2023.

Minutes - December 11, 2023

Motion by Councilmember Fox, seconded by Councilmember Perez, and carried unanimously to approve the meeting minutes of December 11, 2023.

Community Communications

Mayor McEnery-Ogle opened Community Communication and received testimony from the following community members regarding any matter on the agenda not scheduled for a Public Hearing:

- Kimberlee Goheen Elbon, La Center, WA

There being no further testimony, Mayor McEnery-Ogle closed Community Communication.

Consent Agenda (Items 1-11)

Motion by Councilmember Hansen, seconded by Councilmember Stober, and carried unanimously to approve items 1-11 on the Consent Agenda.

1. Bid Rejection - Bid #23-44: Sewage Lift Pump for Vancouver Marine Park Wastewater Treatment Facility

Staff Report: 001-24

The influent sewage lift pumps are a critical infrastructure component to Vancouver's wastewater treatment services. The Marine Park WWTF sewage influent pump gallery contains two newer non-clog pumps and three pumps from original construction in the 1990's. The three older pumps clog with wipes and debris within two days of operation and require treatment plant operators to manually remove the material from pumps. Replacement of two of the larger old pumps with newer non-clog pumps is necessary to ensure a safer workplace and more reliable operation.

This project was bid on October 26, 2023, for the purchase of two Sewage Lift Pumps for Vancouver's Marine Park WWTF. One bid was received and opened. The bid was \$862,969.30 which is 9.5 times higher than the published engineer's estimate of \$90,000.

SUMMARY OF BIDS	
BIDDER	AMOUNT
Whitney Equipment, Woodinville, WA	\$862,969.30
Engineer's Estimate (as published)	\$90,000
Updated Estimate	\$560,000

The engineer's estimate (as published) was based on a single, smaller pump. The estimate was erroneously not updated when the project turned to pursuing larger pumps.

Staff and their consultant engineer are evaluating pump specifications and bid requirements to ensure cost-effective and competitive prices for the purchase of these replacement pumps.

Request: On January 8, 2024, reject all bids to allow staff to pursue competitive purchase of pumps for Marine Park Wastewater Treatment Facility.

Frank Dick, Senior Civil Engineer, 360-487-7179

Motion approved the request.

2. Triple J Towing Services Contract

Staff Report: 002-24

The City uses Triple J Towing Services to tow derelict RV's, vehicles, and other vessels under contract number C-100814. Towing services are expected to exceed the current \$300,000 threshold, requiring Council approval. The current contract has been liquidated approximately \$255,983.48. The raising of this threshold to a maximum of \$1,806,000.00 for the next additional three years, ending December 31, 2026, will enable Vancouver Police Department to continue towing derelict RV's, vehicles, and other vessels.

Request: Authorize the City Manager, or designee, to continue to use Triple J Towing services to continue towing derelict RV's, vehicles, and other vessels, up to a maximum of \$1,806,000 through May 31, 2027.

Jeff Mori, Police Chief, 360-487-7472

Motion approved the request.

3. New Movers Travel Options Program Consultant Contract

Staff Report: 003-24

Vancouver continues to see steady population growth and the City's Climate Action Framework calls for increasing options that allow people to choose clean, active modes of transportation. The New Movers Travel Options Program connects people with transportation resources and support in a time of transition. Research shows that people are more likely to change their habits during a period of change, like moving to a new home or switching jobs. The residential program aligns with national best practices in using this behavioral science concept to support Vancouver residents making changes to their transportation habits. The New Movers program will use multiple touchpoints to share information about transportation options at a time when community members are exploring new ways to get to work, school, the grocery store, and other daily needs.

The New Movers Travel Options Program is aimed at reducing vehicle miles traveled by increasing transit ridership, providing transportation subsidies, offering incentives, and building education and awareness of travel options. The New Movers program implements the City's 2024-2044 Transportation System Plan, Climate Action Framework and 2023-2029 Strategic Plan, and aligns with the Comprehensive Plan Update that is currently underway.

The proposed agreement is fully funded by the Washington State Department of Transportation 2023-2025 Regional Mobility Grant.

Staff recommends the City enter a contract with Alta Planning + Design, Inc. to build a new movers residential transportation demand management program and execute the pilot.

Request: On January 8, 2024, authorize the City Manager, or designee, to sign the Services Agreement with Alta Planning + Design, Inc. (C-101509).

*Olivia Kahn, Transportation Demand Management Coordinator,
360-487-7939*

Motion approved the request.

4. On-Call Mechanical Engineering Services Contract per RFQ 65-23

Staff Report: 004-24

On September 29, 2023, RFQ # 65-23 On-Call Mechanical Engineering Services was issued for solicitation for qualifications to firms to assess city buildings for mechanical upgrades along with construction drawings and specifications for the upgrades.

Along with standard advertising, firms from the MRSC list; which included veteran-, minority-, and women-owned firms; were notified of the solicitation and their qualification statements requested.

On October 25, 2023, the city received eight (8) qualification statements for RFQ 65-23. The qualification statements were evaluated based on project approach and understanding, capabilities, and qualifications.

Sazan Environmental of Portland, Oregon was selected to provide the service.

Request: Authorize the City Manager, or designee, to execute a Professional Services Agreement with Sazan Environmental for the services referenced above in a contract with a not-to-exceed amount of \$3,000,000.

Motion approved the request.

5. Purchase of Supervisory Control and Data Acquisition equipment for Sanitary Sewer Pump Stations - S&B, Inc., Sole Source

Staff Report: 005-24

Sewer Engineering has upgraded 6 existing pump stations to a newer more comprehensive and efficient SCADA system. There are 23 pump stations remaining in the system to undergo upgrades. These upgrades will require the purchase of SCADA equipment from S&B, Inc. to bring the stations up to current standards.

Depending on the size of the stations and the extent of the work, the pump station upgrades are either completed through a Capital project or by the City's Operations Team. In either case, SCADA equipment, MCC (Motor Control Center) and RTU (Remote Terminal Unit) equipment needs to be pre-purchased to accommodate for supply chain issues.

In addition to the existing pump stations requiring upgrades and pursuant to the Development Agreement executed between the City and Hewlett Packard, Inc. in December 2019, the City will administer a construction contract to complete the construction of a sanitary sewer pump station within Section 30. The pump station will be designed in accordance with City standards and will come under ownership of the City upon its completion. The City's design standards include certain manufactured items that must be obtained by a sole source vendor. Those items are described in detail within this staff report. The City is endeavoring to have the pump station completed by the end of 2025.

Request: Authorize the City Manager, or designee to award and execute a contract and any required amendments with S&B, Inc. for SCADA upgrades to existing Sanitary Sewer Pump Stations as well as the purchase of the MCC and RTU in accordance with the Developer Agreement of 12/29/2019.

Sheryl Hale, Senior Civil Engineer, 360-487-7151

Motion approved the request.

6. Homework Café interlocal agreement with Vancouver Public Schools (VPS) to support implementation of the Fourth Plain for All Investment Strategy

Staff Report: 006-24

The City of Vancouver received funding through the American Rescue Plan

Act (ARPA) to help support efforts to recover from the pandemic-induced economic and housing crisis, which disproportionately impacted socially and economically vulnerable communities and small independent businesses. On November 15, 2021, the Vancouver City Council endorsed an investment framework that would allocate nearly 75% of these funds (approximately \$25 million) to the Fourth Plain area in central Vancouver.

Council directed staff to co-create a 10-year investment strategy with the local community that incorporates the dedicated \$25 million in ARPA funding, as well as prepares the City to take advantage of other funding sources and opportunities to continue advancing equity, safety, mobility, access to jobs and services, a thriving small business ecosystem, and improved parks and open spaces for the Fourth Plain community.

The resulting Fourth Plain for All Investment Strategy includes community-identified priorities and action items to advance the community's vision for the Fourth Plain area over the next 10 years. Projects and programs will advance through a combination of ARPA funding and other funding sources. The Investment Strategy calls out key priority action items to be implemented in the short-term using ARPA funding.

The Homework Café pilot program, to be operated by Vancouver Public Schools (VPS), helps to implement one of the strategies prioritized for ARPA funding in the investment strategy to "Expand Academic and Career Support Programs". This program provides regular after-school tutoring to address COVID-related learning loss and provides caregivers with culturally relevant adult educational opportunities while students are being tutored. Each session will culminate in a family meal open to all participants and teachers to provide both an incentive for participation and an opportunity for community building.

The Homework Café pilot program is scoped to be a three-year pilot to provide three 8-week tutoring sessions per year at one Fourth Plain area school in the first year and two Fourth Plain schools in years two and three. Vancouver Public Schools will provide high-quality tutoring, adult educational opportunities, and a family meal at each tutoring session. The interlocal agreement allows the City to reimburse VPS for expenses related to implementing the Homework Café pilot program until December 2026, up to a maximum of \$500,000.

Request: On January 8, 2024, authorize the City Manager, or designee, to execute an interlocal agreement with Vancouver Public Schools to fund the Homework Café Pilot Program as described herein.

Shannon Williams, Senior Planner, 360-487-7898

Motion approved the request.

7. **Grant Agreement for Fenton Community Park (RCO #22-1496A)**

Staff Report: 007-24

Acquisition of Fenton Community Park was completed in 2019 and approved by City Council on December 17, 2018. The property was acquired under a Waiver of Retroactivity, granted by RCO to preserve the city's ability to seek a grant for the acquisition of the property prior to completion of a grant agreement.

On April 18, 2022, City Council authorized Parks staff to submit a grant project application to the Recreation and Conservation Office for consideration in the biennial Washington Wildlife and Recreation Program (WWRP) for the Fenton property acquisition (Resolution M-4167). The City of Vancouver was officially informed on November 1, 2023, that \$1,000,000 is available toward reimbursement of acquisition expenses.

Per RCO requirements, a project agreement must be executed to accept grant funding. The agreement obligations specify that lands purchased with WWRP funds be retained and managed in a manner consistent with the original intent of the grant program by committing the site to public outdoor recreation in perpetuity. The attached agreement is consistent with standard RCO requirements and execution of the document will enable Parks staff to initiate the grant reimbursement process.

Request: Accept and authorize the City Manager, or designee, to execute Grant Project Agreement 2022-1496A for the Fenton Community Park acquisition reimbursement.

Monica Tubberville, Senior Planner, 360-487-8353

Motion approved the request.

8. **Health Insurance Contribution**

Staff Report: 008-24

City of Vancouver operates a self-insured health insurance trust for non-union employees and employees represented by AFSCME, Vancouver Fire Department Guild and the Joint Labor Coalition (Teamsters, IAM, Plumbers and Steamfitters). Since the City became self-insured, it picked up the first 5% in annual cost increases and employees picked up the balance of the increase, if any applicable.

The City receives updated rates on an annual basis from insurance carriers that provide medical and pharmacy services for the City. For 2024 the annual increase in cost for the City's PPO plan totaled 9.3% for Regence and the City's HMO plan (Kaiser) increase came in at 18%. These rate increases would result in large increases in employee contributions towards their health insurance of up to 23% for the Kaiser plan.

The City's Budget committee recommended a one-time exception to be made in 2024 in the City paying up to an additional 5% for a total contribution increase of up to 10% for 2024. During 2024, a thorough review of the medical coverage will take place and, hopefully, the cost increase for the following year will be significantly lower. The City's Health Care Governing Board took this recommendation under advisement and approved the increases. This one-time action by the City does not set the precedent for the future health cost increases. This one-time exception requires mutual agreement with the impacted Unions, who have approved via signed MOU's which are attached.

Request: Approve additional requested one-time contribution of up to 5%, for a total contribution increase of up to 10% by the City to employee health insurance rates for 2024.

Lee Lofton, Deputy Human Resources Director, 360-487-8415

Motion approved the request.

9. Fircrest Meadows Planned Development

Staff Report: 009-24

AN ORDINANCE rendering findings and issuing a decision on a proposed concept development plan for the Fircrest Meadows Planned Development and Zone Change; and providing for severability and an effective date.

The applicant requests approval of a proposed planned development consisting of a 57-lot single-family subdivision and zone change from R-6 to R-9 on a 7.46-acre parcel.

Planned developments allow for flexibility in certain development standards in order to promote creativity in design and efficient use of land; increase economic feasibility; and preserve existing landscape features and amenities. The proposed planned development includes over an acre of open space, preservation of existing trees, and an innovative lot size arrangement.

Planned developments allow for an increase in density of up to 15%. The proposed development is within the maximum density of the R-9 zone including the 15% density bonus allowed by the planned development.

Request: On Monday, January 8, 2024, approve the ordinance on first reading; setting date of second reading and quasi-judicial public hearing for January 22, 2024.

Mark Person, Senior Planner, 360-487-7885

Mayor McEnerny-Ogle read the title of the ordinance into the record.

Motion approved the request.

10. Appointments to Vancouver Housing Authority Board

The Vancouver Housing Authority Board is appointed by the Mayor to provide opportunities to people who experience barriers to housing because of income, disability or special needs in an environment which preserves personal dignity, and in a manner which maintains the public trust.

Mayor Anne McEnerny-Ogle recently evaluated candidates for this Board and recommends the full-term appointment of Jennifer Rhoads, Alishia Topper, and Duana Ricks-Johnson (Resident Commissioner position) to a position that would begin February 11, 2024 and expire February 11, 2029.

*If there are no objections, this appointment will be presented for Council action at the at the **Monday, January 8**, Council meeting.*

Request: Appoint to the Vancouver Housing Authority Board of Commissioners Jennifer Rhoads, Alishia Topper, and Duana Ricks-Johnson (Resident Commissioner position) to full-term positions that would begin February 11, 2024, and expire February 11, 2029.

Mayor McEnerny-Ogle

Motion approved the request.

11. Approval of Claim Vouchers

Request: Approve claim vouchers for January 8, 2024.

Motion approved claim vouchers in the amount of \$27,531,162.35.

Public Hearings (Items 12-14)

12. Right-of-Way Franchise Agreement for Ziplly Fiber

Staff Report: 221-23

AN ORDINANCE relating to management of the public rights-of-way, granting to Ziplly Fiber Pacific LLC and its affiliates (hereinafter referred to as the "Franchisee"), a Delaware Limited Liability Company, a non-exclusive and revocable franchise to install, operate and maintain a telecommunications system in, on, over, upon, along, and across public rights-of-way of the City of

Vancouver, Washington (hereinafter referred to as the “City”), prescribing certain rights, duties, terms and conditions with respect to such franchise; and setting an effective date and conditions.

Ziply Fiber Pacific LLC wishes to occupy and utilize portions of the public rights-of-way in the City. Cities may require a permit or franchise for the use of its right-of-way for telecommunication facilities (RCW 35.99.030); however, the City may not charge a franchise fee for the franchise (RCW 35.21.860). The proposed ordinance establishes the terms and conditions of the right to construct and maintain telecommunications facilities within the City’s right-of-way.

City staff has worked with Ziply Fiber to negotiate a franchise ordinance, which manages the deployments of a telecommunications system in a way that balances local aesthetics, character, and public health and safety, while also deriving the benefits of this technology for the City’s residents to the greatest extent practicable.

Request: On Monday, January 8, 2024, upon second reading and a public hearing, approve the ordinance.

*Aaron Lande, Program and Policy Development Manager,
360-487-8612*

Aaron Lande, Program and Policy Development Manager, provided an overview of the Right-of-Way Franchise Agreement for Ziply Fiber.

Council discussed the item briefly with staff.

Mayor McEnerny-Ogle opened the public hearing and received testimony from the following community members:

- Kimberlee Goheen, La Center, WA

There being no further testimony, Mayor McEnerny-Ogle closed the public hearing.

Motion by Councilmember Hansen, seconded by Councilmember Perez, and carried unanimously to approve Ordinance 4439.

13. Adopting the 2024 - Transportation System Plan

Staff Report: 239-23

AN ORDINANCE of the City of Vancouver, Washington relating to the mandatory transportation element of comprehensive planning in compliance with the Washington Growth Management Act, as identified in RCW 36.70A.020, adopting the 2024 – 2044 Transportation System Plan for the

City of Vancouver, Washington; providing for severability and an effective date.

The Vancouver Transportation System Plan is our 20-year vision for maintaining and growing a transportation system that supports a safe, equitable, and resilient city. Transportation investment during the past 75 years focused primarily on cars. This TSP expands the focus to walking, rolling, bicycling and small mobility, taking transit, and moving freight. The policies, programs, and capital projects in the TSP will be integrated into the City's adopted roadway projects and programs, and some will be implemented through future updates to Title 9 and Title 11 of the Vancouver Municipal Code.

The TSP serves as the transportation element of the Comprehensive Plan. The Washington State Growth Management Act (GMA) requires adoption of a transportation plan consistent with land use, population, and job growth targets. Land uses coordinated with transportation result in mixed-use places where it is easy to walk, bicycle, use small mobility devices or take transit. The TSP process began before the Comprehensive Plan update but has been crafted to serve forecasted areas of growth. The 2045 Comprehensive Plan update will be complete in 2025, and at that time the TSP will undergo a minor update to ensure alignment with the goals and growth needs of the Plan.

Request: On January 8, 2024, upon second reading and a public hearing, approve ordinance adopting the 2024-2044 Transportation System Plan

Kate Drennan, Principal Planner, 360-487-7959

Kate Drennan, Principal Planner, provided an overview of Adopting the 2024 - Transportation System Plan.

Council discussed the item briefly with staff.

Mayor McEnerny-Ogle opened the public hearing and received testimony from the following community members:

- Kimberlee Goheen, La Center, WA

There being no further testimony, Mayor McEnerny-Ogle closed the public hearing.

Motion by Councilmember Stober, seconded by Councilmember Fox, and carried unanimously to approve Ordinance 4440.

14. 192nd Avenue - 2023 Comprehensive Plan and Zoning Map and Text Changes

Ordinance A

AN ORDINANCE relating to zoning for the City of Vancouver and Vancouver Municipal Code (VMC) Title 20; amending the Vancouver Comprehensive Plan and Zoning map designation for adjacent tax lots 177224000, 177224005, 177224010, 177240000, 177242000, 177238000, and 177239000, and approximately 12,015 square feet of unimproved right-of-way, all located at the northwest corner of SE 192nd Avenue and SE 15th Street; authorizing the City Manager to enter into a Development Agreement related to future use of the site; and providing for severability; and providing for an effective date.

Ordinance B

AN ORDINANCE relating to zoning for the City of Vancouver and Vancouver Municipal Code (VMC) Title 20; amending the Vancouver Comprehensive Plan and Zoning map designation for adjacent tax lots 177224000, 177224005, 177224010, 177240000, 177242000, 177238000, and 177239000, and approximately 12,015 square feet of unimproved right-of-way, all located at the northwest corner of SE 192nd Avenue and SE 15th Street; authorizing the City Manager to enter into a Development Agreement related to future use of the site; and providing for severability; and providing for an effective date.

Citizen testimony at the December 4 First Reading raised continued concern about incomplete sidewalks on the north side of 15th Street west of the site. There are two stretches of roadway on the north side of 15th to the west of the proposed development totaling approximately 1,100 lineal feet that currently lack sidewalk. Involved properties are six oversized residential lots of 1-3 acres in size each, which would be required to construct sidewalk at the time of redevelopment or land division. The short to mid-term redevelopment potential of these properties is unclear as they contain predominantly 1970's ranch homes, although new HB 1110 requirements to effectively allow 4-6 units on most single-family zoned properties will enhance this potential. Full development of the 192nd Avenue rezone site under proposed R-22 zoning in 2024 would result in approximately \$420,000 in Transportation Impact Fees, but under the current TIF program sidewalk improvements are not eligible for funding. Short to mid-term sidewalk improvement on the north side of 15th would require City right-of-way acquisition and construction, and realization would be contingent on owner willingness to sell.

A secondary citizen concern was raised about ensuring that future non-emergency vehicle and pedestrian access be prohibited on SE 191st Avenue and SE 13th Street as shown at the north and west edges of the rezone site conceptual site plan. Per City transportation policy, non-

emergency vehicular access is typically not provided from multi-family development through abutting single-family development. Pedestrian and bike access is however typically not prohibited, and in this case is particularly needed to allow direct access from the rezone site to Hanna Acres Park to the north without needing to use 192nd Avenue.

Two ordinance options are presented for Council consideration:

Ordinance A (Recommendation of Transportation and Planning Staff)

- Does not address 15th Street sidewalk issues in the D.A., but leaves construction of enhanced crosswalk at 15th Street and 189th Avenue to be required as a condition of site plan review. This would provide safe access near the site to the south side of 15th Street containing complete sidewalk, would more likely result in short term improvements, and would forego the need to spend limited public funds on 15th Street sidewalks at the expense of other areas of the City with greater sidewalk need.*
- Includes new D.A. language that's prohibits non-emergency vehicular access on the 191st Avenue and 13th Street stub roads on the north and west edges of the rezone site, but do not prohibit pedestrian access on 191st Street, and prohibit pedestrian access on 13th Street contingent on it not being required at the time of site plan review.*
- Includes other previously established D.A. provisions as described herein.*

Ordinance B

- Includes D.A. language requiring the City to acquire right-of-way and complete sidewalk improvements, unless the TIF program is changed to make sidewalk improvements creditable. Enhanced crossing improvements at 189th Avenue will likely also be required during site plan review.*
- Same provisions as Ordinance A for stub road access and other D.A. provisions.*

Links

October 24, 2023 Planning Commission public hearing staff report

192nd Avenue rezone traffic analysis

192nd Avenue rezone applicant submittal

Request: On January 8, 2024, subject to second reading and public hearing, approve either Ordinance A or Ordinance B.

Bryan Snodgrass, Principal Planner, 360-487-7946

Bryan Snodgrass, Principal Planner, provided an overview of 192nd Avenue - 2023 Comprehensive Plan and Zoning Map and Text Changes.

Council discussed the item briefly with staff.

Jessica Herceg, the applicant's representative from DOWL, provided a presentation to Council.

Mayor McEnerny-Ogle opened the public hearing and received testimony from the following community members:

- Kimberlee Goheen, La Center, WA

There being no further testimony, Mayor McEnerny-Ogle closed the public hearing.

Motion by Councilmember Fox, seconded by Councilmember Hansen, and carried unanimously to approve Ordinance A, numbered as Ordinance 4441.

Communications

A. From the Council

B. From the Mayor

Council Board and Committee Assignments

Mayor McEnerny-Ogle presented Council with a proposed slate of board and committee assignments for 2024 and 2025.

Council discussed who would be able to fill the remaining unassigned primary and alternate positions.

Motion by Councilmember Fox, seconded by Councilmember Stober, and carried unanimously to approve the 2024-25 Council board and committee assignments, with the amendment that Councilmember Harless be removed as the alternate for the Metro Policy Advisory Committee, per the attached spreadsheet.

Mayor Pro Tem Appointment

Mayor McEnerny-Ogle opened the floor for nominations of the Mayor Pro-Tem.

Councilmember Stober nominated Councilmember Paulsen to serve as Mayor Pro Tem.

Motion by Councilmember Stober, seconded by Councilmember Fox, and carried unanimously to appoint Councilmember Paulsen as Mayor Pro Tem.

C. From the City Manager

Legislative Discussion - Rent Regulation

Aaron Lande, Program and Policy Development Manager, Patrick Quinton, Economic Development Director, and Brian Enslow, Arbutus Consulting, discussed the Legislative Discussion for Rent Regulation.

Homelessness Emergency Situation Report #2

Aaron Lande, Program and Policy Development Manager, discussed the Homelessness Emergency Situation Report #2.

Adjournment

8:12 p.m.

Anne McEnerny-Ogle, Mayor

Attest:

Natasha Ramras, City Clerk

The written comments below are those of the submitter alone and are not representative of the views of CVTV or the City of Vancouver, its elected or appointed officials, or its employees.

SE 192nd Avenue Comprehensive Plan Amendment and Zone Change

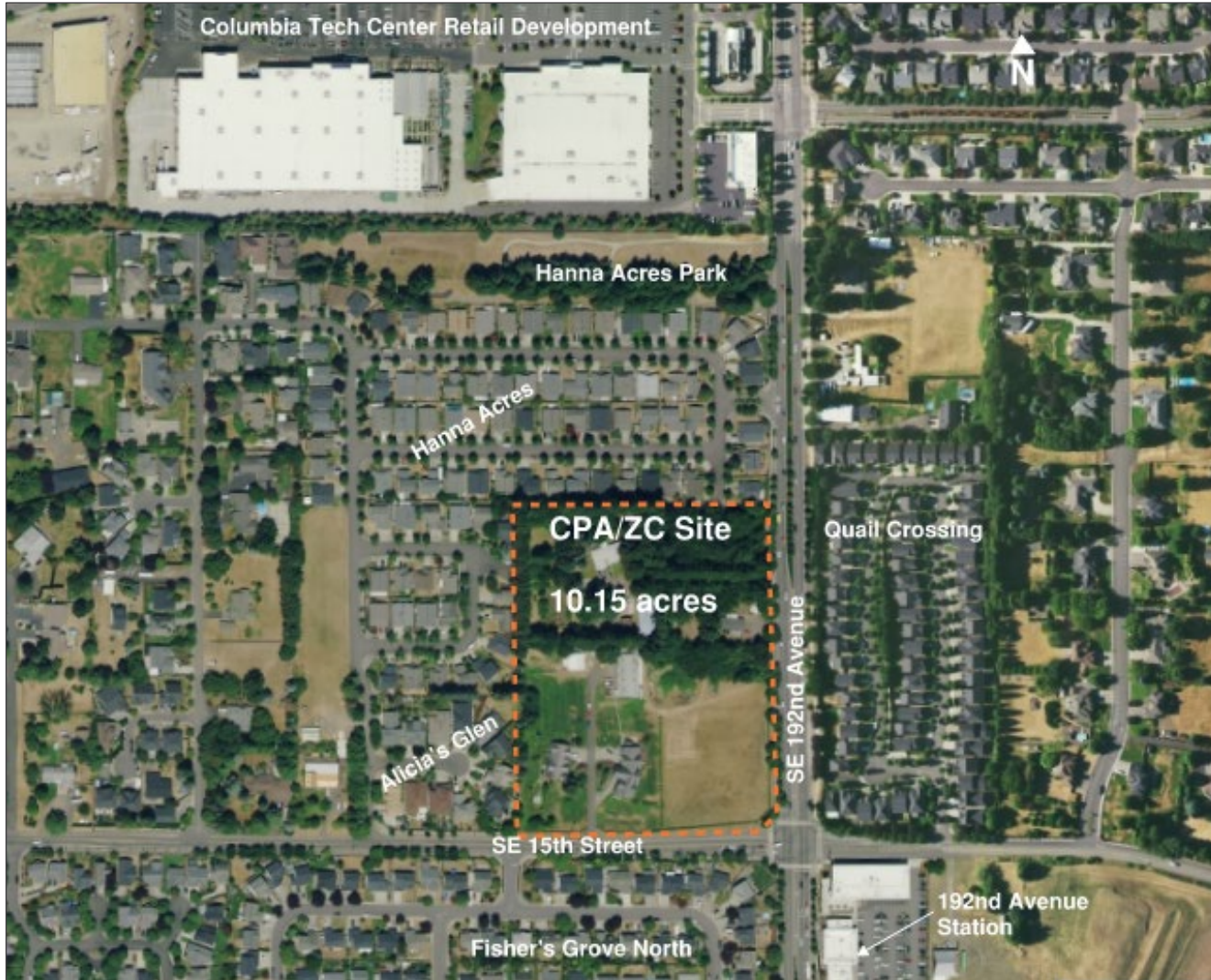
PRJ-168777 / LUP-83484

City of Vancouver City Council

January 8, 2024



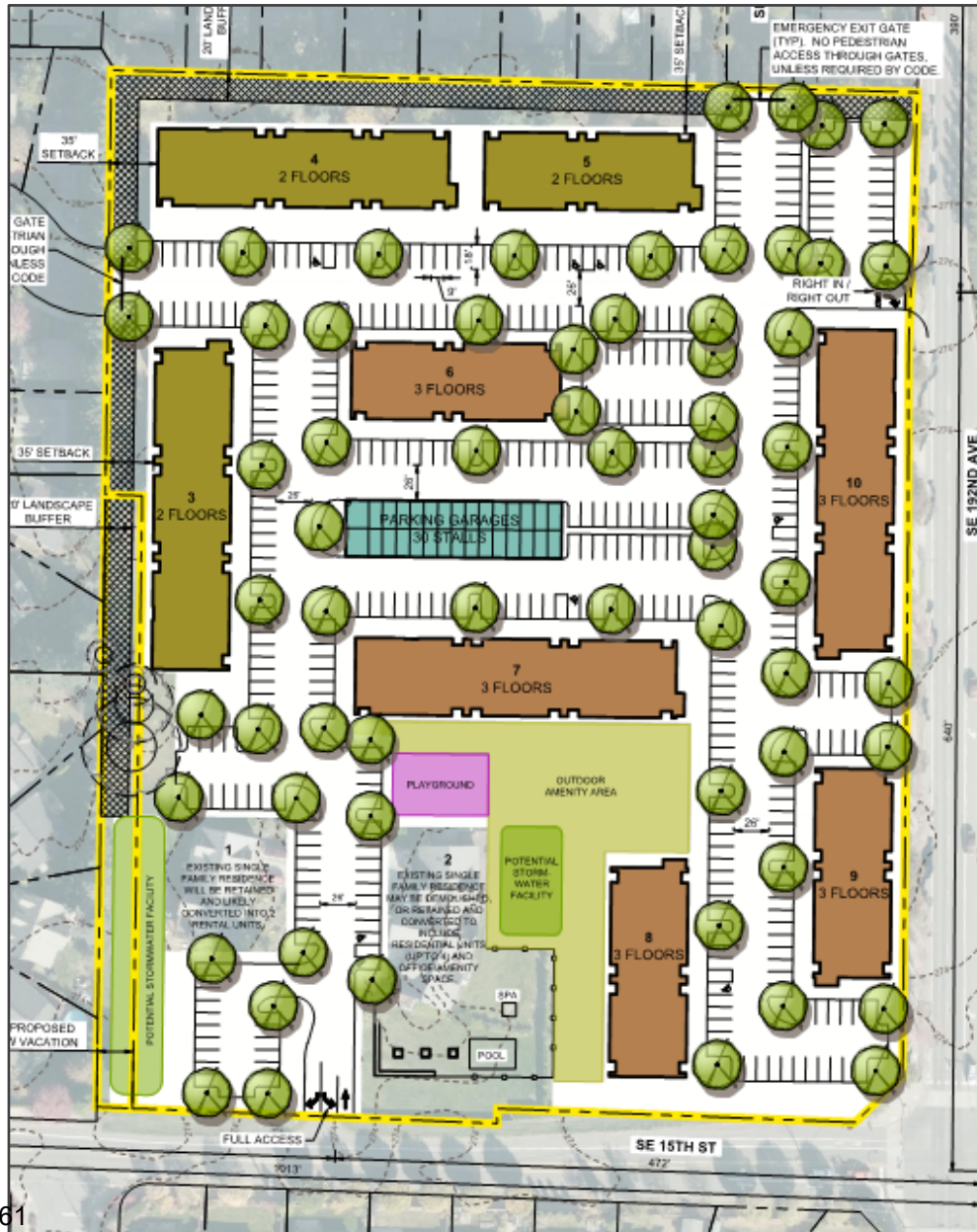
INTRODUCTION



Applicant
Vance Development
Consultant Team



Conceptual Site Plan



Development Agreement

- 35-foot setbacks along north and west
- 2-story and 3-story buildings
- Landscape buffer of 20 feet wide on west and north
- 5% of units at 80% AMI for 25 years
- Green building commitments
- Site access restrictions
- Offsite sidewalk improvements
 - Either option proposed by the City is acceptable by Applicant

Questions?



VANCE DEVELOPMENT SIMILAR BUILDINGS RECENTLY FINISHED CONSTRUCTION



VANCE DEVELOPMENT SIMILAR BUILDINGS RECENTLY FINISHED CONSTRUCTION



PREVIOUS DEVELOPMENTS WILSONVILLE, OR



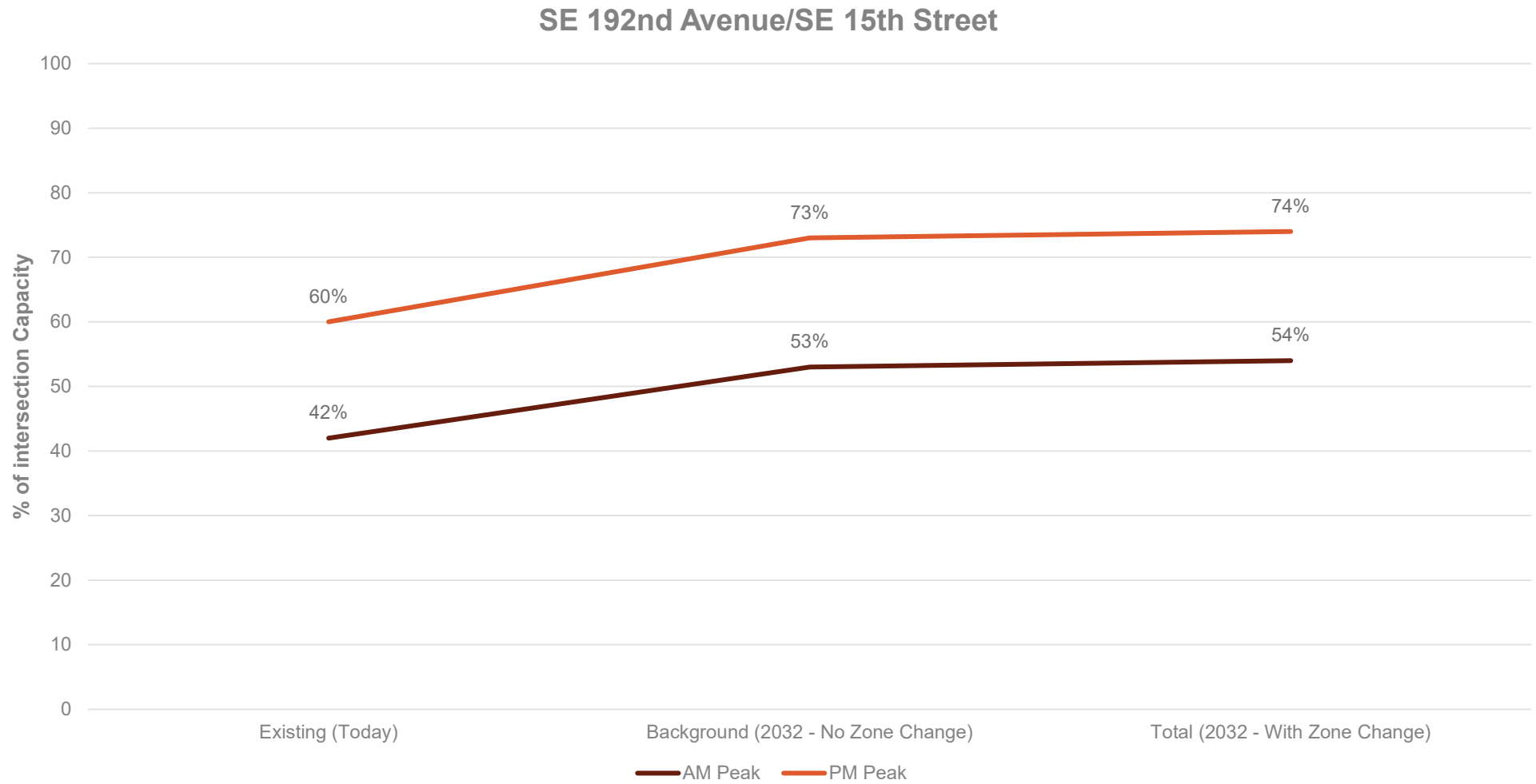
PREVIOUS DEVELOPMENTS VANCOUVER, WA



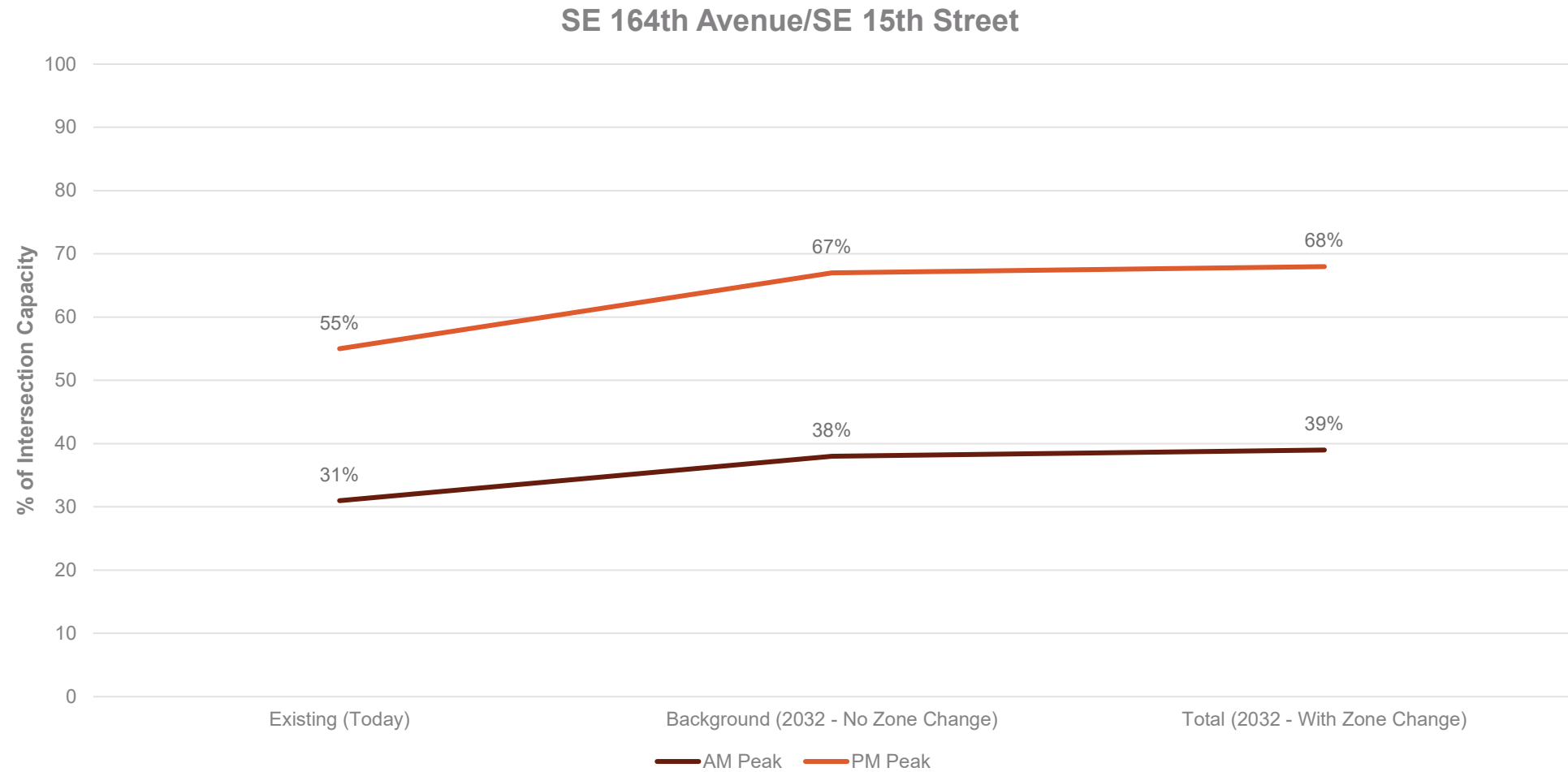
TRAFFIC STUDY

- Traffic study was prepared for previous R-30 zone change proposal in August 2023, and updated to current R-22 zone change proposal in October 2023
- Increase in trips compared to existing R-6 zoning (less than 1 trip per minute):
 - 947 daily trips
 - 46 trips during the weekday AM peak hour
 - 55 trips during the weekday PM peak hour
- Surrounding intersections continue to meet City operational standards with the addition of these trips:
 - Project increases volume-to-capacity (V/C) ratio by approx. 1%
 - Eastbound left-turn queue on 15th Street approaching 192nd Avenue exceeds available storage. Traffic study recommends extending the turn lane to 175 feet.

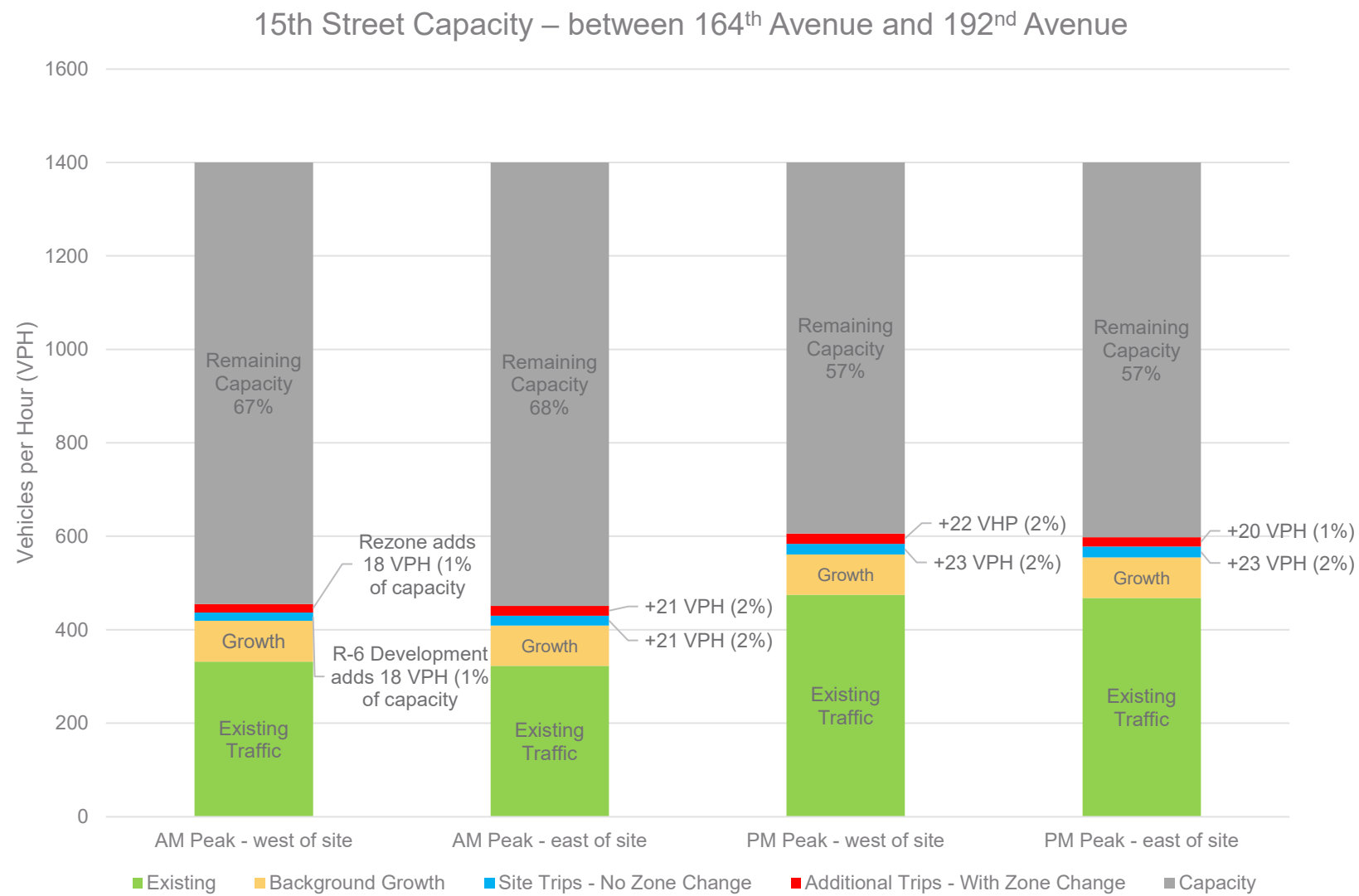
TRAFFIC STUDY



TRAFFIC STUDY



TRAFFIC STUDY



TRAFFIC STUDY

- Traffic study included crash analysis of study intersections
- We heard concern of neighbors and requested 10 years of crash data along the entire corridor of SE 15th Street between 164th Avenue and 192nd Avenue:
 - 35 total crashes were reported (average of 3.5 crashes per year)
 - 4 crashes involved a bicycle or pedestrian
 - 3 occurred at the traffic signal at 164th Avenue, and 1 occurred at an unsignalized driveway
 - Since then, the City has restriped corridor to add buffered bike lanes where feasible
- No safety-based improvements were identified based on review of crash history
- Site development will provide sidewalks, buffered bike lane and lighting along frontage
- City's draft TSP identifies a long-term project to complete buffered bike lane and sidewalk infill along 15th Street

EXISTING R-6 ZONING VS. PROPOSED R-22 ZONING

	R-6 Existing Zoning	R-22 Proposed Zoning	Development Agreement Commitments
Building Height	35 feet (2-3 stories)	50 feet (4 stories)	Approx. 30-40 feet (2 - 3 stories)
Side / Rear Yard Setbacks	5 feet	5 feet	35 feet adjacent to existing residential
Front Yard Setback	10 feet	10 feet	10 feet
Maximum Lot Coverage	50%	50%	50%
Minimum Landscaping Requirement	10% of total net lot area	10% of total net lot area	10% of total net lot area AND a commitment to provide a 20-foot landscape buffer and preservation of existing trees adjacent to existing residential to the north and west.
Minimum Off-Street Parking	1 per lot	0.75 per unit	1.75-1.9 per unit anticipated

NEARBY APARTMENTS ADJACENT TO SINGLE FAMILY

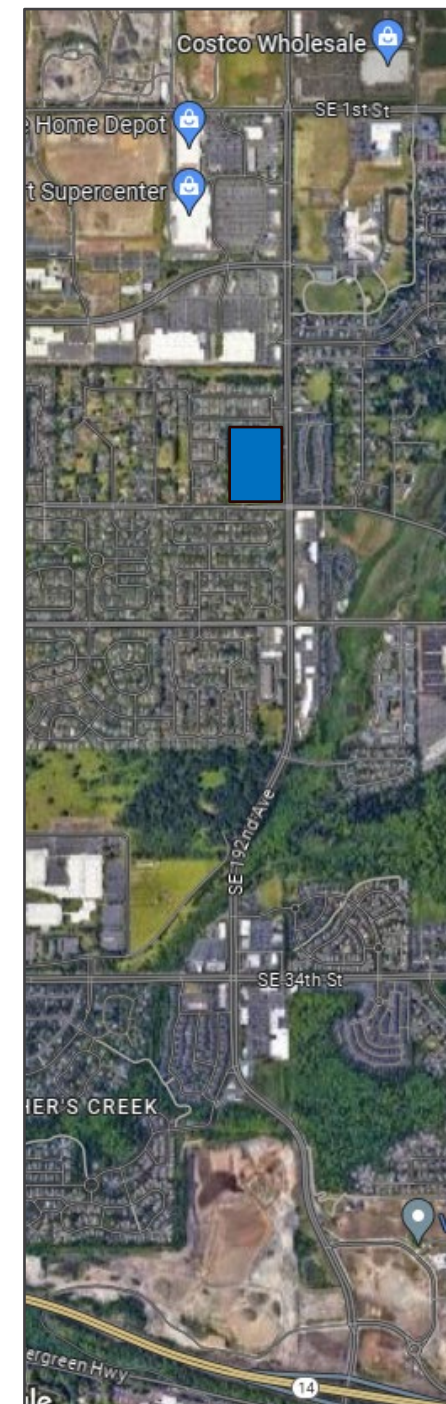


NEARBY APARTMENTS ADJACENT TO SINGLE FAMILY



SE 192ND AVENUE – PRINCIPAL ARTERIAL

- SE 192nd Ave is a Principal Arterial: “It carries large volumes of traffic over long distances. Access is generally limited to intersections with other arterials and collectors. Signalized intersection spacing is regulated. Direct land access is minimal and managed.” VMC 11.80.040
- Land uses adjacent to SE 192nd are typically commercial or multifamily, as shown in the image to the right.
- Less than 5% of the property adjacent to SE 192nd Ave is developed as single family.
- R-22 is an appropriate zone to transition from the principal arterial to single family zoning.



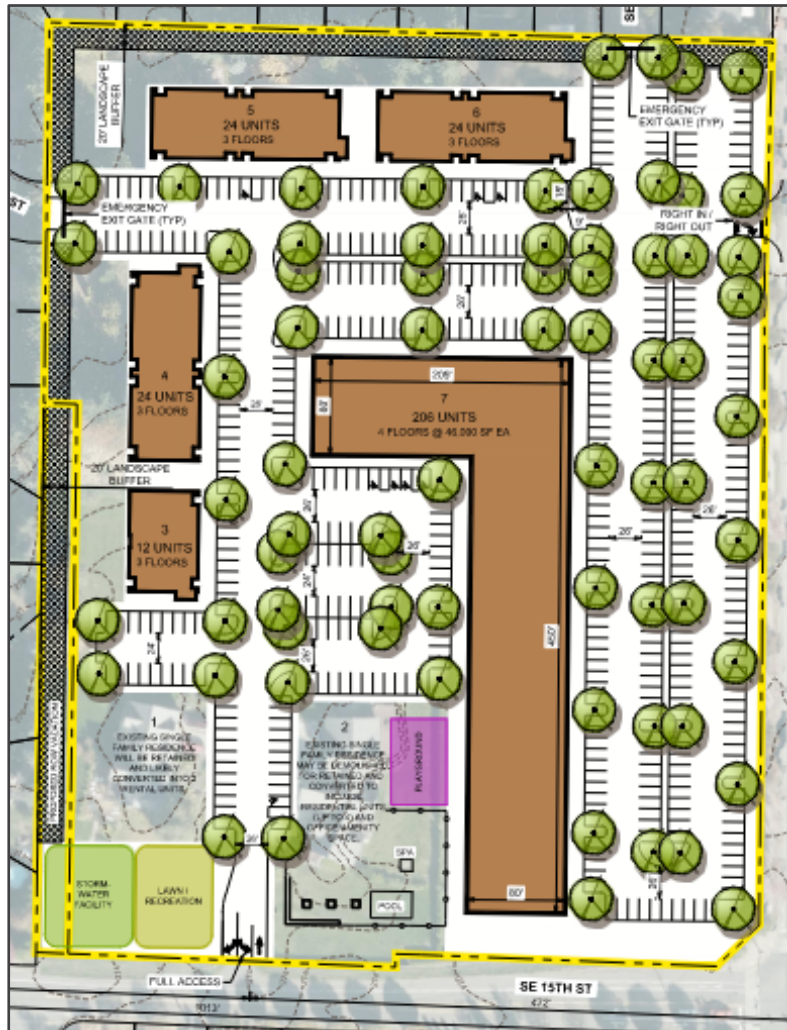
NEIGHBORHOOD OUTREACH

- Canvassed neighborhood May - September.
 - Contact made with all abutting properties.
 - Knocked on doors in neighborhoods to the west and north.
- Applicant facilitated two well attended neighborhood meetings held at Hanna Acres Park September 13th and 28th.
 - Flyers advertising the meetings were left on 150 homes around site.
- Applicant and consultant team have received and responded to emails from the public throughout the process.
- Applicant is offering additional engagement with adjacent homeowner's associations.
- Applicant provided R-22 alternative proposal materials to approximately 30 interested citizens.

WHAT WE HEARD

CONCEPTUAL SITE PLAN REVISIONS R-30 VS. R-22

R-30: 3 and 4 story buildings



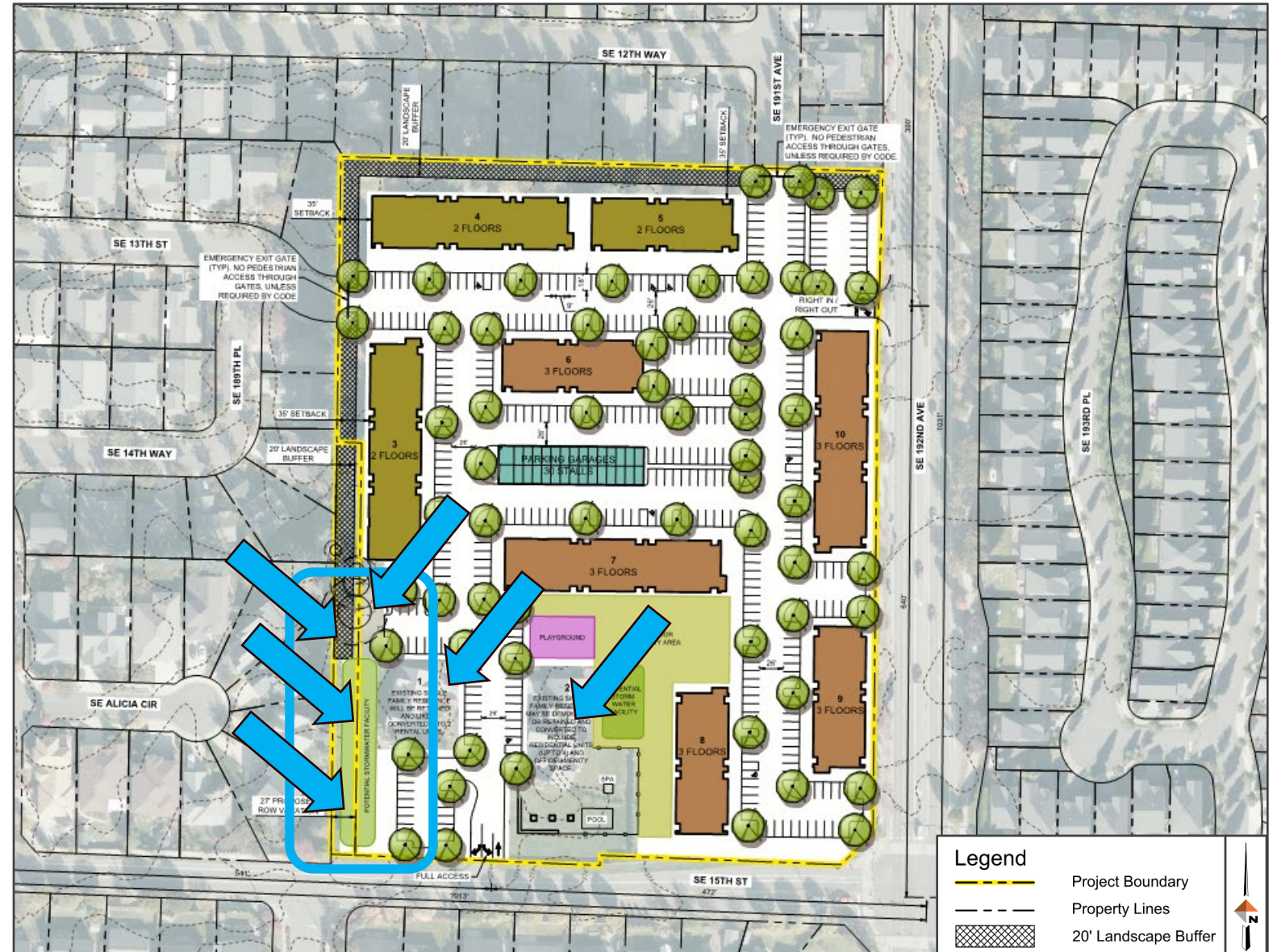
R-22: 2 and 3 story buildings



WHAT WE HEARD

Plan Changes following Neighbor Feedback

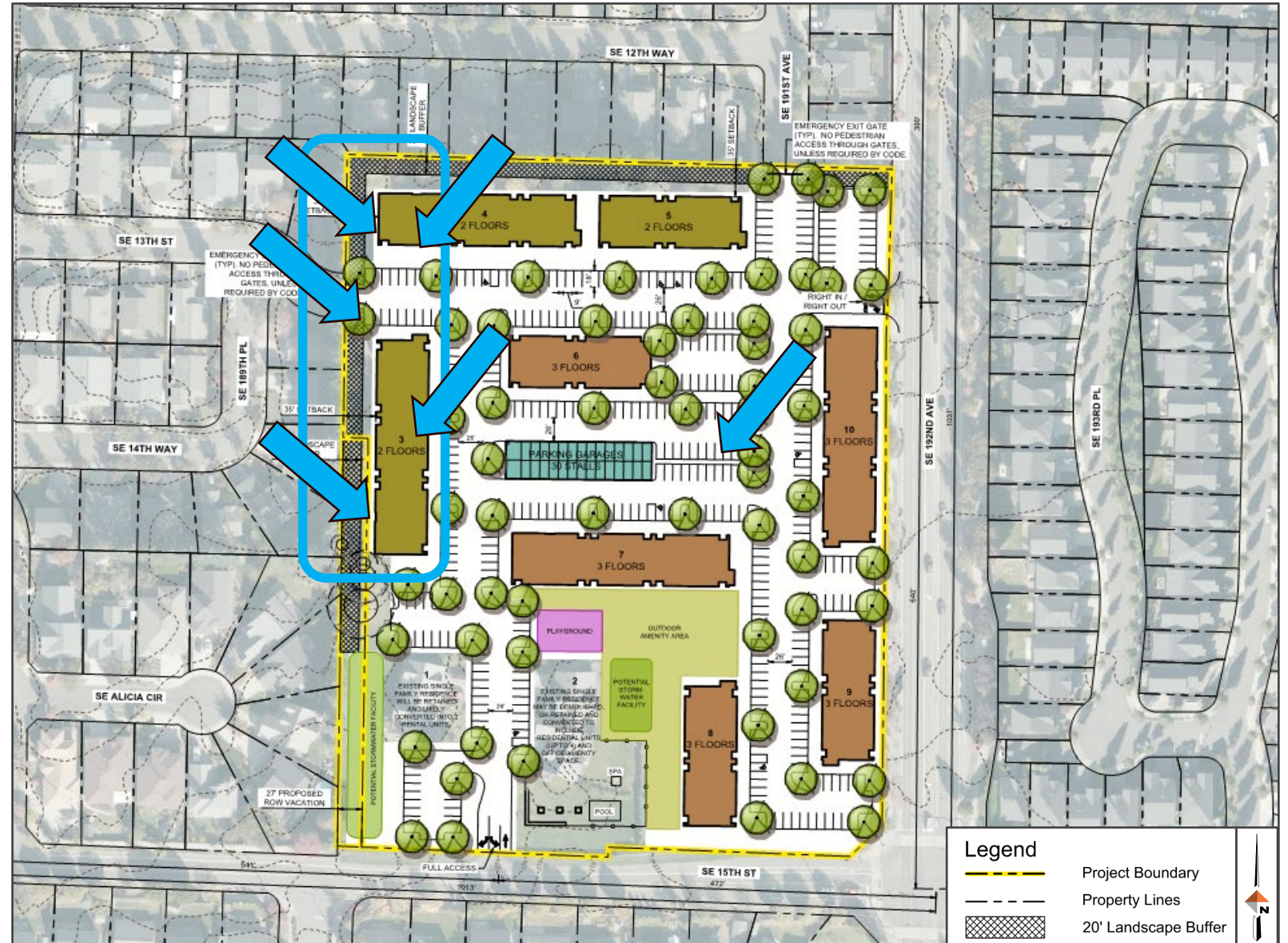
- Preserve views/existing conditions
 - Keep existing homes
 - Preserve trees with 15", 28" and 36" trunks
- Minimize impact to adjacent homes & neighborhood
 - Landscape buffer
 - Stormwater facility adjacent to homes – amenity area away from existing homes.



WHAT WE HEARD

Plan Changes from Neighbor Feedback

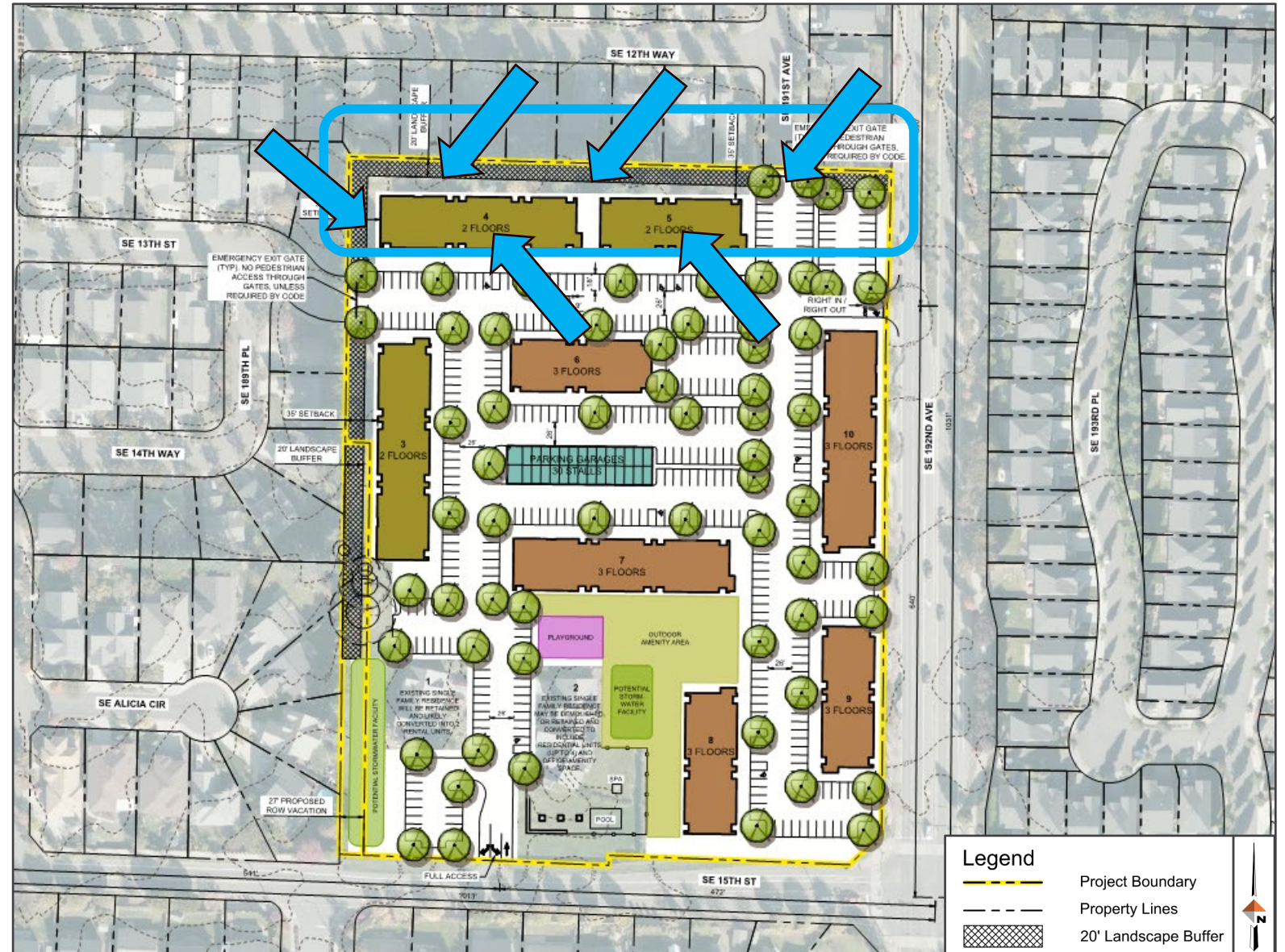
- Preserve views/existing conditions
 - 2 story buildings – matches existing homes
 - Preserve tall pine trees
- Minimize impact to adjacent homes & neighborhood
 - Landscape buffer
 - No vehicular or pedestrian traffic through neighborhood – Emergency access gate to SE 13th St
 - High parking ratio to ensure no parking in neighborhood.



WHAT WE HEARD

Plan Changes from Neighbor Feedback

- Preserve views/existing conditions
 - 2 story buildings – matches more than half of existing adjacent homes
 - Preserve tall pine trees
- Minimize impact to adjacent homes & neighborhood
 - Landscape buffer
 - No vehicular traffic through neighborhood – Emergency access gate to SE 191st Ave. Pedestrian traffic allowed.
 - Install fence where missing



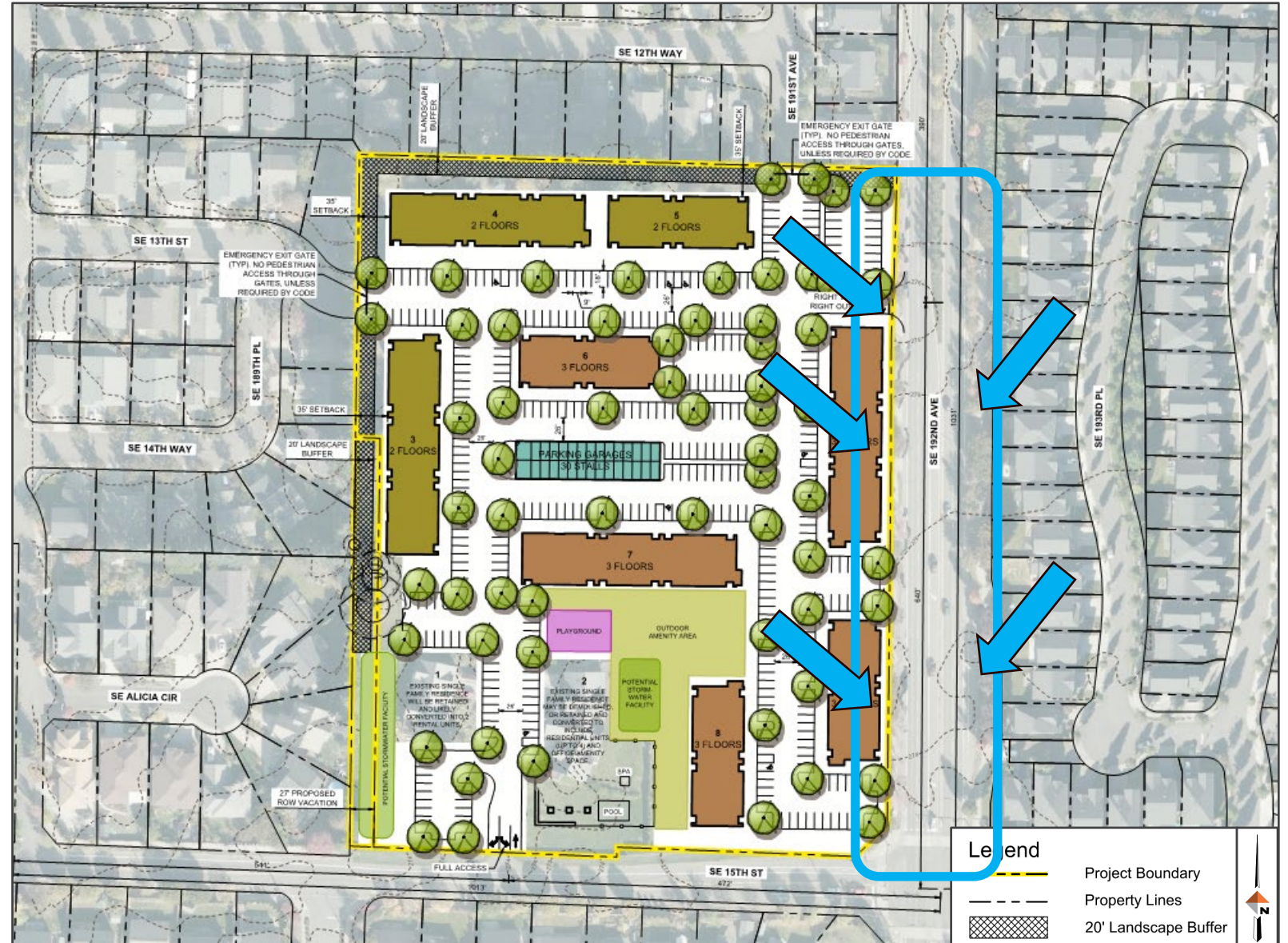
WHAT WE HEARD

Plan Changes from Neighbor Feedback

- Adjacent to SE 192nd Ave/major arterial
 - 3 story buildings
 - Right-in/right-out to 192nd

Existing Conditions Considerations

- Mature street trees on east side of the street.
- Approximately 110-125 feet of ROW



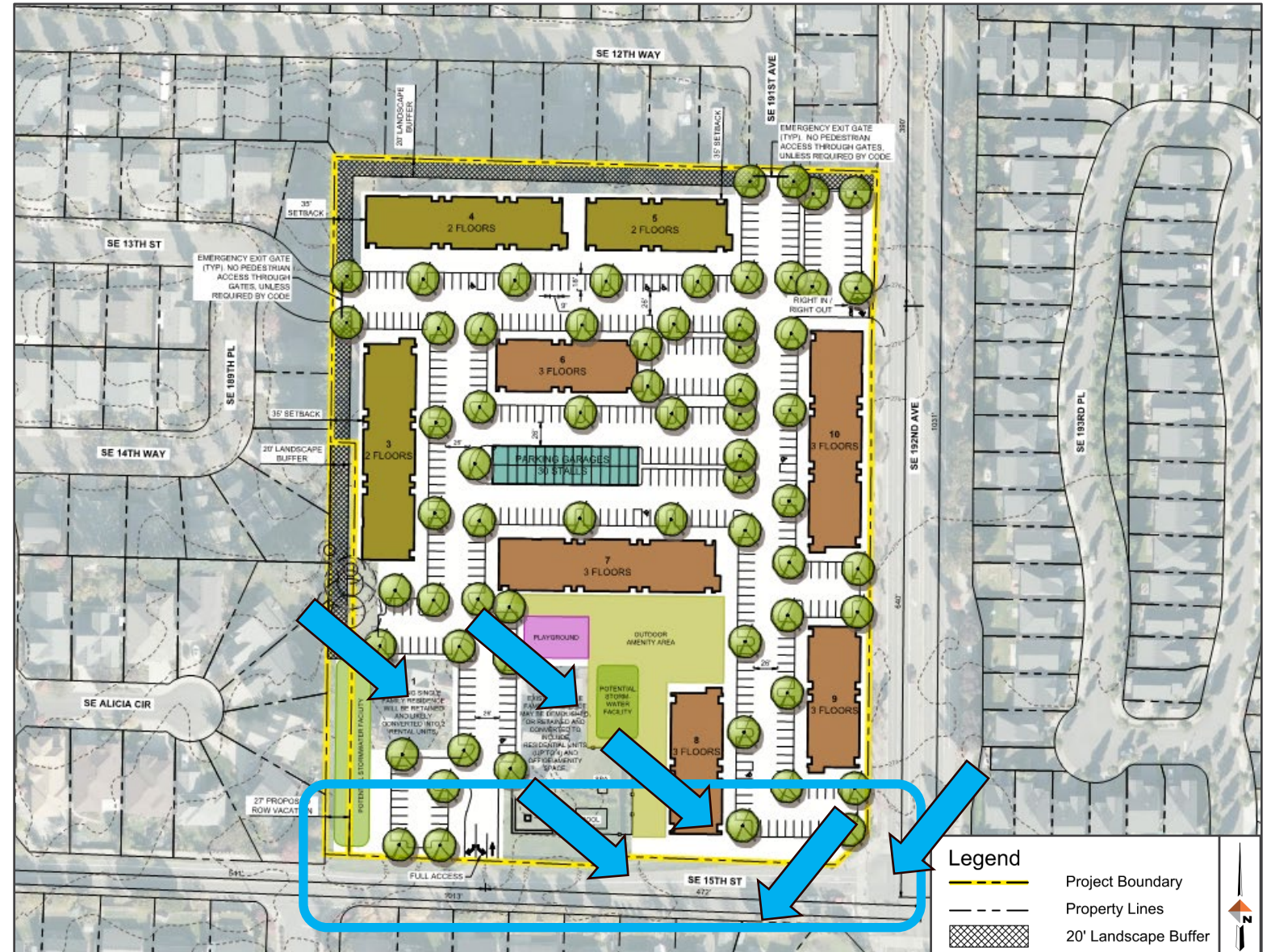
WHAT WE HEARD



WHAT WE HEARD

Plan Changes from Neighbor Feedback

- Preserve views/existing conditions
 - Keep existing homes
 - End of one building closest to south property line
 - Mature trees on south side of the street
- Proposed Improvements to SE 15th Street
 - Build sidewalk, bike lane, landscaping strip along site frontage
 - Extend east bound left turn lane
 - Signal changes to improve traffic flow



WHAT WE HEARD



CONSISTENCY WITH REVISED CODE OF WASHINGTON

Planning Goals (RCW 36.70A.020)	Response
1. Urban Growth	<ul style="list-style-type: none">• Promotes development in an area with urban services, adjacent to transit, employment, education and recreation• Promotes infill development near urban centers reducing pressure on rural lands• Development utilizes and supports adjacent multi-modal transportation network through improvements and use.• Increases quantity and variety of housing types• Provides market rate and affordable housing units• Location has adequate facilities and services to accommodate additional housing.
2. Reduce Sprawl	
3. Transportation	
4. Housing	
12. Public Facilities and Services	

CONSISTENCY WITH WASHINGTON ADMINISTRATIVE CODE

Urban Growth Areas and Countywide Planning Policies	Response
Urban Density (WAC 365-196-300)	<ul style="list-style-type: none">• Expand variety of and capacity for housing• Rezone will result in approximately 153-166 additional housing units• Housing for a broader range of income levels• Affordable housing commitments• Locates higher intensity residential adjacent to urban services, transit and other multi-modal facilities• Existing transportation system can support the proposed zone change• Site design commitments will complement development
Land Use Element (WAC 365-196-405)	
Housing Element (WAC 365-196-410)	
Transportation Element (WAC 360-196-430)	

NEW LEGISLATION OR POLICIES SHAPING GROWTH

New Legislation / Policy	General Policy Goal
House Bill 1220	Increase middle-housing production with parameters based upon city size and location.
House Bill 1181	Adds a climate goal to GMA, requiring local plans to include climate element in update.
House Bill 1110	Amends GMA to require fully planning cities to “plan for and accommodate” housing to all income levels.
Housing Action Plan	Sets targets for housing to address deficit and projected need.
Climate Action Framework	Reduce GHG over time and achieve carbon neutrality
Affordable Housing Fund	Levy renewed by voters in 2023 for preservation, development of affordable housing and rent assistance.

KEY APPROVAL CRITERIA

VMC 20.285.050 Approval Criteria

How the proposal is more consistent than the existing designation with applicable policies of the **Vancouver Strategic Plan** and **Comprehensive Plan**?

CONSISTENCY WITH THE COMPREHENSIVE PLAN

Elements and Associated Policies	Response
<p>Community Development (Chapter 1)</p> <ul style="list-style-type: none"> • CD-1 Citywide land supplies • CD-2 Efficient development patterns • CD-3 Infill and redevelopment • CD-6 Neighborhood Livability • CD-9 Compatible uses • CD-10 Complementary Uses 	<ul style="list-style-type: none"> • Rezone responds directly to City's strategy to increase housing development • Increases variety of housing options at a broader range of affordability levels • Proximity to urban services supports efficient infill development • Site design commitments will provide transition between site and existing neighborhoods
<p>Housing (Chapter 3)</p> <ul style="list-style-type: none"> • H-1 Housing options • H-4 Innovative zoning • H-5 Housing placement near services and centers 	<ul style="list-style-type: none"> • Wider variety of housing types and price points • Affordable housing commitment • Adjacency/walkability to services
<p>Public Facilities and Services (Chapter 5)</p> <ul style="list-style-type: none"> • PFS-1 Service availability • PFS-2 Service standards • PFS-4 Transportation system 	<ul style="list-style-type: none"> • TIA demonstrated level of service standards are met, • Increased eastbound left turn lane storage at 192nd/15th • No safety-based mitigation identified.

CONSISTENCY WITH THE STRATEGIC PLAN

Goals	Response
Goal 1, Objective 1.1 Develop and maintain a safe, balanced and innovative transportation system that will meet the needs of future generations.	The existing, multi-modal transportation system can support the requested change. Future site development will yield additional roadway improvements along SE 15 th Street.
Goal 6, Objective 6.1 Support a strong, active neighborhood program that enhances livability and community connections.	Proposal will increase housing supply, create diversity in housing options and will provide affordable housing units in an urban area equipped with services including transportation, utilities, employment, retail, education and recreation.

KEY APPROVAL CRITERIA

Approval Criteria (VMC 20.285.050)	Response
<p>How the proposal is more consistent than the existing designation with each of the following objectives, as applicable:</p>	
<ul style="list-style-type: none"> Encourage more intensive development to locate in major urban centers and corridors...Encourage development of distinct neighborhoods served by commercial nodes and discourage urban sprawl and strip commercial development. 	<p>SE 192nd Avenue is a major corridor with a variety of urban services which support high-density residential. Increased housing capacity in the area supports housing and climate goals adopted by the City in response to current conditions.</p>
<ul style="list-style-type: none"> Provide development of uses which are functionally integrated with surrounding areas and neighborhoods in terms of local shopping, employment, recreational or other opportunities. 	<p>The site is adjacent to SE 192nd Avenue, a high-intensity transit corridor with a variety of services. Multi-modal transportation network and public transit will provide means to connect with services.</p>
<ul style="list-style-type: none"> Provide adequate provision of transportation, water, sewer and other public services. 	<p>Facilities and services can support the requested zone change. Impact fees and SDCs will be paid.</p>

KEY APPROVAL CRITERIA

Approval Criteria (VMC 20.285.050)	Response
<ul style="list-style-type: none">• Provide development which is compatible and integrated with surrounding uses in terms of scale, orientation, pedestrian enhancements and landscaping.	<ul style="list-style-type: none">• High-density residential is consistent with urban setting adjacent to SE 192nd Avenue corridor.• Site development commitments in support of existing single family detached residential.
<ul style="list-style-type: none">• Provide for the formation and enhancement of neighborhoods and communities.	<ul style="list-style-type: none">• Increased housing will support existing and future businesses in the vicinity,• Frontage improvements (including sidewalks and bike lanes) will benefit all• Add diversity of both housing variety and cost of housing
<ul style="list-style-type: none">• Provide affordable or below-market rate housing opportunities.	<ul style="list-style-type: none">• Housing diversity will support broader range of income levels• 5% of housing units to be rented at 80% AMI

From: [Darla Daring](#)
To: [City of Vancouver - Office of the City Manager](#)
Subject: Public testimony- 1/8/24
Date: Thursday, January 4, 2024 9:52:37 AM

You don't often get email from [REDACTED]. [Learn why this is important](#)

CAUTION: This email originated from outside of the City of Vancouver. Do not click links or open attachments unless you recognize the sender and know the content is safe.

I will be virtually attending the City Council Meeting on January 8 in protest on specific discriminatory City policies and approaches.

I will be contesting the adoption of the Transportation System Plan on the premise that it is not compliant with the Washington State Growth Management Act (GMA) requirements related to public outreach and engagement to be adopted as the transportation element of the Comprehensive Plan.

Per the Growth Management Act requirements, public engagement can be defined as “activities that meaningfully involve community members, Indigenous rights-holders and/or stakeholders to inform decisions for planning, policies, programs, and services that will impact them.”

In acknowledgement and in argument to the “public outreach” you did conduct, this does not meet the GMA definition of public engagement.

The map comments cannot be considered in “cumulative” counts, as it is designed intentionally to aggravate data results and confound total participation by encouraging multiple responses. It is great, don’t get me wrong, but cannot be considered in the total engaged counts as you did not provide rough estimates of total people participating, just total comments. As such, a cumulative total of 517 modal surveys, plus 193 transportation value surveys, equates to only 710 comments received through the duration of outreach. With a population of (let’s be really nice to you and go with 2021 counts and remove the rapid growth counts) roughly 192,000 people. You received public comment responses from roughly 0.3% of the general public. Without argument, less than 1% of public engagement is not compliant with the Growth Management Acts requirements for inclusion in public engagement which is defined as involving people who reflect the demographic, attitudinal, and experiential diversity of the communities that may be impacted by a decision. 0.3% of total public participation is not reflective of the 192,000 voices of Vancouver.

Furthermore, I argue the City intentionally catered public notification in an exclusionary manner to gear who received awareness of public comment opportunities to select demographics. When the City of Vancouver was looking for neighborhood transportation projects to execute I was notified by mail. A flyer notification was sent to my house asking me to submit an idea. Yet, the Transportation System Plan did not send a single community-wide mailer for the duration of public outreach. All executed outreach occurred digitally.

When an area is being prepared to be cleaned and the unplaced dispersed, signage has to be posted in advance. When a bus stop is planned to be closed, it is posted. Yet no effort was made to post notices at bus stops or near unplaced gathering sites to encourage participation.

Where were the radio ads? The bus ads? You are planning the transportation system for the next 20 years and think that 3 static social media posts that were not even translated into the adequate number of languages to meet federal diversity requirements meets public outreach requirements to be compliant with the Growth Management Act and be used in a Comprehensive Plan Update?!

The City of Vancouver relied on third-party products, which requires individuals to sell their personal data to receive information and is predominantly comprised of the population of middle-aged humans and older.

The exclusion of Instagram and TikTok suggests intentional action to exclude the youth and young adults of Vancouver, the people of voting age who do not make up the demographic of Facebook, NextDoor, and X, but live and work in the area. Do I dare also argue that these are the lowest income bracket, renters, who do not know that they can comment on something that will be adopted into a 20 year Comprehensive Plan because you didn't send them a postcard in the mail? Instead, you relied on third party vendors and your response rates show it.

I am contesting the adoption of the Transportation System Plan on the grounds that it should not be included as part of the Comprehensive Plan Update on the basis of exclusionary public outreach and engagement efforts that discriminated against the minority voices that will be most impacted by the Transportation System Plan in the year 2045.

From: [Darla Daring](#)
To: [City of Vancouver - Office of the City Manager](#)
Subject: Re: Public testimony- 1/8/24
Date: Monday, January 8, 2024 1:22:43 PM

You don't often get email from [REDACTED]. [Learn why this is important](#)

CAUTION: This email originated from outside of the City of Vancouver. Do not click links or open attachments unless you recognize the sender and know the content is safe.

Please confirm you have registered me to participate as the online form is broken.

On Thu, Jan 4, 2024 at 9:52 AM Darla Daring [REDACTED] > wrote:

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I will be contesting the adoption of the Transportation System Plan on the premise that it is not compliant with the Washington State Growth Management Act (GMA) requirements related to public outreach and engagement to be adopted as the transportation element of the Comprehensive Plan.

Per the Growth Management Act requirements, public engagement can be defined as “activities that meaningfully involve community members, Indigenous rights-holders and/or stakeholders to inform decisions for planning, policies, programs, and services that will impact them.”

In acknowledgement and in argument to the “public outreach” you did conduct, this does not meet the GMA definition of public engagement.

The map comments cannot be considered in “cumulative” counts, as it is designed intentionally to aggravate data results and confound total participation by encouraging multiple responses. It is great, don’t get me wrong, but cannot be considered in the total engaged counts as you did not provide rough estimates of total people participating, just total comments. As such, a cumulative total of 517 modal surveys, plus 193 transportation value surveys, equates to only 710 comments received through the duration of outreach. With a population of (let’s be really nice to you and go with 2021 counts and remove the rapid growth counts) roughly 192,000 people. You received public comment responses from roughly 0.3% of the general public. Without argument, less than 1% of public engagement is not compliant with the Growth Management Acts requirements for inclusion in public engagement which is defined as involving people who reflect the demographic, attitudinal, and experiential diversity of the communities that may be impacted by a decision. 0.3% of total public participation is not reflective of the 192,000 voices of Vancouver.

Furthermore, I argue the City intentionally catered public notification in an exclusionary manner to gear who received awareness of public comment opportunities to select demographics. When the City of Vancouver was looking for neighborhood transportation projects to execute I was notified by mail. A flyer notification was sent to my house asking me to submit an idea. Yet, the Transportation System Plan did not send a single community-

wide mailer for the duration of public outreach. All executed outreach occurred digitally.

When an area is being prepared to be cleaned and the unplaced dispersed, signage has to be posted in advance. When a bus stop is planned to be closed, it is posted. Yet no effort was made to post notices at bus stops or near unplaced gathering sites to encourage participation. Where were the radio ads? The bus ads? You are planning the transportation system for the next 20 years and think that 3 static social media posts that were not even translated into the adequate number of languages to meet federal diversity requirements meets public outreach requirements to be compliant with the Growth Management Act and be used in a Comprehensive Plan Update?!

The City of Vancouver relied on third-party products, which requires individuals to sell their personal data to receive information and is predominantly comprised of the population of middle-aged humans and older.

The exclusion of Instagram and TikTok suggests intentional action to exclude the youth and young adults of Vancouver, the people of voting age who do not make up the demographic of Facebook, NextDoor, and X, but live and work in the area. Do I dare also argue that these are the lowest income bracket, renters, who do not know that they can comment on something that will be adopted into a 20 year Comprehensive Plan because you didn't send them a postcard in the mail? Instead, you relied on third party vendors and your response rates show it.

I am contesting the adoption of the Transportation System Plan on the grounds that it should not be included as part of the Comprehensive Plan Update on the basis of exclusionary public outreach and engagement efforts that discriminated against the minority voices that will be most impacted by the Transportation System Plan in the year 2045.

From: [Darla Daring](#)
To: [City Council](#)
Subject: Re: Public testimony- 1/8/24
Date: Monday, January 8, 2024 1:24:26 PM

You don't often get email from [REDACTED]. [Learn why this is important](#)

CAUTION: This email originated from outside of the City of Vancouver. Do not click links or open attachments unless you recognize the sender and know the content is safe.

Please confirm receipt of public comments for 1/8/2023.

On Thu, Jan 4, 2024 at 9:52 AM Darla Daring [REDACTED] > wrote:

I will be virtually attending the City Council Meeting on January 8 in protest on specific discriminatory City policies and approaches.

I will be contesting the adoption of the Transportation System Plan on the premise that it is not compliant with the Washington State Growth Management Act (GMA) requirements related to public outreach and engagement to be adopted as the transportation element of the Comprehensive Plan.

Per the Growth Management Act requirements, public engagement can be defined as “activities that meaningfully involve community members, Indigenous rights-holders and/or stakeholders to inform decisions for planning, policies, programs, and services that will impact them.”

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I am contesting the adoption of the Transportation System Plan on the grounds that it should not be included as part of the Comprehensive Plan Update on the basis of exclusionary public outreach and engagement efforts that discriminated against the minority voices that will be most impacted by the Transportation System Plan in the year 2045.

From: [Darla Daring](#)
To: [City Council](#)
Subject: Re: Automatic Reply: Your message has been submitted to the Vancouver City Council
Date: Monday, January 8, 2024 1:26:05 PM

You don't often get email from [REDACTED]. [Learn why this is important](#)

CAUTION: This email originated from outside of the City of Vancouver. Do not click links or open attachments unless you recognize the sender and know the content is safe.

Please note that the hyperlink URL on the city's posted agenda directs to a different email address. As such you are acting in intentional negligence in allowing people to comment by intentionally directing people to the incorrect email address. Shame on you. There is no way today's policy is passing.

On Mon, Jan 8, 2024 at 1:24 PM City Council <council@cityofvancouver.us> wrote:

Your message has been submitted to the Vancouver City Council. A City staff member may reach out to you if you have requested information about a City program or project, or if additional information is required to respond to your inquiry.

Please note that pursuant to the state's Public Records Act (RCW 42.56), information submitted to the City Council are public records and may be subject to public disclosure.

From: [Wynn Grcich](#)
To: [Rebecca Messinger](#); [Dollar, Sarah](#)
Subject: Fwd: Recall Alert: Air Fryers, Salad, Spinach
Date: Monday, December 18, 2023 1:01:21 PM

CAUTION: This email originated from outside of the City of Vancouver. Do not click links or open attachments unless you recognize the sender and know the content is safe.

Please send to council members and MELNECK. Put on public record and confirm that you did. You can subscribe to the recall lists and put it on the health board website. Thanks from Wynn

----- Forwarded message -----

From: **Emergencyemail.org** <noreply@emergencyemail.org>
Date: Mon, Dec 18, 2023, 12:55 PM
Subject: Recall Alert: Air Fryers, Salad, Spinach
To: [REDACTED] >

The Emergency Email and Wireless Network
Updated Monday, December 18, 2023

New product safety alerts have been issued.

The FDA and CPSC have issued new recall warnings, click the link below to see the updated list.

[View Product List](#)

New Breaking News....

[Breaking News](#)



THE EMERGENCY EMAIL & WIRELESS NETWORK
Customer Service Department | Enotem, Inc.
P. O. Box 1446 | Orange Park, FL 32067-1446

Alert services include severe weather, health, product safety and weather forecast updates.

----- **UNSUBSCRIBE OPTIONS** -----

Use the following link to unsubscribe only to Product Alerts. Other alerts will continue.

[UNSUBSCRIBE RECALL ALERTS ONLY](#)

Stop our service here.

Use the following link to unsubscribe to all services. **You will no longer receive weather or any other alerts.**

[UNSUBSCRIBE ALL](#)



From: [Wynn Grcich](#)
Subject: Watch "CDC Agrees With NRC Finding That Fluoride Can Potentially Cause Alzheimer's And Dementia." on YouTube
Date: Monday, December 18, 2023 1:08:05 PM

CAUTION: This email originated from outside of the City of Vancouver. Do not click links or open attachments unless you recognize the sender and know the content is safe.

<https://youtu.be/0A34FK2lTDs?si=E2Oxm4dZDpB9eVie> .please send to council members and MELNECK, put on public record, and confirm that you did. Time to stop fluoridation in Battle Ground, Camas, and Western Vancouver. It needs to be stopped nation wide. Thanks from Wynn

Staff Report: 021-24

TO: Mayor and City Council

FROM: Eric Holmes, City Manager

DATE: 2/5/2024

SUBJECT Bid Award for SE 17th St Outfall Improvements per Bid #23-42

Key Points

- The project will replace a degraded stormwater pipe that has reached the end of its useful life and is no longer functioning. The existing system cannot convey the amount of runoff that is collected, and overflow during rain events has the potential to damage private properties. The City received 10 bids for the project.
- Staff proposes awarding a contract to the lowest, responsive bidder, Jeffries Company, of Woodland, Washington, at the bid price of \$424,375.

Strategic Plan Alignment

Climate and Natural Systems – Environmental stewardship and efforts to address climate change to ensure a sustainable future.

Present Situation

Runoff from the project area, part of the Columbia Slope, drains to a City of Vancouver stormwater system prior to discharge to the Columbia River. An existing portion of the stormwater system has degraded and no longer has capacity to convey the stormwater, which leads to stormwater overflow, localized flooding and property damage at two private properties on SE 17th St.

The project will replace 430 linear feet of corrugated metal storm main with a more resilient and higher capacity polyethylene storm main. The project will eliminate the overflow condition and provide a safe, maintainable system that limits the risk of damage to private property due to flooding.

On 12/19/2023, the City received 10 bids for the subject project. The bids ranged between \$424,375 and \$997,000. The low bidder was responsive. The bids are as follows:

SUMMARY OF BIDS	
BIDDER	AMOUNT

Jeffries Company, Woodland, Washington	\$424,375.00
Colf Construction, Vancouver, Washington	\$494,835.00
Nylund Inc, Brush Prairie, Washington	\$521,867.32
SLE Inc, Vancouver, Washington	\$528,775.75
Odyssey Contracting, Vancouver, Washington	\$543,373.00
Nutter Corporation, Vancouver, Washington	\$655,835.00
JQ Construction Inc, Beaverton, Oregon	\$711,207.00
Tapani, Inc., Battle Ground, Washington	\$751,985.00
Angelo Underground, Portland, Oregon	\$920,920.00
Advanced Excavating, Kelso, Washington	\$997,000.00
Engineers' Estimate	\$475,000.00

There is no apprenticeship utilization goal as this project value does not meet the minimum threshold.

Advantage(s)

1. Replacing the degraded storm line will allow the system to properly discharge stormwater to the Columbia River.
2. The risk of private property damage will be reduced and the system will be maintainable by City Operations staff.
3. City Operations staff are less likely to need to respond to flooding calls in this location, freeing up staff and equipment to respond to other locations in the City.

Disadvantage(s)

None

Budget Impact

This project is funded by the Surface Water Utility Fund as part of the Capital Improvement Program.

Prior Council Review

Project funding was previously reviewed by Council as part of the 2023-2024 Surface Water Construction Capital Budget.

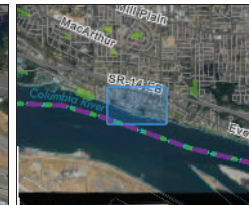
Action Requested

On 2/5/2024, award a construction contract for the SE 17th St Outfall Improvements project to the lowest responsive and responsible bidder, Jeffries Company of Woodland, Washington, USA at their bid price of \$424,375.00, and authorize the City Manager or designee to execute the same.

Aron Rice, Civil Engineer, 360-487-7170

ATTACHMENTS:

- ▣ Vicinity Map
- ▣ Unexecuted Contract



Project Location

Notes:



CONSTRUCTION CONTRACT # C-101537
ITB 23-42: SE 17th St Outfall Improvements

This Contract (hereinafter referred to as the "Contract") is entered into by and between the City of Vancouver, Washington, a municipal corporation organized under the laws of the State of Washington (hereinafter referred to as the "City") and Jeffries Construction, LLC, PO Box 570, Woodland, WA 98674 (hereinafter referred to as the "Contractor"). The City and Contractor may be collectively referred to herein as the "parties" or individually as a "party".

WHEREAS, the City desires to engage the Contractor to provide public works construction and other related services for the work described herein;

WHEREAS, Contractor has agreed to offer its services to perform said work per the City issued Invitation to Bid (ITB) No. 23-42 and all addenda thereto, Contractor's Bid to said ITB, the Project Plan Set and Special Provisions, and City Council's approval on **Month Day, Year** per Staff Report No. ##-##; and

WHEREAS, the Contractor represents by entering into this Contract that it is fully qualified to perform the work to which it will be assigned in a competent and professional manner, and to the standards required by the City.

NOW, THEREFORE, in consideration of the terms, conditions, covenants, and performance contained herein, or attached and incorporated and made a part hereof, the parties hereto agree as follows:

- 1. STATEMENT OF WORK:** The Contractor hereby agrees to furnish all materials, labor, tools, machinery and implements of every description necessary to complete the work in a professional manner within the time limits stated in this Contract for the construction and installation of the following improvements and will make all necessary arrangements for the obtaining of permits from the United States, State of Washington, and/or any of its agencies as may be necessary to do the work required and covered by this Contract.

This Contract provides for the replacement of approximately 430 LF of 12-inch corrugated metal stormwater pipe with 12-inch and 18-inch HDPE stormwater pipe in an easement located on the property of 7819 SE 17th Street in Vancouver, WA and other work, all in accordance with the attached Contract Plans, these Contract Provisions, and the Standard Specifications.

The Contract Work shall be Physically Complete within 60 Working Days from the Notice to Proceed. Contractor shall be granted Notice to Proceed upon confirmation of demolition of the existing home.

2. **EFFECTIVE DATE:** This Contract is effective as of the last signature of the Contract.
3. **E-VERIFY PROGRAM:** Contractor shall register and enter into a Memorandum of Understanding (MOU) with the Department of Homeland Security E-Verify program within sixty (60) days after execution of this Contract. Contractor shall ensure all Contractor employees and any sub-contractor(s) assigned to perform work under this Contract are eligible to work in the United States. Contractor shall provide verification of compliance upon City request. Failure by Contractor to comply with this subsection shall be considered a material breach.
4. **CONTRACTOR RESPONSIBILITIES FOR SUBCONTRACTORS:** The Contractor shall include the language of this section in all tier subcontracts and shall require each of its subcontractors to include the same language of this section in each of their subcontracts, adjusting only as necessary the terms used for the contracting parties. The requirements of this section apply to all subcontractors regardless of tier. The Contractor shall require all subcontractors to comply with all relevant federal, state and municipal laws, rules and regulations whatsoever.

At the time of subcontract execution, the Contractor shall verify that all tier subcontractors meet the following bidder responsibility criteria:

1. Have a current certificate of registration in compliance with chapter 18.27 RCW, which must have been in effect at the time of subcontract bid submittal;
 2. Have a current Washington Unified Business Identifier (UBI) number;
 3. Have received training on the requirements related to public works and prevailing wage as required by RCW 39.04.350;
 4. Within the three-year period immediately preceding the date of the bid solicitation, not have been determined by a final and binding citation and notice of assessment issued by the department of labor and industries or through a civil judgment entered by a court of limited or general jurisdiction to have willfully violated, as defined in RCW 49.48.082, any provision of chapter 49.46, 49.48, or 49.52 RCW.
 5. If applicable, have:
 - i. Have Industrial Insurance (workers' compensation) coverage for the subcontractor's employees working in Washington, as required in Title 51 RCW;
 - ii. A Washington Employment Security Department reference number, as required in Title 50 RCW;
 - iii. A Washington Department of Revenue state excise tax registration number, as required in Title 82 RCW;
 - iv. An electrical contractor license, if required by Chapter 19.28 RCW;
 - v. An elevator contractor license, if required by Chapter 70.87 RCW.
 6. Not be disqualified from bidding on any public works contract under RCW 39.06.010 or 39.12.065 (3).
5. **DELINQUENT STATE TAXES:** The Contractor shall not owe delinquent taxes to the Washington State Department of Revenue without a payment plan approved by the Department of Revenue.

6. **COMPENSATION AND SCHEDULE OF PAYMENTS:** In consideration of the promises and agreements of the Contractor as set forth herein, and in consideration of the faithful performance and furnishing of the work and materials required by this Contract to the satisfaction of the City, the City agrees to pay to the Contractor as prescribed in the solicitation and Contractor's Bid, and in accordance with the ordinances of the City of Vancouver and the laws of the State of Washington, the following sum as indicated, which amount does includes 8.7% Washington State Sales Tax (if applicable) \$424,375.00 USD.

The amount finally to be paid is, however, variable upon the Work actually performed and final payment will be made upon the basis of the amount of work performed and the materials furnished, and at the lump sum or unit prices fixed in the Contractor's Bid and as modified by any and all approved Change Orders.

7. **CONTRACTOR'S INSURANCE:** The Contractor agrees to the following requirements relating to insurance coverage. Provide a Certificate of Liability Insurance. Said certificate must be provided on a standard "ACORD" form, or its equivalent, and must provide that coverage shall not be canceled or modified without 30 days prior written notice to the City of Vancouver.

In addition, all policies shall be issued by an insurance company licensed to do business in the State of Washington. The City of Vancouver may inspect all policies and copies shall be provided to the City upon request.

The Contractor agrees to procure insurance coverage as required below:

COVERAGE	LIMITS OF LIABILITY
I. Commercial General Liability:	
Policy shall include Bodily Injury, Property Damage, Personal Injury and Broad Form Contractual Liability	
Each Occurrence	\$1,000,000
General Aggregate Per Occurrence	\$2,000,000
Products & Completed Operations Aggregate	\$2,000,000
Personal and Advertising Injury	\$1,000,000
Blanket Contractual Liability	\$1,000,000
II. Commercial Automobile Liability	
Policy shall include Bodily Injury and Property Damage, for any owned, Hired, and/or Non-owned vehicles used in the operation, installation and maintenance of facilities under this Contract.	
Combined Single Limit	\$1,000,000
III. Workers' Compensation (applicable to the State of Washington)	
Per Occurrence	Statutory
Employer's Liability	\$1,000,000
Disease Each Employee	\$1,000,000
Disease Policy Limit	\$1,000,000

COVERAGE	LIMITS OF LIABILITY
Each Claim	\$1,000,000
Annual Aggregate	\$2,000,000
IV. Pollution Legal Liability	
Each Claim	\$1,000,000
Annual Aggregate	\$1,000,000

In addition to the coverage and limits listed above the Contractor's insurance must all contain the following:

- a. City Listed as an Additional Insured. The City of Vancouver, its Agents, Representatives, Officers, Directors, Elected and Appointed Officials, and Employees must be named as an additional insured. The required Additional Insured endorsements shall be at least as broad as ISO CG 20 10 11 85, or its equivalent CG 20 10 07 04 and CG 20 37 07 04 must be included with the Certificate of Insurance.
- b. Either the Commercial General Liability or the Workers' Compensation policy must be endorsed to include "Washington Stop Gap" insurance. The limits and aggregates referenced must apply to the Stop Gap coverage as well and must be indicated on the certificate.
- c. Employment Security. The Contractor shall comply with all employment security laws of the State in which services are provided and shall timely make all required payments in connection therewith.
- d. The City of Vancouver shall be listed on the Certificate as the Certificate Holder.
- e. Coverage Trigger: The insurance must be written on an "occurrence" basis. This must be indicated on the Certificate.

Contractor shall provide evidence of all insurance required, at the City's request, by submitting an insurance certificate to the City on a standard "ACORD" or comparable form.

All policies shall be issued by an insurance company licensed to do business in the State of Washington. The City of Vancouver may inspect all policies and copies shall be provided to the City upon request.

8. **CONTRACTOR'S BOND:** The Contractor agrees that before it undertakes performance of this Contract, it will file with the City of Vancouver a Performance Bond and Payment Bond, in the forms prescribed by the City of Vancouver, in the full amount of the Contract price with a company authorized to do business in the State of Washington as a surety. The bonds shall comply with the laws of the State of Washington, and especially with the provisions of Chapter 39.08 RCW.

9. **DISPUTE RESOLUTION:** In the event of a dispute between the Parties which cannot be resolved by the contract managers, the Contractor and the City shall review such dispute and may attempt to resolve the dispute. Any controversy or claim arising out of or relating to this Contract or the alleged breach of this Contract that cannot be resolved by the Parties within 30 days of receipt of written notice may be submitted to mediation. If the dispute cannot be resolved through mediation, either party may initiate litigation pursuant to the governing law and venue provisions of this Contract. The Parties agree to pay their own attorneys' fees and expenses.
10. **GOVERNING LAW/VENUE:** This Contract shall be deemed to have been executed and delivered within the State of Washington, and the rights and obligations of the parties hereunder shall be construed and enforced in accordance with, and governed by, the laws of the State of Washington without regard to the principles of conflict of laws. Any action or suit brought in connection with this Contract shall be brought in the Superior Court of Clark County, Washington.
11. **EMPLOYMENT OF LABOR:** The Contractor agrees that all persons employed by Contractor and by any of its subcontractors and any of their lower tier contractors in work performed pursuant to this Contract shall not be employed in excess of eight (8) hours in any one day, except as provided or allowed by Chapter 49.28 RCW and WAC 296-127 and any amendment thereto.
12. **PAYMENT OF LABOR:** The Contractor agrees that all laborers, workers, or mechanics employed by it or by any subcontractor in the performance of this Contract will be paid not less than the prevailing rate of wage for an hours work, in accordance with the provisions of the Chapter 39.12 RCW, and all rules and regulations promulgated pursuant thereto.

The prevailing wage in effect for the first contract year is **Tuesday, November 7, 2023**. This rate will be updated annually on the anniversary of the contract.

In case any dispute arises as to what the prevailing rates of wages for work of a similar nature are and such dispute cannot be adjusted by the parties involved, the matter shall be referred to the director of the Department of Labor and Industries of the State of Washington for arbitration, and the director's decision shall be final, conclusive and binding on all parties involved in the dispute.

13. **PAYMENT TO THE CONTRACTOR:** Progress payments to the Contractor shall be made within 30 days of a fully executed Pay Estimate pending all compliance with all contractual requirements. A sum equal to 5% may be reserved and retained from monies earned by the Contractor in accordance with Chapter 60.28 RCW. The City reserves the right to require Contractor to correct any submitted or paid erroneous invoices according to the rates set forth herein. City and Contractor agree that any amount paid in error by City does not constitute a change in the agreed upon amount; Contractor agrees to issue a refund of any overages paid in error by the City.

Release of the retained percentage or the retainage bond shall be in accordance with Chapter 60.28 RCW. Every person performing labor or furnishing supplies toward the completion of said improvement of work shall have a lien upon said monies so reserved; provided, that such

notice of the lien of such claimant shall be given in the manner provided in RCW 39.08.030 and within the time provided in Chapter 60.28 RCW as now existing and in accordance with any amendments that may hereafter be made thereto.

No payment shall be made to the Contractor, however, until the Contractor and all subcontractors who have performed work shall have filed and received approval of a Statement of Intent to Pay Prevailing Wage as required by RCW 39.12.040 from the Washington State Department of Labor and Industries. Said Contractor and all subcontractors shall also keep accurate payroll records for three years from the date of acceptance as described in RCW 39.12.120. A Contractor and all subcontractors shall, file a copy of its certified payroll records using the Department of Labor and Industries online system on a monthly basis. A Contractor's noncompliance with this section shall constitute a violation of RCW 39.12.050.

- 14. INDEMNIFICATION:** Contractor agrees to indemnify, defend, save and hold harmless the City, its officials, employees and agents from any and all liability, including but not limited to demands, claims, causes of action, suits or judgments, claims of copyright or patent infringement, including costs, attorney fees and expenses incurred in connection therewith, or whatsoever kind or nature, arising out of, or in connection with, or incident to, the performance of services by Contractor pursuant to this Contract.

In the event that any suit based on such a claim, demand, loss, damage, cost, or cause of action is brought against the Contractor, the City retains the right to participate in said suit.

This indemnity and hold harmless shall include any claim made against the City by an employee of Contractor or subcontractor or agent of the Contractor, even if Contractor is thus otherwise immune from liability pursuant to the workers' compensation statute, Title 51 RCW. To the extent that such liability arises from the concurrent negligence of both the City and the Contractor, such cost, fees and expenses shall be shared between the City and the Contractor in proportion to their relative degrees of negligence. This indemnity and hold harmless shall NOT apply in the case where liability arises from the sole negligence of the City. Contractor specifically acknowledges that the provisions contained herein have been mutually negotiated by the Parties and it is the intent of the Parties that Contractor provide the broadest scope of indemnity permitted by RCW 4.24.115.

- 15. OWNERSHIP OF RECORDS AND DOCUMENTS:** Any and all work product prepared by the Contractor in the course of performing this Contract shall immediately become the property of the City. In consideration of the compensation provided for by this Contract, the Contractor hereby further assigns all copyright interests in such work product to the City. A copy may be retained by the Contractor. Previously owned intellectual property of Contractor or any third party, and any know-how, methodologies or processes used by Contractor to provide the services or project deliverables under this Contract shall remain property of the original City.

- 16. PUBLIC DISCLOSURE COMPLIANCE:** The parties acknowledge that the City is an "agency" within the meaning of the Washington Public Records Act, Chapter 42.56 RCW, and that materials submitted by the Contractor to the City become public record. Such records may be subject to public disclosure, in whole or part and may be required to be released by the City in the event of a request for disclosure. In the event the City receives a public record request

for any data or deliverable that is provided to the City and that is licensed from the Contractor, the City shall notify the Contractor of such request and withhold disclosure of such information for not less than five (5) business days, to permit the Contractor to seek judicial protection of such information, provided that the Contractor shall be responsible for attorney fees and costs in such action and shall save and hold harmless the City from any costs, attorney fees or penalty assessment under Chapter 42.17 RCW for withholding or delaying public disclosure of such information.

- 17. COOPERATIVE PURCHASING:** The Washington State Inter-local Cooperation Act, Ch. 39.34 RCW, authorizes public agencies to cooperatively purchase goods and services if all parties agree. By having executed this Agreement, the Contractor agrees that other public agencies may purchase goods and services under this solicitation or contract at their own cost and without the City incurring any financial or legal liability for such purchases. The City agrees to allow other public agencies to purchase goods and services under this solicitation or contract, provided that the City is not held financially or legally liable for purchases and that any public agency purchasing under such solicitation or contract file a copy of this invitation and such contract in accordance with RCW 39.34.040.
- 18. AMENDMENTS:** All changes to this Contract, including changes to the statement of work and compensation, must be made by written Change Order and/or Amendment and signed by all parties to this Contract.
- 19. AUTHORIZATION AND COMPLIANCE WITH THE LAW:** The Contractor certifies that the person signing the Contract is legally authorized to enter into this binding Contract and that the Contractor shall fully comply with all relevant, federal, state and municipal laws, rules, regulations and policies.
- 20. CITY BUSINESS AND OCCUPATION LICENSE:** The Contractor will be required to obtain a business license when contracting with the City unless allowable exemptions apply. The Contractor shall contact the State of Washington Business License Service (BLS) at: <http://bls.dor.wa.gov/file.aspx>, or by phone at 800-451-7985, or go to www.bls.dor.wa.gov/cities/vancouver.aspx or www.cityofvancouver.us/businesslicense, to determine whether a business license is required pursuant to the Vancouver Municipal Code (VMC) Chapter 5.04.
- 21. RELATION OF PARTIES:** The Contractor, its subcontractors, agents and employees are independent contractors performing services for The City and are not employees of City; shall not, as a result of this Contract, accrue leave, retirement, insurance, bonding or any other benefits afforded to City employees; and, shall not have the authority to bind the City in any way except as may be specifically provided in the Statement of Work.
- 22. ASSIGNMENT:** This Contract is binding on each party, its successors, assigns, and legal representatives and may not, under any circumstances, be assigned or transferred by either party without the other party's express written authorization.
- 23. TERMINATION FOR CONVENIENCE:** The City, at its sole discretion, may terminate this Contract for convenience at any time for any reason deemed appropriate. Termination is effective immediately upon notice of termination given by the City.

In the event this Contract is terminated prior to the completion of Work, Contractor will only be paid for the Work completed at the time of termination of the Contract.

- 24. TERMINATION FOR CAUSE:** In the event the Contractor is, or has been, in violation of the terms of this Contract, including the solicitation, the City reserves the right, upon written notice to the Contractor, to cancel, terminate, or suspend this contract in whole or in part for default. Termination shall be effected by serving a notice of termination on the Contractor setting forth the manner in which the Contractor is in default. The Contractor will be paid only the contract price for services performed in accordance with the manner of performance set forth in the Contract.

If it is later determined by the City that the Contractor had an excusable reason for not performing, such as a strike, fire, or flood, or events which are not the fault of or are beyond the control of the Contractor, the City after setting up a new delivery or performance schedule, may allow the Contractor to continue work or treat the termination as a termination for convenience.

- 25. OPPORTUNITY TO CURE:** The City at its sole discretion may in lieu of a termination allow the Contractor to cure the defect(s), by providing a "Notice to Cure" to Contractor setting forth the remedies sought by City and the deadline to accomplish the remedies. If the Contractor fails to remedy to the City's satisfaction the breach or default of any of the terms, covenants, or conditions of this Contract within the time stated time, the City shall have the right to terminate the Contract without any further obligation to the Contractor. Any such termination for default shall not in any way operate to preclude the City from also pursuing all available remedies against the Contractor and its sureties for said breach or default, including but not limited to termination of this Contract for convenience.

- 26. WAIVER AND REMEDIES:** City's failure to enforce the terms or conditions herein or to exercise any right or privilege, or the City's waiver of any breach hereunder shall not thereafter waive any other term, condition, or privilege, whether of the same or similar type. Remedies under this Contract are cumulative; the use of one remedy shall not be taken to exclude or waive the right to use another.

- 27. ENTIRETY OF CONTRACT:** This Contract incorporates all the agreements, covenants and understanding between the parties hereto and are merged into this written Contract. No prior agreement or prior understanding, verbal or otherwise, of the parties or their agents shall be valid or enforceable unless set forth in this Contract.

- 28. USE OF CITY'S NAME:** Contractor may not use any of City's name, trademark, service marks, or logo in connection with the services contemplated by this Contract or otherwise without the prior written permission of City, which permission may be withheld for any or no reason and may be subject to certain conditions.

- 29. DEBARMENT:** The Contractor certifies that that it is not presently debarred, suspended, proposed for debarment, and declared ineligible or voluntarily excluded from covered transactions by any Federal, State or local department or agency.

- 30. NON-DISCRIMINATION AND EQUAL EMPLOYMENT OPPORTUNITY:** During the term of this Contract, Contractor will not discriminate against any employee or applicant for employment in accordance with RCW Chapter 49.60, including, but not limited to creed, religion, race, color, age, sex, marital status, sexual orientation, sexual identity, pregnancy, military status, political ideology, ancestry, national origin, or the presence of any sensory, mental or physical disability, unless based upon a bona fide occupational qualification. The Contractor will take affirmative action to ensure that applicants and employees are treated fairly, without regard to their creed, religion, race, color, sex, national origin, or the presence of any sensory, mental or physical disability. Such action shall include all terms and conditions of employment, compensation, and benefits, including apprenticeship.
- 31. BINDING EFFECT:** The provisions, covenants and conditions in this Contract bind the parties, their legal heirs, representatives, successors, and assigns.
- 32. RATIFICATION:** Acts taken pursuant to this Contract but prior to its effective date are hereby ratified and confirmed.
- 33. CONTRACT DOCUMENTS AND ORDER OF PRECEDENCE:** The complete Contract includes these parts, all of which are incorporated herein by reference, and any inconsistency in the parts of the contract shall be resolved by following this order of precedence (e.g., 1 presiding over 2, 2 over 3, 3 over 4, and so forth):
1. Amendments to the Contract,
 2. This Contract,
 3. Contractor's Bid including all Addenda to the Solicitation,
 4. Special Provisions,
 5. Contract Plan Set,
 6. City of Vancouver Amendments to the specified WSDOT Standard Specifications,
 7. City of Vancouver Standard Plans,
 8. WSDOT Standard Specifications,
 9. WSDOT Standard Plans.

On the Contract Plans, Working Drawings, and Standard Plans, figured dimensions shall take precedence over scaled dimensions.

Whenever reference is made in these Specifications or the Special Provisions to codes, rules, specifications, and standards, the reference shall be construed to mean the code, rule, specification, or standard that is in effect on the Invitation to Bid advertisement date, unless otherwise stated or as required by law.

If any part of the Contract requires Work that does not include a description for how the Work is to be performed, the Work shall be performed in accordance with standard trade practice(s). For purposes of the Contract, a standard trade practice is one having such regularity of observance in the trade as to justify an expectation that it will be observed by the Contractor in doing the Work.

- 34. NOTICES:** All notices which are given or required to be given pursuant to this Contract shall be hand delivered, mailed postage paid, or sent by electronic mail as follows:

For the Owner:
Anna Vogel
City of Vancouver
415 W 6th Street
P O Box 1995
Vancouver WA 98668-1995
anna.vogel@cityofvancouver.us

For the Contractor:
Scott Jeffries
Jeffries Construction, LLC
PO Box 570
Woodland, WA 98674
scottj@jellewa.com

The undersigned, as the authorized representatives of the Owner and Contractor respectively, agree to all of the terms and conditions contained in this Contract, as of the dates set forth below.

CITY OF VANCOUVER
A municipal corporation

CONTRACTOR:
Jeffries Construction, LLC

Eric Holmes, City Manager

Signature

Date

Printed Name /Title

Attest:

Date

Natasha Ramras, City Clerk

Approved as to form:

Jonathan Young, City Attorney

Staff Report: 022-24

TO: Mayor and City Council

FROM: Eric Holmes, City Manager

DATE: 2/5/2024

SUBJECT 2024 Fourth Plain Blvd Curb Ramps – E Reserve St to NE Andresen Rd

Key Points

- Under the City's 2024 Street Preservation and Resurfacing contracts, the City is resurfacing streets with hot mix asphalt (HMA) overlay treatments and preserving streets with microsurfacing and cape seal treatments.
- Per the Federal Highway Administration (FHWA) and Department of Justice (DOJ), streets receiving treatments that are considered an alteration are required to be upgraded so that existing curb ramps meet current ADA requirements. Alterations include HMA overlay treatments, cape seals and microsurfacing.
- Project includes construction of 52 curb ramps. Approximate curb ramp locations are shown on the attached vicinity map.
- City maintenance crews do not have the available labor or equipment to do the type of work being done as part of this project.

Strategic Plan Alignment

Transportation and Mobility - a safe, future-ready and convenient transportation system.

Present Situation

The City is issuing three separate curb ramp contracts this year as part of its 2024 pavement management program. These contracts include the "2024 Fourth Plain Blvd Curb Ramps – E Reserve St to NE Andresen Rd", the "2024 East Curb Ramps", and the "2024 West Curb Ramps". The purpose of splitting the work into three contracts is to reduce each contract to a manageable size, which helps expedite ramp construction. From a construction sequencing standpoint, it is far more efficient to construct the new curb ramps in advance of the on-street pavement management resurfacing work.

This staff report and recommended action is to award the 2024 Fourth Plain Blvd Curb Ramps – E Reserve St to NE Andresen Rd contract only. Recommendations to award the East Curb Ramps project and West Curb Ramps project will come to Council at a later time.

On January 9, 2024, the City received seven bids for the subject project. The bids ranged

between \$1,037,985 to \$1,696,802.25. The low bidder was responsive. The bids are as follows:

SUMMARY OF BIDS	
BIDDER	AMOUNT
Grade Werks Excavating, LLC, Battle Ground, WA	\$1,037,985.00
Western United Civil Group, LLC, Yacolt, WA	\$1,046,414.00
Tikka Masonry, Inc., Battle Ground, WA	\$1,200,885.00
Halme Excavating, Inc., Battle Ground, WA	\$1,222,990.00
Clark & Sons Excavating, Inc., Battle Ground, WA	\$1,256,946.50
Advanced Excavating Specialists, Kelso, WA	\$1,324,800.00
MJ Hughes Construction, Vancouver, WA	\$1,696,802.25
Engineers' Estimate	\$1,400,000.00

There is a minimum apprenticeship goal of 3% of the utilized labor hours for this project. Grade Werks Excavating, LLC, Battle Ground, Washington has submitted an Apprenticeship Utilization Plan to meet or exceed this goal by using approximately 200 hours of apprentice time of the estimated a total of 4280 applicable labor hours for the project.

Advantage(s)

1. Will construct curb ramps in advance of the annual paving contracts, which will allow the paving to be done much faster and more efficiently.
2. Will ensure that cuts in the street from ramp construction will be completed before the final paving, which will prolong the life of the new pavement.
3. Will install ADA compliant curb ramps at intersections with sidewalks but without ramps and upgrade non-compliant ramps.

Disadvantage(s)

1. Neighborhood residents, businesses and local traffic will be inconvenienced during the construction period at the various locations; however, the construction duration at each location is short, with traffic able to drive through construction zones, which will minimize the temporary inconvenience.
2. Construction will generate noise in the area; however, the contractor will not be working in one spot the entire time with all work expected to be complete within a few days at each location.

Budget Impact

The project is currently funded through the Pavement Management Program in the Street Fund (\$1,037,985.00). No additional budget appropriation is required.

Prior Council Review

None

Action Requested

On February 5, 2024, award a construction contract for the 2024 Fourth Plain Blvd Curb Ramps – E Reserve St to NE Andresen Rd project to the lowest responsive and responsible bidder, and authorize the City Manager or his designee to sign a contract with Grade Werks Excavating, LLC, Battle Ground, WA at their bid price of \$1,037,985.00, which includes Washington State sales tax.

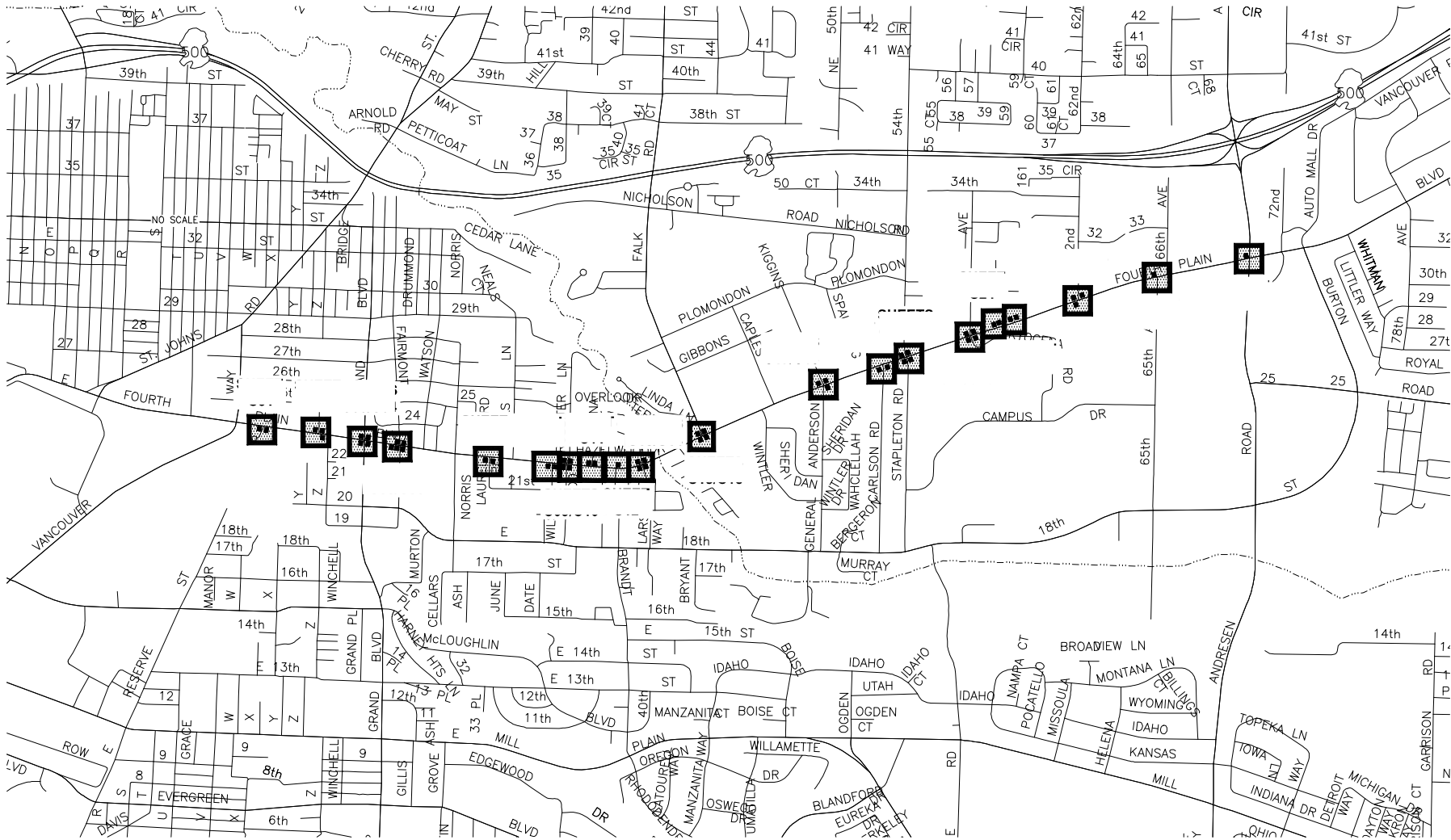
Chris Sneider, Senior Civil Engineer, 360-487-8239

ATTACHMENTS:

- ▣ Vicinity Map
- ▣ Draft Contract

Vicinity Map

AN\LEGACY_Z_DRIVE\MURRAY_SMITH\PORTLAND\PDV_PROJECTS\2210271646OR02 - VANCOUVER - 4TH PLAIN BLVD CURB RAMPS\CAD SHEETS\22-1646-WA-GWG 11/17/2023



811
Call before you dig

FILE NAME: 22-1646-WA-GWG DATE: JAN. 2024
 DESIGNED BY: WJM
 SCALE: HORIZONTAL NO. SCALE
 DRAWN BY: WJM
 CHECKED BY: ERM
 APPROVED BY: GEC
 DATE: No.
 REVISIONS

Vancouver Public Works

FOURTH PLAIN BLVD. CURB RAMPS
E. RESERVE ST. TO NE ANDERSEN RD.

SHEET INDEX

072824
 ACTIVITY
ACT00589
G03
 SHEET **3** OF 54



CONSTRUCTION CONTRACT C-101547

ITB 24-05: Fourth Plain Blvd. Curb Ramps – E Reserve St. to NE Andresen Rd.

This Contract (hereinafter referred to as the "Contract") is entered into by and between the City of Vancouver, Washington, a municipal corporation organized under the laws of the State of Washington (hereinafter referred to as the "City") and Grade Werks Excavating, LLC, 31205 NE 142nd Ave, Battle Ground, WA 98604 (hereinafter referred to as the "Contractor"). The City and Contractor may be collectively referred to herein as the "parties" or individually as a "party".

WHEREAS, the City desires to engage the Contractor to provide public works construction and other related services for the work described herein;

WHEREAS, Contractor has agreed to offer its services to perform said work per the City issued Invitation to Bid (ITB) No. 24-05 and all addenda thereto, Contractor's Bid to said ITB, the Project Plan Set and Special Provisions, and City Council's approval on **Month Day, Year** per Staff Report No. **##-##**; and

WHEREAS, the Contractor represents by entering into this Contract that it is fully qualified to perform the work to which it will be assigned in a competent and professional manner, and to the standards required by the City.

NOW, THEREFORE, in consideration of the terms, conditions, covenants, and performance contained herein, or attached and incorporated and made a part hereof, the parties hereto agree as follows:

- 1. STATEMENT OF WORK:** The Contractor hereby agrees to furnish all materials, labor, tools, machinery and implements of every description necessary to complete the work in a professional manner within the time limits stated in this Contract for the construction and installation of the following improvements and will make all necessary arrangements for the obtaining of permits from the United States, State of Washington, and/or any of its agencies as may be necessary to do the work required and covered by this Contract.

This Contract provides for curb ramps, curbs, sidewalks, excavation, minor paving, detection and signal systems, and other work, all in accordance with the attached Contract Plans, these Contract Provisions, and the Standard Specifications.

The Contract Work shall be Physically Complete within 70 Working Days from the Notice to Proceed.

- 2. EFFECTIVE DATE:** This Contract is effective as of the last signature of the Contract.
- 3. E-VERIFY PROGRAM:** Contractor shall register and enter into a Memorandum of Understanding (MOU) with the Department of Homeland Security E-Verify program within sixty (60) days after execution of this Contract. Contractor shall ensure all Contractor

employees and any sub-contractor(s) assigned to perform work under this Contract are eligible to work in the United States. Contractor shall provide verification of compliance upon City request. Failure by Contractor to comply with this subsection shall be considered a material breach.

- 4. CONTRACTOR RESPONSIBILITIES FOR SUBCONTRACTORS:** The Contractor shall include the language of this section in all tier subcontracts and shall require each of its subcontractors to include the same language of this section in each of their subcontracts, adjusting only as necessary the terms used for the contracting parties. The requirements of this section apply to all subcontractors regardless of tier. The Contractor shall require all subcontractors to comply with all relevant federal, state and municipal laws, rules and regulations whatsoever.

At the time of subcontract execution, the Contractor shall verify that all tier subcontractors meet the following bidder responsibility criteria:

1. Have a current certificate of registration in compliance with chapter 18.27 RCW, which must have been in effect at the time of subcontract bid submittal;
 2. Have a current Washington Unified Business Identifier (UBI) number;
 3. Have received training on the requirements related to public works and prevailing wage as required by RCW 39.04.350;
 4. Within the three-year period immediately preceding the date of the bid solicitation, not have been determined by a final and binding citation and notice of assessment issued by the department of labor and industries or through a civil judgment entered by a court of limited or general jurisdiction to have willfully violated, as defined in RCW 49.48.082, any provision of chapter 49.46, 49.48, or 49.52 RCW.
 5. If applicable, have:
 - i. Have Industrial Insurance (workers' compensation) coverage for the subcontractor's employees working in Washington, as required in Title 51 RCW;
 - ii. A Washington Employment Security Department reference number, as required in Title 50 RCW;
 - iii. A Washington Department of Revenue state excise tax registration number, as required in Title 82 RCW;
 - iv. An electrical contractor license, if required by Chapter 19.28 RCW;
 - v. An elevator contractor license, if required by Chapter 70.87 RCW.
 6. Not be disqualified from bidding on any public works contract under RCW 39.06.010 or 39.12.065 (3).
- 5. DELINQUENT STATE TAXES:** The Contractor shall not owe delinquent taxes to the Washington State Department of Revenue without a payment plan approved by the Department of Revenue.
- 6. COMPENSATION AND SCHEDULE OF PAYMENTS:** In consideration of the promises and agreements of the Contractor as set forth herein, and in consideration of the faithful performance and furnishing of the work and materials required by this Contract to the satisfaction of the City, the City agrees to pay to the Contractor as prescribed in the solicitation and Contractor's Bid, and in accordance with the ordinances of the City of Vancouver and the

laws of the State of Washington, the following sum as indicated, which amount does includes 8.7% Washington State Sales Tax (if applicable) \$1,037,985.00 USD.

The amount finally to be paid is, however, variable upon the Work actually performed and final payment will be made upon the basis of the amount of work performed and the materials furnished, and at the lump sum or unit prices fixed in the Contractor's Bid and as modified by any and all approved Change Orders.

- 7. CONTRACTOR'S INSURANCE:** The Contractor agrees to the following requirements relating to insurance coverage. Provide a Certificate of Liability Insurance. Said certificate must be provided on a standard "ACORD" form, or its equivalent, and must provide that coverage shall not be canceled or modified without 30 days prior written notice to the City of Vancouver.

In addition, all policies shall be issued by an insurance company licensed to do business in the State of Washington. The City of Vancouver may inspect all policies and copies shall be provided to the City upon request.

The Contractor agrees to procure insurance coverage as required below:

COVERAGE	LIMITS OF LIABILITY
I. Commercial General Liability:	
Policy shall include Bodily Injury, Property Damage, Personal Injury and Broad Form Contractual Liability	
Each Occurrence	\$1,000,000
General Aggregate Per Occurrence	\$2,000,000
Products & Completed Operations Aggregate	\$2,000,000
Personal and Advertising Injury	\$1,000,000
Blanket Contractual Liability	\$1,000,000
II. Commercial Automobile Liability	
Policy shall include Bodily Injury and Property Damage, for any owned, Hired, and/or Non-owned vehicles used in the operation, installation and maintenance of facilities under this Contract.	
Combined Single Limit	\$1,000,000
III. Workers' Compensation (applicable to the State of Washington)	
Per Occurrence	Statutory
Employer's Liability	\$1,000,000
Disease Each Employee	\$1,000,000
Disease Policy Limit	\$1,000,000
Each Claim	\$1,000,000
Annual Aggregate	\$2,000,000
IV. Pollution Legal Liability	
Each Claim	\$1,000,000
Annual Aggregate	\$2,000,000

In addition to the coverage and limits listed above the Contractor's insurance must all contain the following:

- a. City Listed as an Additional Insured. The City of Vancouver, its Agents, Representatives, Officers, Directors, Elected and Appointed Officials, and Employees must be named as an additional insured. The required Additional Insured endorsements shall be at least as broad as ISO CG 20 10 11 85, or its equivalent CG 20 10 07 04 and CG 20 37 07 04 must be included with the Certificate of Insurance.
- b. Either the Commercial General Liability or the Workers' Compensation policy must be endorsed to include "Washington Stop Gap" insurance. The limits and aggregates referenced must apply to the Stop Gap coverage as well and must be indicated on the certificate.
- c. Employment Security. The Contractor shall comply with all employment security laws of the State in which services are provided and shall timely make all required payments in connection therewith.
- d. The City of Vancouver shall be listed on the Certificate as the Certificate Holder.
- e. Coverage Trigger: The insurance must be written on an "occurrence" basis. This must be indicated on the Certificate.

Contractor shall provide evidence of all insurance required, at the City's request, by submitting an insurance certificate to the City on a standard "ACORD" or comparable form.

All policies shall be issued by an insurance company licensed to do business in the State of Washington. The City of Vancouver may inspect all policies and copies shall be provided to the City upon request.

8. **CONTRACTOR'S BOND:** The Contractor agrees that before it undertakes performance of this Contract, it will file with the City of Vancouver a Performance Bond and Payment Bond, in the forms prescribed by the City of Vancouver, in the full amount of the Contract price with a company authorized to do business in the State of Washington as a surety. The bonds shall comply with the laws of the State of Washington, and especially with the provisions of Chapter 39.08 RCW.
9. **DISPUTE RESOLUTION:** In the event of a dispute between the Parties which cannot be resolved by the contract managers, the Contractor and the City shall review such dispute and may attempt to resolve the dispute. Any controversy or claim arising out of or relating to this Contract or the alleged breach of this Contract that cannot be resolved by the Parties within 30 days of receipt of written notice may be submitted to mediation. If the dispute cannot be resolved through mediation, either party may initiate litigation pursuant to the governing law

and venue provisions of this Contract The Parties agree to pay their own attorneys' fees and expenses.

10. GOVERNING LAW/VENUE: This Contract shall be deemed to have been executed and delivered within the State of Washington, and the rights and obligations of the parties hereunder shall be construed and enforced in accordance with, and governed by, the laws of the State of Washington without regard to the principles of conflict of laws. Any action or suit brought in connection with this Contract shall be brought in the Superior Court of Clark County, Washington.

11. EMPLOYMENT OF LABOR: The Contractor agrees that all persons employed by Contractor and by any of its subcontractors and any of their lower tier contractors in work performed pursuant to this Contract shall not be employed in excess of eight (8) hours in any one day, except as provided or allowed by Chapter 49.28 RCW and WAC 296-127 and any amendment thereto.

12. PAYMENT OF LABOR: The Contractor agrees that all laborers, workers, or mechanics employed by it or by any subcontractor in the performance of this Contract will be paid not less than the prevailing rate of wage for an hours work, in accordance with the provisions of the Chapter 39.12 RCW, and all rules and regulations promulgated pursuant thereto.

The prevailing wage in effect for the first contract year is **Tuesday, January 9, 2024**. This rate will be updated annually on the anniversary of the contract.

In case any dispute arises as to what the prevailing rates of wages for work of a similar nature are and such dispute cannot be adjusted by the parties involved, the matter shall be referred to the director of the Department of Labor and Industries of the State of Washington for arbitration, and the director's decision shall be final, conclusive and binding on all parties involved in the dispute.

13. PAYMENT TO THE CONTRACTOR: Progress payments to the Contractor shall be made within 30 days of a fully executed Pay Estimate pending all compliance with all contractual requirements. A sum equal to 5% may be reserved and retained from monies earned by the Contractor in accordance with Chapter 60.28 RCW. The City reserves the right to require Contractor to correct any submitted or paid erroneous invoices according to the rates set forth herein. City and Contractor agree that any amount paid in error by City does not constitute a change in the agreed upon amount; Contractor agrees to issue a refund of any overages paid in error by the City.

Release of the retained percentage or the retainage bond shall be in accordance with Chapter 60.28 RCW. Every person performing labor or furnishing supplies toward the completion of said improvement of work shall have a lien upon said monies so reserved; provided, that such notice of the lien of such claimant shall be given in the manner provided in RCW 39.08.030 and within the time provided in Chapter 60.28 RCW as now existing and in accordance with any amendments that may hereafter be made thereto.

No payment shall be made to the Contractor, however, until the Contractor and all subcontractors who have performed work shall have filed and received approval of a Statement of Intent to Pay Prevailing Wage as required by RCW 39.12.040 from the Washington State

Department of Labor and Industries. Said Contractor and all subcontractors shall also keep accurate payroll records for three years from the date of acceptance as described in RCW 39.12.120. A Contractor and all subcontractors shall, file a copy of its certified payroll records using the Department of Labor and Industries online system on a monthly basis. A Contractor's noncompliance with this section shall constitute a violation of RCW 39.12.050.

- 14. INDEMNIFICATION:** Contractor agrees to indemnify, defend, save and hold harmless the City, its officials, employees and agents from any and all liability, including but not limited to demands, claims, causes of action, suits or judgments, claims of copyright or patent infringement, including costs, attorney fees and expenses incurred in connection therewith, or whatsoever kind or nature, arising out of, or in connection with, or incident to, the performance of services by Contractor pursuant to this Contract.

In the event that any suit based on such a claim, demand, loss, damage, cost, or cause of action is brought against the Contractor, the City retains the right to participate in said suit.

This indemnity and hold harmless shall include any claim made against the City by an employee of Contractor or subcontractor or agent of the Contractor, even if Contractor is thus otherwise immune from liability pursuant to the workers' compensation statute, Title 51 RCW. To the extent that such liability arises from the concurrent negligence of both the City and the Contractor, such cost, fees and expenses shall be shared between the City and the Contractor in proportion to their relative degrees of negligence. This indemnity and hold harmless shall NOT apply in the case where liability arises from the sole negligence of the City. Contractor specifically acknowledges that the provisions contained herein have been mutually negotiated by the Parties and it is the intent of the Parties that Contractor provide the broadest scope of indemnity permitted by RCW 4.24.115.

- 15. OWNERSHIP OF RECORDS AND DOCUMENTS:** Any and all work product prepared by the Contractor in the course of performing this Contract shall immediately become the property of the City. In consideration of the compensation provided for by this Contract, the Contractor hereby further assigns all copyright interests in such work product to the City. A copy may be retained by the Contractor. Previously owned intellectual property of Contractor or any third party, and any know-how, methodologies or processes used by Contractor to provide the services or project deliverables under this Contract shall remain property of the original City.

- 16. PUBLIC DISCLOSURE COMPLIANCE:** The parties acknowledge that the City is an "agency" within the meaning of the Washington Public Records Act, Chapter 42.56 RCW, and that materials submitted by the Contractor to the City become public record. Such records may be subject to public disclosure, in whole or part and may be required to be released by the City in the event of a request for disclosure. In the event the City receives a public record request for any data or deliverable that is provided to the City and that is licensed from the Contractor, the City shall notify the Contractor of such request and withhold disclosure of such information for not less than five (5) business days, to permit the Contractor to seek judicial protection of such information, provided that the Contractor shall be responsible for attorney fees and costs in such action and shall save and hold harmless the City from any costs, attorney fees or penalty assessment under Chapter 42.17 RCW for withholding or delaying public disclosure of such information.

- 17. COOPERATIVE PURCHASING:** The Washington State Inter-local Cooperation Act, Ch. 39.34 RCW, authorizes public agencies to cooperatively purchase goods and services if all parties agree. By having executed this Agreement, the Contractor agrees that other public agencies may purchase goods and services under this solicitation or contract at their own cost and without the City incurring any financial or legal liability for such purchases. The City agrees to allow other public agencies to purchase goods and services under this solicitation or contract, provided that the City is not held financially or legally liable for purchases and that any public agency purchasing under such solicitation or contract file a copy of this invitation and such contract in accordance with RCW 39.34.040.
- 18. AMENDMENTS:** All changes to this Contract, including changes to the statement of work and compensation, must be made by written Change Order and/or Amendment and signed by all parties to this Contract.
- 19. AUTHORIZATION AND COMPLIANCE WITH THE LAW:** The Contractor certifies that the person signing the Contract is legally authorized to enter into this binding Contract and that the Contractor shall fully comply with all relevant, federal, state and municipal laws, rules, regulations and policies.
- 20. CITY BUSINESS AND OCCUPATION LICENSE:** The Contractor will be required to obtain a business license when contracting with the City unless allowable exemptions apply. The Contractor shall contact the State of Washington Business License Service (BLS) at: <http://bls.dor.wa.gov/file.aspx>, or by phone at 800-451-7985, or go to www.bls.dor.wa.gov/cities/vancouver.aspx or www.cityofvancouver.us/businesslicense, to determine whether a business license is required pursuant to the Vancouver Municipal Code (VMC) Chapter 5.04.
- 21. RELATION OF PARTIES:** The Contractor, its subcontractors, agents and employees are independent contractors performing services for The City and are not employees of City; shall not, as a result of this Contract, accrue leave, retirement, insurance, bonding or any other benefits afforded to City employees; and, shall not have the authority to bind the City in any way except as may be specifically provided in the Statement of Work.
- 22. ASSIGNMENT:** This Contract is binding on each party, its successors, assigns, and legal representatives and may not, under any circumstances, be assigned or transferred by either party without the other party's express written authorization.
- 23. TERMINATION FOR CONVENIENCE:** The City, at its sole discretion, may terminate this Contract for convenience at any time for any reason deemed appropriate. Termination is effective immediately upon notice of termination given by the City.

In the event this Contract is terminated prior to the completion of Work, Contractor will only be paid for the Work completed at the time of termination of the Contract.

- 24. TERMINATION FOR CAUSE:** In the event the Contractor is, or has been, in violation of the terms of this Contract, including the solicitation, the City reserves the right, upon written notice to the Contractor, to cancel, terminate, or suspend this contract in whole or in part for

default. Termination shall be effected by serving a notice of termination on the Contractor setting forth the manner in which the Contractor is in default. The Contractor will be paid only the contract price for services performed in accordance with the manner of performance set forth in the Contract.

If it is later determined by the City that the Contractor had an excusable reason for not performing, such as a strike, fire, or flood, or events which are not the fault of or are beyond the control of the Contractor, the City after setting up a new delivery or performance schedule, may allow the Contractor to continue work or treat the termination as a termination for convenience.

25. OPPORTUNITY TO CURE: The City at its sole discretion may in lieu of a termination allow the Contractor to cure the defect(s), by providing a "Notice to Cure" to Contractor setting forth the remedies sought by City and the deadline to accomplish the remedies. If the Contractor fails to remedy to the City's satisfaction the breach or default of any of the terms, covenants, or conditions of this Contract within the time stated time, the City shall have the right to terminate the Contract without any further obligation to the Contractor. Any such termination for default shall not in any way operate to preclude the City from also pursuing all available remedies against the Contractor and its sureties for said breach or default, including but not limited to termination of this Contract for convenience.

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28. USE OF CITY'S NAME: Contractor may not use any of City's name, trademark, service marks, or logo in connection with the services contemplated by this Contract or otherwise without the prior written permission of City, which permission may be withheld for any or no reason and may be subject to certain conditions.

29. DEBARMENT: The Contractor certifies that that it is not presently debarred, suspended, proposed for debarment, and declared ineligible or voluntarily excluded from covered transactions by any Federal, State or local department or agency.

30. NON-DISCRIMINATION AND EQUAL EMPLOYMENT OPPORTUNITY: During the term of this Contract, Contractor will not discriminate against any employee or applicant for employment in accordance with RCW Chapter 49.60, including, but not limited to creed, religion, race, color, age, sex, marital status, sexual orientation, sexual identity, pregnancy, military status, political ideology, ancestry, national origin, or the presence of any sensory, mental or physical disability, unless based upon a bona fide occupational qualification. The Contractor will take affirmative action to ensure that applicants and employees are treated

fairly, without regard to their creed, religion, race, color, sex, national origin, or the presence of any sensory, mental or physical disability. Such action shall include all terms and conditions of employment, compensation, and benefits, including apprenticeship.

31. BINDING EFFECT: The provisions, covenants and conditions in this Contract bind the parties, their legal heirs, representatives, successors, and assigns.

32. RATIFICATION: Acts taken pursuant to this Contract but prior to its effective date are hereby ratified and confirmed.

33. CONTRACT DOCUMENTS AND ORDER OF PRECEDENCE: The complete Contract includes these parts and any inconsistency in the parts of the contract shall be resolved by following this order of precedence (e.g., 1 presiding over 2, 2 over 3, 3 over 4, and so forth):

1. Amendments to the Contract,
2. This Contract,
3. Contractor's Bid including all Addenda to the Solicitation,
4. Special Provisions,
5. Contract Plan Set,
6. City of Vancouver Standard Plans,
7. WSDOT Standard Specifications,
8. WSDOT Standard Plans.

On the Contract Plans, Working Drawings, and Standard Plans, figured dimensions shall take precedence over scaled dimensions.

Whenever reference is made in these Specifications or the Special Provisions to codes, rules, specifications, and standards, the reference shall be construed to mean the code, rule, specification, or standard that is in effect on the Invitation to Bid advertisement date, unless otherwise stated or as required by law.

If any part of the Contract requires Work that does not include a description for how the Work is to be performed, the Work shall be performed in accordance with standard trade practice(s). For purposes of the Contract, a standard trade practice is one having such regularity of observance in the trade as to justify an expectation that it will be observed by the Contractor in doing the Work.

34. NOTICES: All notices which are given or required to be given pursuant to this Contract shall be hand delivered, mailed postage paid, or sent by electronic mail as follows:

For the Owner:
Anna Vogel
City of Vancouver
415 W 6th Street
P O Box 1995
Vancouver WA 98668-1995
anna.vogel@cityofvancouver.us

For the Contractor:
Ali Abu Nawwas
Grade Werks Excavating, LLC.
31205 NE 142nd Ave.
Battle Ground, WA 98604
info.gew@yahoo.com

The undersigned, as the authorized representatives of the Owner and Contractor respectively, agree to all of the terms and conditions contained in this Contract, as of the dates set forth below.

CITY OF VANCOUVER

A municipal corporation

CONTRACTOR:

Grade Werks Excavating, LLC.

Eric Holmes, City Manager

Signature

Date

Printed Name /Title

Attest:

Date

Natasha Ramras, City Clerk

Approved as to form:

Jonathan Young, City Attorney

Staff Report: 023-24

TO: Mayor and City Council

FROM: Eric Holmes, City Manager

DATE: 2/5/2024

SUBJECT Approval of Purchasing Authority for Annual Asphaltic Concrete from Lakeside Industries, Inc.

Key Points

- The City has greatly benefited from using the Clark County Contract #2729 for asphalt-related purchases and would like to continue to utilize this contract with Lakeside Industries, Inc. for annual asphaltic concrete purchases as part of the routine street maintenance and operations program.
- Utilizing this contract will enable City departments to purchase asphalt concrete and materials at a competitive price.
- Purchases from this contract are approaching the City's \$300,000 threshold and staff is requesting approval to exceed the threshold to allow for future purchases.

Strategic Plan Alignment

Transportation and Mobility - a safe, future-ready and convenient transportation system.

Present Situation

The City currently purchases asphalt products from Lakeside Industries, Inc. through their contract with Clark County (#2729). Total purchases from this contract are about to exceed the \$300,000 threshold requiring approval of Council. This will enable the Public Works department to continue to utilize this contract to purchase asphalt concrete and materials to take advantage of this competitive price.

Public works has ongoing, annual needs for asphalt and related products of approximately \$200,000 - \$250,000 per year and is requesting Council approve the increased spending with Lakeside Industries, Inc. up to a \$1,200,000 threshold against this contract, which is currently good through July 25, 2024, with eligible yearly extensions through July 25, 2027.

Advantage(s)

1. Utilizes an existing contract through Clark County with eligible annual extensions through July

25, 2027.

2. Utilizes an existing contract through cooperative purchasing, which saves the City time and money in going out for a separate bid process.

Disadvantage(s)

None

Budget Impact

The additional purchasing authority is already budgeted within the current adopted biennial budget appropriation. This contract authority change will not impact annual spending and will not require any change in budget authorization.

Prior Council Review

None

Action Requested

Approve purchasing authority related to the Clark County Contract #2729 with Lakeside Industries, Inc. in an amount not to exceed \$1,200,000 through July 25, 2027.

Ryan Miles, Engineering Program Manager, 360-487-7708

ATTACHMENTS:

- ▣ Lakside Clark County Bid 2729 Contract
- ▣ Lakeside Clark County Bid 2729 Extension 2023
- ▣ Example PO

**CLARK COUNTY WASHINGTON****INTERNAL SERVICES****www.clark.wa.gov**

1300 Franklin Street, Suite 650
 PO Box 5000
 Vancouver, WA 98666-5000
 564.397.2323

NOTICE OF AWARD

July 26, 2022

Lakeside Industries, Inc.
 8705 NE 117th Ave
 Vancouver WA 98662

Dear Mr. Green:

On July 26, 2022 the County Manager approved the award of a contract to your company for furnishing the Annual Asphaltic Concrete in accordance with the specifications of Clark County's call for Bids #2729 in the total amount of \$247,152.00 including Washington State Sales Tax, starting July 26, 2022 through July 25, 2023. Your company shall supply in varying quantities of the product listed in the table during this contract period:

DESCRIPTION	EST USE	PRICE / TON	TOTAL
HMA CL 1/2 IN PG 64-22 or PG 58H-22 (TON)	1,000	\$75.00	\$75,000.00
HMA PRELEVEL 3/8 IN PG 64-22 or PG 58H-22 (TON)	1,500	\$84.00	\$126,000.00
EZ STREET (TON)	200	\$125.00	\$25,000.00
CCS-1 TACK (GAL)	250	\$8.00	\$2,000.00
Sub-Total			\$228,000.00
Washington State Sales Tax - 8.4%			\$19,152.00
NET TOTAL BID			\$247,152.00

Kindly acknowledge this Notice of Award by signing below and returning the same to the Clark County Office of Purchasing.



This document is between the undersigned and the County of Clark.

Sincerely,



Priscilla Ricci, C.P.P.B.
Senior Buyer

PR/ko

ACKNOWLEDGMENT

Lakeside Industries

Signature

Lakeside Industries

Printed Name

Regional Manager

Title/Position

07/26/22

Date

Certificate Of Completion

Envelope Id: 4B21C65360044EE9AAE5A830C057B2E1

Status: Completed

Subject: Please DocuSign: Bid 2729 Award Letter Lakeside.pdf

Source Envelope:

Document Pages: 2

Signatures: 1

Envelope Originator:

Certificate Pages: 4

Initials: 0

Koni Odell

AutoNav: Enabled

1300 Franklin St

Envelope Stamping: Enabled

Vancouver, WA 98660

Time Zone: (UTC-08:00) Pacific Time (US & Canada)

Koni.Odell@clark.wa.gov

IP Address: 64.4.181.41

Record Tracking

Status: Original

Holder: Koni Odell

Location: DocuSign

7/26/2022 1:59:05 PM

Koni.Odell@clark.wa.gov

Signer Events**Signature****Timestamp**

Lakeside Industries

ron.green@lakesideindustries.com

Regional Manager

Security Level: Email, Account Authentication
(None)*Lakeside Industries*

Sent: 7/26/2022 2:02:36 PM

Viewed: 7/26/2022 6:55:52 PM

Signed: 7/26/2022 6:56:06 PM

Signature Adoption: Pre-selected Style
Using IP Address: 69.128.89.73**Electronic Record and Signature Disclosure:**

Accepted: 7/26/2022 6:55:52 PM

ID: 86588256-9970-4bfc-8dc3-2c6594d1064d

In Person Signer Events**Signature****Timestamp****Editor Delivery Events****Status****Timestamp****Agent Delivery Events****Status****Timestamp****Intermediary Delivery Events****Status****Timestamp****Certified Delivery Events****Status****Timestamp****Carbon Copy Events****Status****Timestamp****Witness Events****Signature****Timestamp****Notary Events****Signature****Timestamp****Envelope Summary Events****Status****Timestamps**

Envelope Sent

Hashed/Encrypted

7/26/2022 2:02:36 PM

Certified Delivered

Security Checked

7/26/2022 6:55:52 PM

Signing Complete

Security Checked

7/26/2022 6:56:06 PM

Completed

Security Checked

7/26/2022 6:56:06 PM

Payment Events**Status****Timestamps****Electronic Record and Signature Disclosure**

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Getting paper copies

At any time, you may request from us a paper copy of any record provided or made available electronically to you by us. You will have the ability to download and print documents we send to you through the DocuSign system during and immediately after signing session and, if you elect to create a DocuSign signer account, you may access them for a limited period of time (usually 30 days) after such documents are first sent to you. After such time, if you wish for us to send you paper copies of any such documents from our office to you, you will be charged a \$0.00 per-page fee. You may request delivery of such paper copies from us by following the procedure described below.

Withdrawing your consent

If you decide to receive notices and disclosures from us electronically, you may at any time change your mind and tell us that thereafter you want to receive required notices and disclosures only in paper format. How you must inform us of your decision to receive future notices and disclosure in paper format and withdraw your consent to receive notices and disclosures electronically is described below.

Consequences of changing your mind

If you elect to receive required notices and disclosures only in paper format, it will slow the speed at which we can complete certain steps in transactions with you and delivering services to you because we will need first to send the required notices or disclosures to you in paper format, and then wait until we receive back from you your acknowledgment of your receipt of such paper notices or disclosures. To indicate to us that you are changing your mind, you must withdraw your consent using the DocuSign "Withdraw Consent"™ form on the signing page of a DocuSign envelope instead of signing it. This will indicate to us that you have withdrawn your consent to receive required notices and disclosures electronically from us and you will no longer be able to use the DocuSign system to receive required notices and consents electronically from us or to sign electronically documents from us.

All notices and disclosures will be sent to you electronically

Unless you tell us otherwise in accordance with the procedures described herein, we will provide electronically to you through the DocuSign system all required notices, disclosures, authorizations, acknowledgements, and other documents that are required to be provided or made available to you during the course of our relationship with you. To reduce the chance of you inadvertently not receiving any notice or disclosure, we prefer to provide all of the required notices and disclosures to you by the same method and to the same address that you have given us. Thus, you can receive all the disclosures and notices electronically or in paper format through the paper mail delivery system. If you do not agree with this process, please let us know as described below. Please also see the paragraph immediately above that describes the consequences of your electing not to receive delivery of the notices and disclosures

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How to contact Clark County, WA:

You may contact us to let us know of your changes as to how we may contact you electronically, to request paper copies of certain information from us, and to withdraw your prior consent to receive notices and disclosures electronically as follows:

To contact us by email send messages to: loann.vuu@clark.wa.gov

To advise Clark County, WA of your new e-mail address

To let us know of a change in your e-mail address where we should send notices and disclosures electronically to you, you must send an email message to us at loann.vuu@clark.wa.gov and in the body of such request you must state: your previous e-mail address, your new e-mail address. We do not require any other information from you to change your email address..

In addition, you must notify DocuSign, Inc. to arrange for your new email address to be reflected in your DocuSign account by following the process for changing e-mail in the DocuSign system.

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To withdraw your consent with Clark County, WA

To inform us that you no longer want to receive future notices and disclosures in electronic format you may:

- i. decline to sign a document from within your DocuSign session, and on the subsequent page, select the check-box indicating you wish to withdraw your consent, or you may;
- ii. send us an e-mail to loann.vuu@clark.wa.gov and in the body of such request you must state your e-mail, full name, US Postal Address, and telephone number. We do not need any other information from you to withdraw consent.. The consequences of your withdrawing consent for online documents will be that transactions may take a longer time to process..

Required hardware and software

Operating Systems:	Windows® 2000, Windows® XP, Windows Vista®; Mac OS® X
Browsers:	Final release versions of Internet Explorer® 6.0 or above (Windows only); Mozilla Firefox 2.0 or above (Windows and Mac); Safari®, 3.0 or above (Mac only)
PDF Reader:	Acrobat® or similar software may be required to view and print PDF files
Screen Resolution:	800 x 600 minimum
Enabled Security Settings:	Allow per session cookies

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To confirm to us that you can access this information electronically, which will be similar to other electronic notices and disclosures that we will provide to you, please verify that you were able to read this electronic disclosure and that you also were able to print on paper or electronically save this page for your future reference and access or that you were able to e-mail this disclosure and consent to an address where you will be able to print on paper or save it for your future reference and access. Further, if you consent to receiving notices and disclosures exclusively in electronic format on the terms and conditions described above, please let us know by clicking the "I agree"™ button below.

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- I can print on paper the disclosure or save or send the disclosure to a place where I can print it, for future reference and access; and
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CLARK COUNTY WASHINGTON

INTERNAL SERVICES

www.clark.wa.gov

1300 Franklin Street, Suite 650
PO Box 5000
Vancouver, WA 98666-5000
564.397.2323

July 12, 2023

Lakeside Industries, Inc.
8705 NE 117th Ave
Vancouver WA98662

Dear Mr. Green,

It is the intention of Clark County to extend the existing contract with Lakeside Industries, Inc., to provide the Annual Asphaltic Concrete as provided in the specifications of Bid #2729 beginning July 26, 2023 through July 25, 2024.

We estimated the 3/8" mix at 1,500 tons and anticipate there maybe additional need and that we should increase that item by 250 tons for a total of 1,750 tons.

All terms and conditions will remain the same unless the change request box is checked below and a price change request is submitted, by **providing market condition documentation that resulted in any price increase/decrease changes**. A letter of acceptance will be returned once Clark County accepts your justification.

We have been pleased with your service and are looking forward to working with you for another year.

You should consider this letter a formal extension for one year.

Please sign and return the letter within 7 days.

Sincerely,

Priscilla Ricci, C.P.P.B.
Purchasing Agent of Record

RON GREEN

Approval Signature

RON GREEN

Printed Name

Regional Manager

Title

07/13/23

Date

PR/ko

cc: Public Works | Nick Eiesland
File



Price change request can be emailed

(this extension will not be executed until
the changes are accepted by Clark County)



Certificate Of Completion

Envelope Id: A35D7C09DAC44973B64D4EAB230DE135

Status: Completed

Subject: Complete with DocuSign: Bid 2729 Annual Asphaltic Concrete 2023 EXTEND Lakeside.pdf

Source Envelope:

Document Pages: 1

Signatures: 1

Envelope Originator:

Certificate Pages: 4

Initials: 0

Koni Odell

AutoNav: Enabled

1300 Franklin St

Envelope Stamping: Enabled

Vancouver, WA 98660

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7/13/2023 8:16:32 AM

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Signer Events**Signature****Timestamp**

RON GREEN

ron.green@lakesideindustries.com

Regional Manager

Security Level: Email, Account Authentication
(None)*RON GREEN*

Sent: 7/13/2023 8:19:07 AM

Viewed: 7/13/2023 9:54:22 AM

Signed: 7/13/2023 9:54:33 AM

Signature Adoption: Pre-selected Style

Using IP Address: 50.225.173.178

Electronic Record and Signature Disclosure:

Accepted: 7/13/2023 9:54:22 AM

ID: 373963a9-e6e6-4183-b8ea-f94d6f4d493b

In Person Signer Events**Signature****Timestamp****Editor Delivery Events****Status****Timestamp****Agent Delivery Events****Status****Timestamp****Intermediary Delivery Events****Status****Timestamp****Certified Delivery Events****Status****Timestamp****Carbon Copy Events****Status****Timestamp****Witness Events****Signature****Timestamp****Notary Events****Signature****Timestamp****Envelope Summary Events****Status****Timestamps**

Envelope Sent

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7/13/2023 9:54:22 AM

Signing Complete

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7/13/2023 9:54:33 AM

Payment Events**Status****Timestamps****Electronic Record and Signature Disclosure**

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To advise Clark County, WA of your new e-mail address

To let us know of a change in your e-mail address where we should send notices and disclosures electronically to you, you must send an email message to us at loann.vuu@clark.wa.gov and in the body of such request you must state: your previous e-mail address, your new e-mail address. We do not require any other information from you to change your email address..

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- ii. send us an e-mail to loann.vuu@clark.wa.gov and in the body of such request you must state your e-mail, full name, US Postal Address, and telephone number. We do not need any other information from you to withdraw consent.. The consequences of your withdrawing consent for online documents will be that transactions may take a longer time to process..

Required hardware and software

Operating Systems:	Windows® 2000, Windows® XP, Windows Vista®; Mac OS® X
Browsers:	Final release versions of Internet Explorer® 6.0 or above (Windows only); Mozilla Firefox 2.0 or above (Windows and Mac); Safari®, 3.0 or above (Mac only)
PDF Reader:	Acrobat® or similar software may be required to view and print PDF files
Screen Resolution:	800 x 600 minimum
Enabled Security Settings:	Allow per session cookies

** These minimum requirements are subject to change. If these requirements change, you will be asked to re-accept the disclosure. Pre-release (e.g. beta) versions of operating systems and browsers are not supported.

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- I can print on paper the disclosure or save or send the disclosure to a place where I can print it, for future reference and access; and
- Until or unless I notify Clark County, WA as described above, I consent to receive from exclusively through electronic means all notices, disclosures, authorizations, acknowledgements, and other documents that are required to be provided or made available to me by Clark County, WA during the course of my relationship with you.



CITY OF VANCOUVER
Procurement Services
 (360) 487-8430
 procurement.services@cityofvancouver.us
 www.cityofvancouver.us
 Federal Tax ID No. 91-6001288

Purchase Order #:	PO-66233
Revision #:	1
Effective Date:	1/29/24
Contract #:	C-100989

This Purchase Order number must appear on all invoices, packing lists, and correspondence related to this order.

Lakeside Industries Inc
 PO Box 820465
 Vancouver, WA 98682

Submit Invoice To:

City of Vancouver
 PO Box 1995
 Vancouver, WA 98668
 accpay@cityofvancouver.us

Ship To:

City of Vancouver
Julie Denton
 415 W 6th Street
 Vancouver, WA 98660

If you have any questions regarding this order, please contact:

Line #	Line Description	Qty	UOM	Unit Price	Tax	Amount
1	Annual Asphaltic Concrete - Example PO					1.00
Subtotal:						\$1.00
Tax:						\$0.00
Total:						\$1.00

Note to Supplier

Acceptance of this purchase order shall bind the Contractor to the City's terms and conditions, which can be reviewed at <https://www.cityofvancouver.us/business/procurement-services/>. No other agreement shall modify said terms and conditions, unless a Contract Number is listed on the first page of the purchase order, in which case, the Supplier Contract terms shall govern in the event of any conflict with the City's terms and conditions.

The Annual Asphaltic Concrete Bid 2729 Contract and Amendments thereto ("Master Contract") between the Contractor and the Clark County is adopted and incorporated herein by this reference. The City shall be considered the "Clark County" under the terms of the Master Contract.

Supplier shall be deemed to have agreed to be bound by the aforementioned terms by accepting the Purchase Order, delivering the goods, and/or performing the services.

Authorized Signature

Staff Report: 024-24

TO: Mayor and City Council

FROM: Eric Holmes, City Manager

DATE: 2/5/2024

SUBJECT Increase purchasing on Sourcewell Contract 12201-SCA for Hydro Excavator Truck

Key Points

- The City contracts with SWS Equipment through Sourcewell Contract 101221-SCA for purchasing sewer vacuuming and hydro-excavation equipment.
- Contract includes parts and services for maintenance and repairs.
- Purchases from this contract will exceed the City's \$300,000 purchasing threshold.
- The City has ongoing equipment repairs and replacement needs.
- The contract is set to expire November 29th, 2025.
- The original contract was competitively bid and conforms to the bidding requirements set forth by Sourcewell and the City of Vancouver.

Strategic Plan Alignment

Safe and Prepared Community – a safe place to live, work, learn, and play.

Present Situation

One of the Water Department's hydro-excavation trucks is due for replacement. The department demoed three different truck manufactures at multiple job sites and RamVac performed the best. Since this purchase will exceed the current contract's \$300,000 spending threshold, Fleet Service's staff is requesting that the contract be amended for purchases to be made according to the departments' current authorized budget in place of setting a new spending threshold.

Advantage(s)

1. The equipment purchased through this contract match the current City standard.
2. The vendor covered under this contract has continuously provided high quality, dependable equipment and service that help maintain uniformity in the City fleet and the operational needs of multiple City maintenance departments.
3. The approval for continued use of this contract will enable Fleet Services to order the required replacement equipment while taking advantage of the contract's competitive pricing.

Disadvantage(s)

None

Budget Impact

The City will utilize the contract for purchasing high priority essential parts and equipment and will stay within the current authorized budget.

Prior Council Review

None

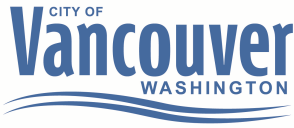
Action Requested

Authorize the City Manager or their designee to approve purchases under C-101548: Sourcewell 101221-SCA for the life of the contract with SWS Equipment up to the current authorized budget.

Jake Mahan, Senior Management Analyst, 360-487-8195

ATTACHMENTS:

- ▣ Draft PO SWS
- ▣ Sourcewell contract



CITY OF VANCOUVER
Procurement Services
 (360) 487-8430
 procurement.services@cityofvancouver.us
 www.cityofvancouver.us
 Federal Tax ID No. 91-6001288

Purchase Order #: PO-66073
Revision #: 0
Effective Date: 1/18/24
Contract #: C-101547

This Purchase Order number must appear on all invoices, packing lists, and correspondence related to this order.

Solid Waste Systems, Inc.
 PO Box 13040
 Spokane Valley, WA 99213-3040

Submit Invoice To:

City of Vancouver
 Jacob Mahan
 PO Box 1995
 Vancouver, WA 98668
 Jacob.Mahan@cityofvancouver.us
 accpay@cityofvancouver.us

Ship To:

City of Vancouver
Jacob Mahan
 Ops Center - Fleet Services
 4711 E Fourth Plain Blvd
 Vancouver, WA 98661

If you have any questions regarding this order, please contact:

Jacob Mahan / (360) 487-8195 Jacob.Mahan@cityofvancouver.us

Line #	Line Description	Qty	UOM	Unit Price	Tax	Amount
1	RamVac Hydro-Excavator truck to replace #3144 in the Water Department.	1	Each	554,501.00	48,241.59	554,501.00
Subtotal:						\$554,501.00
Tax:						\$48,241.59
Total:						\$602,742.59

Note to Supplier

Acceptance of this purchase order shall bind the Contractor to the City's terms and conditions, which can be reviewed at <https://www.cityofvancouver.us/business/procurement-services/>. No other agreement shall modify said terms and conditions, unless a Contract Number is listed on the first page of the purchase order, in which case, the Supplier Contract terms shall govern in the event of any conflict with the City's terms and conditions.

The Sourcwell Contract 101221-SCA per quote BCNMQ1168 and Amendments thereto ("Primary Contract") between the Contractor and Sourcwell is adopted and incorporated herein by this reference. The City shall have and be afforded all contractual rights and privileges owed to "Sourcwell" under the terms of the Primary Contract. Supplier shall be deemed to have agreed to be bound by the aforementioned terms by accepting the Purchase Order, delivering the goods, and/or performing the services.

Authorized Signature

**Solicitation Number: RFP #101221****CONTRACT**

This Contract is between Sourcewell, 202 12th Street Northeast, P.O. Box 219, Staples, MN 56479 (Sourcewell) and Sewer Equipment Co. of America, 1590 Dutch Rd., Dixon, IL 61021 (Supplier).

Sourcewell is a State of Minnesota local government unit and service cooperative created under the laws of the State of Minnesota (Minnesota Statutes Section 123A.21) that offers cooperative procurement solutions to government entities. Participation is open to eligible federal, state/province, and municipal governmental entities, higher education, K-12 education, nonprofit, tribal government, and other public entities located in the United States and Canada. Sourcewell issued a public solicitation for Sewer Vacuum, Hydro-Excavation, and Municipal Pumping Equipment with Related Accessories and Supplies from which Supplier was awarded a contract.

Supplier desires to contract with Sourcewell to provide equipment, products, or services to Sourcewell and the entities that access Sourcewell's cooperative purchasing contracts (Participating Entities).

1. TERM OF CONTRACT

- A. **EFFECTIVE DATE.** This Contract is effective upon the date of the final signature below.
- B. **EXPIRATION DATE AND EXTENSION.** This Contract expires November 29, 2025, unless it is cancelled sooner pursuant to Article 22. This Contract may be extended one additional year upon the request of Sourcewell and written agreement by Supplier.
- C. **SURVIVAL OF TERMS.** Notwithstanding any expiration or termination of this Contract, all payment obligations incurred prior to expiration or termination will survive, as will the following: Articles 11 through 14 survive the expiration or cancellation of this Contract. All rights will cease upon expiration or termination of this Contract.

2. EQUIPMENT, PRODUCTS, OR SERVICES

- A. **EQUIPMENT, PRODUCTS, OR SERVICES.** Supplier will provide the Equipment, Products, or Services as stated in its Proposal submitted under the Solicitation Number listed above.

Supplier's Equipment, Products, or Services Proposal (Proposal) is attached and incorporated into this Contract.

All Equipment and Products provided under this Contract must be new and the current model. Supplier may offer close-out or refurbished Equipment or Products if they are clearly indicated in Supplier's product and pricing list. Unless agreed to by the Participating Entities in advance, Equipment or Products must be delivered as operational to the Participating Entity's site.

This Contract offers an indefinite quantity of sales, and while substantial volume is anticipated, sales and sales volume are not guaranteed.

B. **WARRANTY.** Supplier warrants that all Equipment, Products, and Services furnished are free from liens and encumbrances, and are free from defects in design, materials, and workmanship. In addition, Supplier warrants the Equipment, Products, and Services are suitable for and will perform in accordance with the ordinary use for which they are intended. Supplier's dealers and distributors must agree to assist the Participating Entity in reaching a resolution in any dispute over warranty terms with the manufacturer. Any manufacturer's warranty that extends beyond the expiration of the Supplier's warranty will be passed on to the Participating Entity.

C. **DEALERS, DISTRIBUTORS, AND/OR RESELLERS.** Upon Contract execution and throughout the Contract term, Supplier must provide to Sourcewell a current means to validate or authenticate Supplier's authorized dealers, distributors, or resellers relative to the Equipment, Products, and Services offered under this Contract, which will be incorporated into this Contract by reference. It is the Supplier's responsibility to ensure Sourcewell receives the most current information.

3. PRICING

All Equipment, Products, or Services under this Contract will be priced at or below the price stated in Supplier's Proposal.

When providing pricing quotes to Participating Entities, all pricing quoted must reflect a Participating Entity's total cost of acquisition. This means that the quoted cost is for delivered Equipment, Products, and Services that are operational for their intended purpose, and includes all costs to the Participating Entity's requested delivery location.

Regardless of the payment method chosen by the Participating Entity, the total cost associated with any purchase option of the Equipment, Products, or Services must always be disclosed in the pricing quote to the applicable Participating Entity at the time of purchase.

A. **SHIPPING AND SHIPPING COSTS.** All delivered Equipment and Products must be properly packaged. Damaged Equipment and Products may be rejected. If the damage is not readily apparent at the time of delivery, Supplier must permit the Equipment and Products to be

returned within a reasonable time at no cost to Sourcewell or its Participating Entities. Participating Entities reserve the right to inspect the Equipment and Products at a reasonable time after delivery where circumstances or conditions prevent effective inspection of the Equipment and Products at the time of delivery. In the event of the delivery of nonconforming Equipment and Products, the Participating Entity will notify the Supplier as soon as possible and the Supplier will replace nonconforming Equipment and Products with conforming Equipment and Products that are acceptable to the Participating Entity.

Supplier must arrange for and pay for the return shipment on Equipment and Products that arrive in a defective or inoperable condition.

Sourcewell may declare the Supplier in breach of this Contract if the Supplier intentionally delivers substandard or inferior Equipment or Products.

B. SALES TAX. Each Participating Entity is responsible for supplying the Supplier with valid tax-exemption certification(s). When ordering, a Participating Entity must indicate if it is a tax-exempt entity.

C. HOT LIST PRICING. At any time during this Contract, Supplier may offer a specific selection of Equipment, Products, or Services at discounts greater than those listed in the Contract. When Supplier determines it will offer Hot List Pricing, it must be submitted electronically to Sourcewell in a line-item format. Equipment, Products, or Services may be added or removed from the Hot List at any time through a Sourcewell Price and Product Change Form as defined in Article 4 below.

Hot List program and pricing may also be used to discount and liquidate close-out and discontinued Equipment and Products as long as those close-out and discontinued items are clearly identified as such. Current ordering process and administrative fees apply. Hot List Pricing must be published and made available to all Participating Entities.

4. PRODUCT AND PRICING CHANGE REQUESTS

Supplier may request Equipment, Product, or Service changes, additions, or deletions at any time. All requests must be made in writing by submitting a signed Sourcewell Price and Product Change Request Form to the assigned Sourcewell Supplier Development Administrator. This approved form is available from the assigned Sourcewell Supplier Development Administrator. At a minimum, the request must:

- Identify the applicable Sourcewell contract number;
- Clearly specify the requested change;
- Provide sufficient detail to justify the requested change;

- Individually list all Equipment, Products, or Services affected by the requested change, along with the requested change (e.g., addition, deletion, price change); and
- Include a complete restatement of pricing documentation in Microsoft Excel with the effective date of the modified pricing, or product addition or deletion. The new pricing restatement must include all Equipment, Products, and Services offered, even for those items where pricing remains unchanged.

A fully executed Sourcewell Price and Product Change Request Form will become an amendment to this Contract and will be incorporated by reference.

5. PARTICIPATION, CONTRACT ACCESS, AND PARTICIPATING ENTITY REQUIREMENTS

A. PARTICIPATION. Sourcewell's cooperative contracts are available and open to public and nonprofit entities across the United States and Canada; such as federal, state/province, municipal, K-12 and higher education, tribal government, and other public entities.

The benefits of this Contract should be available to all Participating Entities that can legally access the Equipment, Products, or Services under this Contract. A Participating Entity's authority to access this Contract is determined through its cooperative purchasing, interlocal, or joint powers laws. Any entity accessing benefits of this Contract will be considered a Service Member of Sourcewell during such time of access. Supplier understands that a Participating Entity's use of this Contract is at the Participating Entity's sole convenience and Participating Entities reserve the right to obtain like Equipment, Products, or Services from any other source.

Supplier is responsible for familiarizing its sales and service forces with Sourcewell contract use eligibility requirements and documentation and will encourage potential participating entities to join Sourcewell. Sourcewell reserves the right to add and remove Participating Entities to its roster during the term of this Contract.

B. PUBLIC FACILITIES. Supplier's employees may be required to perform work at government-owned facilities, including schools. Supplier's employees and agents must conduct themselves in a professional manner while on the premises, and in accordance with Participating Entity policies and procedures, and all applicable laws.

6. PARTICIPATING ENTITY USE AND PURCHASING

A. ORDERS AND PAYMENT. To access the contracted Equipment, Products, or Services under this Contract, a Participating Entity must clearly indicate to Supplier that it intends to access this Contract; however, order flow and procedure will be developed jointly between Sourcewell and Supplier. Typically, a Participating Entity will issue an order directly to Supplier or its authorized subsidiary, distributor, dealer, or reseller. If a Participating Entity issues a purchase order, it may use its own forms, but the purchase order should clearly note the applicable Sourcewell

contract number. All Participating Entity orders under this Contract must be issued prior to expiration or cancellation of this Contract; however, Supplier performance, Participating Entity payment obligations, and any applicable warranty periods or other Supplier or Participating Entity obligations may extend beyond the term of this Contract.

Supplier's acceptable forms of payment are included in its attached Proposal. Participating Entities will be solely responsible for payment and Sourcewell will have no liability for any unpaid invoice of any Participating Entity.

B. ADDITIONAL TERMS AND CONDITIONS/PARTICIPATING ADDENDUM. Additional terms and conditions to a purchase order, or other required transaction documentation, may be negotiated between a Participating Entity and Supplier, such as job or industry-specific requirements, legal requirements (e.g., affirmative action or immigration status requirements), or specific local policy requirements. Some Participating Entities may require the use of a Participating Addendum; the terms of which will be negotiated directly between the Participating Entity and the Supplier. Any negotiated additional terms and conditions must never be less favorable to the Participating Entity than what is contained in this Contract.

C. SPECIALIZED SERVICE REQUIREMENTS. In the event that the Participating Entity requires service or specialized performance requirements not addressed in this Contract (such as e-commerce specifications, specialized delivery requirements, or other specifications and requirements), the Participating Entity and the Supplier may enter into a separate, standalone agreement, apart from this Contract. Sourcewell, including its agents and employees, will not be made a party to a claim for breach of such agreement.

D. TERMINATION OF ORDERS. Participating Entities may terminate an order, in whole or in part, immediately upon notice to Supplier in the event of any of the following events:

1. The Participating Entity fails to receive funding or appropriation from its governing body at levels sufficient to pay for the equipment, products, or services to be purchased; or
2. Federal, state, or provincial laws or regulations prohibit the purchase or change the Participating Entity's requirements.

E. GOVERNING LAW AND VENUE. The governing law and venue for any action related to a Participating Entity's order will be determined by the Participating Entity making the purchase.

7. CUSTOMER SERVICE

A. PRIMARY ACCOUNT REPRESENTATIVE. Supplier will assign an Account Representative to Sourcewell for this Contract and must provide prompt notice to Sourcewell if that person is changed. The Account Representative will be responsible for:

- Maintenance and management of this Contract;
- Timely response to all Sourcewell and Participating Entity inquiries; and
- Business reviews to Sourcewell and Participating Entities, if applicable.

B. BUSINESS REVIEWS. Supplier must perform a minimum of one business review with Sourcewell per contract year. The business review will cover sales to Participating Entities, pricing and contract terms, administrative fees, sales data reports, supply issues, customer issues, and any other necessary information.

8. REPORT ON CONTRACT SALES ACTIVITY AND ADMINISTRATIVE FEE PAYMENT

A. CONTRACT SALES ACTIVITY REPORT. Each calendar quarter, Supplier must provide a contract sales activity report (Report) to the Sourcewell Supplier Development Administrator assigned to this Contract. Reports are due no later than 45 days after the end of each calendar quarter. A Report must be provided regardless of the number or amount of sales during that quarter (i.e., if there are no sales, Supplier must submit a report indicating no sales were made).

The Report must contain the following fields:

- Participating Entity Name (e.g., City of Staples Highway Department);
- Participating Entity Physical Street Address;
- Participating Entity City;
- Participating Entity State/Province;
- Participating Entity Zip/Postal Code;
- Participating Entity Contact Name;
- Participating Entity Contact Email Address;
- Participating Entity Contact Telephone Number;
- Sourcewell Assigned Entity/Participating Entity Number;
- Item Purchased Description;
- Item Purchased Price;
- Sourcewell Administrative Fee Applied; and
- Date Purchase was invoiced/sale was recognized as revenue by Supplier.

B. ADMINISTRATIVE FEE. In consideration for the support and services provided by Sourcewell, the Supplier will pay an administrative fee to Sourcewell on all Equipment, Products, and Services provided to Participating Entities. The Administrative Fee must be included in, and not added to, the pricing. Supplier may not charge Participating Entities more than the contracted price to offset the Administrative Fee.

The Supplier will submit payment to Sourcewell for the percentage of administrative fee stated in the Proposal multiplied by the total sales of all Equipment, Products, and Services purchased

by Participating Entities under this Contract during each calendar quarter. Payments should note the Supplier's name and Sourcewell-assigned contract number in the memo; and must be mailed to the address above "Attn: Accounts Receivable" or remitted electronically to Sourcewell's banking institution per Sourcewell's Finance department instructions. Payments must be received no later than 45 calendar days after the end of each calendar quarter.

Supplier agrees to cooperate with Sourcewell in auditing transactions under this Contract to ensure that the administrative fee is paid on all items purchased under this Contract.

In the event the Supplier is delinquent in any undisputed administrative fees, Sourcewell reserves the right to cancel this Contract and reject any proposal submitted by the Supplier in any subsequent solicitation. In the event this Contract is cancelled by either party prior to the Contract's expiration date, the administrative fee payment will be due no more than 30 days from the cancellation date.

9. AUTHORIZED REPRESENTATIVE

Sourcewell's Authorized Representative is its Chief Procurement Officer.

Supplier's Authorized Representative is the person named in the Supplier's Proposal. If Supplier's Authorized Representative changes at any time during this Contract, Supplier must promptly notify Sourcewell in writing.

10. AUDIT, ASSIGNMENT, AMENDMENTS, WAIVER, AND CONTRACT COMPLETE

A. **AUDIT.** Pursuant to Minnesota Statutes Section 16C.05, subdivision 5, the books, records, documents, and accounting procedures and practices relevant to this Agreement are subject to examination by Sourcewell or the Minnesota State Auditor for a minimum of six years from the end of this Contract. This clause extends to Participating Entities as it relates to business conducted by that Participating Entity under this Contract.

B. **ASSIGNMENT.** Neither party may assign or otherwise transfer its rights or obligations under this Contract without the prior written consent of the other party and a fully executed assignment agreement. Such consent will not be unreasonably withheld. Any prohibited assignment will be invalid.

C. **AMENDMENTS.** Any amendment to this Contract must be in writing and will not be effective until it has been duly executed by the parties.

D. **WAIVER.** Failure by either party to take action or assert any right under this Contract will not be deemed a waiver of such right in the event of the continuation or repetition of the circumstances giving rise to such right. Any such waiver must be in writing and signed by the parties.

E. **CONTRACT COMPLETE.** This Contract represents the complete agreement between the parties. No other understanding regarding this Contract, whether written or oral, may be used to bind either party. For any conflict between the attached Proposal and the terms set out in Articles 1-22 of this Contract, the terms of Articles 1-22 will govern.

F. **RELATIONSHIP OF THE PARTIES.** The relationship of the parties is one of independent contractors, each free to exercise judgment and discretion with regard to the conduct of their respective businesses. This Contract does not create a partnership, joint venture, or any other relationship such as master-servant, or principal-agent.

11. INDEMNITY AND HOLD HARMLESS

Supplier must indemnify, defend, save, and hold Sourcewell and its Participating Entities, including their agents and employees, harmless from any claims or causes of action, including attorneys' fees incurred by Sourcewell or its Participating Entities, arising out of any act or omission in the performance of this Contract by the Supplier or its agents or employees; this indemnification includes injury or death to person(s) or property alleged to have been caused by some defect in the Equipment, Products, or Services under this Contract to the extent the Equipment, Product, or Service has been used according to its specifications. Sourcewell's responsibility will be governed by the State of Minnesota's Tort Liability Act (Minnesota Statutes Chapter 466) and other applicable law.

12. GOVERNMENT DATA PRACTICES

Supplier and Sourcewell must comply with the Minnesota Government Data Practices Act, Minnesota Statutes Chapter 13, as it applies to all data provided by or provided to Sourcewell under this Contract and as it applies to all data created, collected, received, stored, used, maintained, or disseminated by the Supplier under this Contract.

13. INTELLECTUAL PROPERTY, PUBLICITY, MARKETING, AND ENDORSEMENT

A. INTELLECTUAL PROPERTY

1. *Grant of License.* During the term of this Contract:

- a. Sourcewell grants to Supplier a royalty-free, worldwide, non-exclusive right and license to use the trademark(s) provided to Supplier by Sourcewell in advertising and promotional materials for the purpose of marketing Sourcewell's relationship with Supplier.
- b. Supplier grants to Sourcewell a royalty-free, worldwide, non-exclusive right and license to use Supplier's trademarks in advertising and promotional materials for the purpose of marketing Supplier's relationship with Sourcewell.

2. *Limited Right of Sublicense.* The right and license granted herein includes a limited right of each party to grant sublicenses to their respective subsidiaries, distributors, dealers,

resellers, marketing representatives, and agents (collectively "Permitted Sublicensees") in advertising and promotional materials for the purpose of marketing the Parties' relationship to Participating Entities. Any sublicense granted will be subject to the terms and conditions of this Article. Each party will be responsible for any breach of this Article by any of their respective sublicensees.

3. *Use; Quality Control.*

- a. Neither party may alter the other party's trademarks from the form provided and must comply with removal requests as to specific uses of its trademarks or logos.
- b. Each party agrees to use, and to cause its Permitted Sublicensees to use, the other party's trademarks only in good faith and in a dignified manner consistent with such party's use of the trademarks. Upon written notice to the breaching party, the breaching party has 30 days of the date of the written notice to cure the breach or the license will be terminated.

4. As applicable, Supplier agrees to indemnify and hold harmless Sourcewell and its Participating Entities against any and all suits, claims, judgments, and costs instituted or recovered against Sourcewell or Participating Entities by any person on account of the use of any Equipment or Products by Sourcewell or its Participating Entities supplied by Supplier in violation of applicable patent or copyright laws.

5. *Termination.* Upon the termination of this Contract for any reason, each party, including Permitted Sublicensees, will have 30 days to remove all Trademarks from signage, websites, and the like bearing the other party's name or logo (excepting Sourcewell's pre-printed catalog of suppliers which may be used until the next printing). Supplier must return all marketing and promotional materials, including signage, provided by Sourcewell, or dispose of it according to Sourcewell's written directions.

B. PUBLICITY. Any publicity regarding the subject matter of this Contract must not be released without prior written approval from the Authorized Representatives. Publicity includes notices, informational pamphlets, press releases, research, reports, signs, and similar public notices prepared by or for the Supplier individually or jointly with others, or any subcontractors, with respect to the program, publications, or services provided resulting from this Contract.

C. MARKETING. Any direct advertising, marketing, or offers with Participating Entities must be approved by Sourcewell. Send all approval requests to the Sourcewell Supplier Development Administrator assigned to this Contract.

D. ENDORSEMENT. The Supplier must not claim that Sourcewell endorses its Equipment, Products, or Services.

14. GOVERNING LAW, JURISDICTION, AND VENUE

The substantive and procedural laws of the State of Minnesota will govern this Contract. Venue for all legal proceedings arising out of this Contract, or its breach, must be in the appropriate state court in Todd County, Minnesota or federal court in Fergus Falls, Minnesota.

15. FORCE MAJEURE

Neither party to this Contract will be held responsible for delay or default caused by acts of God or other conditions that are beyond that party's reasonable control. A party defaulting under this provision must provide the other party prompt written notice of the default.

16. SEVERABILITY

If any provision of this Contract is found by a court of competent jurisdiction to be illegal, unenforceable, or void then both parties will be relieved from all obligations arising from that provision. If the remainder of this Contract is capable of being performed, it will not be affected by such determination or finding and must be fully performed.

17. PERFORMANCE, DEFAULT, AND REMEDIES

A. **PERFORMANCE.** During the term of this Contract, the parties will monitor performance and address unresolved contract issues as follows:

1. *Notification.* The parties must promptly notify each other of any known dispute and work in good faith to resolve such dispute within a reasonable period of time. If necessary, Sourcewell and the Supplier will jointly develop a short briefing document that describes the issue(s), relevant impact, and positions of both parties.
2. *Escalation.* If parties are unable to resolve the issue in a timely manner, as specified above, either Sourcewell or Supplier may escalate the resolution of the issue to a higher level of management. The Supplier will have 30 calendar days to cure an outstanding issue.
3. *Performance while Dispute is Pending.* Notwithstanding the existence of a dispute, the Supplier must continue without delay to carry out all of its responsibilities under the Contract that are not affected by the dispute. If the Supplier fails to continue without delay to perform its responsibilities under the Contract, in the accomplishment of all undisputed work, the Supplier will bear any additional costs incurred by Sourcewell and/or its Participating Entities as a result of such failure to proceed.

B. **DEFAULT AND REMEDIES.** Either of the following constitutes cause to declare this Contract, or any Participating Entity order under this Contract, in default:

1. Nonperformance of contractual requirements, or
2. A material breach of any term or condition of this Contract.

The party claiming default must provide written notice of the default, with 30 calendar days to cure the default. Time allowed for cure will not diminish or eliminate any liability for liquidated or other damages. If the default remains after the opportunity for cure, the non-defaulting party may:

- Exercise any remedy provided by law or equity, or
- Terminate the Contract or any portion thereof, including any orders issued against the Contract.

18. INSURANCE

A. REQUIREMENTS. At its own expense, Supplier must maintain insurance policy(ies) in effect at all times during the performance of this Contract with insurance company(ies) licensed or authorized to do business in the State of Minnesota having an "AM BEST" rating of A- or better, with coverage and limits of insurance not less than the following:

1. *Workers' Compensation and Employer's Liability.*

Workers' Compensation: As required by any applicable law or regulation.

Employer's Liability Insurance: must be provided in amounts not less than listed below:

Minimum limits:

\$500,000 each accident for bodily injury by accident

\$500,000 policy limit for bodily injury by disease

\$500,000 each employee for bodily injury by disease

2. *Commercial General Liability Insurance.* Supplier will maintain insurance covering its operations, with coverage on an occurrence basis, and must be subject to terms no less broad than the Insurance Services Office ("ISO") Commercial General Liability Form CG0001 (2001 or newer edition), or equivalent. At a minimum, coverage must include liability arising from premises, operations, bodily injury and property damage, independent contractors, products-completed operations including construction defect, contractual liability, blanket contractual liability, and personal injury and advertising injury. All required limits, terms and conditions of coverage must be maintained during the term of this Contract.

Minimum Limits:

\$1,000,000 each occurrence Bodily Injury and Property Damage

\$1,000,000 Personal and Advertising Injury

\$2,000,000 aggregate for Products-Completed operations

\$2,000,000 general aggregate

3. *Commercial Automobile Liability Insurance.* During the term of this Contract, Supplier will maintain insurance covering all owned, hired, and non-owned automobiles in limits of liability not less than indicated below. The coverage must be subject to terms

no less broad than ISO Business Auto Coverage Form CA 0001 (2010 edition or newer), or equivalent.

Minimum Limits:

\$1,000,000 each accident, combined single limit

4. *Umbrella Insurance*. During the term of this Contract, Supplier will maintain umbrella coverage over Employer's Liability, Commercial General Liability, and Commercial Automobile.

Minimum Limits:

\$2,000,000

5. *Network Security and Privacy Liability Insurance*. During the term of this Contract, Supplier will maintain coverage for network security and privacy liability. The coverage may be endorsed on another form of liability coverage or written on a standalone policy. The insurance must cover claims which may arise from failure of Supplier's security resulting in, but not limited to, computer attacks, unauthorized access, disclosure of not public data – including but not limited to, confidential or private information, transmission of a computer virus, or denial of service.

Minimum limits:

\$2,000,000 per occurrence

\$2,000,000 annual aggregate

Failure of Supplier to maintain the required insurance will constitute a material breach entitling Sourcewell to immediately terminate this Contract for default.

B. CERTIFICATES OF INSURANCE. Prior to commencing under this Contract, Supplier must furnish to Sourcewell a certificate of insurance, as evidence of the insurance required under this Contract. Prior to expiration of the policy(ies), renewal certificates must be mailed to Sourcewell, 202 12th Street Northeast, P.O. Box 219, Staples, MN 56479 or sent to the Sourcewell Supplier Development Administrator assigned to this Contract. The certificates must be signed by a person authorized by the insurer(s) to bind coverage on their behalf.

Failure to request certificates of insurance by Sourcewell, or failure of Supplier to provide certificates of insurance, in no way limits or relieves Supplier of its duties and responsibilities in this Contract.

C. ADDITIONAL INSURED ENDORSEMENT AND PRIMARY AND NON-CONTRIBUTORY INSURANCE CLAUSE. Supplier agrees to list Sourcewell and its Participating Entities, including their officers, agents, and employees, as an additional insured under the Supplier's commercial general liability insurance policy with respect to liability arising out of activities, "operations," or "work" performed by or on behalf of Supplier, and products and completed operations of Supplier. The policy provision(s) or endorsement(s) must further provide that coverage is

primary and not excess over or contributory with any other valid, applicable, and collectible insurance or self-insurance in force for the additional insureds.

D. **WAIVER OF SUBROGATION.** Supplier waives and must require (by endorsement or otherwise) all its insurers to waive subrogation rights against Sourcewell and other additional insureds for losses paid under the insurance policies required by this Contract or other insurance applicable to the Supplier or its subcontractors. The waiver must apply to all deductibles and/or self-insured retentions applicable to the required or any other insurance maintained by the Supplier or its subcontractors. Where permitted by law, Supplier must require similar written express waivers of subrogation and insurance clauses from each of its subcontractors.

E. **UMBRELLA/EXCESS LIABILITY/SELF-INSURED RETENTION.** The limits required by this Contract can be met by either providing a primary policy or in combination with umbrella/excess liability policy(ies), or self-insured retention.

19. COMPLIANCE

A. **LAWS AND REGULATIONS.** All Equipment, Products, or Services provided under this Contract must comply fully with applicable federal laws and regulations, and with the laws in the states and provinces in which the Equipment, Products, or Services are sold.

B. **LICENSES.** Supplier must maintain a valid and current status on all required federal, state/provincial, and local licenses, bonds, and permits required for the operation of the business that the Supplier conducts with Sourcewell and Participating Entities.

20. BANKRUPTCY, DEBARMENT, OR SUSPENSION CERTIFICATION

Supplier certifies and warrants that it is not in bankruptcy or that it has previously disclosed in writing certain information to Sourcewell related to bankruptcy actions. If at any time during this Contract Supplier declares bankruptcy, Supplier must immediately notify Sourcewell in writing.

Supplier certifies and warrants that neither it nor its principals are presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from programs operated by the State of Minnesota; the United States federal government or the Canadian government, as applicable; or any Participating Entity. Supplier certifies and warrants that neither it nor its principals have been convicted of a criminal offense related to the subject matter of this Contract. Supplier further warrants that it will provide immediate written notice to Sourcewell if this certification changes at any time.

21. PROVISIONS FOR NON-UNITED STATES FEDERAL ENTITY PROCUREMENTS UNDER UNITED STATES FEDERAL AWARDS OR OTHER AWARDS

Participating Entities that use United States federal grant or FEMA funds to purchase goods or services from this Contract may be subject to additional requirements including the procurement standards of the Uniform Administrative Requirements, Cost Principles and Audit Requirements for Federal Awards, 2 C.F.R. § 200. Participating Entities may have additional requirements based on specific funding source terms or conditions. Within this Article, all references to “federal” should be interpreted to mean the United States federal government. The following list only applies when a Participating Entity accesses Supplier’s Equipment, Products, or Services with United States federal funds.

A. **EQUAL EMPLOYMENT OPPORTUNITY.** Except as otherwise provided under 41 C.F.R. § 60, all contracts that meet the definition of “federally assisted construction contract” in 41 C.F.R. § 60-1.3 must include the equal opportunity clause provided under 41 C.F.R. §60-1.4(b), in accordance with Executive Order 11246, “Equal Employment Opportunity” (30 FR 12319, 12935, 3 C.F.R. §, 1964-1965 Comp., p. 339), as amended by Executive Order 11375, “Amending Executive Order 11246 Relating to Equal Employment Opportunity,” and implementing regulations at 41 C.F.R. § 60, “Office of Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor.” The equal opportunity clause is incorporated herein by reference.

B. **DAVIS-BACON ACT, AS AMENDED (40 U.S.C. § 3141-3148).** When required by federal program legislation, all prime construction contracts in excess of \$2,000 awarded by non-federal entities must include a provision for compliance with the Davis-Bacon Act (40 U.S.C. § 3141-3144, and 3146-3148) as supplemented by Department of Labor regulations (29 C.F.R. § 5, “Labor Standards Provisions Applicable to Contracts Covering Federally Financed and Assisted Construction”). In accordance with the statute, contractors must be required to pay wages to laborers and mechanics at a rate not less than the prevailing wages specified in a wage determination made by the Secretary of Labor. In addition, contractors must be required to pay wages not less than once a week. The non-federal entity must place a copy of the current prevailing wage determination issued by the Department of Labor in each solicitation. The decision to award a contract or subcontract must be conditioned upon the acceptance of the wage determination. The non-federal entity must report all suspected or reported violations to the federal awarding agency. The contracts must also include a provision for compliance with the Copeland “Anti-Kickback” Act (40 U.S.C. § 3145), as supplemented by Department of Labor regulations (29 C.F.R. § 3, “Contractors and Subcontractors on Public Building or Public Work Financed in Whole or in Part by Loans or Grants from the United States”). The Act provides that each contractor or subrecipient must be prohibited from inducing, by any means, any person employed in the construction, completion, or repair of public work, to give up any part of the compensation to which he or she is otherwise entitled. The non-federal entity must report all suspected or reported violations to the federal awarding agency. Supplier must be in compliance with all applicable Davis-Bacon Act provisions.

C. **CONTRACT WORK HOURS AND SAFETY STANDARDS ACT (40 U.S.C. § 3701-3708).** Where applicable, all contracts awarded by the non-federal entity in excess of \$100,000 that involve the employment of mechanics or laborers must include a provision for compliance with 40 U.S.C. §§ 3702 and 3704, as supplemented by Department of Labor regulations (29 C.F.R. § 5). Under 40 U.S.C. § 3702 of the Act, each contractor must be required to compute the wages of every mechanic and laborer on the basis of a standard work week of 40 hours. Work in excess of the standard work week is permissible provided that the worker is compensated at a rate of not less than one and a half times the basic rate of pay for all hours worked in excess of 40 hours in the work week. The requirements of 40 U.S.C. § 3704 are applicable to construction work and provide that no laborer or mechanic must be required to work in surroundings or under working conditions which are unsanitary, hazardous or dangerous. These requirements do not apply to the purchases of supplies or materials or articles ordinarily available on the open market, or contracts for transportation or transmission of intelligence. This provision is hereby incorporated by reference into this Contract. Supplier certifies that during the term of an award for all contracts by Sourcewell resulting from this procurement process, Supplier must comply with applicable requirements as referenced above.

D. **RIGHTS TO INVENTIONS MADE UNDER A CONTRACT OR AGREEMENT.** If the federal award meets the definition of “funding agreement” under 37 C.F.R. § 401.2(a) and the recipient or subrecipient wishes to enter into a contract with a small business firm or nonprofit organization regarding the substitution of parties, assignment or performance of experimental, developmental, or research work under that “funding agreement,” the recipient or subrecipient must comply with the requirements of 37 C.F.R. § 401, “Rights to Inventions Made by Nonprofit Organizations and Small Business Firms Under Government Grants, Contracts and Cooperative Agreements,” and any implementing regulations issued by the awarding agency. Supplier certifies that during the term of an award for all contracts by Sourcewell resulting from this procurement process, Supplier must comply with applicable requirements as referenced above.

E. **CLEAN AIR ACT (42 U.S.C. § 7401-7671Q.) AND THE FEDERAL WATER POLLUTION CONTROL ACT (33 U.S.C. § 1251-1387).** Contracts and subgrants of amounts in excess of \$150,000 require the non-federal award to agree to comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act (42 U.S.C. § 7401- 7671q) and the Federal Water Pollution Control Act as amended (33 U.S.C. § 1251- 1387). Violations must be reported to the Federal awarding agency and the Regional Office of the Environmental Protection Agency (EPA). Supplier certifies that during the term of this Contract will comply with applicable requirements as referenced above.

F. **DEBARMENT AND SUSPENSION (EXECUTIVE ORDERS 12549 AND 12689).** A contract award (see 2 C.F.R. § 180.220) must not be made to parties listed on the government wide exclusions in the System for Award Management (SAM), in accordance with the OMB guidelines at 2 C.F.R. § 180 that implement Executive Orders 12549 (3 C.F.R. § 1986 Comp., p. 189) and 12689 (3 C.F.R. § 1989 Comp., p. 235), “Debarment and Suspension.” SAM Exclusions contains the names

of parties debarred, suspended, or otherwise excluded by agencies, as well as parties declared ineligible under statutory or regulatory authority other than Executive Order 12549. Supplier certifies that neither it nor its principals are presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation by any federal department or agency.

G. BYRD ANTI-LOBBYING AMENDMENT, AS AMENDED (31 U.S.C. § 1352). Suppliers must file any required certifications. Suppliers must not have used federal appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of any agency, a member of Congress, officer or employee of Congress, or an employee of a member of Congress in connection with obtaining any federal contract, grant, or any other award covered by 31 U.S.C. § 1352. Suppliers must disclose any lobbying with non-federal funds that takes place in connection with obtaining any federal award. Such disclosures are forwarded from tier to tier up to the non-federal award. Suppliers must file all certifications and disclosures required by, and otherwise comply with, the Byrd Anti-Lobbying Amendment (31 U.S.C. § 1352).

H. RECORD RETENTION REQUIREMENTS. To the extent applicable, Supplier must comply with the record retention requirements detailed in 2 C.F.R. § 200.333. The Supplier further certifies that it will retain all records as required by 2 C.F.R. § 200.333 for a period of 3 years after grantees or subgrantees submit final expenditure reports or quarterly or annual financial reports, as applicable, and all other pending matters are closed.

I. ENERGY POLICY AND CONSERVATION ACT COMPLIANCE. To the extent applicable, Supplier must comply with the mandatory standards and policies relating to energy efficiency which are contained in the state energy conservation plan issued in compliance with the Energy Policy and Conservation Act.

J. BUY AMERICAN PROVISIONS COMPLIANCE. To the extent applicable, Supplier must comply with all applicable provisions of the Buy American Act. Purchases made in accordance with the Buy American Act must follow the applicable procurement rules calling for free and open competition.

K. ACCESS TO RECORDS (2 C.F.R. § 200.336). Supplier agrees that duly authorized representatives of a federal agency must have access to any books, documents, papers and records of Supplier that are directly pertinent to Supplier's discharge of its obligations under this Contract for the purpose of making audits, examinations, excerpts, and transcriptions. The right also includes timely and reasonable access to Supplier's personnel for the purpose of interview and discussion relating to such documents.

L. PROCUREMENT OF RECOVERED MATERIALS (2 C.F.R. § 200.322). A non-federal entity that is a state agency or agency of a political subdivision of a state and its contractors must comply with Section 6002 of the Solid Waste Disposal Act, as amended by the Resource Conservation

and Recovery Act. The requirements of Section 6002 include procuring only items designated in guidelines of the Environmental Protection Agency (EPA) at 40 C.F.R. § 247 that contain the highest percentage of recovered materials practicable, consistent with maintaining a satisfactory level of competition, where the purchase price of the item exceeds \$10,000 or the value of the quantity acquired during the preceding fiscal year exceeded \$10,000; procuring solid waste management services in a manner that maximizes energy and resource recovery; and establishing an affirmative procurement program for procurement of recovered materials identified in the EPA guidelines.

M. FEDERAL SEAL(S), LOGOS, AND FLAGS. The Supplier not use the seal(s), logos, crests, or reproductions of flags or likenesses of Federal agency officials without specific pre-approval.

N. NO OBLIGATION BY FEDERAL GOVERNMENT. The U.S. federal government is not a party to this Contract or any purchase by an Participating Entity and is not subject to any obligations or liabilities to the Participating Entity, Supplier, or any other party pertaining to any matter resulting from the Contract or any purchase by an authorized user.

O. PROGRAM FRAUD AND FALSE OR FRAUDULENT STATEMENTS OR RELATED ACTS. The Contractor acknowledges that 31 U.S.C. 38 (Administrative Remedies for False Claims and Statements) applies to the Supplier's actions pertaining to this Contract or any purchase by a Participating Entity.

P. FEDERAL DEBT. The Supplier certifies that it is non-delinquent in its repayment of any federal debt. Examples of relevant debt include delinquent payroll and other taxes, audit disallowance, and benefit overpayments.

Q. CONFLICTS OF INTEREST. The Supplier must notify the U.S. Office of General Services, Sourcewell, and Participating Entity as soon as possible if this Contract or any aspect related to the anticipated work under this Contract raises an actual or potential conflict of interest (as described in 2 C.F.R. Part 200). The Supplier must explain the actual or potential conflict in writing in sufficient detail so that the U.S. Office of General Services, Sourcewell, and Participating Entity are able to assess the actual or potential conflict; and provide any additional information as necessary or requested.

R. U.S. EXECUTIVE ORDER 13224. The Supplier, and its subcontractors, must comply with U.S. Executive Order 13224 and U.S. Laws that prohibit transactions with and provision of resources and support to individuals and organizations associated with terrorism.

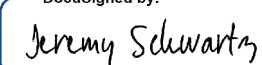
S. PROHIBITION ON CERTAIN TELECOMMUNICATIONS AND VIDEO SURVEILLANCE SERVICES OR EQUIPMENT. To the extent applicable, Supplier certifies that during the term of this Contract it will comply with applicable requirements of 2 C.F.R. § 200.216.

T. DOMESTIC PREFERENCES FOR PROCUREMENTS. To the extent applicable, Supplier certifies that during the term of this Contract will comply with applicable requirements of 2 C.F.R. § 200.322.

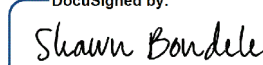
22. CANCELLATION

Sourcewell or Supplier may cancel this Contract at any time, with or without cause, upon 60 days' written notice to the other party. However, Sourcewell may cancel this Contract immediately upon discovery of a material defect in any certification made in Supplier's Proposal. Cancellation of this Contract does not relieve either party of financial, product, or service obligations incurred or accrued prior to cancellation.

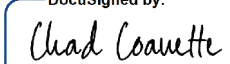
Sourcewell

DocuSigned by:

By: C0FD2A139D06489...
Jeremy Schwartz
Title: Chief Procurement Officer
Date: 11/23/2021 | 8:44 PM CST

Sewer Equipment Co. of America

DocuSigned by:

By: B5011C400B714B6...
Shawn Bondele
Title: Inside Sales Manager
Date: 11/23/2021 | 4:13 PM EST

Approved:

DocuSigned by:

By: 7E42B8F817A64CC...
Chad Coauette
Title: Executive Director/CEO
Date: 11/24/2021 | 6:48 PM CST

RFP 101221 - Sewer Vacuum, Hydro-Excavation, and Municipal Pumping Equipment with Related Accessories and Supplies

Vendor Details

Company Name: Sewer Equipment Co. of America

Does your company conduct business under any other name? If yes, please state: IL

Address: 1590 Dutch Road
DIXON, IL 61021

Contact: Shawn Bondele

Email: shawnbondele@sewerequipment.com

Phone: 815-835-5623

Fax: 815-284-0452

HST#: 36-2786536

Submission Details

Created On: Wednesday August 25, 2021 07:50:30

Submitted On: Monday October 11, 2021 15:11:12

Submitted By: Shawn Bondele

Email: shawnbondele@sewerequipment.com

Transaction #: 44e1e7e4-e719-4802-a155-e76c8332dafc

Submitter's IP Address: 98.142.194.242

Specifications**Table 1: Proposer Identity & Authorized Representatives**

General Instructions (applies to all Tables) Sourcewell prefers a brief but thorough response to each question. Do not merely attach additional documents to your response without also providing a substantive response. Do not leave answers blank; respond "N/A" if the question does not apply to you (preferably with an explanation).

Line Item	Question	Response *	
1	Proposer Legal Name (one legal entity only): (In the event of award, will execute the resulting contract as "Supplier")	Sewer Equipment Co. of America	*
2	Identify all subsidiary entities of the Proposer whose equipment, products, or services are included in the Proposal.	Rock Rentals	*
3	Identify all applicable assumed names or DBA names of the Proposer or Proposer's subsidiaries in Line 1 or Line 2 above.	Sewer Equipment	*
4	Proposer Physical Address:	1590 Dutch Rd., Dixon, IL 61021	*
5	Proposer website address (or addresses):	www.sewerequipment.com, www.rock-rental.com, www.sewershop.com	*
6	Proposer's Authorized Representative (name, title, address, email address & phone) (The representative must have authority to sign the "Proposer's Assurance of Compliance" on behalf of the Proposer and, in the event of award, will be expected to execute the resulting contract):	Shawn Bondele Inside Sales Manager 1590 Dutch Rd. Dixon, IL 61021 shawnbondele@sewerequipment.com 815-835-5566	*
7	Proposer's primary contact for this proposal (name, title, address, email address & phone):	Shawn Bondele Inside Sales Manager 1590 Dutch Rd. Dixon, IL 61021 shawnbondele@sewerequipment.com 815-835-5566	*
8	Proposer's other contacts for this proposal, if any (name, title, address, email address & phone):	Tom Hochmuth Regional Sales Manager 1590 Dutch Rd. Dixon, IL 61021 tomhochmuth@sewerequipment.com 815-342-1700 Vanessa Gomez Inside Sales Coordinator 1590 Dutch Rd. Dixon, IL 61021 vanessagomez@sewerequipment.com 815-835-5566	

Table 2: Company Information and Financial Strength

Line Item	Question	Response *																
9	Provide a brief history of your company, including your company's core values, business philosophy, and industry longevity related to the requested equipment, products or services.	<p>"Best Product, Best Local Support" is a promise to our customers and is also a tagline that acts as a guiding principle to us each day. We have long been known for robust and innovative products that focus on simplicity, an increasingly rare characteristic in our marketplace. Sewer Equipment is also unique among manufacturers for our breadth of product, which ultimately allows our salespeople and distributors to sell in a consultative fashion. No other manufacture provides full size combination (jet/vacuum) trucks, mini combo trucks, water recycling combo trucks, truck and trailer jets both large and small, rodders, easement machines, and accessories for sewer cleaning applications as well as purpose built hydro excavation and air excavation trucks of all sizes.</p> <p>Our 76-year history has been one of growth and meaningful innovation. In 1941, our founder, H.T. O'Brien, developed the idea of using a rotating, spring tipped rod for cleaning drains in buildings, and a company was born. Throughout the 1940's and into the 1960's, O'Brien Manufacturing refined and expanded this principle to include trailer mounted rodders for cleaning mainline sewer pipes – these rodders were the predecessors of today's sewer jetters. The late 1960's saw the advent of modern-day sewer jet trucks and water powered rotating root cutters by O'Brien. O'Brien Manufacturing was sold in the early 70's and Sewer Equipment Company of America was opened by Jim O'Brien, son of the founder. The company grew from accessory sales to the manufacture of rodders, bucket machines, vacuum trailers, and truck and trailer jetters. In the mid 2000's we began manufacturing an extensive line of hydro excavating trucks and trailers. In 2012, the company was moved from a 37,000 sq/ft manufacturing facility in Chadwick IL to a 122,000 sq/ft plant in Dixon IL to accommodate our growth. This move allowed us to begin producing the 900-ECO combination sewer cleaner 2015. In the 6 years since its release, the 900-ECO has achieved approximately a 13% share of this hotly contested segment, measured in annual new truck sales in the US. In the last 4 years, we have also released the 400-ECO mini combo truck, the Genesis water recycling combo, and the AX-4000 air excavator truck. May of 2021 marked the completion of our 9000th piece of "big equipment" in company history.</p>																
10	What are your company's expectations in the event of an award?	We would immediately schedule a video conference meeting with all distributor sales personnel, reiterating the terms of the contract and calling attention to any changes. This would be followed up with in person reviews as well as e-mail / social media blasts to dealers and end users. We would remain the sole source of responsibility for this contract and would handle all order entry and reporting tasks required by the contract as we currently do.	*															
11	Demonstrate your financial strength and stability with meaningful data. This could include such items as financial statements, SEC filings, credit and bond ratings, letters of credit, and detailed reference letters. Upload supporting documents (as applicable) in the document upload section of your response.	Sewer Equipment has a consistent track record of growth and profitability. The company's past performance assures ample resources to enhance our product offerings for the markets we serve. Sewer Equipment maintains insurance coverage that is customary for the business being conducted. (Attachment – 11-2020 Sewer Equipment Co....., 11 – Huntington National Bank....., 11 – 2021-2022 Sewer Equipment COI)	*															
12	What is your US market share for the solutions that you are proposing?	<p>Our US Market Share data listed here for combination trucks, truck jets, and hydro excavation trucks is based on data reporting through the American Association of Equipment Manufacturers.</p> <table><tr><td>Combination Sewer Cleaners</td><td>(2018) 6.4%</td><td>(2019) 7.1%</td><td>(2020) 14%</td><td>(2021y.t.d.) 13.3%</td></tr><tr><td>Truck Jets</td><td>(2018) 58.5%</td><td>(2019) 8%</td><td>(2020) 44.6%</td><td>(2021y.t.d.) 31.7%</td></tr><tr><td>Hydro-Excavation Trucks</td><td>(2018) 5.9%</td><td>(2019) 9.3%</td><td>(2020) 6.9%</td><td>(2021y.t.d.) 8.1%</td></tr></table>	Combination Sewer Cleaners	(2018) 6.4%	(2019) 7.1%	(2020) 14%	(2021y.t.d.) 13.3%	Truck Jets	(2018) 58.5%	(2019) 8%	(2020) 44.6%	(2021y.t.d.) 31.7%	Hydro-Excavation Trucks	(2018) 5.9%	(2019) 9.3%	(2020) 6.9%	(2021y.t.d.) 8.1%	*
Combination Sewer Cleaners	(2018) 6.4%	(2019) 7.1%	(2020) 14%	(2021y.t.d.) 13.3%														
Truck Jets	(2018) 58.5%	(2019) 8%	(2020) 44.6%	(2021y.t.d.) 31.7%														
Hydro-Excavation Trucks	(2018) 5.9%	(2019) 9.3%	(2020) 6.9%	(2021y.t.d.) 8.1%														
13	What is your Canadian market share for the solutions that you are proposing?	<p>Our Canadian Market Share data listed here for combination trucks, truck jets, and hydro-excavation trucks is based on data reporting through the American Association of Equipment Manufacturers.</p> <table><tr><td>Combination Sewer Cleaners</td><td>(2018) 1.7%</td><td>(2019) 2.0%</td><td>(2020) 7.7%</td><td>(2021y.t.d.) 7.5%</td></tr><tr><td>Truck Jets</td><td>(2018) 66.7%</td><td>(2019) 42.9%</td><td>(2020) 75%</td><td>(2021y.t.d.) 75%</td></tr><tr><td>Hydro-Excavation Trucks</td><td>(2018) 2.1%</td><td>(2019) 2.0%</td><td>(2020) 0%</td><td>(2021y.t.d.) 7.8%</td></tr></table>	Combination Sewer Cleaners	(2018) 1.7%	(2019) 2.0%	(2020) 7.7%	(2021y.t.d.) 7.5%	Truck Jets	(2018) 66.7%	(2019) 42.9%	(2020) 75%	(2021y.t.d.) 75%	Hydro-Excavation Trucks	(2018) 2.1%	(2019) 2.0%	(2020) 0%	(2021y.t.d.) 7.8%	*
Combination Sewer Cleaners	(2018) 1.7%	(2019) 2.0%	(2020) 7.7%	(2021y.t.d.) 7.5%														
Truck Jets	(2018) 66.7%	(2019) 42.9%	(2020) 75%	(2021y.t.d.) 75%														
Hydro-Excavation Trucks	(2018) 2.1%	(2019) 2.0%	(2020) 0%	(2021y.t.d.) 7.8%														
14	Has your business ever petitioned for bankruptcy protection? If so, explain in detail.	Since its formation, Sewer Equipment has never petitioned for bankruptcy protection.	*															
15	How is your organization best described: is it a manufacturer, a distributor/dealer/reseller, or a service provider? Answer whichever question (either a) or b) just below) best applies to your organization. a) If your company is best described as a distributor/dealer/reseller (or similar entity), provide your written authorization to act as a distributor/dealer/reseller for the manufacturer of the products proposed in this RFP. If applicable, is your dealer network independent or company owned? b) If your company is best described as a manufacturer or service provider, describe your relationship with your sales and service force and with your dealer network in delivering the products and services proposed in this RFP. Are these individuals your employees, or the employees of a third party?	As a manufacturer, our primary means of going to market is via exclusive distributors that are typically responsible for covering the municipal entities in an entire state/states, multiple provinces, or multiple countries. We have distributors in 46 States and 2 Providences in Canada, as well as 5 overseas countries. The only exception is in some states/provinces that are in a transitional phase. Distributors act on our behalf as local sales, service, training, and warranty providers. These distributor sales and service people are 3rd party employees and are looked after by regional sales managers from Sewer Equipment. Distributor service personnel work closely with, and have direct access to Sewer Equipment's warranty department, technical service department and engineering group.	*															
16	If applicable, provide a detailed explanation outlining the licenses and certifications that are both required to be held, and actually held, by your organization (including third parties and subcontractors that you use) in pursuit of the business contemplated by this RFP.	<p>As a United States based company, we are an Illinois corporation registered with the Illinois Secretary of State (File No. 50370119). Our Federal Employer Identification Number is 36-2786536. Our Illinois Certificate of Resale Number is 0252-2705.</p> <p>As a manufacturing making mobile products operating on US highways, we have two dealer licenses. DL1582 for trucks and DLT1419 for trailers. Each of our Dealers also hold Dealer Licenses in their respective territories.</p> <p>Where required, Sewer Equipment is licensed as a Manufacturer or Motor Vehicle Converter including Iowa Manufacturer License No. M241, Texas Motor Vehicle Converter License No. 105517, Louisiana Motor Vehicle Converter License No. CV-2021-00122, Washington Vehicle Manufacturer License No. 08152 and Montana New Motor Vehicle Manufacturer License No. 139.</p> <p>Sewer Equipment is also a member of the National Association of Trailer Manufacturers. This assures our trailers are manufactured in accordance with all DOT and NATM guidelines.</p>	*															
17	Provide all "Suspension or Debarment" information that has applied to your organization during the past ten years.	Sewer Equipment has not within the ten-year period preceding this bid been debarred or suspended from any public transactions (Federal, State, or local).	*															

Table 3: Industry Recognition & Marketplace Success

Line Item	Question	Response *
18	Describe any relevant industry awards or recognition that your company has received in the past five years	<p>Sewer Equipment was awarded patent number "US 9,863,135 B2" for our Hydro-Drive system on January 9th, 2018. This Hydro-Drive System is the heart of our 900-ECO Combination Sewer Cleaner and has been a major contributor to the continued growth and success of our company.</p> <p>In the July 2021 issue of THE MUNICIPAL, Sewer Equipment was featured in an article "Moving Beyond Transactional Relationships Toward Partnerships." referencing a sale to King County, WA, where they utilized the Sourcwell Contract for the purchase and National Cooperative Lease for the financing.</p> <p>Sewer Equipment's products are in focus on almost a monthly basis in Industry Trade Publications such as CLEANER, DIG DIFFERENT, and MUNICIPAL WATER & SEWER.</p>
19	What percentage of your sales are to the governmental sector in the past three years	(2018) 47%, (2019) 52%, (2020) 53%, (2021) 54%
20	What percentage of your sales are to the education sector in the past three years	(2018) .032%, (2019) .058%, (2020) 0%, (2021) 0%
21	List any state, provincial, or cooperative purchasing contracts that you hold. What is the annual sales volume for each of these contracts over the past three years?	<p>The figures below do not include state and other local contracts that are managed by our distributors. These are only contract held directly by Sewer Equipment.</p> <p>HGAC (2018) \$361,491.00, (2019) \$496,502.00, (2020) \$0.00, (2021) \$0.00, State of Ohio (2018) \$66,914.00, (2019) \$337,639.00, (2020) \$569,970.00, (2021) \$248,523.00 Florida Sheriffs (2018) \$0.00, (2019) \$0.00, (2020) \$0.00, (2021) \$87,886.00 BuyBoard (2018) \$0.00, (2019) \$0.00, (2020) \$0.00 (2021) \$52,325.00</p>
22	List any GSA contracts or Standing Offers and Supply Arrangements (SOSA) that you hold. What is the annual sales volume for each of these contracts over the past three years?	<p>Sewer Equipment partners with Fedharmony on a GSA contract. We also directly hold a DLA contract.</p> <p>GSA (2018) \$0.00, (2019) \$250,619.00, (2020) \$263,271.00, (2021) \$58,479.00 DLA (2018) \$0.00, (2019) \$256,309.83, (2020) \$274,847.00, (2021) \$0.00</p>

Table 4: References/Testimonials

Line Item 23. Supply reference information from three customers who are eligible to be Sourcwell participating entities.

Entity Name *	Contact Name *	Phone Number *
City of Reno, NV	Zac Haffner	775-399-8692
City of Salem, OR	Jerry Smith	503-385-7560
City of Atlanta, GA	Robert Horton	404-982-1426

Table 5: Top Five Government or Education Customers

Line Item 24. Provide a list of your top five government, education, or non-profit customers (entity name is optional), including entity type, the state or province the entity is located in, scope of the project(s), size of transaction(s), and dollar volumes from the past three years.

Entity Name	Entity Type *	State / Province *	Scope of Work *	Size of Transactions *	Dollar Volume Past Three Years *
City of Atlanta, GA	Government	Georgia - GA	Combination Sewer Cleaners	8 - 900-ECO's	\$2,171,740.00
City of Reno, NV	Government	Nevada - NV	Combination Sewer Cleaners, Truck Jets, Easement Machines	3 - 800-HPRs, 3 - 900-ECO's, 1 - JAJ-600WH	\$1,141,776.00
Snohomish County	Government	Washington - WA	Combination Sewer Cleaners	3 - 900-ECO's	\$812,988.00
City of Salem, OR	Government	Oregon - OR	Combination Sewer Cleaners	3 - 900-ECO's	\$755,912.00
City of Hamilton, ON	Government	ON - Ontario	Hydro Excavators	2 - Ramvac HX-12's	\$705,804.00

Table 6: Ability to Sell and Deliver Service

Describe your company's capability to meet the needs of Sourcwell participating entities across the US and Canada, as applicable. Your response should address in detail at least the following areas: locations of your network of sales and service providers, the number of workers (full-time equivalents) involved in each sector, whether these workers are your direct employees (or employees of a third party), and any overlap between the sales and service functions.

Line Item	Question	Response *
25	Sales force.	<p>We directly employ a national sales manager as well as an eastern, central, and western regional sales manager that are responsible for our distributor network. We employ 3 inside salespeople as well as 7 direct salespeople that serve markets that are not fully covered by distribution (primarily contractors, but also some federal agencies and education to a very small degree). Three full time demonstration specialists work with our regional sales managers and distributor salespeople to allow our customers to "try it before they buy it", which is a very important aspect of our sales program.</p>

26	Dealer network or other distribution methods.	In total, our distributor network employs approximately 140 salespeople. As a premium specialty product, our distributors are quite focused on the Sewer Equipment line, typically spending 50% or more of their efforts on our offerings. A new focus moving forward will be an intensive product and presentation technique training (SEAL - Sewer Equipment Advanced Learning) program for our distributors, with the goal being the most educated and knowledgeable sales staff in the industry. This has already begun with a dealer "walkaround" event (live product presentation), in which dealer salespeople presented several products to their peers and factory personnel and were graded for certification purposes. This program will be expanded with more events and more content in the coming years.	*
27	Service force.	(See attachment: 27 Service Distributor Map – US) As the Sewer Equipment distributor network evolves, our service presence has improved in recent years. With more professional organizations in our ranks, our number of service techs at the dealer in the US and Canada is approximately 170. Each of our distributors is required to have at least two technicians certified at Sewer University, a multi-day class that is regularly held at our Dixon IL headquarters. 99% of our customer's service needs are accommodated at the distributor level. Sewer Equipment also employs 3 mobile service technicians equipped with service trucks that fill in any gaps in service coverage and cover special projects. A relatively unique offering for customers in remote regions is our willingness to provide warranty coverage via a 3rd party repair shop of their choice of their choice or to reimburse the customer to perform simple warranty repairs themselves. This is very popular among customers in the rural western US, and is largely made possible by our simple products and factory tech support.	*
28	Describe the ordering process. If orders will be handled by distributors, dealers or others, explain the respective roles of the Proposer and others.	As in the past, Sewer Equipment distributors will provide Sourcewell quotations to customers and will accept purchase orders from customers following Sourcewell guidelines as called out in our Quick start guide for distributors which will be updated (Attachment - 28 Quick Start Guide for dealers- Sourcewell INTERNAL - rev6 4-6-2020). Upon securing the order from the end user, the distributor will in turn place their order with Sewer Equipment and must include a copy of their customer's purchase order complete with Sourcewell discount information, customer Sourcewell number, and our Sourcewell contract number. Said in a simpler way, customers will order from their authorized distributor, and the distributor will order from Sewer Equipment as they normally would, with the exception that Sourcewell quote and order protocols will be followed.	*
29	Describe in detail the process and procedure of your customer service program, if applicable. Include your response-time capabilities and commitments, as well as any incentives that help your providers meet your stated service goals or promises.	The first and likely most important aspect of our service program is building equipment that can be worked on by the customer or a local shop. Because Sewer Equipment has consciously avoided the use of computers, circuit boards, and CANbus communication protocols in our products, a mechanic with traditional skills and a knowledge of 12-volt wiring systems can often help themselves. If the customer does not possess the skills or cannot resolve the issue on their own, they should make a call to their local distributor to schedule a service visit, or to our corporate service technicians for assistance via the phone. Our corporate, in-house customer service department is comprised of both parts sales specialists and technical support specialists that provide toll-free service and tech support 24-7 & 365 days a year to end users and distributor service groups. Depending upon the issue, many can be handled over the phone with minor adjustments to either the operator's use of the equipment or to the machine itself. Our support specialists have extensive experience in troubleshooting issues and offering solutions. If repair service and parts are required, our specialists will work with the customer and/or dealer to most quickly and easily remedy the situation. To assist in this process, each unit we build is assigned a 4 digit serial number that allows us to retrieve electronic copies of every document related to the system from the sales order to product manuals that contain as built wiring diagrams and hydraulic schematics. We stock an extensive inventory of repair parts and accessories to give expedited service to our customers. Due to our stock levels and standardization on most buy out components, we have a track record of consistently shipping 95+% parts the same day ordered. For those remaining parts, we go to our vendor suppliers for support to meet our customer and dealer network needs. In regard to response time, most customers can expect a personal visit from a dealer technician within 24 hours with some exceptions due to geographic challenges. As detailed above, technical phone support is available all day, every day.	*
30	Describe your ability and willingness to provide your products and services to Sourcewell participating entities in the United States.	All personnel, physical assets, and procedures are already in place to provide our products and product support nationwide.	*
31	Describe your ability and willingness to provide your products and services to Sourcewell participating entities in Canada.	We are prepared and have already utilized the Sourcewell contract in Canada for a substantial transaction with Hamilton, Ontario (2 Hydro-Excavator trucks)	*
32	Identify any geographic areas of the United States or Canada that you will NOT be fully serving through the proposed contract.	Hawaii is the only geography not covered by an exclusive distributor, but we do utilize a non-exclusive reseller to facilitate service issues and the few sales that we see there.	*
33	Identify any Sourcewell participating entity sectors (i.e., government, education, not-for-profit) that you will NOT be fully serving through the proposed contract. Explain in detail. For example, does your company have only a regional presence, or do other cooperative purchasing contracts limit your ability to promote another contract?	Although we are willing and able to serve all sectors, 98-99% of our customers fall in the government segment with some tribal entities and an occasional school district or university mixed in.	*
34	Define any specific contract requirements or restrictions that would apply to our participating entities in Hawaii and Alaska and in US Territories.	We do not have any restrictions in regards to the contract for the States of Alaska and Hawaii.	*

Table 7: Marketing Plan

Line Item	Question	Response *
35	Describe your marketing strategy for promoting this contract opportunity. Upload representative samples of your marketing materials (if applicable) in the document upload section of your response.	<ul style="list-style-type: none"> Product Literature: We display the Sourcewell contract awarded logo on our product line cards, product catalogs, and our website. See supporting document "Sewer Equipment Co. of America Full Product Line Catalog". Website: We will highlight this in our website blog content when awarded and highlight on our social platforms. Magazines: Collaborate with Industry Partners and Trade Publications advertise and write articles highlighting the benefits of utilizing the Sourcewell Contract. Training on Finance Options: Promote the use of the Contract and Finance Options during our yearly Dealer Meetings. Main Phone Line: Our on-hold message for our main Sewer Equipment phone line includes a narrative describing the contract and benefits to our customers. Tradeshows: We display Sourcewell flags/banners at the major industry shows and our distribution (dealer) partners do as well at dozens of local shows each year. Field: Our three regional sales managers, national sales manager, and demonstration specialists promote the contract at in person customer visits and demonstrations. Trailing has also been provided to our distribution (dealer) partners on how to also promote the contract in the field
36	Describe your use of technology and digital data (e.g., social media, metadata usage) to enhance marketing effectiveness.	Our marketing platforms include: our websites (Sewer Equipment and Rock Rental), ad campaigns through Google AdWords, LinkedIn ads, and Facebook ads, social media platforms such as LinkedIn, Facebook, and Twitter, advertising and editorial content with trade magazines, and email campaigns to established dealer networks and customers.
37	In your view, what is Sourcewell's role in promoting contracts arising out of this RFP? How will you integrate a Sourcewell-awarded contract into your sales process?	<p>We feel that Sourcewell provides the medium and Sewer Equipment supplies the product, both supplying prospects. Sourcewell's marketing efforts are important to expose municipalities to the contract and the accepted option as an alternative to the traditional bid process. Sewer Equipment's responsibility is to market our product to prospects and our distribution network.</p> <p>Integrate Into Sales Process:</p> <ul style="list-style-type: none"> We will continue with our existing plan which is mentioned in number 35 above. In addition to what is mentioned we have additional plans already in place that we will continue with that include: <ul style="list-style-type: none"> WWETT show, Indianapolis, February 2022: announce renewal of contract at annual dealer meeting. Each year we present the top 3 Sourcewell dealer salespersons with monetary awards covered by Sewer Equipment. Our secured dealer portal website includes: all Sourcewell pricing, Sourcewell quick start guide which outlines all pertinent details of our contract. Internal quarterly sales meeting includes update on sales success regarding the contract. When a new dealer is brought on, we allocate for 1 hour of Sourcewell training.
38	Are your products or services available through an e-procurement ordering process? If so, describe your e-procurement system and how governmental and educational customers have used it.	We do not have an e-procurement system in place at this time.

Table 8: Value-Added Attributes

Line Item	Question	Response *
39	Describe any product, equipment, maintenance, or operator training programs that you offer to Sourcewell participating entities. Include details, such as whether training is standard or optional, who provides training, and any costs that apply.	<p>Operational training is standard and provided free of charge by our distributors at time of delivery of new machines. Because a large percentage of our customers are repeat buyers, we choose to offer additional on-site operator training by a factory representative on an optional basis for those that feel they need it. Price is \$1,839.00 for the first day and \$1,370.00 for each subsequent day, including all expenses such as transportation.</p> <p>Model specific maintenance training is optional, customizable, and available on demand. This covers daily, weekly, monthly, and annual maintenance requirements as well as basic and model specific troubleshooting. This is typically 2 days at our plant and is \$943 per person. Meals and lodging are included in the price and customer is responsible for transportation.</p>
40	Describe any technological advances that your proposed products or services offer.	<p>Our primary "advancement" revolves around the principle of keeping our systems simple. Particularly in the combination truck, hydro excavator, and full-size truck jet market, nearly every manufacturer has moved to microprocessor-controlled modules that incorporate touch screens and complex digital user interfaces. We have retained the use of traditional 12-volt control systems. This makes our trucks easier and safer to run, easier to maintain without special training and tools (increasing up-time) and eliminates the obsolescence and fragility of high-tech components.</p> <p>We are in the process of manufacturing the world's only battery powered rodder for the City of Seattle sewer collections department.</p> <p>The Genesis Recycling Combination truck is an exclusive partnership with Cappellotto of Italy that allows us to offer their world leading technology of this product in North America with the sales efforts and support of our nationwide dealer network.</p> <p>Our patented Hydro Drive system utilized on our 900-ECO drives our blower and water pump in a very unique but surprisingly simple manner that offers a host of benefits. Eliminating the transfer case present in most other designs removes a potential maintenance headache, allows our truck to work in neutral offering unmatched operator safety and ease of setup, and consumes less horsepower, thus cutting fuel consumption and emissions.</p> <p>The 800-HPRTV Series IV was recently refined and is the most user friendly and productive TV/Jet combination systems in the truck and trailer market, allowing customers to TV and clean sewer lines simultaneously.</p>

41	Describe any "green" initiatives that relate to your company or to your products or services, and include a list of the certifying agency for each.	<p>Company</p> <p>2020 solar panel project.</p> <p>Through the Illinois Adjustable Block Program Sewer Equipment's 706.86 kW solar system is generating 11,871 REC's (Renewable Energy Credits). (attachment – 41 Sewer Equipment Solar Renewable... and attachment - 41 Illinois Adjustable....),</p> <p>Sewer Equipment participated in ComEd's Smart Inverter rebate program which incentivizes non-residential customers to make renewable energy investments. (attachment – 41 Smart Inverter....)</p> <p>To date, Sewer Equipment's solar charging system has saved CO2 emissions of 895,396 lbs. (attachment 41 Solar Edge summary.)</p> <p>Battery powered forklifts and material handling devices utilize solar charging</p> <p>Adoption of low VOC paints has decreased overall VOC generation despite a 10-fold increase in production in the last 10 years.</p> <p>Installation of a water recirculation system for jetter testing, saving hundreds of thousands of gallons per year.</p> <p>Recycling Program</p> <p>Utilization of reusable, steel transport skids for our locally sourced large components eliminates the need for one-use wood and plastic skids.</p> <p>Recycling of wood and cardboard shipping components</p> <p>Plant-wide paper and plastic recycling program</p> <p>Products</p> <p>The Genesis recycler combo truck can clean sewers all day without using a drop of fresh water. It processes the debris and water that is vacuumed during the operating process, using the reclaimed water for jetting.</p> <p>Our 900-ECO truck, 800HPR-ECO truck and 747-ECO trailer operating system allows the engine to operate at 30-50% lower speed while in the work mode, offering reductions in fuel use, emissions, and ambient noise.</p> <p>Our rodders are the only commonly accepted waterless sewer cleaning tools, making them popular in arid regions where water conservation is of importance. Thousands of gallons of water are saved daily versus traditional sewer jet-vac technology.</p> <p>Although traditionally gas powered, we have now developed a battery powered rodder.</p> <p>Biodegradable hydraulic fluid is offered as an option in all our systems.</p> <p>We have manufactured several CNG powered jet trucks for the Southern California Market</p>
42	Identify any third-party issued eco-labels, ratings or certifications that your company has received for the equipment or products included in your Proposal related to energy efficiency or conservation, life-cycle design (cradle-to-cradle), or other green/sustainability factors.	<p>Sewer Equipment has not received any third-party ECO ratings specifically. However, a patent has been granted by the US Patent office for our HydroDrive system described above, as used on our 900-ECO. This system does provide fuel saving vs traditional drive systems. (Attachment 42 HydroDrive...)</p>
43	Describe any Women or Minority Business Entity (WMBE), Small Business Entity (SBE), or veteran owned business certifications that your company or hub partners have obtained. Upload documentation of certification (as applicable) in the document upload section of your response.	<p>We continue to receive the EDGE credit from the State of Illinois. This credit is based on the number of jobs created and retained. (Attachment 43 Edge Credit.....)</p>
44	What unique attributes does your company, your products, or your services offer to Sourcewell participating entities? What makes your proposed solutions unique in your industry as it applies to Sourcewell participating entities?	<p>One of the most unique attributes of our offering is our unprecedented breadth of product. No other manufacturer in our marketplace offers everything from small jetters used in the plumbing segment to full size combo trucks, and everything in between. This means that our distributors can be consultants starting with assessing a customer's needs and then supplying the proper product. This also makes us one of the only suppliers of smaller products in the sewer industry that has a strong nationwide sales and service network.</p>

Table 9A: Warranty

Describe in detail your manufacturer warranty program, including conditions and requirements to qualify, claims procedure, and overall structure. You may upload representative samples of your warranty materials (if applicable) in the document upload section of your response in addition to responding to the questions below.

Line Item	Question	Response *	
45	Do your warranties cover all products, parts, and labor?	Sewer Equipment's standard warranty policy covers all items manufactured by Sewer Equipment except for wear items. Many major components are covered by their respective manufacturers warranty policy. (Attachment 45 Warranty Policy.....)	*
46	Do your warranties impose usage restrictions or other limitations that adversely affect coverage?	Sewer Equipment's standard warranty policy covers 12 months or use or 2000 hours. The 2000 hours limit covers typical usage by all Municipalities.	*
47	Do your warranties cover the expense of technicians' travel time and mileage to perform warranty repairs?	Sewer Equipment provides up to 3 hours of travel time for warranty reimbursement. Our Dealers pick up travel time in addition to the 3 hours as needed. Our Municipal customers do not have to pay for travel time regardless of where they are located.	*
48	Are there any geographic regions of the United States or Canada (as applicable) for which you cannot provide a certified technician to perform warranty repairs? How will Sourcewell participating entities in these regions be provided service for warranty repair?	Sewer Equipment has dealers that cover 46 of States in the U.S. In Canada we have dealers currently covering 4 Provinces. Our dealers cover service in these areas. For customer in other states or provinces in Canada we have two options for service. First Sewer Equipment employs direct field service personnel that we can send directly to the customers locations. We also work with third party service centers across North America that will do warranty work on Sewer Equipment products. Regardless of the customers location, we have service handled.	*
49	Will you cover warranty service for items made by other manufacturers that are part of your proposal, or are these warranties issues typically passed on to the original equipment manufacturer?	Sewer Equipment assist in processing warranty claims for all purchased items covered by their respective manufacturer's warranties. For most items we handle these claims directly with the manufacturer for a seamless claim by the end user. This would be similar to claims on Sewer manufactured items. The only exception is auxiliary engines. Engine warranty claims and repairs are handled by the respective manufacturers service centers around the country. Sewer Equipment does assist with communication between the end user and the service center.	*
50	What are your proposed exchange and return programs and policies?	If the customer decides to return a purchased item such as a spare part, Sewer Equipment charges a 25% re-stocking fee. The customer will also be responsible for shipping charges. This policy does not apply to new custom-built equipment sold through our dealer network. Any potential return for new equipment would be negotiated with the selling dealer.	*
51	Describe any service contract options for the items included in your proposal.	Sewer Equipment's dealer network offers service packages for customers. These packages are priced by our dealers. For regions not supported by our dealer network, Sewer Equipment offers quarterly maintenance packages with work performed by our own Field Service Personnel. Pricing is on a case-by-case basis based on expectations of the customer.	*

Table 9B: Performance Standards or Guarantees

Describe in detail your performance standards or guarantees, including conditions and requirements to qualify, claims procedure, and overall structure. You may upload representative samples of your performance materials (if applicable) in the document upload section of your response in addition to responding to the questions below.

Line Item	Question	Response *	
52	Describe any performance standards or guarantees that apply to your services	Sewer Equipment does not have any performance guarantees that apply to service. We do offer a 27/7 phone support for all service-related issues. For urgent parts needs, we typically ship 90% of orders within 24 hours.	*
53	Describe any service standards or guarantees that apply to your services (policies, metrics, KPIs, etc.)	We do not have service performance standards currently but are looking to implement a program in 2022.	*

Table 10: Payment Terms and Financing Options

Line Item	Question	Response *	
54	Describe your payment terms and accepted payment methods?	Sewer Equipment's payment terms for all municipal and educational Customers is Net 30. Our dealers would also utilize Net 30-day terms to their customers.	*
55	Describe any leasing or financing options available for use by educational or governmental entities.	Sewer Equipment utilizes and recommends NCL Government Capital for leasing options to our Municipal Customers. This has proved very useful for long term leasing arrangements. For short term rental needs, we offer rentals through our subsidiary Rock Rentals. Many of our dealers also partner with us in offering short term equipment rentals.	*
56	Describe any standard transaction documents that you propose to use in connection with an awarded contract (order forms, terms and conditions, service level agreements, etc.). Upload a sample of each (as applicable) in the document upload section of your response.	Sewer Equipment and our dealers utilize our standard Sourcewell Price sheets for quoting to our customers. When a customer submits a purchase order to one of our dealers, the dealer submits a copy of the customer purchase order along with the worksheet used for quotation to us. We utilize this information to establish the Sourcewell Contract fee. All other related transaction documents are handled between our dealers and customers. See copies of our worksheets uploaded in the pricing section.	*
57	Do you accept the P-card procurement and payment process? If so, is there any additional cost to Sourcewell participating entities for using this process?	Sewer Equipment does not accept P-Card for payments currently.	*

Table 11: Pricing and Delivery

Provide detailed pricing information in the questions that follow below. Keep in mind that reasonable price and product adjustments can be made during the term of an awarded Contract as described in the RFP, the template Contract, and the Sourcewell Price and Product Change Request Form.

Line Item	Question	Response *	
58	Describe your pricing model (e.g., line-item discounts or product-category discounts). Provide detailed pricing data (including standard or list pricing and the Sourcewell discounted price) on all of the items that you want Sourcewell to consider as part of your RFP response. If applicable, provide a SKU for each item in your proposal. Upload your pricing materials (if applicable) in the document upload section of your response.	Sewer Equipment utilizes a straightforward discount off list pricing model for all our new equipment sales. This also applies to all spare parts and accessories. Pricing for all our new equipment models has been uploaded and is included with this submittal. We do not utilize SKUs for our equipment. All worksheets are identified by their model name. Pricing for all parts and accessories is not included with this submittal as the number of items is quite large. MSRP pricing for most items can be found at www.sewershop.com .	*
59	Quantify the pricing discount represented by the pricing proposal in this response. For example, if the pricing in your response represents a percentage discount from MSRP or list, state the percentage or percentage range.	The Sourcewell Contract discount for all new equipment is 3% off MSRP. The discount for parts and accessories is 5% off MSRP. The discount for rentals is 3% off published rates. The buyout price for rentals if applicable is priced at 3% off MSRP. These discounts are minimums, and our dealers may provide additional discounts.	*
60	Describe any quantity or volume discounts or rebate programs that you offer.	Sewer Equipment does not have a standard volume discount pricing structure. However, us and our dealers will offer volume discounts as necessary on a case by case basis. When offered, these discounts are noted on the quote to be above and beyond the standard Sourcewell discount.	*
61	Propose a method of facilitating "sourced" products or related services, which may be referred to as "open market" items or "nonstandard options". For example, you may supply such items "at cost" or "at cost plus a percentage," or you may supply a quote for each such request.	Sewer Equipment and/or our dealers will provide non-standard items to be mounted on our equipment at request of our customers. These items are quoted on a case-by-case basis and are considered part of our product. These non-standard items are subject to the Sourcewell discount. Sewer Equipment and/or our dealers will also supply chassis for our truck mounted models. These chassis are currently being quoted at cost on a case by case basis due to pricing influx in the market. We consider these items to be "pass-thru" items and are not subject to Sourcewell discounts or fee reporting.	*
62	Identify any element of the total cost of acquisition that is NOT included in the pricing submitted with your response. This includes all additional charges associated with a purchase that are not directly identified as freight or shipping charges. For example, list costs for items like pre-delivery inspection, installation, set up, mandatory training, or initial inspection. Identify any parties that impose such costs and their relationship to the Proposer.	Items that can be included on a quotation to a customer but are not on our pricing worksheet or discussed in the above sections include the following. Dealer supplied freight, training, and pre-delivery inspections. These items are not subject to Sourcewell Discount or fee reporting.	*
63	If freight, delivery, or shipping is an additional cost to the Sourcewell participating entity, describe in detail the complete freight, shipping, and delivery program.	Sewer Equipment charges freight from our Dixon, IL location to our Dealers location. We charge freight on a per mile bases. Our dealers may impose an additional charge for freight from their location to the customers location depending on location. That is a separate charge as listed in question 62.	*
64	Specifically describe freight, shipping, and delivery terms or programs available for Alaska, Hawaii, Canada, or any offshore delivery.	For freight charges to customers located outside of the continental United States or Canada, we will with our freight broker to establish the lowest price options for our customers. Our customers are also welcomed to take on the freight responsibility themselves.	*
65	Describe any unique distribution and/or delivery methods or options offered in your proposal.	We do not currently offer any unique freight programs other than what is listed above.	*

Table 12: Pricing Offered

Line Item	The Pricing Offered in this Proposal is: *	Comments
66	c. better than the Proposer typically offers to GPOs, cooperative procurement organizations, or state purchasing departments.	Sewer Equipment has always offered a discount from list price on the Sourcewell Contract.

Table 13: Audit and Administrative Fee

Line Item	Question	Response *
67	Specifically describe any self-audit process or program that you plan to employ to verify compliance with your proposed Contract with Sourcewell. This process includes ensuring that Sourcewell participating entities obtain the proper pricing, that the Vendor reports all sales under the Contract each quarter, and that the Vendor remits the proper administrative fee to Sourcewell. Provide sufficient detail to support your ability to report quarterly sales to Sourcewell as described in the Contract template.	<p>Our Sourcewell pricing worksheets are accessible for download on our dealer website. This assures that our dealer sales staff have access to the correct price pages. These contract specific price sheets have the 3% minimum discount already listed to prevent error.</p> <p>Sewer Equipment audits every incoming order to determine if our Dealers have sold it via the Sourcewell Contract. If it was determined it was a Sourcewell sale, we verify all contract pricing via our worksheet and the customer purchase order. Every customer purchase order utilizing the Sourcewell contract must list their Sourcewell membership number and Sewer Equipment's contract number. Upon confirming the order is purchased via the contract, we document every order on an Excel spreadsheet. This spreadsheet tracks contract sell price, contract fee, and so on. Our Accounting Department audits this spreadsheet on every order that is completed before shipping. We also identify the use of the contract on our order tracking database for an easy to access record of all Sourcewell orders.</p> <p>For fee reporting and remittance we have a dedicated person in our Accounting Department that audits the Sourcewell Orders spreadsheet and reports sales on a quarterly basis. Fees are paid based on this quarterly reporting.</p>
68	If you are awarded a contract, provide a few examples of internal metrics that will be tracked to measure whether you are having success with the contract.	We continually monitor contract usage against overall sales volumes through our Dealerships. We track and award the highest grossing dealer salesperson that utilizes the Sourcewell Contract on a yearly basis during our dealer awards ceremony. It should be noted that the Sourcewell Contract is the only contract where we offer this award. We also compare the Sourcewell contract against competing national contracts and dealer held state contracts. These comparisons help us to put emphasis on training dealer sales staff.
69	Identify a proposed administrative fee that you will pay to Sourcewell for facilitating, managing, and promoting the Sourcewell Contract in the event that you are awarded a Contract. This fee is typically calculated as a percentage of Vendor's sales under the Contract or as a per-unit fee; it is not a line-item addition to the Member's cost of goods. (See the RFP and template Contract for additional details.)	<p>Sewer Equipment will pay an administrative fee to Sourcewell based on 1% of the Sourcewell sell price to the customer. This 1% fee is paid on our equipment, spare parts, and accessories. We do not pay the administrative fee on chassis which are considered a pass thru with our units. We will also pay the 1% administrative fee on all rental billings limited to 18 months and to buyouts of rentals based on the negotiated buyout price.</p> <p>The fees are calculated and paid on a quarterly basis.</p>

Table 14A: Depth and Breadth of Offered Equipment Products and Services

Line Item	Question	Response *
70	Provide a detailed description of the equipment, products, and services that you are offering in your proposal.	<p>Sewer Equipment is offering an extensive range of equipment that all fall into the Sewer Vacuum, & Hydro-Excavation Category on this proposal. Our list of offered equipment is as follows....</p> <ul style="list-style-type: none"> • Our models 400-ECO & 900-ECO Combination Sewer Cleaners • Our Genesis Recycler Sewer Cleaner • Our Mongoose Series of Truck and Trailer Jetters • Our 545 & 747 Series of Truck and Trailer Jetters • Our 800 Series Truck Jetters • Our Ramvac Series Hydro Excavation Trucks • Or Ramvac Series Air Excavation Trucks. • Our JAJ Series of Easement Machines for Sewer Cleaning • Our 444, 866 & 877 Rodders for Sewer Cleaning • Spare parts and Accessories for above listed equipment. • Our Rental Program of above equipment.
71	Within this RFP category there may be subcategories of solutions. List subcategory titles that best describe your products and services.	All our equipment falls under the primary category on the proposal.

Table 14B: Depth and Breadth of Offered Equipment Products and Services

Indicate below if the listed types or classes of equipment, products, and services are offered within your proposal. Provide additional comments in the text box provided, as necessary.

Line Item	Category or Type	Offered *	Comments	
72	Sewer vacuums or combination sewer cleaners	<input checked="" type="radio"/> Yes <input type="radio"/> No	See Equipment List	*
73	Hydro or air excavation equipment	<input checked="" type="radio"/> Yes <input type="radio"/> No	See Equipment List	*
74	Jetters and rodders	<input checked="" type="radio"/> Yes <input type="radio"/> No	See Equipment List	*
75	Dewatering, mud, trash, and centrifugal pumps	<input type="radio"/> Yes <input checked="" type="radio"/> No	No items specifically in this category, but our Geneisis Recycler unit does de-water before dumping.	*
76	Pumps used in lift stations, sewage treatment, water treatment, or water collection facilities	<input type="radio"/> Yes <input checked="" type="radio"/> No	No items specifically in this category, but our 900-ECO with optional trash pump can be used as an emergency pump system.	*
77	Accessories, supplies and replacement or wear parts related to the offerings above.	<input checked="" type="radio"/> Yes <input type="radio"/> No		

Table 15: Industry Specific Questions

Line Item	Question	Response *	
78	Describe any product or equipment features that improve operator safety.	Our 900-ECO with patented HydroDrive system operates with the transmission in neutral and no transfer case required which has the potential to pop into gear and drive away. All of our ECO Series equipment operators at a reduced RPM for lowered noise for the operator. Our standard wireless remote has an e-stop safety check built in.	*
79	Describe any product or equipment innovations that increase uptime and operator productivity.	Our 900-ECO with patented HydroDrive system operates with the transmission in neutral and no transfer case required. The operator simply puts the truck in neutral, sets the parking brake, gets out of the truck, and turns on one switch to activate the unit. Then they can vacuum and/or jet within seconds. We do not utilize any completed computers or touch screens that prevent the operator from using while wearing gloves. Our dig-deep boom available on the 900-ECO and our HX12 series allows for increase vacuum depth without the need for as many vacuum tube additions.	

Table 16: Exceptions to Terms, Conditions, or Specifications Form

Line Item 80. NOTICE: To identify any exception, or to request any modification, to the Sourcwell template Contract terms, conditions, or specifications, a Proposer must submit the exception or requested modification on the **Exceptions to Terms, Conditions, or Specifications Form** immediately below. The contract section, the specific text addressed by the exception or requested modification, and the proposed modification must be identified in detail. Proposer's exceptions and proposed modifications are subject to review and approval of Sourcwell and will not automatically be included in the contract.

Contract Section	Term, Condition, or Specification	Exception or Proposed Modification

Documents

Ensure your submission document(s) conforms to the following:

1. Documents in PDF format are preferred. Documents in Word, Excel, or compatible formats may also be provided.
2. Documents should NOT have a security password, as Sourcwell may not be able to open the file. It is your sole responsibility to ensure that the uploaded document(s) are not either defective, corrupted or blank and that the documents can be opened and viewed by Sourcwell.
3. Sourcwell may reject any response where any document(s) cannot be opened and viewed by Sourcwell.
4. If you need to upload more than one (1) document for a single item, you should combine the documents into one zipped file. If the zipped file contains more than one (1) document, ensure each document is named, in relation to the submission format item responding to. For example, if responding to the Marketing Plan category save the document as "Marketing Plan."

- [Pricing](#) - Price Sheets.zip - Monday October 11, 2021 13:50:43
- [Financial Strength and Stability](#) - Financials.zip - Monday October 11, 2021 13:51:14
- [Marketing Plan/Samples](#) - Marketing Documents.zip - Monday October 11, 2021 13:52:29
- [WMBE/MBE/SBE or Related Certificates](#) - 43 Edge Credit Cert of Verification.pdf - Monday October 11, 2021 13:53:20
- [Warranty Information](#) - 45 WARRANTY POLICY AND PROCEDURE.docx - Monday October 11, 2021 13:52:48
- [Standard Transaction Document Samples](#) - Sourewell Order Transaction Document.pdf - Monday October 11, 2021 13:57:20
- [Upload Additional Document](#) - Additional Documents.zip - Monday October 11, 2021 13:54:30

Addenda, Terms and Conditions**PROPOSER AFFIDAVIT AND ASSURANCE OF COMPLIANCE**

I certify that I am the authorized representative of the Proposer submitting the foregoing Proposal with the legal authority to bind the Proposer to this Affidavit and Assurance of Compliance:

1. The Proposer is submitting this Proposal under its full and complete legal name, and the Proposer legally exists in good standing in the jurisdiction of its residence.
2. The Proposer warrants that the information provided in this Proposal is true, correct, and reliable for purposes of evaluation for contract award.
3. The Proposer, including any person assisting with the creation of this Proposal, has arrived at this Proposal independently and the Proposal has been created without colluding with any other person, company, or parties that have or will submit a proposal under this solicitation; and the Proposal has in all respects been created fairly without any fraud or dishonesty. The Proposer has not directly or indirectly entered into any agreement or arrangement with any person or business in an effort to influence any part of this solicitation or operations of a resulting contract; and the Proposer has not taken any action in restraint of free trade or competitiveness in connection with this solicitation. Additionally, if Proposer has worked with a consultant on the Proposal, the consultant (an individual or a company) has not assisted any other entity that has submitted or will submit a proposal for this solicitation.
4. To the best of its knowledge and belief, and except as otherwise disclosed in the Proposal, there are no relevant facts or circumstances which could give rise to an organizational conflict of interest. An organizational conflict of interest exists when a vendor has an unfair competitive advantage or the vendor's objectivity in performing the contract is, or might be, impaired.
5. The contents of the Proposal have not been communicated by the Proposer or its employees or agents to any person not an employee or legally authorized agent of the Proposer and will not be communicated to any such persons prior to Due Date of this solicitation.
6. If awarded a contract, the Proposer will provide to Sourcewell Participating Entities the equipment, products, and services in accordance with the terms, conditions, and scope of a resulting contract.
7. The Proposer possesses, or will possess before delivering any equipment, products, or services, all applicable licenses or certifications necessary to deliver such equipment, products, or services under any resulting contract.
8. The Proposer agrees to deliver equipment, products, and services through valid contracts, purchase orders, or means that are acceptable to Sourcewell Members. Unless otherwise agreed to, the Proposer must provide only new and first-quality products and related services to Sourcewell Members under an awarded Contract.
9. The Proposer will comply with all applicable provisions of federal, state, and local laws, regulations, rules, and orders.
10. The Proposer understands that Sourcewell will reject RFP proposals that are marked "confidential" (or "nonpublic," etc.), either substantially or in their entirety. Under Minnesota Statutes Section 13.591, subdivision 4, all proposals are considered nonpublic data until the evaluation is complete and a Contract is awarded. At that point, proposals become public data. Minnesota Statutes Section 13.37 permits only certain narrowly defined data to be considered a "trade secret," and thus nonpublic data under Minnesota's Data Practices Act.
11. Proposer its employees, agents, and subcontractors are not:
 1. Included on the "Specially Designated Nationals and Blocked Persons" list maintained by the Office of Foreign Assets Control of the United States Department of the Treasury found at: <https://www.treasury.gov/ofac/downloads/sdnlist.pdf>;
 2. Included on the government-wide exclusions lists in the United States System for Award Management found at: <https://sam.gov/SAM/>; or
 3. Presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from programs operated by the State of Minnesota; the United States federal government or the Canadian government, as applicable; or any Participating Entity. Vendor certifies and warrants that neither it nor its principals have been convicted of a criminal offense related to the subject matter of this solicitation.

☒ By checking this box I acknowledge that I am bound by the terms of the Proposer's Affidavit, have the legal authority to submit this Proposal on behalf of the Proposer, and that this electronic acknowledgment has the same legal effect, validity, and enforceability as if I had hand signed the Proposal. This signature will not be denied such legal effect, validity, or enforceability solely because an electronic signature or electronic record was used in its formation. - Shawn Bondele, Inside Sales Manager, Sewer Equipment Co. of America

The Proposer declares that there is an actual or potential Conflict of Interest relating to the preparation of its submission, and/or the Proposer foresees an actual or potential Conflict of Interest in performing the contractual obligations contemplated in the bid.

☒ Yes ☐ No

The Bidder acknowledges and agrees that the addendum/addenda below form part of the Bid Document.

Check the box in the column "I have reviewed this addendum" below to acknowledge each of the addenda.

File Name	I have reviewed the below addendum and attachments (if applicable)	Pages
Addendum_3_Sewer_Vac_Hydro-Excavation_Pumps_RFP_101221 Thu September 30 2021 03:29 PM	<input checked="" type="checkbox"/>	2
Addendum_2_Sewer_Vac_Hydro-Excavation_Pumps_RFP_101221 Fri September 10 2021 02:40 PM	<input checked="" type="checkbox"/>	2
Addendum_1_Sewer_Vac_Hydro-Excavation_Pumps_RFP_101221 Thu August 26 2021 05:40 PM	<input checked="" type="checkbox"/>	1

Staff Report: 025-24

TO: Mayor and City Council

FROM: Eric Holmes, City Manager

DATE: 2/5/2024

SUBJECT Interlocal Agreement with Clark County - Whatley Pit

Key Points

- A decant facility is a large concrete pad that provides an environmentally permitted method to discharge waste material retrieved from storm drain catch basins, drywells, and piping systems. This waste typically contains traces of petroleum, heavy metals and other contaminants.
- A street sweeping collection area consists of a series of concrete pads to store the collection of street sweeping material. Street sweeping collection typically consists of leaves, woody material, grasses/weeds, dirt, and trash.
- The Whatley Pit facility is a Clark County-owned and operated facility specifically designed and developed for the collection, processing and disposal of stormwater material collection.
- Through a series of Interlocal Agreements, the City of Vancouver has utilized the Whatley facility since 1994 and participated financially in the capital improvement and expansion of the facility since 2000.

Strategic Plan Alignment

Transportation and Mobility - a safe, future-ready and convenient transportation system.

Safe and Prepared Community – a safe place to live, work, learn, and play.

Present Situation

The City of Vancouver has been partnering with Clark County for use of the Whatley Pit facility since 1994. Clark County manages and staffs the facility, permitting the City of Vancouver, and other local public agencies with the opportunity to deposit, process and properly dispose of street sweeping and collected stormwater liquids and solids collected within the boundaries of the City. The Whatley Pit facility is owned and maintained by Clark County, however, the City of Vancouver, and other public agencies compose a Steering Committee, who participate in an advisory role to assist with management of the facility.

Initially constructed by Clark County, the City of Vancouver has financially contributed towards two

additional phases of expansion and capital improvements of the facility. The City has contributed close to \$160,000 since 2000, participating in the expansion of the decant facility, as well as the improvement and expansion of stormwater facilities and impervious surfacing to add street sweeping bays.

The attached Interlocal Agreement renews this partnership with the County, setting forth the terms and conditions under which the City will continue to use this critical facility for the next four years.

Advantage(s)

1. The City of Vancouver continues to utilize the facility. The City of Vancouver currently does not have other cost-effective options for the proper disposal of decant material, and extremely limited options for the containment of street sweeping material.
2. The use of the facility, and the City's participation on the Steering Committee with other local public agencies, allows for beneficial communication and stormwater maintenance coordination.

Disadvantage(s)

None

Budget Impact

Public Works, and specifically, the Stormwater maintenance program, received appropriate 2024 budget allocation in Professional Services and Repair and Maintenance objects. The funds are derived from Funds 444 and 103.

Prior Council Review

Council authorized the prior, and now expired, Interlocal Agreement on 6/26/2017.

Action Requested

Authorize City Manager to approve, sign, and execute the attached 2024 Interlocal Agreement.

Brian Potter, Operations Superintendent, 360-487-8323

ATTACHMENTS:

- ▣ Interlocal Agreement - Whatley Pit

**INTERLOCAL AGREEMENT
BETWEEN CLARK COUNTY AND VANCOUVER
FOR**

**DECANT AND/OR STREET SWEEPINGS PROCESSING
AND DISPOSAL SERVICES**

THIS IS AN INTERLOCAL AGREEMENT, entered into under the authority of the Interlocal Cooperation Act, Chapter 39.34 RCW, between Clark County, Washington, a political subdivision of the State of Washington, (the "County") and The City of Vancouver, hereinafter referred to as the "Agency", a municipal corporation and charter Agency of the first class of the State of Washington, by which the County will allow utilization of the County's Whatley Facility for the treatment and disposal of storm water liquids and solids, and/or street sweepings generated by the Agency.

WHEREAS, pursuant to Chapter 39.34 RCW (Interlocal Cooperation Act), one or more public entities may contract with one another to perform government services which each is by law authorized to perform; and

WHEREAS, the county has the resources available to provide such services to the Agency in a cost-effective manner; and

WHEREAS, for purposes and intent of this Agreement, the facility is defined as the upper-portion of the Whatley site which encompasses the main gate access to, and including the scale, wash rack, upper asphalt stockpile pad, Decant facility, storm water systems and retention ponds.

WHEREAS, as set forth in the Charter for the Whatley Decant and Street Sweeping Recycling Facility Steering Committee; hereinafter referred to as Steering Committee, the county and partnership agencies within aforementioned committee shall serve in an advisory role to assist in decision making related to this facility; and

NOW, THEREFORE,

INTERLOCAL AGREEMENT FOR DECANT AND/OR STREET SWEEPINGS TREATMENT AND DISPOSAL SERVICES
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THE COUNTY AND AGENCY agree as follows:

SECTION 1. PURPOSE. The purpose of this Agreement is to provide for utilization of the County's Whatley Facility for treatment and disposal of storm water solids and liquids, and/or street sweepings generated by the Agency.

SECTION 2. TERM. The initial term of the Agreement, not including any extensions is a (5) five--year period from January 1, 2024 through December 31, 2028.

SECTION 3. TERMINATION. Either party may choose to terminate this Agreement by notifying the other party in writing 180 days prior to termination. The Agency agrees to reimburse the County for the cost of services provided, and includes any amounts owed related to import fees or costs of Agency-contributed portion of stockpiled materials, and furthermore; Agency shall be responsible for any remaining proportional projected costs of materials, equipment, hauling, tipping fees, taxes, labor, grinding, screening, chipping, etc., associated with movement of Agency generated materials. The Agency hereby agrees to payment and/or reimbursement as expressed within the body of this agreement, and understands that the amount owed may be based on actual or projected costs of remaining materials as identified within this agreement. The County reserves the right to accept services in lieu of monetary funds if in the best interest of the site objectives and if approved in advance by the Steering Committee.

SECTION 4. EXTENSIONS. The term of this Agreement may be extended in two-year increments of subsequent years by mutual written agreement of both parties, up to maximum of four additional (4) years. The extension agreements shall be executed at least fifteen (15) days prior to the expiration of the contract. The County Manager is authorized to approve and execute such two-year extensions without further authorization from the Board of County Councilors.

INTERLOCAL AGREEMENT FOR DECANT AND/OR STREET SWEEPINGS TREATMENT AND DISPOSAL SERVICES
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SECTION 5. DEFINITION OF FACILITY AND PARTICIPANTS. The facility, located at 11203 N.E. 76th. Street, Vancouver, Washington was designed and built to treat and store solids, and to treat, store and dispose of storm water liquids removed from storm water and drainage systems, and municipal street sweepings. The original cost of construction of the facility was borne by Clark County, and subsequent expansion occurred through contributions from the Washington State Department of Transportation (State) and the City of Vancouver (Agency) for their impacts related to sizing of the facility. Currently, Clark County, City of Ridgefield, Washington State Department of Transportation, City of Battle Ground, City of Camas and City of Washougal compose a Steering Committee which serves in an advisory role to assist in decision making related to *this* facility.

SECTION 6. SCOPE OF SERVICES. The County will allow the Agency to bring storm water solids and liquids and/or street sweepings collected inside the Agency boundaries, for treatment and coordinated disposal as-defined within this agreement. The County will provide all labor and equipment necessary for the treatment of liquids and solids, and disposal of liquids from the decant and sweepings processes; and shall provide disposal services as outlined in Section 7B, as-necessary to maintain sufficient pad space related to solids treatment and storage areas on the solids pad. The Agency hereby agrees that necessary pad storage space shall be as-determined by the County, with the understanding that pad space for storage and treatment of solids material shall take precedent over any implied or intended cost-savings related to a local reuse event. The Agency also hereby acknowledges that a determination to move solids based on aforementioned storage space may result in the Agency's solids disposal costs increasing significantly higher than costs which are dependent upon participation from the Agency during reuse/disposal haul-out events described in Section 7B.

SECTION 7. COST OF SERVICES - GENERAL. Costs will be based per weight of each imported load, and shall be derived from the sum of separate, described herein operations for accounting and billing purposes. The first operation; liquids and treatment, covers overall decant facility operations, and includes daily operations. liquid treatment, testing, maintenance. associated storm water facilities, and handling of solids related to treatment such as solids movement from decant or street sweeping materials, pile separation and turning. The second service is defined by the solids that remain following the liquid and treatment service, which include screening, testing, loading, transporting, overage disposal, various tipping-related fees and equipment related to re-use/disposal sites such as excavators/loaders needed for material handling, as well as other on-site and/or reuse/disposal site requirements or upgrades, services such as planting operations or site improvements. The Agency understands that the cost of some of these aforementioned services is highly subject to Agency participation during partnership supported reuse projects of solids materials, and may fluctuate significantly annually.

SECTION 7A. COSTS FOR LIQUIDS AND TREATMENT. The cost of liquids and treatment services under this Agreement are established by the County on an annual basis, and based on the projected budget amount over each biennium and the quantity of imported materials from the previous year; unless, at the discretion of the County, there is found to be a more suitable accounting of imported material costs. These costs shall be defined in Attachment A, incorporated herein by reference, and attached. Costs will be based on the budgeted data, tonnages of decant and sweepings material brought into the facility, equipment, upgrades and/or repairs, and any uncollected costs from previous year(s), including costs from redirection of solids to the landfill site or any other less cost-effective options than local reuse.

Liquids and treatment services reporting category costs do not include costs specific to the lower pit area or solids disposal/reuse. The lower pit area is designated only for Clark County Public Works Operations use, and Clark County Public Works will be responsible for any and all costs and

INTERLOCAL AGREEMENT FOR DECANT AND/OR STREET SWEEPINGS TREATMENT AND DISPOSAL SERVICES
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fees associated with the lower pit, including operations, maintenance, permitting, etc., and any other items related to requirements, needs or projects that occur which are exclusive to Clark County.

SECTION 7B. FEES FOR SOLIDS. Fees of solids-related services under this Agreement are based on scale weights of imported material, an estimated level of decomposition and drying of material, and remaining solids. To achieve consistency for all partnership agencies, each agency will pay an annually determined amount for the type and weight of material they bring into the site, which covers anticipated costs for disposal during a local reuse event. Each agency is responsible for payment of their respective portion of the solids they have imported onto the site.

The Agency understands that participation in local reuse events is critical to keeping costs and fees low for all partnership agencies, and participation is preferred but not mandatory. The Agency hereby understands that although not mandatory; significant non-participation causes overall cost and fee increases to other partnership agencies. The burden of significant non-participation should not be placed on other partnership agencies, and is subject to a separate, proportionally-determined payment exclusive to the non-participating agency with a majority vote from the Steering Committee. In the event of a majority vote of significant non-participation, costs shall be billed to the Agency based on the Agencies percentage-based proportion of material(s) brought in to Whatley.

The Agency understands that fees per wet ton generally vary annually due to overall quality of material, regulator directive, storage pad space restraints, hauling to a landfill, and all other disposal, tipping, tax, overhead, or any other costs or savings subject to variation based on internal or external sources, agreements and/or contracts.

The fees per wet ton (Attachment A) will be annually adjusted, and for disclosure purposes of this Agreement, the Agency and County hereby recognizes and agrees that:

1. There is currently no reserve fee for major maintenance projects, as these projects will be determined by the Steering Committee on an annual basis, and the overall fees will be distributed amongst all partnership agencies. The County reserves the

right to create a reserve fund if needed during the scope or extended scope of this agreement, with approval through a majority vote of the Steering Committee.

2. A program overhead charge is included on all imported solids, and includes costs for program administration and division support. Changes will be updated annually on Attachment A.
3. Solid waste collection tax, currently 3.6%, is included in the import fee for overage material. This tax applies to materials that do not get reused, including overage and solids that are transported to the dump per WAC 458-20-250. Changes to anticipated solids waste collection tax, including tax rate and/or changes in quantity of material to be taxed will be reflected on Attachment A.

SECTION 8. BILLING METHOD AND PROCESS. Per wet ton fees based on type of material imported to the facility will be charged by the County to the Agency on a monthly basis. The invoice will identify the dates, type of material and weight of the solid material delivered, with the amount owed during that billing period.

Import records will be taken directly from Whatley scale documentation, input into an electronic format by County staff, then sent to the County's Accounting Department for processing and formal billing to the Agency. The County Accounting Department will send billings to the Agency's Finance office for payment and will simultaneously send an informational copy of the billing to the Agency. Payment by the Agency shall be due within thirty days after issuance of the bill. Payments that are not paid within the allotted time periods shall be considered delinquent. Delinquent charges shall accrue interest on the unpaid balance, from the date of delinquency until paid, at a County set interest rate, which is currently one percent (1%) per month.

In the event of dispute due to lack of, or illegible information on the scale documentation, the County shall take an average of the most previous three (3) loads of the Agencies similar type of material with completed scale data, and annotate through supporting documentation and/or directly

on invoice that an average was applied for billing: this average will be utilized until complete information is available.

SECTION 9. CONTRIBUTIONS AND AGENCY PAYMENT. The Agency may submit invoices for services or improvements provided and agreed upon by Clark County and/or the Steering Committee for any portion that is reimbursable through the intent of this agreement. The County, with any requested guidance from the Steering Committee shall consider all items and/or services on an individual agency basis, and reserves the right to accept or deny payment/credit for any item or service that is not conducive to the intent of this agreement and/or the overall benefit to the Whatley Facility or members. Each agency must provide invoices to County within 60 days of each solids disposal and/or local reuse project completion. Payment may be subject to the approval of Steering Committee if the contribution was not pre-authorized. Reimbursable services or improvements would include items such as the following not all-inclusive examples:

1. Hourly cost and total quantity of hours of labor provided by the Agency
2. Any vehicles, machinery or rentals costs provided by the Agency
3. Any materials (including ground cover, vegetation, herbicides, etc.) associated with loading, disposal or application of Whatley solids.
4. Any other items or services that are provided which are determined as desirable by the Steering Committee for the general purposes of the overall site or individual project provided the County pre-authorizes the aforementioned items or services prior to the agency commencing said items or services.

SECTION 10. COMPLIANCE TO OPERATING PROCEDURES. The Agency will be required to follow the terms and conditions outlined in the Clark County Public Works Decant Facility Standard Operations and Procedures Manual, incorporated by reference and available to all partnership agencies.

INTERLOCAL AGREEMENT FOR DECANT AND/OR STREET SWEEPINGS TREATMENT AND DISPOSAL SERVICES

SECTION 11. ADMINISTRATION/COMMUNICATIONS. Contract managers designated by the County Manager and Agency Manager shall administer this Agreement. Contract managers shall monitor service level and budget provisions of this Agreement. The County and Agency contract managers shall review service levels, service delivery, and costs on an annual basis. The contract managers shall, during the interim, communicate via telephone or e-mail to relay information, answer questions, or raise concerns.

SECTION 12. DISPUTE RESOLUTION. In the event of a dispute between the County and Agency regarding the delivery of services under this Agreement, which cannot be resolved by their respective designated contract managers, the Clark County Manager and the Agency Manager or their designated representatives shall review such dispute and options for resolution. Any dispute not resolved by the representatives shall be referred to the Clark County Council. The decision of the County Council and the Agency Manager regarding the dispute shall be final as between the parties.

Any controversy or claim arising out of or relating to this Agreement or the alleged breach of such Agreement that cannot be resolved by the County Council and the Agency Manager may be submitted to mediation and if still not resolved, shall be submitted to binding arbitration in accordance with the rules and procedures set forth in Chapter 7.04 RCW, and the judgment or award rendered by the arbitrator may be entered in any court having jurisdiction thereof.

SECTION 13. INDEPENDENT CONTRACTOR The County is and shall at all times be deemed to be an independent contractor in the provision of the services set forth in this Agreement. Nothing herein shall be construed as creating the relationship of employer and employee, or principal and agent, between the County and Agency or between any of the County's or Agency's employees. The County shall retain all authority for provision of services, standards of performance, discipline

and control of personnel, and other matters incident to the performance of services by the County pursuant to this Agreement. Nothing in this Agreement shall make any employee of the County an employee of the Agency or any employee of the Agency an employee of the County for any purpose, including but not limited to, for withholding taxes, payment of benefits, workers' compensation pursuant to Title 51 RCW, or any other rights or privileges accorded their respective employees by virtue of their employment.

SECTION 14. HOLD HARMLESS/INDEMNIFICATION.

a. COUNTY RESPONSIBILITY. The County agrees to indemnify, defend, save and hold harmless the Agency, its officials, employees, and agents from any and all liability, demands, claims, causes of action, suits or judgments, including costs, attorney fees and expenses incurred in connection therewith, or whatsoever kind of nature, arising out of, or in connection with, or incident to, the performance of services by the County pursuant to this Agreement. In the event that any suit based on such a claim, demand, loss, damage, cost, or cause of action is brought against the Agency; the Agency retains the right to participate in said suit if any principal of public law is involved.

This indemnity and hold harmless shall include any claim made against the Agency by an employee of the County or subcontractor or agent of the County, even if the County is thus otherwise immune from liability pursuant to the workers' compensation statute, Title 51 RCW.

b. AGENCY RESPONSIBILITY. The Agency agrees to indemnify, defend save and hold harmless the County, its officials, employees, and agents from any and all liability, demands, claims, causes of action, suits or judgments, including costs, attorney fees and expenses incurred in connection therewith, or whatsoever kind of nature, arising out of, or in connection with, or incident to, the provision of services by the Agency pursuant to this Agreement.

In the event that any suit bases on such a claim, demand, loss, damage, cost, or cause of action is brought against the Agency, the County retains the right to participate in said suit if any principal of public law is involved.

This indemnity and hold harmless shall include any claim made against the County by an employee of the Agency or subcontractor or agent of the Agency, even if the Agency is thus otherwise immune from liability pursuant to the workers' compensation statute, Title 51 RCW.

c. ATTORNEYS FEES AND COSTS. All parties shall bear their own costs of enforcing the rights and responsibilities under the contract.

SECTION 15. ASSIGNMENT/SUBCONTRACTING. Neither party shall transfer or assign, in whole or in part, any or all of its respective rights or obligations under this Agreement without the prior written consent of the other. The County shall not subcontract for the provision of any services it is to provide the Agency under this Agreement without the prior written consent of the Agency.

SECTION 16. NO THIRD PARTY BENEFICIARY. The County does not intend by this Agreement to assume any contractual obligations to anyone other than the Agency. The Agency does not intend by this Agreement to assume any contractual obligations to anyone other than the County. The County and Agency do not intend there be any third-party beneficiary to this Agreement.

SECTION 17. NOTICE. Any notices to be given under this Agreement shall at minimum be delivered, postage prepaid and addressed to:

To the Agency;
CITY OF: _____ Vancouver _____
_____ 4711 E 4th Plain Blvd _____
_____ Vancouver _____, Washington, __98661____
Attention: Public Works Director _____

INTERLOCAL AGREEMENT FOR DECANT AND/OR STREET SWEEPINGS TREATMENT AND DISPOSAL SERVICES

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To the County:

CLARK COUNTY PUBLIC WORKS
4700 NE 78th Street
Vancouver, Washington 98665
Attention: Operations Manager

The name and address to which notices shall be directed may be changed by either the County or Agency giving the other notice of such change as provided in this section.

SECTION 18. WAIVER. No waiver by either party of any term or condition of this Agreement incorporated in the Agreement shall be deemed or construed to constitute a waiver of any other term or condition or of any subsequent breach, whether of the same or different provision.

SECTION 19. INTERLOCAL COOPERATION ACT COMPLIANCE. This is an Agreement entered into pursuant to Chapter 39.34 RCW. Its purpose is as set forth in Section 1. Its duration is as specified in Sections 2 (Term) and 2 (Extensions). Its method of termination is set forth in Section 3. Its manner of financing and of establishing and maintaining a budget therefore is described in Sections 6 (Scope of Service) and 7 (Cost of Services). No property shall be acquired pursuant to this Agreement, which will need to be disposed of upon partial or complete termination of this Agreement.

SECTION 20. ENTIRE AGREEMENT. This Agreement contains all of the agreements of the parties with respect to the subject matter covered or mentioned therein, and no prior Agreements shall be effective to the contrary.

SECTION 21. AMENDMENT. The provisions of this Agreement may be amended with the mutual consent of the parties. No additions to, or alterations of the terms of this Agreement shall be

INTERLOCAL AGREEMENT FOR DECANT AND/OR STREET SWEEPINGS TREATMENT AND DISPOSAL SERVICES

valid unless made in writing and formally approved and executed by the duly authorized agents of both parties, provided that pursuant to Sections 4 and 5, respectively, the County Manager or designated agent may approve up to two (2), two-year extensions of this Agreement and additional compensation to the County for additional service hours without further approval of the County Council.

SECTION 22. DOCUMENT EXECUTION AND FILING. The County and Agency agree that there shall be four (4) signed originals of this Agreement procured and distributed for signature by the necessary officials of the County and Agency. Upon execution, the executed originals of this Agreement shall be returned to the contract manager who shall file copies of the Agreement with the Agency Clerk, the Clark County Auditor, and the Washington State Secretary of State. Upon receipt by the Clark County Auditor of the signed originals, each such signed original shall constitute an agreement binding upon both County and Agency.

SECTION 23. RATIFICATION. Acts taken in conformity with this Agreement prior to its execution are hereby ratified and affirmed.

SECTION 24. SEVERABILITY. If any section or part of this Agreement is held by a court to be invalid, such action shall not affect the validity of any other part of this Agreement.

IN WITNESS WHEREOF, the County and Agency have caused this Agreement to be executed in their respective names by their duly authorized officers and have caused this Agreement to be in effect as of the First day of January, 2024.

INTERLOCAL AGREEMENT FOR DECANT AND/OR STREET SWEEPINGS TREATMENT AND DISPOSAL SERVICES

FOR CLARK COUNTY, WASHINGTON
a subdivision of the State of Washington

Kathleen Otto
Kathleen Otto
County Manager

Approved As To Form Only:
LESLIE LOPEZ
Prosecuting Attorney

Leslie Lopez
Deputy Prosecuting Attorney

FOR CITY OF: Vancouver

By _____

Printed Name _____

Title _____

Approved as to Form Only:

By _____
City Attorney

INTERLOCAL AGREEMENT FOR DECANT AND/OR STREET SWEEPINGS TREATMENT AND DISPOSAL SERVICES

Staff Report: 026-24

TO: Mayor and City Council

FROM: Eric Holmes, City Manager

DATE: 2/5/2024

SUBJECT Washington Department of Commerce Climate Planning Grant 2023-25 Award

Key Points

- The Washington State Department of Commerce (“Commerce”) has recently awarded \$575,000 to the City of Vancouver as part of House Bill 1181, which provides funding to assist local government agencies with climate resilience and mitigation planning and implementation.
- This grant will fund four projects that enhance climate-related infrastructure resilience planning and reduce greenhouse gas emissions from Vancouver buildings and transportation systems.
- The four proposed projects are already recommended in the City’s Climate Action Framework (CAF) and will be jointly managed by current staff from Community Development and the City Manager’s Office.
- No local match or ongoing costs are required.

Strategic Plan Alignment

Transportation and Mobility - a safe, future-ready and convenient transportation system.

Climate and Natural Systems – Environmental stewardship and efforts to address climate change to ensure a sustainable future.

Present Situation

The Washington State Department of Commerce has awarded the City of Vancouver \$575,000 in Climate Planning Grant funds as part of Washington State’s Growth Management Act[1] amendment House Bill 1181 (Chapter 228, Laws of 2023), which requires climate action to be integrated into local comprehensive plans.

Climate planning activities required for the City of Vancouver’s Comprehensive Plan include changes to land use, transportation systems, climate resilience, and reduction of greenhouse gas emissions.

Much of the required climate planning work specific to greenhouse gas emission reduction was completed in 2020-2022 as part of the development and adoption of Vancouver's Climate Action Framework. This puts Vancouver in a highly favorable position to take on new projects that will support further development of climate resilience elements and greenhouse gas reduction recommendations from the CAF. These projects are as follows:

Vancouver Climate Planning 2023-25 Grant Projects	Commerce Grant Funds
Citywide electric vehicle charging strategy	\$100,000
Asset vulnerability mapping	\$100,000
Citywide commercial building decarbonization strategy	\$175,000
Low carbon transportation acceleration strategy	\$200,000
2023 Total Award based on four current projects: (Note: A \$700,000 Max available through 2029)	\$575,000

This grant award term ends June 30, 2025. Note that this \$575,000 grant is a partial allocation from a larger, non-competitive formula grant totaling \$700,000 that Commerce has set aside for Vancouver to assist in completing Comprehensive Plan revisions and enhance climate-related implementation activities. The City has until 2029 to apply for and use the remaining portion (\$125,000) of this allocation.

Advantage(s)

1. Commerce grant funding will support foundational climate planning work that is not currently funded in the local budget.
2. Vancouver will receive \$575,000 for foundational climate planning projects that are included in Vancouver's CAF.
3. This funding will support key implementation priorities from the recently adopted Transportation System Plan, including the development of new Safe Routes for School and Safe Routes for Seniors programs.
4. Supports development of the climate element of the City's Comprehensive Plan update.
5. This grant requires no local match or ongoing expenses, and funding can be used through June 30, 2025.

Disadvantage(s)

None

Budget Impact

There is no local funding match or ongoing subsidy required, and no net impact to the General Fund.

Prior Council Review

None

Action Requested

Authorize the City Manager or designee to execute an interlocal agreement with Commerce to accept Climate Planning Grant funds from Commerce and take any and all action necessary to enforce the terms thereof.

Rebecca Small, Senior Policy Analyst, 360-487-8601; Rebecca Kennedy, Deputy Community Development Director, 360-487-7896

ATTACHMENTS:

- ▣ Commerce Climate Planning Grant contract



Interagency Agreement with

City of Vancouver

through

Growth Management Services

**Contract Number:
24-63610-173**

For

2023-2025 Climate Planning Grant

Dated: Date of Execution

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Face Sheet

Contract Number: 24-63610-173

**Local Government Division
Growth Management Services
2023-2025 Climate Planning Grant**

1. Contractor City of Vancouver 415 W. 6 th St. Vancouver, WA 98660		2. Contractor Doing Business As (as applicable) N/A	
3. Contractor Representative Rebecca Small Senior Policy Analyst rebecca.small@cityofvancouver.us		4. COMMERCE Representative Noelle Madera Climate Operations Team Lead 509-818-1040 noelle.madera@commerce.wa.gov PO Box 42525 1011 Plum St. SE Olympia, WA 98504	
5. Contract Amount \$575,000	6. Funding Source Federal: <input type="checkbox"/> State: <input checked="" type="checkbox"/> Other: <input type="checkbox"/> N/A: <input type="checkbox"/>		7. Start Date July 1, 2023
8. End Date June 30, 2025			
9. Federal Funds (as applicable) N/A		Federal Agency: N/A ALN N/A	
10. Tax ID # N/A	11. SWV # SWV0008489	12. UBI # 065-001-364	13. UEI # N/A
14. Contract Purpose For the development of the Growth Management Act (GMA) climate change and resiliency element requirements related to the implementation of HB 1181 and climate related implementation activities. COMMERCE, defined as the Department of Commerce, and the Contractor, as defined above, acknowledge and accept the terms of this Contract and Attachments and have executed this Contract on the date below and warrant they are authorized to bind their respective agencies. The rights and obligations of both parties to this Contract are governed by this Contract and the following documents incorporated by reference: Contractor Terms and Conditions including Attachment "A" – Scope of Work and Attachment "B" – Budget.			
FOR CONTRACTOR _____ <insert name>, <insert title> _____ Signature _____ Date		FOR COMMERCE _____ <insert name>, <insert title> _____ Date APPROVED AS TO FORM ONLY BY ASSISTANT ATTORNEY GENERAL APPROVAL ON FILE	

Special Terms and Conditions

1. AUTHORITY

COMMERCE and Contractor enter into this Contract pursuant to the authority granted by Chapter 39.34 RCW.

2. CONTRACT MANAGEMENT

The Representative for each of the parties shall be responsible for and shall be the contact person for all communications and billings regarding the performance of this Contract.

The Representative for COMMERCE and their contact information are identified on the Face Sheet of this Contract.

The Representative for the Contractor and their contact information are identified on the Face Sheet of this Contract.

3. COMPENSATION

COMMERCE shall pay an amount not to exceed **five hundred seventy-five thousand dollars (\$575,000)**, for the performance of all things necessary for or incidental to the performance of work under this Contract as set forth in the attached Scope of Work and Budget.

4. BILLING PROCEDURES AND PAYMENT

COMMERCE will pay Contractor upon acceptance of services provided and receipt of properly completed invoices, which shall be submitted to the Representative for COMMERCE not more often than monthly nor less than quarterly.

The invoices shall describe and document, to COMMERCE's satisfaction, a description of the work performed, the progress of the project, and fees. The invoice shall include the Contract Number 24-63610-173. A receipt must accompany any single expenses in the amount of \$50.00 or more in order to receive reimbursement.

Payment shall be considered timely if made by COMMERCE within thirty (30) calendar days after receipt of properly completed invoices. Payment shall be sent to the address designated by the Contractor.

COMMERCE may, in its sole discretion, terminate the Contract or withhold payments claimed by the Contractor for services rendered if the Contractor fails to satisfactorily comply with any term or condition of this Contract.

No payments in advance or in anticipation of services or supplies to be provided under this Agreement shall be made by COMMERCE.

Grant Start Date

COMMERCE will pay the Contractor for costs incurred beginning July 1, 2023, for services and deliverables described under this Agreement.

State Fiscal Year Payments

COMMERCE will reimburse Contractor for State Fiscal Year 2024 (July 1, 2023-June 30, 2024), and State Fiscal Year 2025 (July 1, 2024-June 30, 2025), based on the expenses incurred under this Contract.

Invoices and End of Fiscal Year

Invoices are due at a minimum of June 15, 2024 and 2025, if not submitted at more frequent intervals.

Final invoices for a state fiscal year may be due sooner than the 15th of June and Commerce will provide notification of the end of fiscal year due date.

The Contractor must invoice for all expenses from the beginning of the contract through June 30, regardless of the contract start and end date.

Duplication of Billed Costs

The Contractor shall not bill COMMERCE for services performed under this Agreement, and COMMERCE shall not pay the Contractor, if the Contractor is entitled to payment or has been or will be paid by any other source, including grants, for that service.

Disallowed Costs

The Contractor is responsible for any audit exceptions or disallowed costs incurred by its own organization or that of its subcontractors.

Line Item Modification of Budget

- A. Notwithstanding any other provision of this contract, the Contractor may, at its discretion, make modifications to line items in the Budget, hereof, that will not increase the line item by more than fifteen percent (15%).
- B. The Contractor shall notify COMMERCE in writing (by email or regular mail) when proposing any budget modification or modifications to a line item in the Budget (Attachments B) hereof, that would increase the line item by more than fifteen percent (15%). Conversely, COMMERCE may initiate the budget modification approval process if presented with a request for payment under this contract that would cause one or more budget line items to exceed the 15 percent (15%) threshold increase described above.
- C. Any such budget modification or modifications as described above shall require the written approval of COMMERCE (by email or regular mail), and such written approval shall amend the Project Budget. Each party to this contract will retain and make any and all documents related to such budget modifications a part of their respective contract file.
- D. Nothing in this section shall be construed to permit an increase in the amount of funds available for the Project, as set forth in Section 3 of this contract, nor does this section allow any proposed changes to the Scope of Work, include Tasks/Work Items and Deliverables under Attachment A, without specific written approval from COMMERCE by amendment to this contract.

5. SUBCONTRACTOR DATA COLLECTION

Contractor will submit reports, in a form and format to be provided by Commerce and at intervals as agreed by the parties, regarding work under this Contract performed by subcontractors and the portion of Contract funds expended for work performed by subcontractors, including but not necessarily limited to minority-owned, woman-owned, and veteran-owned business subcontractors. "Subcontractors" shall mean subcontractors of any tier.

6. INSURANCE

Each party certifies that it is self-insured under the State's or local government self-insurance liability program, and shall be responsible for losses for which it is found liable.

7. FRAUD AND OTHER LOSS REPORTING

Contractor shall report in writing all known or suspected fraud or other loss of any funds or other property furnished under this Contract immediately or as soon as practicable to the Commerce Representative identified on the Face Sheet.

8. ORDER OF PRECEDENCE

In the event of an inconsistency in this Contract, the inconsistency shall be resolved by giving precedence in the following order:

- Applicable federal and state of Washington statutes and regulations
- Special Terms and Conditions
- General Terms and Conditions
- Attachment A – Scope of Work
- Attachment B – Budget

General Terms and Conditions

1. DEFINITIONS

As used throughout this Contract, the following terms shall have the meaning set forth below:

- A. "Authorized Representative" shall mean the Director and/or the designee authorized in writing to act on the Director's behalf.
- B. "COMMERCE" shall mean the Washington Department of Commerce.
- C. "Contract" or "Agreement" or "Grant" means the entire written agreement between COMMERCE and the Contractor, including any Attachments, documents, or materials incorporated by reference. E-mail or Facsimile transmission of a signed copy of this contract shall be the same as delivery of an original.
- D. "Contractor" or "Grantee" shall mean the entity identified on the face sheet performing service(s) under this Contract, and shall include all employees and agents of the Contractor.
- E. "Personal Information" shall mean information identifiable to any person, including, but not limited to, information that relates to a person's name, health, finances, education, business, use or receipt of governmental services or other activities, addresses, telephone numbers, social security numbers, driver license numbers, other identifying numbers, and any financial identifiers, and "Protected Health Information" under the federal Health Insurance Portability and Accountability Act of 1996 (HIPAA).
- F. "State" shall mean the state of Washington.
- G. "Subcontractor" shall mean one not in the employment of the Contractor, who is performing all or part of those services under this Contract under a separate contract with the Contractor. The terms "subcontractor" and "subcontractors" mean subcontractor(s) in any tier.

2. ALL WRITINGS CONTAINED HEREIN

This Contract contains all the terms and conditions agreed upon by the parties. No other understandings, oral or otherwise, regarding the subject matter of this Contract shall be deemed to exist or to bind any of the parties hereto.

3. AMENDMENTS

This Contract may be amended by mutual agreement of the parties. Such amendments shall not be binding unless they are in writing and signed by personnel authorized to bind each of the parties.

4. ASSIGNMENT

Neither this Contract, work thereunder, nor any claim arising under this Contract, shall be transferred or assigned by the Contractor without prior written consent of COMMERCE.

5. CONFIDENTIALITY AND SAFEGUARDING OF INFORMATION

- A. "Confidential Information" as used in this section includes:
 - i. All material provided to the Contractor by COMMERCE that is designated as "confidential" by COMMERCE;
 - ii. All material produced by the Contractor that is designated as "confidential" by COMMERCE; and

- iii. All Personal Information in the possession of the Contractor that may not be disclosed under state or federal law.
- B. The Contractor shall comply with all state and federal laws related to the use, sharing, transfer, sale, or disclosure of Confidential Information. The Contractor shall use Confidential Information solely for the purposes of this Contract and shall not use, share, transfer, sell or disclose any Confidential Information to any third party except with the prior written consent of COMMERCE or as may be required by law. The Contractor shall take all necessary steps to assure that Confidential Information is safeguarded to prevent unauthorized use, sharing, transfer, sale or disclosure of Confidential Information or violation of any state or federal laws related thereto. Upon request, the Contractor shall provide COMMERCE with its policies and procedures on confidentiality. COMMERCE may require changes to such policies and procedures as they apply to this Contract whenever COMMERCE reasonably determines that changes are necessary to prevent unauthorized disclosures. The Contractor shall make the changes within the time period specified by COMMERCE. Upon request, the Contractor shall immediately return to COMMERCE any Confidential Information that COMMERCE reasonably determines has not been adequately protected by the Contractor against unauthorized disclosure.
- C. Unauthorized Use or Disclosure. The Contractor shall notify COMMERCE within five (5) working days of any unauthorized use or disclosure of any confidential information, and shall take necessary steps to mitigate the harmful effects of such use or disclosure.

6. COPYRIGHT

Unless otherwise provided, all Materials produced under this Contract shall be considered "works for hire" as defined by the U.S. Copyright Act and shall be owned by COMMERCE. COMMERCE shall be considered the author of such Materials. In the event the Materials are not considered "works for hire" under the U.S. Copyright laws, the Contractor hereby irrevocably assigns all right, title, and interest in all Materials, including all intellectual property rights, moral rights, and rights of publicity to COMMERCE effective from the moment of creation of such Materials.

"Materials" means all items in any format and includes, but is not limited to, data, reports, documents, pamphlets, advertisements, books, magazines, surveys, studies, computer programs, films, tapes, and/or sound reproductions. "Ownership" includes the right to copyright, patent, register and the ability to transfer these rights.

For Materials that are delivered under the Contract, but that incorporate pre-existing materials not produced under the Contract, the Contractor hereby grants to COMMERCE a nonexclusive, royalty-free, irrevocable license (with rights to sublicense to others) in such Materials to translate, reproduce, distribute, prepare derivative works, publicly perform, and publicly display. The Contractor warrants and represents that the Contractor has all rights and permissions, including intellectual property rights, moral rights and rights of publicity, necessary to grant such a license to COMMERCE.

The Contractor shall exert all reasonable effort to advise COMMERCE, at the time of delivery of Materials furnished under this Contract, of all known or potential invasions of privacy contained therein and of any portion of such document which was not produced in the performance of this Contract. The Contractor shall provide COMMERCE with prompt written notice of each notice or claim of infringement received by the Contractor with respect to any Materials delivered under this Contract. COMMERCE shall have the right to modify or remove any restrictive markings placed upon the Materials by the Contractor.

7. DISPUTES

In the event that a dispute arises under this Agreement, it shall be determined by a Dispute Board in the following manner: Each party to this Agreement shall appoint one member to the Dispute Board. The members so appointed shall jointly appoint an additional member to the Dispute Board. The Dispute Board shall review the facts, Agreement terms and applicable statutes and rules and make a determination of the dispute. The Dispute Board shall thereafter decide the dispute with the majority

prevailing. The determination of the Dispute Board shall be final and binding on the parties hereto. As an alternative to this process, either of the parties may request intervention by the Governor, as provided by RCW 43.17.330, in which event the Governor's process will control.

8. GOVERNING LAW AND VENUE

This Contract shall be construed and interpreted in accordance with the laws of the state of Washington, and the venue of any action brought hereunder shall be in the Superior Court for Thurston County.

9. INDEMNIFICATION

Each party shall be solely responsible for the acts of its employees, officers, and agents.

10. LICENSING, ACCREDITATION AND REGISTRATION

The Contractor shall comply with all applicable local, state, and federal licensing, accreditation and registration requirements or standards necessary for the performance of this Contract.

11. RECAPTURE

In the event that the Contractor fails to perform this Contract in accordance with state laws, federal laws, and/or the provisions of this Contract, COMMERCE reserves the right to recapture funds in an amount to compensate COMMERCE for the noncompliance in addition to any other remedies available at law or in equity.

Repayment by the Contractor of funds under this recapture provision shall occur within the time period specified by COMMERCE. In the alternative, COMMERCE may recapture such funds from payments due under this Contract.

12. RECORDS MAINTENANCE

The Contractor shall maintain books, records, documents, data and other evidence relating to this contract and performance of the services described herein, including but not limited to accounting procedures and practices that sufficiently and properly reflect all direct and indirect costs of any nature expended in the performance of this contract.

The Contractor shall retain such records for a period of six years following the date of final payment. At no additional cost, these records, including materials generated under the contract, shall be subject at all reasonable times to inspection, review or audit by COMMERCE, personnel duly authorized by COMMERCE, the Office of the State Auditor, and federal and state officials so authorized by law, regulation or agreement.

If any litigation, claim or audit is started before the expiration of the six (6) year period, the records shall be retained until all litigation, claims, or audit findings involving the records have been resolved.

13. SAVINGS

In the event funding from state, federal, or other sources is withdrawn, reduced, or limited in any way after the effective date of this Contract and prior to normal completion, COMMERCE may suspend or terminate the Contract under the "Termination for Convenience" clause, without the ten calendar day notice requirement. In lieu of termination, the Contract may be amended to reflect the new funding limitations and conditions.

14. SEVERABILITY

The provisions of this contract are intended to be severable. If any term or provision is illegal or invalid for any reason whatsoever, such illegality or invalidity shall not affect the validity of the remainder of the contract.

15. SUBCONTRACTING

The Contractor may only subcontract work contemplated under this Contract if it obtains the prior written approval of COMMERCE.

If COMMERCE approves subcontracting, the Contractor shall maintain written procedures related to subcontracting, as well as copies of all subcontracts and records related to subcontracts. For cause, COMMERCE in writing may: (a) require the Contractor to amend its subcontracting procedures as they relate to this Contract; (b) prohibit the Contractor from subcontracting with a particular person or entity; or (c) require the Contractor to rescind or amend a subcontract.

Every subcontract shall bind the Subcontractor to follow all applicable terms of this Contract. The Contractor is responsible to COMMERCE if the Subcontractor fails to comply with any applicable term or condition of this Contract. The Contractor shall appropriately monitor the activities of the Subcontractor to assure fiscal conditions of this Contract. In no event shall the existence of a subcontract operate to release or reduce the liability of the Contractor to COMMERCE for any breach in the performance of the Contractor's duties.

Every subcontract shall include a term that COMMERCE and the State of Washington are not liable for claims or damages arising from a Subcontractor's performance of the subcontract.

16. SURVIVAL

The terms, conditions, and warranties contained in this Contract that by their sense and context are intended to survive the completion of the performance, cancellation or termination of this Contract shall so survive.

17. TERMINATION FOR CAUSE

In the event COMMERCE determines the Contractor has failed to comply with the conditions of this contract in a timely manner, COMMERCE has the right to suspend or terminate this contract. Before suspending or terminating the contract, COMMERCE shall notify the Contractor in writing of the need to take corrective action. If corrective action is not taken within 30 calendar days, the contract may be terminated or suspended.

In the event of termination or suspension, the Contractor shall be liable for damages as authorized by law including, but not limited to, any cost difference between the original contract and the replacement or cover contract and all administrative costs directly related to the replacement contract, e.g., cost of the competitive bidding, mailing, advertising and staff time.

COMMERCE reserves the right to suspend all or part of the contract, withhold further payments, or prohibit the Contractor from incurring additional obligations of funds during investigation of the alleged compliance breach and pending corrective action by the Contractor or a decision by COMMERCE to terminate the contract. A termination shall be deemed a "Termination for Convenience" if it is determined that the Contractor: (1) was not in default; or (2) failure to perform was outside of his or her control, fault or negligence.

The rights and remedies of COMMERCE provided in this contract are not exclusive and are, in addition to any other rights and remedies, provided by law.

18. TERMINATION FOR CONVENIENCE

Except as otherwise provided in this Contract, COMMERCE may, by ten (10) business days' written notice, beginning on the second day after the mailing, terminate this Contract, in whole or in part. If this Contract is so terminated, COMMERCE shall be liable only for payment required under the terms of this Contract for services rendered or goods delivered prior to the effective date of termination.

19. TERMINATION PROCEDURES

Upon termination of this contract, COMMERCE, in addition to any other rights provided in this contract, may require the Contractor to deliver to COMMERCE any property specifically produced or acquired for the performance of such part of this contract as has been terminated. The provisions of the "Treatment of Assets" clause shall apply in such property transfer.

COMMERCE shall pay to the Contractor the agreed upon price, if separately stated, for completed work and services accepted by COMMERCE, and the amount agreed upon by the Contractor and COMMERCE for (i) completed work and services for which no separate price is stated, (ii) partially completed work and services, (iii) other property or services that are accepted by COMMERCE, and (iv) the protection and preservation of property, unless the termination is for default, in which case the Authorized Representative shall determine the extent of the liability of COMMERCE. Failure to agree with such determination shall be a dispute within the meaning of the "Disputes" clause of this contract. COMMERCE may withhold from any amounts due the Contractor such sum as the Authorized Representative determines to be necessary to protect COMMERCE against potential loss or liability.

The rights and remedies of COMMERCE provided in this section shall not be exclusive and are in addition to any other rights and remedies provided by law or under this contract.

After receipt of a notice of termination, and except as otherwise directed by the Authorized Representative, the Contractor shall:

- A. Stop work under the contract on the date, and to the extent specified, in the notice;
- B. Place no further orders or subcontracts for materials, services, or facilities except as may be necessary for completion of such portion of the work under the contract that is not terminated;
- C. Assign to COMMERCE, in the manner, at the times, and to the extent directed by the Authorized Representative, all of the rights, title, and interest of the Contractor under the orders and subcontracts so terminated, in which case COMMERCE has the right, at its discretion, to settle or pay any or all claims arising out of the termination of such orders and subcontracts;
- D. Settle all outstanding liabilities and all claims arising out of such termination of orders and subcontracts, with the approval or ratification of the Authorized Representative to the extent the Authorized Representative may require, which approval or ratification shall be final for all the purposes of this clause;
- E. Transfer title to COMMERCE and deliver in the manner, at the times, and to the extent directed by the Authorized Representative any property which, if the contract had been completed, would have been required to be furnished to COMMERCE;
- F. Complete performance of such part of the work as shall not have been terminated by the Authorized Representative; and
- G. Take such action as may be necessary, or as the Authorized Representative may direct, for the protection and preservation of the property related to this contract, which is in the possession of the Contractor and in which COMMERCE has or may acquire an interest.

20. TREATMENT OF ASSETS

Title to all property furnished by COMMERCE shall remain in COMMERCE. Title to all property furnished by the Contractor, for the cost of which the Contractor is entitled to be reimbursed as a direct item of cost under this contract, shall pass to and vest in COMMERCE upon delivery of such property by the Contractor. Title to other property, the cost of which is reimbursable to the Contractor under this contract, shall pass to and vest in COMMERCE upon (i) issuance for use of such property in the performance of this contract, or (ii) commencement of use of such property in the performance of this contract, or (iii) reimbursement of the cost thereof by COMMERCE in whole or in part, whichever first occurs.

- A. Any property of COMMERCE furnished to the Contractor shall, unless otherwise provided herein or approved by COMMERCE, be used only for the performance of this contract.
- B. The Contractor shall be responsible for any loss or damage to property of COMMERCE that results from the negligence of the Contractor or which results from the failure on the part of the Contractor to maintain and administer that property in accordance with sound management

practices.

- C.** If any COMMERCE property is lost, destroyed or damaged, the Contractor shall immediately notify COMMERCE and shall take all reasonable steps to protect the property from further damage.
- D.** The Contractor shall surrender to COMMERCE all property of COMMERCE prior to settlement upon completion, termination or cancellation of this contract.
- E.** All reference to the Contractor under this clause shall also include Contractor's employees, agents or Subcontractors.

21. WAIVER

Waiver of any default or breach shall not be deemed to be a waiver of any subsequent default or breach. Any waiver shall not be construed to be a modification of the terms of this Contract unless stated to be such in writing and signed by Authorized Representative of COMMERCE.

Attachment A: Scope of Work

Scope of Work for GHG Emissions Reduction Sub-Element (Implementation) and Climate Resilience Sub-Element		
Section Steps, Tasks, and Deliverables	Description	End Date
Section 1	Citywide EV Strategy	11/2023 - 6/2025
Task 1.1	Hire consultant to conduct community engagement and develop EV/electric mobility deployment scenarios and implementation strategy	
Task 1.2	Convene stakeholder collaboration to advise on strategy and partner on implementation	
Task 1.3	Conduct community engagement to inform EV use cases, equitable outcomes, and community partnership opportunities	
Task 1.4	Map priority locations for public EV charging infrastructure in support of climate and equity goals and Transportation System Plan	
Deliverable 1	Citywide EV deployment strategy completed	6/30/2025
Section 2	Asset vulnerability mapping	11/2023 - 6/2025
Task 2.1	Hire consultant to conduct spatial mapping analysis of existing city assets and infrastructure, and provide assessment of vulnerability to climate impacts	
Task 2.2	Conduct focus group conversations with utility providers and other key stakeholders	
Task 2.3	Facilitate engagement with key population groups disproportionately impacted by disruption or failure of key assets identified in the mapping exercise	
Task 2.4	Provide memorandum highlighting best practices and adaptation measures the City can undertake to mitigate impacts on existing assets	
Deliverable 2	Integrate recommendations into Comp Plan update.	6/30/2025

Section 3	Pt. 1: Low carbon transportation acceleration strategy	11/2023 - 6/2025
Task 3.1	Create project team; identify strategy elements	
Task 3.2	Program identification and definition including what is within City jurisdiction versus partner organization	
Task 3.3	Internal and external stakeholder interviews to understand program needs; workflow between City departments and partners	
Task 3.4	Program research, regional/ state/ national best practices for similar programs in other jurisdictions	
Deliverable 3.1	Memo outlining acceleration strategy with defined programs; target outcomes/performance tracking; potential funding sources	6/30/2025
Deliverable 3.2	Individual program memos with materials, collateral, workflow, agency/department roles and responsibilities	6/30/2025
Section 4	Citywide commercial building decarbonization program	11/2023 - 6/2025
Task 4.1	Hire consultant to support community outreach and technical assistance.	
Task 4.2	Identify key stakeholders and target buildings for program design and engagement.	
Task 4.3	Develop program structure, including the services to be provided, estimated number of buildings, prioritization approach, performance metrics, etc.	
Deliverable 4.1	Summary of program design, including program goals, proposed service offerings, approach for identifying target buildings, and outreach & engagement plan.	12/31/24
Task 4.4	Provide technical assistance to buildings: energy benchmarking, energy audits, development of energy management/operations and maintenance plans for selected buildings, and other services.	
Deliverable 4.2	Memo summarizing local participation and impact of the program.	6/30/2025

Attachment B: Budget

Deliverables	Commerce Grant Funds
Deliverable 1: Citywide EV charging strategy	\$100,000
Deliverable 2: Asset vulnerability mapping	\$100,000
Deliverable 3: Low carbon transportation acceleration strategy	\$200,000
Deliverable 4: Citywide commercial building decarbonization strategy	\$175,000
2023 Total: (\$700,000 Max)	\$575,000

Staff Report: 027-24

TO: Mayor and City Council

FROM: Eric Holmes, City Manager

DATE: 2/5/2024

SUBJECT Fourth Plain Commons Condominium Agreement approval

Key Points

- In alignment with the goals of the Fourth Plain Forward Action Plan (2015), an equitable development framework for the Fourth Plain corridor, the City of Vancouver partnered with the Vancouver Housing Authority to co-locate community development services and affordable housing in what is now called the Fourth Plain Commons project.
- The project constructed tenant improvements for multiple community-serving spaces, including a shared office space, commissary kitchen and community event space in the Commons multiuse building.
- The City of Vancouver and Vancouver Housing Authority entered into a Purchase and Sale Agreement on November 9, 2021, which detailed the terms and conditions by which the City will acquire the ground floor commercial condominium unit in the Commons building from the VHA.
- A condominium declaration and associated documents are required to provide the legal framework for the creation of the commercial condominium to be purchased from the Vancouver Housing Authority.

Strategic Plan Alignment

Economic Opportunity - a place where a wide variety of businesses of all sizes grow and thrive.

Housing and Human Needs – meeting basic needs and partnering with organizations to support the community.

Vibrant and Distinct Neighborhoods – a variety of accessible places and spaces.

Culture and Heritage – celebrating culture and heritage.

Climate and Natural Systems – Environmental stewardship and efforts to address climate change to ensure a sustainable future.

Present Situation

In 2015, the City of Vancouver worked with the community to develop the Fourth Plain Forward Action Plan, a framework for equitable development on the Fourth Plain that focuses on supporting small businesses, building community capacity, addressing pedestrian safety issues, and increasing access to economic opportunity and affordable housing near transit.

In alignment with multiple goals of the City's 2015 Fourth Plain Forward Action Plan, the City of Vancouver and Vancouver Housing Authority partnered to make a catalytic investment in the Fourth Plain community that will provide family-sized affordable housing, up-stream services for both businesses and residents, and much needed community spaces, all near schools and other community services and on a high-capacity transit line (The Vine BRT).

The Fourth Plain Community Commons includes 106 affordable housing units that are owned and operated by the Vancouver Housing Authority, and the following components in a commercial unit that the City of Vancouver will own:

- A commissary kitchen to launch and support emerging food-based businesses
- A shared office space to co-locate upstream services to make it easier for residents and businesses to access resources on the corridor
- A community event space that can be rented for festivals, birthdays, trainings, and other events
- A public plaza with infrastructure to support a community market and other community-serving events
- A playground and activity lawn to provide outdoor recreation opportunities for the Commons and surrounding community

On November 9, 2021, the City of Vancouver and Vancouver Housing Authority entered into a Purchase and Sale Agreement that provided the terms and conditions by which the City will acquire a commercial condominium unit including the community event space, the commissary kitchen, shared office space, public plaza and playground, located at 2200 Norris Road, Vancouver, Washington.

The Purchase and Sale Agreement specifies that the sale of the commercial unit is subject to the condominium form of ownership requiring governing condominium documents to be recorded in the records of the Clark County Recording Department in accordance with RCW 64.90. Drafts of the following condominium documents are attached and have been mutually agreed upon by the parties:

- **Condominium Declaration for Fourth Plain Commons Condominium.** The "Declaration" provides the following articles including but not limited to: a legal description of the property, description of units, common elements, easements, permitted and prohibited uses, maintenance responsibilities, allocated expenses, and requires the formation of an owner's association.
- **Articles of Incorporation of 2200 Norris Condominium Association.** The "Articles of Incorporation" specifies the organization of the corporation pursuant to the provisions of the Condominium Act (RCW 64.90), The Washington Nonprofit Corporation Act (RCW 24.03), and the "Declaration" (Section 12.1).
- **Bylaws of 2200 Norris Condominium Association.** The "Bylaws" provide for the operation of the Fourth Plain Commons Condominium and are subject to all current and future owners pursuant to the Condominium Act (RCW 64.90) and the "Declaration" (Section 12.2).

The “Declaration” and associated documents are required before the City of Vancouver can purchase the commercial unit from the Vancouver Housing Authority, as stated in the Purchase and Sale Agreement. Construction has been completed on the Commons and the commercial unit was opened to the public as of the September 23, 2023 Grand Opening event.

Advantage(s)

1. Supports equitable development on the Fourth Plain corridor through the implementation of multiple community-stated and supported needs and priorities.
2. Supports community partners and community-based organizations through the creation of a shared office space that will co-locate upstream services to make it easier for Fourth Plain area residents and businesses to access services.
3. Supports job growth and food-based entrepreneurship through the creation of a commissary kitchen located on the Fourth Plain Corridor.
4. Improves access to healthy foods through the creation of a public plaza with infrastructure to support a community market.
5. Aligns with Council priorities related to equity and climate action by providing services to economically vulnerable communities in a location that residents and businesses can access by walking, biking, rolling and taking transit.

Disadvantage(s)

None

Budget Impact

None. The budget appropriation is included in the 2023-2024 Biennial Budget.

Prior Council Review

1. August 3, 2020: Staff presentation and Council endorsement of the Fourth Plain Commons funding strategy.
2. November 16, 2020: Approval of the 2021-2022 biennial budget, including a decision package to advance design process for tenant improvements to the commercial space.
3. January 11, 2021: Council update on Commons project, budget, timeline and funding approval process.
4. June 7, 2021: Approval of the contract with Salazar Architects, Inc. for professional architectural and engineering services.
5. July 26, 2021: Authorization of Section 108 Loan application.
6. November 8, 2021: Final approval of the Section 108 Loan Ordinance; approval of the Purchase and Sale Agreement and Easement with the Vancouver Housing Authority.
7. August 15, 2022: Approval of the Interlocal Agreement with the Vancouver Housing Authority to provide construction management and compliance services.
8. September 12, 2022: Approval of the construction contract with Ross Builders Northwest for construction of the tenant improvements for the ground floor commercial spaces.
9. April 25, 2023: Approval of the Purchase and Sale Agreement Amendment with the Vancouver Housing Authority to approve payment of earnest money to the Vancouver Housing Authority in the amount of \$1,200,000.
10. July 17, 2023: Award of the professional services agreement for the operation of the Commons to Fourth Plain Forward.

Action Requested

Approve Condominium Declaration for Fourth Plain Commons Condominium, Articles of Incorporation of 2200 Norris Condominium Association and Bylaws of 2200 Norris Condominium Association, and authorize the City Manager or designee to execute the Declaration, Articles of Incorporation and Bylaws.

Shannon Williams, Senior Planner, 360-487-7898; Becky Rude, Assistant City Attorney, 360-487-8513

ATTACHMENTS:

- ▣ Draft Condominium Declaration for Fourth Plain Commons Condominium
- ▣ Draft Articles of Incorporation of 2200 Norris Condominium Association
- ▣ Draft Bylaws of 2200 Norris Condominium Association

AFTER RECORDING RETURN TO:

Miller Nash Graham & Dunn LLP
111 SW 5th Avenue, Suite 3400
Portland, Oregon 97204
Attn: Ryan Nisle

CONDOMINIUM DECLARATION
FOR
FOURTH PLAIN COMMONS CONDOMINIUM

THIS CONDOMINIUM IS SUBJECT TO RCW 64.90.

NOTICE TO AUDITOR'S OFFICE

AT THE TIME OF RECORDING PLEASE INSERT IN SECTION 1.5 OF ARTICLE 1 THE
CROSS REFERENCE DATA FOR THE MAP, AS REQUIRED BY RCW CHAPTER 64.90.

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FOURTH PLAIN COMMONS CONDOMINIUM

ARTICLE 1 CONSTRUCTION AND VALIDITY OF DECLARATION

Section 1.1 Purpose. Declarant has recorded this Declaration for the purpose of creating a condominium of the real property described in Schedule A under the Condominium Act.

Section 1.2 Construction. The Declaration and the Condominium Act provide the framework by which the Condominium is created and operated. In the event a provision of the Declaration is inconsistent with a provision of the Condominium Act and the Condominium Act does not permit such inconsistency with such provision, the Condominium Act shall prevail. In the event of a conflict between a provision of this Declaration and the Bylaws, the Declaration shall prevail except to the extent the Declaration is inconsistent with the Condominium Act and the Condominium Act does not permit the inconsistency. The creation of the Condominium shall not be impaired and title to a Unit and its Common Ownership Interest shall not be rendered unmarketable or otherwise affected by reason of an insignificant failure of this Declaration or the Map or any amendment thereto to comply with the Condominium Act.

Section 1.3 Covenant Running With Land. This Declaration shall operate as covenants running with the land, or equitable servitudes, and shall bind Declarant, its successors and assigns, and all subsequent Owners of the Property, or any portion(s) thereof, together with their grantees, successors, heirs, executors, administrators, devisees or assigns.

Section 1.4 Severability. The provisions of this Declaration shall be independent and severable, and the unenforceability of any one provision shall not affect the enforceability of any other provision, if the remaining provision or provisions comply with the Condominium Act.

Section 1.5 Reference to Map. The Map was filed with the Recorder of Clark County, Washington, simultaneously with the recording of this Declaration under File No. [_____]. This Declaration shall be effective as of the first date that it and the Map are recorded.

ARTICLE 2 DEFINITIONS

Section 2.1 Words Defined. For the purposes of the Declaration and any amendments hereto, the following definitions shall apply. The singular form of words includes the plural and the plural includes the singular. Masculine, feminine and neutral pronouns are used interchangeably.

“Allocated Interests” means the Common Ownership Interest, the Common Expense Liability and the Voting Interest allocated to each of the Units in the Condominium. The method used to determine the Allocated Interests is set forth in Article 56. The actual Allocated Interests are set forth in Schedule B.

“Apartment” or “Apartments” means an apartment or dwelling, or, collectively, some or all of the apartments or dwellings, located within the Residential Unit. The Residential Unit may also be referred to herein as “Unit 1.”

“Articles” means Articles of Incorporation for the Association.

“Assessments” means all sums chargeable by the Association against a Unit, including, without limitation: (a) general and special assessments for Common Expenses; (b) charges and fines imposed by the Association; (c) interest and late charges on any delinquent account; and (d) costs of collection, including reasonable attorneys’ fees, incurred by the Association in connection with the collection of a delinquent Owner’s account.

“Association” means the owners’ association identified in Article 12.

“Authorized Users” means the agents, servants, tenants, invitees and licensees of an Owner, or of the Owner’s tenants, who are accorded rights, directly or indirectly by that Owner to use or access all or a portion of that Owner’s Unit and its appurtenant interest in the Common Elements.

“Board” means the board of directors of the Association, as described in Article 14, the Articles and the Bylaws.

“Books and Records of the Association” means all documents in the possession or control of the Association, including, without limitation, the following:

- (a) Declaration, Map, Articles, Bylaws and other rules and regulations governing the Condominium or any part thereof, and all amendments thereto;
- (b) Minute books, including all minutes, of all Owner, Board, Officer, committee or other meetings relating to the Condominium or any part thereof, including all reports, resolutions, documents, communications or written instruments attached thereto or referenced therein;
- (c) All financial records, including without limitation, canceled checks, bank statements and financial statements of the Association and source documents from the time of incorporation of the Association through the current date;
- (d) All reports, documents, communications or written instruments pertaining to the personal property of the Association or Condominium or any part thereof or the construction, remodeling, maintenance, repair, replacement or condition of the Condominium or any part thereof;
- (e) All insurance policies or copies thereof for the Association or Condominium or any part thereof;
- (f) Copies of any certificates of occupancy that may have been issued for the Condominium or any part thereof;

- (g) Any other permits or notices by governmental bodies applicable to the Condominium or any part thereof in force or issued;
- (h) All written warranties that are still in effect for the Condominium or any part thereof, or any other areas or facilities that the Association has the responsibility for maintaining, from the Declarant, contractor, subcontractors, suppliers, and manufacturers, together with all owners' manuals or instructions furnished with respect to installed equipment or building systems;
- (i) A roster of Owners, officers and Directors and Eligible Mortgagees and their addresses and telephone numbers, if known;
- (j) All reports, documents, communications or written instruments pertaining to any litigation or other legal or mediation/arbitration proceeding (whether pending, threatened, or under consideration) to which the Association (or Board or officer) is or may be a party, or which may relate to or affect the Common Elements or any part thereof; and
- (k) All other reports, documents, communications or written instruments in any way relating to or affecting the Association, Board, officers, Owners or the Condominium or any part thereof.

"Building" means the building described in Section 4.2 of the Declaration.

"Bylaws" means the bylaws of the Association as they may from time to time be amended.

"Code" means the Internal Revenue Code of 1986, as amended from time to time, or any successor statute thereto. Reference herein to any Code section shall include any successor provision.

"Commercial Unit" means Unit 2 as shown on the Map. The Commercial Unit may also be referred to herein as "Unit 2."

"Common Elements" means all portions of the Condominium other than Units. The term includes the Limited Common Elements.

"Common Expenses" means expenditures made by or financial liabilities of the Association, including expenses related to the maintenance, repair and replacement of the Common Elements, allocations to reserves, and expenses related to any utility services provided by or billed through the Association to the Unit Owners. Some Common Expenses are allocated to the Units according to the Common Expense Liability of the Unit. Other Common Expenses are Specially Allocated Expenses.

"Common Expense Liability" means the liability for Common Expenses (other than Specially Allocated Expenses) allocated to each Unit, as described in Article 6.

“Common Ownership Interest” means the undivided ownership interest in the Common Elements allocated to each Unit, as described in Article 5.

“Condominium” means the condominium created under this Declaration and the Map.

“Condominium Act” means Articles I and II of the Washington Uniform Common Interest Ownership Act, codified as RCW 64.90.010 through 64.90.330 and RCW 64.90.900, as it may be from time to time amended. Pursuant to RCW 64.90.100(2), only RCW 64.90.010 through 64.90.330 and 64.90.900 apply to this Condominium. All references to the Condominium Act in the Governing Documents are references to Articles I and II and not to Articles III and IV of the Washington Uniform Common Interest Ownership Act.

“Conveyance” means any transfer of the ownership of a Unit, including a transfer by deed or by real estate contract. Conveyance does not mean a transfer solely as security for a debt or other obligation or a Foreclosure.

“Declarant” means the Housing Authority of the City of Vancouver, a public body corporate and politic of the State of Washington, and its successors and assigns to the extent that they are within the meaning of “Declarant” in the Condominium Act.

“Declaration” means this Condominium Declaration as it may from time to time be amended in accordance with the terms hereof.

“Eligible Mortgagee” means Wells Fargo Bank, National Association, its successors and assigns and any Mortgagee who either (i) has a recorded security interest in a Unit at the time of the recording of this Declaration or (ii) has filed with the secretary of the Association a written request that it be given copies of notices of any action by the Association that requires the consent of Mortgagees. The request must state the name and address of the Eligible Mortgagee and the Identifying Number or address of the Unit on which it holds (or insures or guarantees) a Mortgage.

“Floor Area” means the approximate square footage of each Unit as set forth in Schedule B. The Floor Area is approximate and may not match the interior area of a Unit when measured by the Owner, Association or others.

“Foreclosure” means a forfeiture or judicial or nonjudicial foreclosure of a Mortgage or a deed in lieu thereof.

“Governing Documents” means this Declaration, the Articles, the Bylaws, and any rules or regulations adopted by the Board, as they may be amended from time to time.

“Ground Floor” is the first above grade Level of the Building as depicted in the Map.

“Identifying Number” means the number of each Unit shown on the Map and in Schedule B.

“Investor” means Wells Fargo Affordable Housing Community Development Corporation and its permitted successors and assigns, but only during such time that an Investor is a partner of the entity that owns Unit 1, and when an Investor is no longer a partner of the entity that owns Unit 1, references to Investor shall be of no force or effect.

“Level” means a particular floor of the Building. The Levels associated with each Unit are described in Schedule B of this Declaration.

“Limited Common Element” means a portion of the Common Elements allocated in this Declaration, or by operation of law, for the exclusive use of one or more but fewer than all of the Units.

“Managing Agent” means the Person designated by the Board under Section 14.3.

“Map” means the map for the Condominium. Section 1.5 refers to the recording number of the Map, which was recorded simultaneously with this Declaration. The Map includes any recorded amendments, corrections, and addenda thereto.

“Mortgage” means a mortgage, deed of trust or real estate contract. **“Mortgagee”** means any holder, insurer or guarantor of a Mortgage on a Unit.

“Notice and Opportunity To Be Heard” means the procedure described in Section 14.9.

“Owner” or **“Unit Owner”** means the Declarant or other Person who owns fee title to a Unit, but does not include any Person who (i) has an interest in a Unit solely as security for an obligation, monetary or regulatory, (ii) is the beneficiary of rights under easements and/or covenants granted by an Owner, or (iii) is an Authorized User.

“Person” means a natural person, corporation, partnership, limited partnership, trust, governmental subdivision or agency, or other legal entity.

“Property” means all real property comprised by the Condominium pursuant to Section 4.1 of this Declaration.

“Playground Area” means an outdoor playground space adjacent to the southeastern portion of the Building as depicted in the Salazar Site Plan prepared by Salazar Architect, Inc.

“Plaza” means an outdoor public plaza consisting of approximately 9,234 square feet on the northwest end of the Property.

“P-T Slab” means the concrete post-tension slab that separates the Alley Level from Level 1 in the Building and supports Level 1 through Level 6 of the Building.

“Priority and Subordination Agreement” means that certain priority and subordination agreement, dated December 9, 2021 under Clark County Recording No. 5997806 SUBORD and

any amendments thereto, establishing the respective rights and priorities of Mortgagees and other Persons holding interests in the Property.

“Residential Unit” means Unit 1 as shown on the Map. The Residential Unit may also be referred to herein as “Unit 1.”

“Rules and Regulations” means rules or regulations, if any, governing use of the Condominium that may be adopted by the Board.

“Salazar Site Plan” means the July 24, 2020 Site Plan prepared by Salazar Architect, Inc. attached hereto as Schedule C.

“Specially Allocated Expenses” means those Common Expenses described in Section 16.6 of this Declaration.

“Transition Date” means the date that the first Unit in the Condominium is conveyed.

“Unit” means a physical portion of the Condominium designated for separate ownership, the boundaries of which are described in Section 5.2 and shown on the Map.

“Voting Interest” means the number of votes in the Association held by all Owners in the aggregate.

Section 2.2 Statutory Definitions. Some of the terms defined above are also defined in the Condominium Act. The definitions in the Declaration are not intended to cause any violation of the Condominium Act. To the extent necessary so that no provision hereof will violate the Condominium Act or cause any failure to satisfy the requirements of the Condominium Act, if there is any inconsistency or conflict, the definition in the Condominium Act will prevail.

ARTICLE 3 NAME OF CONDOMINIUM

The name of the Condominium created by this Declaration and the Map is “Fourth Plain Commons Condominium.” The name of the Association is 2200 Norris Condominium Association.

ARTICLE 4 DESCRIPTION OF LAND AND BUILDING

Section 4.1 Description of Property. The real property included in the Condominium is the land described in Schedule A, together with all improvements and fixtures hereafter thereon, and all appurtenances thereto.

Section 4.2 Description of Building. At the time of the creation of this Condominium there will be one Building in the Condominium. The location of the Building is shown on the Map.

ARTICLE 5 DESCRIPTION OF UNITS

Section 5.1 Number and Identification of Units. The Condominium contains two Units. Notwithstanding the fact that residential apartments or dwellings are to be located within Unit 1, and those apartments or dwellings are intended to be used for residential purposes, the Units are intended to be condominium units restricted to nonresidential use for the purposes of the Condominium Act to the full extent permitted by law. The location and configuration of each Unit created by this Declaration is shown on the Map. Schedule B of this Declaration contains the following information as to each Unit created by this Declaration:

5.1.1 Unit Designation. The Identifying Number of each Unit created by the Declaration.

5.1.2 Unit Data. With respect to each Unit created by this Declaration, the Floor Area and Levels of the Building.

5.1.3 Allocated Interests. With respect to each Unit, its allocation of Common Ownership Interest, Common Expense Liability and Voting Interest, as described in Article 6.

Section 5.2 Unit Boundaries. The boundaries of the Commercial Unit and the portions of the Residential Unit on the Ground Floor shall be the walls, floors and ceilings of the Units, as shown on the Map. All lath, furring, wallboard, plasterboard, plaster, paneling, tiles, wallpaper, paint, finished flooring, and any other material constituting any part of the finished interior surfaces thereof are part of the Unit. All other portions of the walls, floors or ceilings are part of the Common Elements. The windows and exterior doors at the boundaries of a Unit are not part of the Unit, but are Limited Common Elements allocated to that Unit. Subject to the provisions of Article 5, all spaces, interior partitions and other fixtures and improvements within the boundaries of the Units are a part of the Units.

The lower horizontal boundary of the Residential Unit on Level 2 is the top of the P-T Slab. The upper horizontal boundary of the Residential Unit is a plane in space at the highest finished surface of Level 6.

The vertical boundaries (side boundaries) of the Residential Unit located above the P-T Slab are the interior surfaces of the Building .

Section 5.3 Additional Components of the Residential Unit. The following shall constitute a portion of the Residential Unit:

5.3.1 The stairwells serving the Residential Unit;

5.3.2 The elevator shafts and equipment serving the Residential Unit;

5.3.3 The community room, laundry room, bike storage room, leasing office, and lobby for the apartments located on the second through sixth Levels; and

5.3.4 The entryways adjacent to the lobby for the Apartments located on the second through sixth Levels.

Section 5.4 Additional Components of the Commercial Unit. All entryways to the Commercial Unit, including entryways from the plaza, south side, and on E. 4th Plain Boulevard, shall constitute portions of the Commercial Unit.

ARTICLE 6 ALLOCATED INTERESTS

Section 6.1 Allocated Interests. This Declaration allocates certain interests in the Condominium to each Unit. Those interests are a Common Ownership Interest, a Common Expense Liability and a Voting Interest. The method used for allocating these interests is set forth in this Article 6. The allocation of these interests to each Unit can be changed only as provided in this Declaration. The Allocated Interests and the title to a Unit may not be separated or separately conveyed, whether voluntarily or involuntarily, except in conformity with this Declaration. The Allocated Interests shall be deemed to be conveyed with the Unit to which they are allocated even though the description in the instrument of conveyance may refer only to the title to the Unit. The formula for determining the Common Ownership Interest, Common Expense Liability and Voting Interest for each Unit is the Floor Area of a Unit divided by the sum of (1) the Floor Area of all Units, plus (2) the square footage of the Plaza. Specially Allocated Expenses are allocated according to Section 15.6. Schedule B sets forth the Allocated Interests of each Unit.

ARTICLE 7 COMMON ELEMENTS

Section 7.1 Description. The Common Elements consist of all portions of the Condominium other than the Units. The Common Elements include all portions of the walls, floors, or ceilings that are not a part of, or within, the Unit boundaries established by Section 5.2 through Section 5.4 or otherwise specified herein as part of a Unit. The Common Elements also include any chute, flue, duct, wire, conduit, bearing wall, bearing column, or any other fixture that lies partially within and partially outside the designated boundaries of a Unit if it serves more than one Unit or any portion of a Common Element. The Common Elements that are not Limited Common Elements include, without limitation:

7.1.1 Land. The land described in Schedule A.

7.1.2 Foundation. The Building's foundations and footings, including any fill or crawl spaces.

7.1.3 Common Structural and Exterior Weatherproofing Elements. The studs (but not the non-bearing interior portions of the improvements within a Unit or the non-structural interior surfaces of the walls or ceilings at the boundary of a Unit) and the Building exterior, weatherproofing, cladding, windows, doors, exterior walls, and other structural elements.

7.1.4 Central Services. The boiler, wires, pumps, motors, fans, ducts and all other parts or apparatus of any central services or common utility service, such as power, light,

gas, hot and cold water, heating, air conditioning, incinerators, compactors, sewer, fire control systems and communication elements, if any, whether they are located in partitions or otherwise that serve more than one Unit. The Common Elements do not include any such systems serving only one Unit.

7.1.5 Areas for Equipment; Equipment. The rooms or areas containing the mechanical, electrical, and other Building equipment and any such machinery or equipment itself, if such machinery and equipment serves more than one Unit, including without limitation, (i) electrical room; (ii) the trash room; and (iii) water room; and (iv) the machine and boiler room.

7.1.6 Landscaped Areas. The sidewalks and landscaped areas on the Property, and any planters built into or adjacent to the Building that are located on the Property. Landscaped areas described in this section do not include the Plaza or Playground Area or landscaped areas outside residential entryways and the residential parking spaces.

7.1.7 Roof. The roof of the Building (including the roof membrane).

Section 7.2 Alteration and Use of Common Elements. Unit Owners may not alter any Common Element (other than Limited Common Elements allocated solely to their Units, as described in Article 8) or construct or remove anything in or from any Common Element (other than Limited Common Elements allocated solely to their Units) except upon the prior written approval of the Owners with a majority of the voting interest and Eligible Mortgagees of such Unit Owners. The right to use the Common Elements, including the Limited Common Elements, shall be governed by the provisions of the Condominium Act and the Governing Documents.

Section 7.3 Conveyance or Encumbrance of Common Elements. No portion of the Common Elements may be conveyed or subjected to a security interest by the Association except upon the unanimous consent of all Unit Owners, Eligible Mortgagees and the Investor. Except where permitted by the Condominium Act, the Common Elements (including Limited Common Elements) are not subject to partition. Any conveyance, encumbrance, judicial sale or other transfer (voluntary or involuntary) of an individual interest in the Common Elements shall be void unless the Unit to which that interest is allocated is also transferred.

ARTICLE 8 LIMITED COMMON ELEMENTS

Section 8.1 Description. Any exterior doors, windows or other equipment or fixtures designed to serve less than all of the Units but that are located outside the Unit boundaries, are Limited Common Elements allocated exclusively to the Unit that they serve. Any chute, flue, duct, wire, conduit, bearing wall, bearing column, or any other equipment or fixture that lies partially within and partially outside the designated boundaries of a Unit, if it serves less than all of the Units is a Limited Common Element allocated exclusively to the Unit or Units it serves. The Limited Common Elements for the Commercial Unit also includes the Plaza and Playground Area. The Limited Common Elements for the Residential Unit also include the 35 parking spaces on the Property, which are further described under Section 10.2 of the Declaration.

Section 8.2 Reallocation or Incorporation of Common Elements. A Common Element may be reallocated as a Limited Common Element and a Common Element (but not a Limited Common Element) may be incorporated into an existing Unit with the unanimous approval of Unit Owners and with the written approval of the Eligible Mortgagees and the Investor. A Limited Common Element may be incorporated into a Unit (or Units) with the consent of all Unit Owners to whom the Limited Common Element has been allocated and the Owner of the Unit or Units into which it is being incorporated. Such reallocation or incorporation shall be reflected in an amendment to the Declaration and the Map.

Section 8.3 Reallocation Between Units. A Limited Common Element may be reallocated between Units only with the approval of the Board, consent of Eligible Mortgagees and the Investor and by an amendment to the Declaration executed by the Owners of the Units to which the Limited Common Element was and will be allocated. The Board shall approve the request of the Owner or Owners under this section within 30 days, or within such other period provided by the Declaration, unless the reallocation does not comply with the Condominium Act or the Declaration. The failure of the Board to act upon a request within such period shall be deemed disapproval thereof. The amendment shall be recorded in the names of the parties and of the Condominium.

Section 8.4 Use of Limited Common Elements. Each Owner of a Unit to which a Limited Common Element is allocated shall have the exclusive right to use the Limited Common Element in common with the other Owners, if any, to which that Limited Common Element is allocated. Furthermore, each Owner of a Unit to which a Limited Common Element is allocated shall have the right to alter a Limited Common Element if the other Unit and Common Elements serving the other Unit are not materially affected. The right to use the Limited Common Element extends to the Owner's Authorized Users but is governed by the provisions of the Condominium Act and the Governing Documents.

ARTICLE 9 EASEMENTS

Section 9.1 In General. In addition to any rights under the Condominium Act, each Unit has an easement in and through the Common Elements (but not the Limited Common Elements) for unrestricted ingress and egress to such Unit. Each Unit has an easement in and through each other Unit and the Common Elements for all support elements; for utility, wiring, heat, and service elements; and for reasonable access thereto, as required to effectuate and continue proper operation of the Condominium and the use and enjoyment of each Unit.

Section 9.2 Utility Easements. The Declarant reserves the right to grant easements to any company or municipality providing utility services to the Condominium or to the Units for the (i) installation, construction, maintenance, repair and reconstruction of all utilities serving the Condominium or the Owners, including, without limitation, such, utility services as water, sanitary sewer, storm sewer, electricity, cable television, internet access and telecommunications; and (ii) access through the Common Elements to the utility installations.

Section 9.3 Duration. Any easements granted in Section 9.1 and Section 9.2 are perpetual and run with the land, however, such easements shall terminate upon the termination of this Condominium pursuant to Article 24 of this Declaration. The Declarant's rights reserved in Section 9.2 shall expire on the later of (i) the date the last Common Element was completed; or (ii) the date the last Common Element was added to the Condominium.

ARTICLE 10 USE RESTRICTIONS

Section 10.1 Permitted Uses. The two Units and their uses are described as follows:

10.1.1 Unit 1. Unit 1 of the Condominium and the Limited Common Elements appurtenant thereto may be used only for the operation of a multifamily housing apartment complex, including (i) use of the Apartments within Unit 1 as primary residences, (ii) social, recreational, and other activities normally incident to residential uses of the Apartments, including use as a home office, and (iii) maintenance of management and rental offices for the Apartments in Unit 1. Those uses are permitted notwithstanding any other provision of this Declaration or the Condominium Documents.

10.1.2 Unit 2. Unit 2 of the Condominium and the Limited Common Elements appurtenant thereto may be used for any lawful commercial use that is compatible with the operation of a multifamily housing apartment complex, including without limitation, use as facilities incident to housing, and other activities normally incidental to commercial or community facility uses.

10.1.3 Prohibited Uses. The Units shall not be used for any of the following uses: (i) the rental to others of residential rental property (as defined in Section 168(e)(2)(A) of the Code); (ii) the operation of any private or commercial golf course, country club, massage parlor, hot tub facility or suntan facility, any racetrack or other facility used for gambling, any store the principal business of which is the sale of alcoholic beverages for consumption off premises, or any check cashing store; (iii) the development or holding of intangibles for sale or license; (iv) farming (within the meaning of Section 2032A(e)(5)(A) or (B) of the Code; (v) any type of flea market, amusement or video arcade, pool or billiard hall, night club, discotheque or dance hall except as such activities are an incidental part of another primary business or event not prohibited hereunder; (vii) any type of sexually oriented business, adult entertainment or adult bookstore including, but not limited to, any facility selling or displaying adult or pornographic books, literature, videotapes/DVDs or materials in any medium, or any facility providing adult entertainment or other adult services (for purposes of this limitation, materials or activities shall be considered "adult" or "pornographic" if the same are not available for sale or rental to children under the age of eighteen (18) years old because they explicitly deal with or depict human sexuality); (viii) escort services, dating services or similar matchmaking or companion services; (ix) without limitation of (ii) above, bingo, or similar games of chance except as such activities are a legal and incidental part of another primary business or event not prohibited hereunder; (x) the sale of any firearms, ammunition or weapons, or a shooting gallery of any type; (xi) the sale of fireworks, except as an incidental part of another primary business; (xii) pay day lending activities, pay day advances, pay

check advances or similar type of lending activity; (xiii) pawn shops, pawn brokers, car title lenders (which for purposes of this limitation, will not include auto loans made by a state or federally chartered bank or thrift), or any similar lending activity; (xiv) check cashing services, except as an incidental part of another primary business or incident to the banking activities of a state or federally chartered bank or thrift; (xv) debt collection activities, debt consolidation services, credit repair or restoration activities, except as such activities are incidental to banking activities conducted by a state or Federally chartered bank or thrift; (xvi) bail bond services of any kind, or any activities of a bail bond agent; (xvii) the sale, distribution, marketing or production of marijuana, cannabis or any constituent cannabinoids such as THC (this limitation applies broadly, regardless of whether the activity is conducted by collectives, collective caregivers, co-ops, growers or any other entity or organization); (xviii) the sale, distribution or manufacture of any type of drug paraphernalia; (xix) tattoo parlors or any establishment that performs tattooing; (xx) a bar, restaurant or other establishment serving alcohol; provided, however, that a restaurant or café deriving at least 80% of its income from the sale of food and non-alcoholic beverages is expressly permitted; (xxi) business based predominately on inbound or outbound telemarketing activities, except as such calls are an incidental part of another primary business; (xxii) a video game or amusement arcade; (xxiii) multi-level marketing activities, the sale of multi-level business opportunities or network marketing activities; (xxiv) any manufacturing, distilling, refining, smelting, agricultural or mining operation; (xxv) any dumping, disposing, incineration or reduction of garbage; (xxvi) any bowling alley or skating rink; (xxvii) any mortuary or funeral home; (xxviii) any auto repair facility; (xxvix) any convenience store; (xxx) any on-premises dry cleaner (except that a dry cleaner that performs all dry cleaning off site shall be permitted); (xxxi) any business which produces environmental hazards regulated under applicable environmental laws and (xxxii) any parole, juvenile detention or similar service.

Section 10.2 Use of Parking Spaces. The Condominium includes 35 uncovered parking spaces of which six are accessible stalls that will not be assigned to either Unit. The remaining 29 stalls will be allocated between the two units, with 18 stalls allocated to Unit 2 (the Commercial Unit) and 11 allocated to the Unit 1 (the Residential Unit). It should be noted that there are additional parking stalls that are not party to the condo agreement that also serve the Residential Unit. The parking spaces may only be used for the parking of operable passenger cars, motorcycles, and passenger vans. The Association may adopt rules further regulating the use of the parking spaces, including the parking of recreational vehicles, campers, boats and the like. The Association may direct that any vehicle improperly parked or kept in the Condominium be removed, and if it is not removed the Association may cause it to be removed at the risk and cost of the owner thereof.

Section 10.3 Effect on Insurance. Nothing shall be done or kept in any Unit or in any Common Element that will increase the rate of insurance on the Condominium without the prior written consent of the Board; provided, however, the foregoing shall not prohibit the use of Unit 1 as a multifamily apartment complex and Unit 2 as general commercial space. Nothing shall be done or kept in any Unit or in any Common Element that will result in the cancellation of insurance on any part of the Condominium, or that would be in violation of any laws.

Section 10.4 Use of Building.

10.4.1 General. No Unit Owner or Authorized User shall use the plumbing facilities for any purpose other than the provision of water or disposal of ordinary wastewater. No Unit Owner or Authorized User shall install, operate or maintain in any Unit any electrical equipment which will overload the electrical system of the Condominium, or any part thereof, beyond its reasonable capacity for proper and safe operation as determined by the Board. No Unit Owner or Authorized User shall use or occupy a Unit or a Common Element, or do or permit anything to be done thereon, in any manner which will cause structural injury to the Building, or which would violate any present or future, ordinary or extraordinary, laws, regulations, ordinances, or requirements of the federal, state, or local governments, or of any department, subdivision, bureaus, or offices thereof, or of any other governmental public or quasi-public authorities now existing or hereafter created having jurisdiction over the Condominium.

10.4.2 Deliveries. The delivery or shipment of goods, merchandise, and supplies to and from the Units shall be accomplished in a manner that does not unreasonably interfere with the enjoyment and security of the Apartment tenants and the Owner or Authorized Users of Unit 1 or the operation of Unit 2 as general commercial space. The Board may adopt such rules and regulations as necessary and appropriate in the judgment of the Board to accommodate the needs and interests of the Owners, tenants and users of the Units.

Section 10.5 Hazardous Substances. No Owner or Authorized User shall permit any Hazardous Substance to be generated, processed, stored, transported, handled, or disposed of on, under, in, or through the Owner's Unit or the Property, except for storage, handling or use of reasonable quantities and types of cleaning solvents, paint, herbicides for landscape maintenance and similar materials which are incidental to normal commercial, rental or residential uses in the ordinary course and prudent conduct of an Owner's or Authorized User's business and used in compliance with applicable laws and regulations. Each Owner shall indemnify, defend, and hold harmless the other Owner or Owners and the Association from all fines, suits, procedures, claims, and actions of any kind arising out of or in any way connected with any spills or discharges of Hazardous Substances or wastes arising from the operation or use of the Unit or the Property by the Owner or Authorized User. As used herein, the term "Hazardous Substance" means any hazardous, toxic, or dangerous substance, waste, or material which is or becomes regulated under any federal, state, or local statute, ordinance, rule, regulation, or other law now or hereafter in effect pertaining to environmental protection, contamination, or cleanup, including without limitation any substance, waste, or material which now or hereafter is designated as a "Hazardous Substance" under the Comprehensive Environmental Response, Compensation and Liability Act (42 USC §9601 et seq.); or under any local or state rule or regulation. Without limiting the foregoing, Hazardous Substances shall include, but not be limited to, any substance which after being released into the environment or indirectly by ingestion through food chains, will or may reasonably be anticipated to cause death, disease, behavior abnormalities, cancer, and/or genetic abnormalities.

Section 10.6 Conveyance by Owners; Notice Required. The right of an Owner to transfer the Unit shall not be subject to any right of approval, disapproval, first refusal, or similar restriction by the Association or the Board, or anyone acting on their behalf. The Board shall have the right to notify the purchaser, the title insurance company, and the closing agent of the amount of unpaid Assessments and charges outstanding against the Unit, whether or not such information is requested. If the Association is the named insured under any insurance policy under Article 19, the Association shall notify each insurance company that has issued an insurance policy under Article 19 of the name and address of the new owner and request that the new Owner be made an additional insured under such liability policy.

Section 10.7 Signs. No Owner or Authorized User may install, display or use any advertising media or device in or on any Common Element. But the Owners may install or display signs on their own Units or on any portion of the façade of the Building adjacent to their Unit if approved by written unanimous consent of the Board.

Section 10.8 Trash and Garbage. Each Owner shall be responsible for removing all trash and garbage from the Owner's Unit and placing it in such location and receptacles as are authorized by the Board and specifically designated for each Unit. Unit 2 will be responsible for exterior trash and garbage removal on the grounds of the site as part of maintaining the landscaping and grounds. Each Owner is responsible for removing from the Condominium all trash and garbage generated by that Owner or its Authorized Users that is not required to be picked up by such service. An Owner may separately contract for removal of trash and garbage generated by Owner or its Authorized Users, with approval of Board. "Trash" as used herein includes materials to be recycled or composted.

ARTICLE 11 MAINTENANCE AND MODIFICATION OF UNITS AND COMMON ELEMENTS

Section 11.1 Owner Maintenance. Each Owner shall, at the Owner's sole expense, be responsible for maintenance, repair and replacement of its Unit and the improvements, fixtures and portions of the Building that are a part thereof. Each Unit Owner shall be responsible for the maintenance, repair or replacement of any plumbing lines, hoses, drains, toilets, showers, tubs, faucets, garbage disposals and other fixtures; water heaters, fans, heating, cooling, or other equipment; and electrical fixtures or appliances that are entirely located within or are part of the Unit and that serve only that Unit. Each Owner shall be responsible for any damage caused to the Unit, another Unit or the Common Elements caused by its failure to maintain such equipment or fixtures. The Unit 1 Owner shall be responsible for the maintenance, repair and replacement of any Limited Common Elements allocated to Unit 1, including but not limited to the maintenance, repair and replacement of the windows and exterior doors of Unit 1, structural, nonstructural and exterior portions of the Building at or above Level 2, roofing materials and components, exterior walls, the elevator and related systems, and any plumbing electrical or HVAC systems that serve only Unit 1. The Unit 2 Owner shall be responsible for the maintenance, repair and replacement of the Limited Common Elements allocated to the Unit 2 identified in Section 8.1 and the windows and exterior doors of Unit 2. The Unit Owners shall promptly resurface any glass on the windows

allocated to their unit and remove any graffiti from any portion of the exterior of the Building attached to their respective Units. Both Unit Owners agree to provide commercially reasonable access to the other Unit Owner in the event repair or maintenance requires entry.

Section 11.2 Association Maintenance. Except as set forth in Section 11.1, the Association is responsible for the maintenance, repair, and replacement of the Common Elements, the cost of which shall be a Common Expense or Specially Allocated Expense, as set forth in this Declaration. The Association shall maintain the Common Elements, other than Limited Common Elements, in sound condition and shall not allow them to fail, deteriorate or cease functioning through lack of regular or proper maintenance.

Section 11.3 Construction Work – Common Elements. Except as provided in this Article 11, the Common Elements shall not be reconstructed, rebuilt, altered, removed or replaced except by the Association acting through the Board in accordance with the Act, this Declaration, and the Bylaws or the Declarant when exercising rights reserved under this Declaration.

ARTICLE 12 OWNERS ASSOCIATION

Section 12.1 Form of Association. The Owners of Units shall be members of an owner's association to be known as the 2200 Norris Condominium Association (the "Association"). The Association shall be organized as a nonprofit corporation, no later than the Transition Date. Except where expressly reserved to the Owners under the Condominium Act or the Governing Documents, the affairs of the Association shall be managed by a Board. The rights and duties of the Board and of the Association shall be governed by the provisions of the Condominium Act, The Washington Nonprofit Corporation Act (RCW Chapter 24.03), the Declaration and the Bylaws.

Section 12.2 Bylaws. The Declarant will adopt initial Bylaws to supplement the Declaration and to provide for the administration of the Association and the property and for other purposes not inconsistent with the Condominium Act or the Declaration. The initial Bylaws may be amended pursuant to the procedures set forth in Article 23.

Section 12.3 Qualifications For Membership. Each Owner of a Unit (including the Declarant as to Units it owns) shall be a member of the Association and shall be entitled to one membership for each Unit owned. Only Owners may be members of the Association. Ownership of a Unit shall be the sole qualification for membership in the Association.

Section 12.4 Transfer of Membership. The membership of an Owner in the Association is appurtenant to the Unit giving rise to the membership. The membership shall not be transferred in any way except upon the transfer of title to the Unit and then only to the transferee of title to the Unit, provided that if a Unit has been sold on contract, the contract purchaser shall exercise the rights of the Owner for purposes of the Association, this Declaration, and the Bylaws, except as hereinafter limited, and shall be the voting representative unless otherwise specified. Any attempt to make a prohibited transfer shall be void. Any transfer of title to a Unit shall operate

automatically to transfer the membership in the Association to the new Owner. An Owner may, however, grant a conditional proxy to any Mortgagee or Investor of the Owner's Unit, such that the Mortgagee or Investor shall have the right, after default by the Owner under the Mortgagee's loan documents or Owner's Partnership Agreement, and subject to applicable law and any conditions stated in the proxy, to exercise the Owner's rights to vote (or give consent or approval) on matters on which the Owner has a right to vote (or give consent or approval), including the rights with respect to the election and removal of Board members under Section 14.1 hereunder, with respect to all Units covered by such proxy.

Section 12.5 Voting.

12.5.1 Number and Classes of Votes. The allocation of Voting Interest in the Association is set forth in Schedule B of the Declaration.

12.5.2 Association Owned Units. The Association may not cast any votes allocated to a Unit owned by the Association. In determining the percentage of votes required to act on any matter, the votes allocated to Units owned by the Association shall be disregarded.

Section 12.6 Powers of Association.

12.6.1 General Powers. Except as set forth in Sections 12.6.2, 12.6.3, Section 14.6 and elsewhere in the Declaration, the Association shall have (i) all powers authorized under the Condominium Act and the Washington Nonprofit Corporation Act; (ii) all powers necessary for the operation of the Condominium or governance of the Association; (iii) any other powers authorized by this Declaration; and (iv) all powers that may be exercised by any corporation of the same type as the Association.

12.6.2 Capital Improvements. The Association may cause additional improvements to be made as a part of the Common Elements, and acquire, hold, encumber, convey, and dispose of, in the Association's name, right, title, or interest to real or tangible and intangible personal property, and arrange for and supervise any addition or improvement or design criteria and aesthetic standards to the Condominium, provided that no structural change shall be made to a Unit without the approval of the Owner of that Unit, the Mortgagees of that Unit and the Investor.

12.6.3 Rules and Regulations. The Board may adopt such reasonable Rules and Regulations as in the judgment of the Board are necessary for the safe, sanitary and efficient operation of the Condominium. Any such Rules and Regulations must accommodate the business needs and interests of, and the governmental restrictions imposed upon, the Owners and Authorized Users of the Units and must not interfere with or prevent the Owner's operations within its Unit that are conducted consistent with this Declaration. All Rules and Regulations adopted by the Board shall comply with the following provisions (which shall not apply to amendments to this Declaration adopted in accordance with Article 23):

12.6.3.1 No Rule or Regulation shall interfere with the freedom of residential tenants to determine the composition of their households.

12.6.3.2 In adopting, amending or rescinding Rules and Regulations, the Board (i) shall give consideration to the matters brought to its attention via the Notice and Opportunity To Be Heard procedures; and (ii) shall give consideration to the interests of the Unit Owners and their respective Authorized Users, as well as the interests of the Association. No Rule or Regulation may be arbitrary or capricious. All Rules and Regulations must treat similarly situated Units, Owners and Authorized Users similarly. No Rule or Regulation shall be inconsistent with or violate the provisions of the Declaration, Articles or Bylaws.

12.6.3.3 The Board and the Association shall have no power to adopt Rules and Regulations or otherwise take any action with respect to any tenants in any of the Apartments that would constitute a violation of applicable landlord/tenant law, the Fair Housing Act, the Americans with Disabilities Act or any other federal, state or local antidiscrimination laws.

12.6.3.4 Following adoption, amendment, or repeal of a rule, the Association must give notice to the Unit Owners of its action and provide a copy of any new or revised rule.

Section 12.7 Financial Statements and Records. The Association shall keep financial records in accordance with generally accepted accounting principles. All financial and other records shall be made reasonably available for examination by the Managing Agent, the Association, the Investor, any Owner or the Owner's authorized agents, or any Mortgagee. The Association shall keep and maintain records and funds in accordance with the requirements set forth in RCW 64.34.372. At least annually, the Association shall prepare, or cause to be prepared, a financial statement of the Association in accordance with generally accepted accounting principles. Any Mortgagee or Investor will, upon request, be entitled to receive the annual financial statement within 180 days following the end of the fiscal year. Upon an affirmative vote of the Owners holding at least 75% of the Voting Interest, the annual financial statement shall be audited by a certified public accountant who is not a Director of the Board or an Owner. Notwithstanding the foregoing, should the Commercial Unit Owner require the annual financial statement sooner than 180 days following the end of the fiscal year to comply with RCW 43.09.230, the Association shall, upon written request from the Commercial Unit Owner, provide the annual financial statement within 120 days following the end of that fiscal year. Additionally, to the extent the Commercial Unit Owner is required by the Washington State Auditor's Office, or pursuant to RCW 43.09.245 or RCW 43.09.260, to obtain an audited annual financial statement from the Association that is audited by a certified public accountant who is not a Director of the Board or an Owner, the Association shall be required to provide such audited annual financial statement without a vote of the Owners holding at least 75% of the Voting Interest.

Section 12.8 Inspection of Condominium Documents, Books and Records. The Books and Records of the Association shall be kept in the offices of the Association, as designated in the Bylaws. The Association shall make available to Owners, Mortgagees, prospective purchasers and their prospective Mortgagees, and the agents or attorneys of any of them, current copies of the Books and Records of the Association. "Available" shall mean available for

inspection upon request, during normal business hours or under other reasonable circumstances. The Association may require the requesting party to pay a reasonable charge to cover the cost of making the copies.

ARTICLE 13 TRANSFER OF CONTROL

Section 13.1 Declarant's Transfer of Association Property. Within 60 days after the Transition Date, the Declarant shall deliver to the Association all property of the Owners and of the Association held or controlled by the Declarant including, but not limited to, the Books and Records of the Association and control of Association funds.

Section 13.2 Audit of Records Upon Transfer. Within 120 days after the Transition Date, the records of the Association shall be audited as of the date of transfer by an independent certified public accountant in accordance with generally accepted auditing standards unless the Owners other than by the Declarant, by 100% vote of their Allocated Interests, elect to waive the audit. The costs of the audit shall be a Common Expense.

ARTICLE 14 THE BOARD OF DIRECTORS

Section 14.1 Selection of the Board and Officers. Each Unit Owner, or class of Owners as set forth below, is entitled, but not obligated, to appoint the applicable directors to serve on the Board at the pleasure of the Owner or Owners, as set forth below. The Directors of the Board shall elect officers in accordance with the procedures provided in the Bylaws. The Directors of the Board and officers shall take office upon appointment and shall serve as provided in the Bylaws. The Owner of Unit 1 shall appoint, at a minimum, two Directors in Position 1 and 2. The Owner of Unit 2 shall appoint, at a minimum, one Director in Position 3. If a Director shall resign or cease to serve for any reason, then the Owner of the Unit who appointed that Director shall have the right to appoint his or her replacement.

Section 14.2 Powers of the Board. Except as provided in this Declaration, the Bylaws or the Condominium Act, the Board shall at all times act on behalf of the Association. The Board may exercise all powers of the Association, except as otherwise provided in the Condominium Act, Declaration or the Bylaws. The Association shall arrange for goods and services necessary for the proper functioning of the Condominium, and the cost shall be shared among the Unit Owners in the manner provided in Article 6, Section 15.6, and as otherwise specifically provided for in this Declaration. Those goods and services may include, but are not limited to the following:

14.2.1 Utilities. Subject to any Specially Allocated Expenses under Section 15.6, all necessary utility services for the Common Elements and all such services for the Limited Common Elements and the Units, if not separately metered or charged may be separately charged to each Unit as part of its Common Expense Liability as allocated by the Board by reasonable formula.

14.2.2 Additions to Common Elements. Additions or improvements to the Common Elements.

14.2.3 Professional Services. The legal and accounting services necessary or proper for the operation of the project or enforcement of Governing Documents.

14.2.4 Maintenance. Unless otherwise provided in the Declaration, the maintenance, repair and replacement of the Common Elements.

14.2.5 Other Necessary Expenditures. Any other materials, supplies, structural alterations, furniture, labor, services, insurance, taxes or assessments that the Association is required to secure or pay for pursuant to the terms of this Declaration, the Bylaws, or under law, or that, in its opinion, are necessary or proper for the operation of the Condominium, or for the enforcement of this Declaration or the Bylaws; provided that if any such services are provided for particular Units, the cost thereof shall be specially assessed to the Owners of such Units and shall be due and payable within thirty days of written notice and demand made to such Owners.

14.2.6 Liens. The Board may cause the Association to pay any amount necessary to discharge any lien or encumbrance levied against the entire Property or any part thereof that may or is claimed, in the opinion of the Board, to constitute a lien against the Property or against the Common Elements, rather than merely against the interest therein of particular Owners. Where one or more Owners are responsible for the existence of such lien, they shall be jointly and severally liable for the cost of discharging it, and any costs and expense incurred by the Association by reason of such lien or liens shall be assessed against the Owners and the Units responsible to the extent of their responsibility and shall be immediately due and payable to the Association.

14.2.7 Representation by Association. The Association shall represent the Unit Owners in any proceedings related to the condemnation, destruction, or liquidation of all or part of the Condominium, and shall have the sole authority to participate in all negotiations and enter into all related settlements or agreements on behalf of the Unit Owners, subject to the requirements of Mortgagees. The Unit Owners hereby appoint the Association as their attorney-in-fact in all such matters.

Section 14.3 Managing Agent. The Association may contract with a Managing Agent to assist the Board in the management and operation of the Common Elements and may delegate such of its powers and duties to the Managing Agent as it deems to be appropriate, except as limited herein. Any contract with a Managing Agent shall have a term no longer than one year (but may be renewable by agreement of the parties for successive one-year periods) and shall be terminable by the Board without payment of a termination fee, with or without cause, on not more than 30 days' written notice.

Section 14.4 Exclusive Right to Contract. The Board shall have the exclusive right to cause the Association to contract for all goods and services, the payment for which is to be made from the common expense fund.

Section 14.5 Authorization of Board of Directors. In the event the moneys in the common expense fund are insufficient to pay the expenditures provided for herein, the Board is

authorized, subject to the limitations set forth in this Declaration, to cause the Association to borrow money to meet such expenditures on behalf of the Association and, to secure the repayment thereof, encumber any portion of the Common Elements. Prior to incurring debt at any time or to conveying or encumbering the Common Elements, the Board must obtain the written consent of all Unit Owners, Eligible Mortgagees and the Investor. Proceeds of the conveyance or financing authorized under this section are an asset of the Association. Any agreement for the sale or financing of Common Elements shall be in writing, contain a legal description of the Common Elements affected thereby, shall be signed by all Unit Owners, and all such signatures shall be acknowledged. The agreement shall be recorded in the county in which the property is located and shall contain a deadline by which it must be recorded. No conveyance or encumbrance of Common Elements pursuant to this Section shall deprive any Unit of its rights of access or support. In addition, the Board is authorized to cause the Association, subject to the limitations set forth in this Declaration, to borrow money to meet such expenditures on behalf of the Association and, to secure the repayment thereof, encumber future income of the Association, including any receivable, right to payment, and special and general assessments from the Unit Owners. Notwithstanding anything in this Section to the contrary, , any assignment of future income may be made only with the written consent of the Eligible Mortgagees and the Investor. In connection with the encumbrance of future income of the Association, the Association may execute such loan documents and undertake such obligations as the lender may require to realize on the encumbrance including powers of attorney, control over deposit accounts, the right to file or foreclose assessment liens, and the right to contact account debtors (including the Unit Owners) and require that payment be made directly to the lender.

Section 14.6 Actions by the Board.

14.6.1 In General. Except when a higher standard is required by a provision of this Declaration or the Condominium Act, the Board shall act by majority vote and act reasonably, in light of the facts determined by the Board, in making all determinations, exercising its discretion, granting or withholding consent, or taking any action on behalf of the Association. The Board shall not act on behalf of the Association to amend the Declaration in any manner that requires the vote or approval of the Unit Owners pursuant to Article 23, to terminate the Condominium pursuant to Article 24, or to elect members of the Board or determine the qualifications, powers, and duties, or terms of office of members of the Board.

Section 14.7 Indemnification. Each Board member, officer and committee member, including the Declarant when acting in any such capacity, shall be indemnified by the Association against all expenses and liabilities, including attorneys' fees, reasonably incurred by or imposed in connection with any proceeding to which such person may be a party, or in which such person may become involved, by reason of holding or having held such position, or any settlement thereof, whether or not such person holds such position at the time such expenses or liabilities are incurred, except to the extent such expenses and liabilities are covered by any type of insurance and except in such cases wherein such person is adjudged guilty of negligence or willful misfeasance in the performance of such person's duties; provided, that in the event of a settlement, the

indemnification shall apply only when the Board approves such settlement and reimbursement as being for the best interests of the Association.

Section 14.8 Entry for Repairs or Maintenance. The Association, the Managing Agent, and their agents or employees may enter a Unit and the Limited Common Elements allocated thereto to inspect and to effect repairs, improvements, replacements, maintenance or sanitation work deemed by the Board to be necessary in the performance of its duties, to do work that the Owner has failed to perform in violation of this Declaration, to prevent damage to the Common Elements or to another Unit, or to prevent unnecessary Common Expenses. The foregoing includes but is not limited to siding, windows, sealant, fireplaces, flues, bathtubs, sinks, toilets, hot water tanks, plumbing and electrical fixtures and other aspects of the Building. Except in cases of emergency, the Board shall cause the Unit Owner to be given two days' notice in advance of such entry. If the Board determines that a Unit Owner has failed to repair or replace a portion of a Unit, Limited Common Element or Common Element as required hereunder, the Association may either require the Owner to make the repair or replacement, or, following a ten day notice to such Owner specifying the nature of the failure and such Owner's failure to act diligently to make the repair and complete such repair within thirty days (or in the event of an existing condition that poses an imminent threat to persons or property, such repair shall be made within five days), may make the repair or replacement itself and allocate the cost to the Owner. The Board may cause the Association to levy a special assessment against the Owner of the Unit for all or a part of such sums, which may be collected and foreclosed by the Association in the same manner as assessments are collected and foreclosed under Article 16. The Commercial Unit Owner may enter the Limited Common Elements and Common Element areas for access necessary to conduct repairs or maintenance on the Commercial Unit.

Section 14.9 Notice and Opportunity To Be Heard. Whenever this Declaration requires that an action of the Board be taken after "Notice and Opportunity to be Heard," the following procedure shall be observed: The Board shall cause the Association to give written notice of the proposed action to all Owners of Units whose interest would be significantly affected by the proposed action. The notice shall include a reasonably specific statement of the proposed action and the date, time and place of the hearing, which shall be not less than five days from the date notice is delivered by the Board. At the hearing, the affected Person shall have the right, personally or by a representative, to give testimony orally, in writing or both (as specified in the notice), subject to reasonable rules of procedure established by the Board to assure a prompt and orderly resolution of the issues. Such evidence shall be considered in making the decision but shall not bind the Board. The affected Person shall be notified of the decision in the same manner in which notice of the meeting was given.

ARTICLE 15 BUDGET AND ASSESSMENTS

Section 15.1 Fiscal Year. The Board may adopt such fiscal year for the Association as it deems to be convenient. Unless another year is adopted, the fiscal year will be the calendar year.

Section 15.2 Preparation of Budget. Not less than 30 days before the end of the fiscal year, the Board shall prepare a budget for the Association for the coming year. In preparing its budget the Board shall estimate the Common Expenses of the Association to be paid during the year, may make provision for accumulation of reserves, including amounts reasonably anticipated to be required for maintenance, repair, and replacement of the Common Elements, and may take into account any surplus or deficit carried over from the preceding year and any expected income to the Association. The accounts of the Association must be reconciled at least annually unless the Board determines that a reconciliation would not result in a material savings to any Unit Owner.

Section 15.3 Ratification of Budget. Within 30 days after adoption of any proposed budget for the Condominium, the Board shall provide a copy of the proposed budget to the Owners and shall set a date for a meeting of the Owners to consider ratification of the budget not fewer than 14 nor more than 60 days after mailing of the proposed budget. The proposed budget shall be deemed ratified unless Owners holding at least 75% of the Voting Interest vote to reject the budget. In the event the proposed budget is rejected at such meeting, the periodic budget last ratified by the Unit Owners shall be continued until such time as the Unit Owners ratify a subsequent budget proposed by the Board pursuant to this Section. If the Board proposes a supplemental budget during any fiscal year, such budget shall not take effect unless ratified by the Unit Owners in accordance with this Section.

Section 15.4 Supplemental Budget. If during the year the budget proves to be inadequate for any reason, including nonpayment of any Owner's Assessments, the Board may prepare a supplemental budget for the remainder of the year. A supplemental budget shall be ratified pursuant to Section 15.3.

Section 15.5 Assessments for Common Expenses. The sums required by the Association for Common Expenses as reflected by the annual budget and any supplemental budgets shall be paid annually (or at such other interval to be established by the Board) over the period to be covered by the budget or supplemental budget. The annual Assessment for Common Expenses for each Unit shall be the total of (a) the Common Expense Liability of that Unit (except Specially Allocated Expenses) and (b) any Specially Allocated Expenses of that Unit. Assessments shall commence against the Units within 30 days of the Transition Date.

Section 15.6 Specially Allocated Expenses. The Common Expenses described in this section shall be assessed against the Owners as described herein, and not on the basis of the Owner's Common Expense Liability.

15.6.1 Insurance. The Common Expense of procuring and maintaining insurance shall be allocated between the Units on the basis of the Owner's Common Expense Liability; except that such costs may be allocated by the Board between the Unit Owners based on the relative cost of insuring each Unit and the operations conducted therein, if the insurance provider or other third-party professional provides the Association with a reasonable alternative allocation of insurance expenses among each Unit and the Common Elements, based upon the relative uses and values of each Unit, and the allocation implemented by the Board is based upon such

reasonable alternative allocation method. Upon placement or renewal of insurance, the Board shall consult with its insurance agent, broker, insurer or insurance advisors to determine how to fairly allocate the Common Expense for insurance among the Unit Owners based upon the relative cost of insuring each Unit and the operations conducted therein.

15.6.2 Misconduct. To the extent that any Common Expense is caused by the negligence, misconduct by, or violation of the Governing Documents by, an Owner or Authorized User of any Unit, the Association may assess the expense (including the cost of any deductible under the Association's property insurance) against the Unit.

15.6.3 Limited Common Elements. Any Common Expense associated with the operation, maintenance, repair, or replacement of a Limited Common Element shall be assessed against the Unit(s) to which that Limited Common Element is allocated.

15.6.4 Unequal Benefit. The Board must assess any Common Expense, or portion thereof, that benefits fewer than all the Units solely against the Units receiving the benefit.

15.6.5 Utilities. If utilities paid for by the Association are separately metered or sub-metered to the Units, the Common Expense for those utilities will be assessed to the user(s) of the service based on the metering or as otherwise described in Schedule D. If utilities are not separately metered to the Units and the allocation of the Common Expense for those utilities is not addressed in Schedule D, then the Board shall assess the Common Expense for those utilities, or any portion thereof, according to the Common Expense Liability if they serve all Units.

15.6.6 Landscaping. Any Common Expense associated with the repair or maintenance of sidewalks or landscaped areas on the Property, and any planters built into or adjacent to the Building that are located on the Property shall be assessed against the Units in accordance with the percentage allocations in Schedule D.

Section 15.7 Special Assessments. For those Common Expenses that cannot reasonably be calculated and paid on a regular basis, the Board may levy special Assessments for such expenses against the Units, subject to ratification by the owners pursuant to Section 15.3.

Section 15.8 Creation of Reserves; Assessments. Subject to the Association's budgeting process set forth in this Article 15, the Board may create reserve accounts for anticipated expenses for repairs, replacement and improvements which will occur in the future, and the Board may make assessments for reserves. The operation of reserve accounts and Assessments for reserve accounts shall be further governed by the Bylaws.

Section 15.9 Notice of Assessments. The Board shall notify each Owner in writing of the amount of the general and special Assessments to be paid for the Owner's Unit and shall furnish copies of all budgets and the Common Expense Liability allocations which apply to the Unit, on which the general and special Assessments are paid. The Board shall furnish the same information to an Owner's Mortgagee if so requested.

Section 15.10 Payment of Assessments. On or before April 1st of each calendar year (or such installment schedule adopted by the Board), each Owner shall pay or cause to be paid to the treasurer or designated agent of the Association all Assessments against the Unit for that year (or such other installment period as adopted by the Board). Any Assessment not paid within five days of the designated payment due date shall be delinquent and subject to late charges, interest charges and collection procedures as provided in Article 16.

Section 15.11 Proceeds Belong to Association. All Assessments and other receipts received by the Association on behalf of the Condominium shall belong to the Association.

Section 15.12 Failure To Assess. Any failure by the Board or the Association to make the budgets and Assessments hereunder before the expiration of any year for the ensuing year shall not be deemed a waiver or modification in any respect of the provisions of this Declaration, or a release of the Owner from the obligation to pay Assessments during that or any subsequent year, and the Assessment amounts established for the preceding year shall continue until new Assessments are established.

Section 15.13 Certificate of Unpaid Assessments. Upon the request of any Owner or Mortgagee of a Unit, the Board will furnish a certificate stating the amount, if any, of unpaid Assessments charged to the Unit. The certificate shall be conclusive upon the Board and the Association as to the amount of such indebtedness on the date of the certificate in favor of all purchasers and mortgagees of the Unit who rely on the certificate in good faith. The Board may establish a reasonable fee to be charged to reimburse it for the cost of preparing the certificate.

Section 15.14 Recalculation of Assessments. If Common Expense Liabilities are reallocated, Common Expense Assessments, Special Assessments, and any installment thereof not yet due shall be recalculated in accordance with the reallocated liabilities.

Section 15.15 Assessments Due in Future. No assessment of any kind shall be made that will come due more than one year after the date of the Board action making such assessment. Any Assessment that has not yet come due may be reduced or rescinded by a vote of the majority of the Board, by written notice to the Owners.

ARTICLE 16 LIEN AND COLLECTION OF ASSESSMENTS

Section 16.1 Assessments Are a Lien; Priority.

16.1.1 The Association has a lien on a Unit for any unpaid Assessment levied against a Unit from the time the Assessment is due.

16.1.2 A lien under this Article shall be prior to all other liens and encumbrances on a Unit except: (a) liens and encumbrances recorded before the recording of this Declaration and all modifications, amendments, restatements and extensions of such liens and encumbrances; (b) a Mortgage on the Unit recorded before the date on which the Assessment sought to be enforced

became delinquent; and (c) liens for real property taxes and other governmental assessments or charges against the Unit.

16.1.3 Recording of this Declaration constitutes recorded notice and perfection of the lien for Assessments, however, the Association may record a notice of claim of lien for Assessments in the real property records of the county in which the Condominium is located.

16.1.4 The Association shall not enforce its lien rights against a Residential Unit Owner unless and until the Association shall have provided written notice of default to the Investor and the Investor has failed to cure the default giving rise to such enforcement within (i) 60 days if such default can be cured by the payment of a sum of money and (ii) 180 days for any other type of default. Said 180 day cure period shall be tolled so long as the defaulting Unit Owner is in bankruptcy or so long as the Investor is attempting in good faith to resolve the default.

Section 16.2 Lien May Be Foreclosed; Judicial Foreclosure. The lien arising under this Article may be enforced judicially by the Association or its authorized representative in the manner set forth in RCW 61.12, or nonjudicially in the manner set forth in Section 16.3. The Association or its authorized representative shall have the power to purchase the Unit at the foreclosure sale and to acquire, hold, lease, mortgage, or convey the same. Upon an express waiver in the complaint of any right to a deficiency judgment in a judicial foreclosure action, the period of redemption shall be eight months. Nothing in this section shall prohibit the Association from taking a deed in lieu of foreclosure. The holder of a Mortgage or other purchaser of a Unit who obtains the right of possession of a Unit through foreclosure shall not be liable for any Assessments or installments thereof that became due prior to such right of possession. Any such unpaid Assessments that became due prior to the holder of a Mortgage or other purchaser of a Unit taking of possession by foreclosure shall be deemed to be Common Expenses collectible from all the Owners, including such Mortgagee or other purchaser of the Unit. The holder of a Mortgage or other purchaser of a Unit who obtains the right of possession of a Unit through foreclosure shall be liable for any Assessments or installments thereof that became due after taking possession. Foreclosure of a Mortgage does not relieve the prior Owner of personal liability for Assessments accruing against the Unit prior to the date of such sale.

Section 16.3 Nonjudicial Foreclosure. A lien arising under this Article may be foreclosed nonjudicially in the manner set forth in RCW 61.24 for nonjudicial foreclosure of deeds of trust. For the purpose of preserving the Association's nonjudicial foreclosure option, this Declaration shall be considered to create a grant and conveyance of each Unit in trust to Chicago Title Insurance Company of Washington or its successors or assigns ("Trustee"), to secure the obligations of each Unit Owner ("Grantor") to the Association ("Beneficiary") for the payment of Assessments. Grantor shall retain the right to possession of Grantor's Unit so long as Grantor is not in default of an obligation to pay Assessments. The Trustee shall have a power of sale with respect to each Unit, which becomes operative in the case of a default in a Grantor's obligation to pay Assessments. No Unit is used principally for agricultural or farming purposes. If the Association forecloses its lien nonjudicially pursuant to this Section, it shall not be entitled to the lien priority over Mortgages provided in Section 16.1.2.

Section 16.4 Receiver During Foreclosure. From the time of commencement of an action by the Association to foreclose a lien for nonpayment of delinquent Assessments against a Unit that is not occupied by the Owner thereof and subject to the rights of Eligible Mortgagees under the Mortgages, the Association shall be entitled to the appointment of a receiver to collect from the lessee thereof the rent for the Unit as and when due. Receivership is governed under chapter 7.60 RCW. If the rent is not paid, the receiver may obtain possession of the Unit, refurbish it for rental up to a reasonable standard for rental Units in this type of Condominium, rent the Unit or permit its rental to others, and apply the rents first to the cost of the receivership and attorneys' fees thereof, then to the cost of refurbishing the Unit, then to applicable charges, then to costs, fees, and charges of the foreclosure action, and then to the payment of the delinquent Assessments. Only a receiver may take possession and collect rents under this Section, and a receiver shall not be appointed less than 90 days after the delinquency. The exercise by the Association of the foregoing rights shall not affect the priority of preexisting liens on the Unit.

Section 16.5 Assessments Are Personal Obligations. In addition to constituting a lien on the Unit, all sums assessed by the Association chargeable to any Unit, including all charges in this Article, shall be the personal obligation of the Owner of the Unit when the Assessments are made. Suit to recover personal judgment for any delinquent Assessments shall be maintainable without foreclosing or waiving the liens securing them.

Section 16.6 Extinguishment of Lien and Personal Liability. A lien for unpaid Assessments and the personal liability for payment of Assessments is extinguished unless proceedings to enforce the lien or collect the debt are instituted within three years after the amount of the Assessments sought to be recovered becomes due.

Section 16.7 Joint and Several Liability. In addition to constituting a lien on the Unit, each Assessment shall be the joint and several obligation of the Owner or Owners of the Unit to which the same are assessed as of the time the Assessment is due, except as otherwise specifically provided herein. In a voluntary conveyance, the grantee of a Unit shall be jointly and severally liable with the grantor for all unpaid Assessments against the grantor up to the time of the grantor's conveyance, without prejudice to the grantee's right to recover from the grantor the amounts paid by the grantee therefore. Suit to recover a personal judgment for any delinquent Assessment shall be maintainable in any court of competent jurisdiction without foreclosing or waving the lien securing such sums.

Section 16.8 Late Charges and Interest on Delinquent Assessments. The Association may from time to time establish reasonable late charges and a rate of interest to be charged on all subsequent delinquent Assessments or installments thereof. In the absence of another established nonusurious rate, delinquent Assessments shall bear interest from the date of delinquency at the maximum rate permitted under RCW 19.52.020 on the date on which the Assessments became delinquent.

Section 16.9 Recovery of Attorneys' Fees and Costs. The Association shall be entitled to recover any costs and reasonable attorneys' fees incurred in connection with the collection of

delinquent Assessments, whether or not such collection activities result in suit being commenced or prosecuted to judgment. In addition, the Association shall be entitled to recover costs and reasonable attorneys' fees if it prevails on appeal and in the enforcement of a judgment.

ARTICLE 17 ENFORCEMENT OF GOVERNING DOCUMENTS

Section 17.1 Rights of Action. Each Owner, its Authorized Users and the Association shall comply strictly with the Governing Documents and the proper decisions of the Board. The Declarant shall enjoy all the rights and assume all the obligations of an Owner as to each unsold Unit in the Condominium owned by the Declarant. The Association acting on behalf of the Owners or any Owner acting on his own behalf may bring an action to recover sums due or damages, or for injunctive relief, or any or all of them, against any party who fails to comply with the Governing Documents and the proper decisions of the Board.

Section 17.2 Additional Rights. In addition, the Board may, after Notice and Opportunity to be Heard, take any of the following actions against any party who fails to comply with the Governing Documents and the proper decisions of the Board:

17.2.1 Require an Owner, at its own expense, to stop work on, and remove, any improvement from such Owner's Unit or other areas of the Condominium in violation of the Governing Documents and to restore the Unit or other areas to its or their previous condition and, upon failure of the Owner to do so, the Board or its designee shall have the right to enter the Unit or other areas, remove the violation and restore the improvements within the Unit or other areas to substantially the same condition as previously existed and any such action shall not be deemed a trespass;

17.2.2 Levy Assessments against a Unit Owner to cover costs incurred by the Association to cure a violation of the Governing Documents by such Unit Owner;

17.2.3 Impose reasonable monetary fines which shall constitute an Assessment and a lien upon the violator's Unit. No fine may be imposed, however, unless pursuant to a previously established schedule thereof adopted by the Board and distributed to Owners;

17.2.4 To the extent allowed by applicable law, suspend any services (including utilities) provided by the Association to an Owner or the Owner's Unit if the Owner is more than thirty days delinquent in paying any Assessment or other charge owed to the Association or has failed to replenish any security deposit required by the Association; and

17.2.5 To the extent allowed by applicable law, exercise self-help or take action to abate any violation of the Governing Documents. Notice and Opportunity to be Heard shall not, however, be required in an emergency situation or in regard to the removal of vehicles or items that are in violation of parking or storage rules and regulations.

Section 17.3 Remedies Cumulative; Attorneys' Fees. All remedies set forth in the Governing Documents shall be cumulative of any remedies available at law or in equity. In any

action to enforce the Governing Documents, if the Association or Owner prevails, it shall be entitled to recover all costs, including without limitation, its attorneys' fees and court costs, reasonably incurred in such action.

Section 17.4 Enforcement Discretion; No Waiver. The decision to pursue enforcement action in any particular case shall be left to the Board's discretion, except that the Board shall not be arbitrary or capricious in taking enforcement action. Without limiting the generality of the foregoing sentence, the Board may determine that, under the circumstances of a particular case:

17.4.1 The Association's position is not strong enough to justify taking any further action; or

17.4.2 The covenant, restriction or rule being enforced is, or is likely to be construed as, inconsistent with applicable law; or

17.4.3 Although a technical violation may exist or may have occurred, it is not of such a material nature as to be objectionable to a reasonable person or to justify expending the Association's resources; or

17.4.4 That it is not in the Association's best interests, based upon hardship, expense or other reasonable criteria, to pursue enforcement action.

Such a decision shall not be construed to be a waiver of the right of the Association to enforce such provision at a later time under other circumstances or preclude the Association from enforcing any other covenant, restriction or rule. The receipt by the Board of payment of an Assessment from an Owner, with knowledge of a breach by the Owner, shall not be a waiver of the breach. No waiver by the Board of any requirement shall be effective unless expressed in writing and signed for by the Board. This Section 17.4 also extends and applies to the Declarant.

ARTICLE 18 TORT AND CONTRACT LIABILITY

Section 18.1 Association Liability. An action alleging a wrong done by the Association must be brought against the Association and not against any Owner or any officer or director of the Association. An Owner is not precluded from bringing an action contemplated by this section because he or she is a Unit Owner or a member or officer of the Association.

Section 18.2 Limitation of Liability for Utility Failure. Except to the extent covered by insurance obtained by the Association, none of the Association, the Board, the Managing Agent nor the Declarant (except in its role as Unit Owner) shall be liable to any Unit Owner for:

18.2.1 the failure of any utility or other service to be obtained and paid for by the Association;

18.2.2 injury or damage to person or property caused by the elements, or resulting from electricity, water, rain, dust, mold or mildew which may leak, travel or flow from outside of

the Building, from any Unit, any Common Element or from any part of the Building, or from any pipes, drains, conduits, appliances, or equipment, or from any other place; or

18.2.3 inconvenience or discomfort resulting from any action taken to comply with the Governing Documents, any law, ordinance or orders of a governmental authority. No diminution or abatement of Assessments shall be claimed or allowed for any such utility or service failure, or for such injury or damage, or for such inconvenience or discomfort.

Section 18.3 No Personal Liability. So long as a Board member, Association committee member, Association officer, the Declarant and the Managing Agent has acted in good faith, in accordance with applicable law, without willful or intentional misconduct, upon the basis of such information as is then possessed by such person, no such person shall be personally liable to any Owner, or to any other person, including the Association, for any damage, loss or prejudice suffered or claimed on account of any act, omission, error, or negligence of such person; provided, that this section shall not apply to deny coverage for any such act, omission, error or negligence under any insurance obtained by the Board. Notwithstanding anything to the contrary herein, the Board shall use commercially reasonable efforts to collect Assessments levied under Article 16.

ARTICLE 19 INSURANCE

Section 19.1 Required Insurance. Unless the Owners unanimously elect to waive all or a portion of this Article 19, the Association shall maintain, to the extent reasonably available, a policy or policies and bonds necessary to provide (a) property insurance on the Condominium, and (b) liability insurance. The Board shall review at least annually the adequacy of the Association's insurance coverage. All insurance shall be obtained from insurance carriers that are generally acceptable for similar projects and have an AM Best rating of A VIII or higher, are authorized to do business in the state of Washington, and meet the reasonable requirements of Mortgagees, except to the extent such coverage is not available on commercially reasonable terms or has been waived in writing by them. If any insurance required by this Section is obtained by the Unit Owners and not the Association, the Owner shall furnish evidence to the other Owner that such insurance is in effect. If any insurance required by this Section is obtained by the Association on behalf of the Owners, the premiums therefor (and any applicable deductible in the event of casualty) may be specially allocated to the Owners in accordance with risk as provided in Section 15.6.1 of this Declaration.

Section 19.2 Property Insurance Requirements. Unless unanimously waived by the Owners, the Association, or its insurance trustee, shall be the "named insured" and the Unit Owners shall each be an "additional insured." The property insurance shall, at the minimum, provide special cause-of-loss coverage in an amount equal to 100% of the replacement cost of the Building, including the Common Elements, the Limited Common Elements, the Units, and the interior partitions, equipment, fixtures, and improvements installed in the Units by Declarant and intended as a permanent part of the Unit (exclusive of such items as land, foundations, excavations, and other items normally excluded from property policies), and all personal property owned by the Association. After the completion of all construction work by the Declarant and the termination of

any builder's risk form of coverage, the policy shall contain a "Guaranteed Replacement Cost Endorsement" or a "Replacement Cost Endorsement" and, if it contains a co-insurance clause, an "Agreed Amount Endorsement." The policy must contain (i) an "Inflation Guard Endorsement;" (ii) a "Building Ordinance or Law Endorsement;" (iii) an "Increased Cost of Construction Endorsement;" (iv) construction code endorsements; and (v) "Special Hazards" insurance or endorsements for boiler and machinery, flood, wind, mudslide and/or earthquake areas, provided that such coverage specified in (i) through (v) is available at commercially reasonable rates. The policy may have deductibles for loss not exceeding \$10,000 if the Board determines that deductibles are reasonable in light of the cost of insurance and the risk of a deductible to the Owners. The loss payable clause of the policy shall show the Association or its insurance trustee as trustee for each Unit Owner and its Mortgagees. The Unit Owner, not the Association, shall be responsible up to the amount of the deductible under the Association's property policy for (a) the cost of damage or loss within the Owner's Unit; (b) damage to another Unit or the Common Elements resulting from the negligence or misconduct of the Unit Owner or its Authorized Users; or (c) damage to another Unit or the Common Elements caused by faulty or leaking plumbing fixtures (including pipes, hoses, drains, toilets, showers, tubs, dishwashers, faucets, garbage disposals, and shower heads), water heaters or hot water tanks that are within or (as to water heaters or water tanks) serve only the Owner's Unit.

Section 19.3 Liability Insurance Requirements. The liability insurance shall insure the Board, the Association and the Owners. The policy shall insure against liability of the insureds for property damage, bodily injury or death arising in connection with the use, operation or maintenance of the Common Elements and any areas under the supervision of the Association. The policy may insure against liability in connection with employment contracts of the Association, employers' liability insurance, automobile, liability insurance, and such other risks as are customarily covered with respect to condominium projects of similar construction, location and use. The limits of liability shall be at least \$1,000,000 per occurrence and \$2,000,000 aggregate. The policy shall contain a "Severability of Interest Endorsement" or equivalent which precludes the insurer from denying the claim of an insured because of the negligent acts of another insured. The policy may contain medical payments coverage and any other coverages that the Board deems advisable.

Section 19.4 Fidelity Insurance. At the option of the Association, the Association may maintain fidelity insurance. Such fidelity insurance shall name the Association as insured. It shall protect against dishonest acts on the part of officers, directors, trustees, and employees of the Association and all other persons who handle or are responsible for handling funds held or administered by the Association. All such fidelity insurance shall name the Association as an insured and shall be not less than the estimated maximum of funds, including reserve funds, in custody of the Association at any time while the policy is in force, but in no event shall the aggregate amount of insurance be less than three months' aggregate Assessments plus reserve funds. The policy shall contain waivers of any defense based upon the exclusion of persons who serve without compensation from any definition of "employee" or similar expression.

Section 19.5 Additional Insurance Requirements. The insurance obtained pursuant to Section 19.2, Section 19.3 and Section 19.4 shall contain the following provisions and limitations:

19.5.1 Each Unit Owner is an insured Person under the policy with respect to liability arising out of the Owner's Common Ownership Interest or membership in the Association.

19.5.2 A waiver of subrogation by the insurer as to any and all claims against the Association, any Unit Owner and/or their respective agents, members of the Owner's household, employees, or lessees.

19.5.3 Coverage shall not be prejudiced by (a) any act or omission of any Unit Owner unless acting within the scope of the Owner's authority on behalf of the Association; or (b) failure of the Association to comply with any warranty or condition with regard to any portion of the Property over which the Association has no control.

19.5.4 If, at the time of the loss under the policy, there is other insurance in the name of any Unit Owner covering the same risk covered by the policy, the Association's policy provides primary insurance.

19.5.5 A standard mortgagee clause which shall:

- (a) Name the Mortgagee and its successors and assigns or its loan servicer as the Mortgagee;
- (b) Provide that any reference to a Mortgagee in the policy shall mean and include all Mortgagees of any Unit or Unit lease or sublease in their respective order of priority, whether or not named therein;
- (c) Provide that such insurance as to the interest of any Mortgagee shall not be invalidated by any act or neglect of the Board or Owners or any Persons under any of them; and
- (d) Waive any provision invalidating such mortgage clause by reason of the failure of any Mortgagee to notify the insurer of any hazardous use or vacancy, any requirement that the Mortgagee pay any premium thereon, and any contribution clause.

19.5.6 To the extent commercially available, a provision that coverage may not be cancelled or substantially modified (including cancellation for nonpayment of premium) without at least 30 days' prior written notice to the named insured and each additional insured.

The provisions of Section 19.1 through Section 19.5 are not intended to contradict or limit any insurance policy or coverage obligations of the Association under any loan agreement, deed of trust, bond guaranty agreement or similar document.

Section 19.6 Adjustment of Losses; Insurance Trustee; Power of Attorney. So long as the Priority and Subordination Agreement governs, any loss covered by the insurance described in Section 19.2 shall be governed by the Priority and Subordination Agreement. After the Priority and Subordination Agreement terminates, any loss covered by the insurance described in Section 19.2 shall be adjusted with the Association, but the proceeds for that loss are payable to any insurance trustee designated for that purpose, or otherwise to the Association, and not to any holder of a Mortgage; provided that if permitted by applicable law and if all Eligible Mortgagees of Unit 1 agree in writing that a particular Mortgagee or Mortgagees shall be entitled to receive insurance proceeds, then insurance proceeds for any casualty that results in damage only within the boundaries of Unit 1 shall be paid to such Mortgagee, and if so agreed by all such Eligible Mortgagees then such Mortgagee shall have right to make and settle a claim for such proceeds, subject to the provisions of any priority and subordination agreement such Mortgagees and the Unit 1 Owner are parties to and subject to the provisions of any deeds of trust between such Mortgagees and the Unit 1 Owner. The insurance trustee or the Association shall hold any insurance proceeds in trust for Unit Owners and lien holders as their interests may appear. Each Owner and the Owner's Mortgagee, if any, shall be beneficiaries of the policy in accordance with percentages established by the Common Ownership Interest of Owner's Unit. Certificates of insurance shall be issued to each Owner and Mortgagee upon request. Subject to the provisions of Section 20.4, the proceeds must be disbursed first for the repair or restoration of the damaged property, and Unit Owners and lien holders are not entitled to receive payment of any portion of the proceeds unless there is a surplus of proceeds after the property has been completely repaired or restored or the Condominium is terminated. Each Owner appoints the Association, or any insurance trustee or successor trustee designated by the Association, as attorney-in-fact for the purpose of purchasing and maintaining such insurance, including the collection and appropriate disposition of the proceeds thereof, the negotiation of losses and execution of releases of liability, the execution of all documents and the performance of all other acts necessary to accomplish such purposes.

Section 19.7 Optional Insurance. If the Board deems it advisable, the Association may also obtain (a) worker's compensation insurance; (b) directors' and officers' liability insurance; and (c) any other insurance.

Section 19.8 Reserved.

Section 19.9 Waiver of Claims. The Association and each Owner hereby waive any and all claims they may have against any and all of the other Owners or their lessees arising out of or in connection with damage to or destruction of the Condominium, or any loss of use of any portion of the Condominium arising out of the actions or omissions of the other Owners or their lessees, regardless of whether such claim results from negligence or fault, but only to the extent the claim is covered by the property insurance maintained by the Association.

Section 19.10 Use of Proceeds. Any portion of the Condominium which is required under this Article and which is damaged or destroyed, other than by uninsured casualty, shall be repaired or replaced promptly by the Association pursuant to Article 20, except as otherwise expressly

provided in Section 20.4. The cost of repair or replacement in excess of insurance proceeds, reserves and deductibles paid by Owners is a Common Expense that the Board shall allocate according to the Common Expense Liability or as a Specially Allocated Expense.

ARTICLE 20 DAMAGE AND REPAIR OF DAMAGE TO PROPERTY

Section 20.1 Definitions: Damage, Substantial Damage, Repair, Emergency Work.

As used in this Article 20:

20.1.1 “Damage” shall mean all kinds of damage, whether of slight degree or total destruction or otherwise.

20.1.2 “Substantial Damage” shall mean that in the judgment of a majority of the Board the estimated Assessment determined under Section 20.2.4 for any one Unit exceeds three percent of the full, fair market value of the Unit before the damage occurred, as determined by the then current assessment for the purpose of real estate taxation.

20.1.3 “Repair” shall mean restoring the insured improvements to substantially the condition they were in before they were damaged, with the Unit and the Common Elements having substantially the same boundaries as before. “Repair” does include restoration of improvements or betterments installed after conveyance by the Declarant if those improvements or betterments are not insured against because the Owner failed to notify the Board of such improvements or betterments. Modifications to conform to applicable governmental rules and regulations or available means of construction may be made.

20.1.4 “Emergency Work” shall mean work that the Board deems essential to avoid further damage or substantial diminution in value to the Building, any Unit and/or the Common Elements and to protect the Owners from liability from the condition of the site.

Section 20.2 Initial Board Determination. In the event of Damage to any portion of the Condominium for which insurance is required by this Declaration, the Board shall promptly, and in all events within thirty days after the date of learning of the Damage, take the following actions after receiving such advice from professionals (such as engineers, architects, contractors, insurance consultants, lenders and attorneys) as the Board deems advisable:

20.2.1 Determine the nature and extent of the Damage to the Condominium and loss to the Association and Unit Owners, together with an inventory of the improvements and property directly affected thereby.

20.2.2 Obtain an estimate of the cost and time to Repair the damage, which estimate shall, if reasonably practicable, be based upon two or more firm bids obtained from responsible contractors.

20.2.3 Determine the insurance proceeds that would be allocable to the particular damaged Unit under Section 20.5 and reserves, if any, that will likely be available to pay for the

Damage, which determination shall include a consultation with any Mortgagees to whom insurance proceeds have been assigned to determine whether the terms of such assignment permit the assigned proceeds to be used for Repair.

20.2.4 Determine (i) the amount, if any, by which the estimated cost of Repair is likely to exceed the expected insurance proceeds, the reserves available to Repair the damage, other available funds of the Association, and the deductibles owed by Owners; and (ii) the likely amount of the Assessments that would have to be made against each Unit if the excess cost were to be paid as a Common Expense.

Section 20.3 Notice of Damage. Within the same time frame, the Board shall provide each Owner with a written notice summarizing the initial Board determinations made under Section 20.2, explaining any further information needed by the Board to make a final decision on the cost and schedule for repairs. If the Board determines that the Damage is Substantial Damage, then the notice shall also explain any further information needed by the Board to allow the Owners to make an informed decision about repairs to the Condominium and call a special meeting to consider whether to repair the Damage. If the Damage affects a material portion of the Condominium, the Board shall also send the notice to Eligible Mortgagees and, if Unit 1, to the Investor, and if the Damage affects a Unit, the Board shall send the notice to the Eligible Mortgagees of that Unit. If the Board fails to call such a meeting within the 30-day period, any Owner, the Investor or Eligible Mortgagee may call such a meeting. The Board may, but is not required to, call such a meeting in other circumstances. The Board may designate the VHA Asset Manager as the point of contact for compliance and fulfillment of this Section 20.3 and overall coordination with Owners for Damage and Repair in accordance with Article 20.

Section 20.4 Execution of Repairs.

20.4.1 The Association or Owner(s) shall use the available insurance proceeds, reserves and other funds identified pursuant to 20.2.4 to promptly repair any Damage to a portion of the Condominium that the Association or an Owner is responsible to insure and to maintain or repair unless:

20.4.1.1 The Condominium is terminated by vote of the Unit Owners and with written consent of the Eligible Mortgagees and the Investor at a special meeting called in accordance with Section 20.3 and taken in accordance with the termination provisions of the Declaration and Condominium Act;

20.4.1.2 Repair would be illegal under any state or local health or safety statute or ordinance; or

20.4.1.3 Owners holding at least 75% of the Voting Interest in the Association vote not to Repair the Damage. In addition to the consent by the Owners specified above, any election not to repair the damage or not to rebuild substantially in accordance with the original plan will require (i) the approval of the Eligible Mortgagees holding a Mortgage on a Unit

that will be altered from the original plan by the Repair or that will not be repaired; and (ii) the approval of the Investor.

20.4.2 The cost of Repair within the deductible that is not recovered from a Unit Owner and that exceeds the available insurance proceeds and the Association's reserves shall be a Common Expense. If the cost of Repair exceeds the available insurance proceeds and any available reserves or other Association funds (to the extent the Board determines to apply them to such costs) the Board shall impose Assessments for the un-insured costs against the Unit responsible for the Damage.

20.4.3 The Board shall have the authority to employ architects and engineers, advertise for bids, let contracts to contractors and others and take such other action as is reasonably necessary to make the Repairs. Contracts for the repair work shall be awarded when the Board, by means of insurance proceeds and sufficient Assessments, has provided for paying the cost. The Board may authorize the insurance carrier to make the repairs if the Board is satisfied that the work will be done satisfactorily, and if such authorization does not contravene any insurance trust agreement or requirement of law.

20.4.4 The Board may expend so much of the insurance proceeds and Association funds as the Board deems reasonably necessary for Emergency Work (which Emergency Work may include but is not necessarily limited to removal of the damaged improvements and clearing, filling, and grading the land), and the remaining funds, if any, and the property shall thereafter be held and distributed as provided in Section 20.5.

Section 20.5 Effect of Decision Not To Repair. If, pursuant to a decision not to repair or rebuild pursuant to Section 20.4.1, and all of the damaged or destroyed portions of the Condominium are not repaired or rebuilt then insurance proceeds will be distributed subject to the terms of the Priority and Subordination Agreement. If, (i) the Priority and Subordination Agreement is terminated, and (ii) a decision not to repair or rebuild is made pursuant to Section 20.4.1 and all of the damaged or destroyed portions of the Condominium are not repaired or rebuilt:

20.5.1 The insurance proceeds attributable to the damaged Common Elements shall be used to restore the damaged area to a condition compatible with the operation of the remainder of the Condominium;

20.5.2 The insurance proceeds attributable to Units and Limited Common Elements that are not fully repaired or replaced shall be distributed to the Owners of those Units and the Owners of the Units to which those Limited Common Elements were allocated or to Mortgagees, as their interests may appear; and

20.5.3 The remainder of the proceeds shall be distributed to all the Unit Owners or Mortgagees, as their interests may appear, in proportion to their Common Ownership Interests as of the date the damage occurred.

If the Unit Owners vote not to rebuild any Unit, that Unit's allocated interests are automatically reallocated upon the vote as if the Unit had been condemned under Article 21, and the Association promptly shall prepare, execute, and record an amendment to this Declaration reflecting the reallocations. Notwithstanding the provisions of this section, Article 24 and RCW 64.90.290 shall govern the distribution of insurance proceeds in the event the Condominium is terminated.

ARTICLE 21 CONDEMNATION

Section 21.1 Consequences of Condemnation; Notices. If any Unit or portion thereof or the Common Elements or Limited Common Elements or any portion thereof is made the subject matter of any condemnation or eminent domain proceeding or is otherwise sought to be acquired by a condemning authority, notice of the proceeding or proposed acquisition shall promptly be given to each Owner, Mortgagee and the Investor, and the provisions of this Article shall apply.

Section 21.2 Power of Attorney. Each Owner appoints the Association as attorney-in-fact for the purpose of representing the Owners in any proceedings, negotiations, settlements or agreements regarding a condemnation of any part of the Condominium. Any proceeds from a condemnation shall be paid to the Association for the benefit of affected Units and their Mortgagees. Should the Association not act, based on their right to act pursuant to this section, the affected Owners may individually or jointly act on their own behalf.

Section 21.3 Condemnation of a Unit. If a Unit is acquired by condemnation, or if part of a Unit is acquired by condemnation leaving the Unit Owner with a remnant of a Unit which may not practically or lawfully be used for any purpose permitted by this Declaration, the award must compensate the Owner for the Owner's Unit and its appurtenant interest in the Common Elements, whether or not any Common Elements are acquired. The proceeds from the condemnation of a Unit shall be paid to the Owner or Mortgagee of the Unit, as their interests may appear. Upon condemnation of a Unit, unless the decree otherwise provides, that Unit's Allocated Interests are automatically reallocated to the remaining Units in proportion to the respective Allocated Interests of those Units before the taking, and the Association shall promptly prepare, execute, and record an amendment to this Declaration reflecting the reallocations. Any remnant of a Unit remaining after part of a Unit is taken under this section is thereafter a Common Element. In such event, the Association shall prepare an amendment to the Declaration that reflects the revised Unit boundaries and is executed by the Unit Owners. The Association shall record an amendment to the Map complying with the requirements of the Condominium Act necessary to show the revised Unit boundaries.

Section 21.4 Condemnation of Part of a Unit. Except as provided in Section 21.3, if part of a Unit is acquired by condemnation, the award must compensate the Unit Owner for the reduction in value of the Unit and its appurtenant interest in the Common Elements, whether or not any Common Elements are acquired. The proceeds from the condemnation awarded to the Unit Owner shall be paid to the Owner or Mortgagees of the Unit, as their interests may appear. Upon acquisition, unless the decree otherwise provides: (a) that Unit's Allocated Interests are reduced

in proportion to the reduction in the size of the Unit; and (b) the portion of the Allocated Interests divested from the partially acquired Unit are automatically reallocated to that Unit and the remaining Units in proportion to the respective Allocated Interests of those Units before the taking, with the partially acquired Unit participating in the reallocation on the basis of its reduced Allocated Interests.

Section 21.5 Condemnation of Common Element or Limited Common Element. If part of the Common Elements is acquired by condemnation the portion of the award attributable to the Common Elements taken shall be paid to the Owners based on their respective interests in the Common Elements or to Mortgagees, as their interests may appear. Any portion of the award attributable to the acquisition of a Limited Common Element must be equally divided among the Owners of the Unit to which that Limited Common Element was allocated at the time of the acquisition, or to lien holders, as their interests may appear. If the Board determines that a particular Owner's interest in the Common Elements will be diminished with respect to other Owners, by the acquisition of a Common Element, the Declaration may be amended to adjust that Owner's Common Expense Liability allocation, or to remove the allocation of a Limited Common Element to that Owner's Unit, as the case may be.

Section 21.6 Reconstruction and Repair. Any reconstruction and repair necessitated by condemnation shall be governed by the procedures specified in Article 21.

ARTICLE 22 PROCEDURES FOR SUBDIVIDING, COMBINING OR ALTERING UNITS AND RELOCATING BOUNDARIES

Section 22.1 Subdivision or Combination of Units. No Unit may be subdivided into a greater number of Units or Units combined into a lesser number of Units, whether by agreement, legal proceedings or operation of law, except as provided in this Section 22.1.

22.1.1 An Owner desiring to subdivide a Unit or combine Units must submit a written proposal to the Board, all Mortgagees of the affected Units and the Investor. The proposal must include complete plans and specifications for accomplishing the subdivision or combination and proposed amendments of this Declaration and the Map. The proposed amendments must assign an identifying number to each resulting Unit, and reallocate the Allocated Interests of the former Unit(s) to the new Unit(s) in a reasonable manner, provided however, that the aggregate Allocated Interest of the new Unit(s) shall not exceed the total Allocated Interest of the Unit(s) before the subdivision or combination.

22.1.2 If approved pursuant to Section 22.1.3, the amendments must be executed by the Owner of the Unit(s) involved. The Owner of the Unit(s) to be subdivided or combined shall bear all costs of the subdivision or combination.

22.1.3 A proposal to subdivide a Unit or combine Units requires approval in writing by the Board, all Mortgagees of the Unit or Units to be subdivided or combined and the Investor. As to any proposal to subdivide or combine a Unit, the Board must approve the proposal

within 60 days unless the proposal fails to comply with the Condominium Act, this Section 22.1, or impairs the structural integrity or mechanical or electrical systems in the Condominium.

Section 22.2 Alteration of Units and Common Elements. No Owner may alter a Unit or Common Elements in any way except in accordance with this Section 22.2.

22.2.1 Subject to the use restrictions and other restrictions of the Governing Documents, an Owner may make any improvements or alterations to the Owner's Unit that do not affect the structural integrity or mechanical or electrical systems or lessen the support of any portion of the Condominium.

22.2.2 An Owner may not change the appearance of the Common Elements without permission of the Unit Owners and Mortgagees pursuant to Section 22.2.4.

22.2.3 After acquiring an adjoining Unit or an adjoining part of any adjoining Unit, an Owner may, with approvals pursuant to Subsection 22.2.4, remove or alter any intervening partition or create apertures therein, even if the partition in whole or in part is a Common Element, if those acts do not adversely affect the structural integrity or mechanical or electrical systems or lessen the support of any portion of the Condominium. Removal of partitions or creation of apertures under this subsection is not a relocation of boundaries.

22.2.4 Except for improvements or alterations under Section 22.2.1, an Owner must submit a written request, including plans and specifications for the proposed alteration or removal to the Board, the Unit Owners and Mortgagees. Such request requires approval in writing by the Board, all Mortgagees of the Unit or Units to be altered and the Investor. The Board must approve a request under this Section 22.2 within 60 days, unless the proposal fails to comply with the Condominium Act or with this Declaration or impairs the structural integrity or mechanical or electrical systems in the Condominium. The failure of the Board to act upon a request within such period shall be deemed its disapproval thereof.

Section 22.3 Relocation of Boundaries – Adjoining Units. The boundaries between adjoining Units may not be relocated in any way except in accordance with this Section 22.3.

22.3.1 The Owners of adjoining Units may relocate the boundaries between their Units if the relocation will not adversely affect the structural integrity or mechanical or electrical systems or lessen the support of any portion of the Condominium.

22.3.2 The Owners desiring to relocate the boundary between the Units must submit a written proposal to the Board, all Eligible Mortgagees of those Units and the Investor. The proposal must include complete plans and specifications for accomplishing the relocation and proposed amendments of this Declaration and the Map. The proposed amendments must reallocate the Allocated Interests of the affected Units in a reasonable manner.

22.3.3 The Board must approve a request under this Section 22.3 within 30 days, unless the proposal fails to comply with the Condominium Act or this Section 22.3, impairs the

structural integrity or mechanical or electrical systems in the Condominium, or contains an unreasonable reallocation of Allocated Interests. The failure of the Board to act upon a request within such period shall be deemed disapproval thereof.

22.3.4 Upon approval by the Board, all Eligible Mortgagees and the Investor, the Association shall prepare and record an amendment in accordance with RCW 64.90.285 that identifies the Units involved, states the reallocations, is executed by those Unit Owners, contains words of conveyance between them, and is recorded in the name of the grantor and the grantee. The Association shall record maps complying with the requirements of RCW 64.90.245 necessary to show the altered boundaries between adjoining Units and their dimensions and identifying numbers.

22.3.5 The Owner or Owners benefited by a relocation of Unit boundaries shall bear all costs associated therewith in proportion to the relative benefits to each such Unit, and if there is more than one benefited Owner, all such costs shall be a joint and several liability of each of such Owner.

22.3.6 Boundaries between Units and Common Elements may be relocated to incorporate Common Elements within a Unit by an amendment to the Declaration upon application to the Association by a Unit Owner of the Unit who proposes to relocate such boundary. The amendment may be approved only if the Unit Owner of such Unit and three-fourths (3/4) of the Voting Interests agree to such relocation or vote in favor of such relocation.

ARTICLE 23 AMENDMENT OF DECLARATION, MAP, ARTICLES OR BYLAWS

Section 23.1 Procedures. Except in cases of amendments that may be executed by the Declarant, the Association or certain Owners under other provisions of this Declaration or under the Condominium Act, the Declaration, the Map, the Articles and the Bylaws may be amended only by vote or agreement of the Owners as specified in this Article.

23.1.1 Any Owner or member of the Board may propose amendments to the Board. If approved by a majority of the Board, the amendment shall be submitted to the members of the Association for their consideration at the next regular or special meeting for which timely notice can be given. The notice for any meeting at which an amendment will be considered shall include the text of the amendment.

23.1.2 Amendments may be adopted at a meeting of the members of the Association or by such alternative methods as allowed by the Bylaws, after such notice as is required by the Bylaws has been given to all persons (including Eligible Mortgagees and the Investor) entitled to receive notices.

23.1.2.1 Upon thirty-day advance notice to Unit Owners, the Declarant may, without a vote of the Unit Owners or approval by the Board, unilaterally adopt, execute, and record a corrective amendment or supplement to the governing documents to correct a mathematical mistake, an inconsistency, or a scrivener's error, or clarify an ambiguity in the

governing documents with respect to an objectively verifiable fact. Any such amendment or supplement may not materially reduce what the obligations of the Declarant would have been if the mistake, inconsistency, error, or ambiguity had not occurred.

23.1.2.2 Upon thirty-day advance notice to Unit Owners, the Association may, upon a vote of two-thirds of the members of the Board, without a vote of the Unit Owners, adopt, execute, and record an amendment to the Declaration for the following purposes: (a) to correct or supplement the governing documents as provided in 23.1.2.1 above; (b) to remove language and otherwise amend as necessary to effect the removal of language purporting to forbid or restrict the conveyance, encumbrance, occupancy, or lease to: individuals of a specified race, creed, color, sex, or national origin; individuals with sensory, mental, or physical disabilities; and families with children or any other legally protected classification; (c) to remove language and otherwise amend as necessary to effect the removal of language that purports to impose limitations on the power of the Association beyond the limit authorized in RCW 64.90.405(1)(u) to deal with the Declarant that are more restrictive than the limitations imposed on the power of the Association to deal with other persons; and (d) to remove any other language and otherwise amend as necessary to effect the removal of language purporting to limit the rights of the Association or its unit owners in direct conflict with chapter 64.90 RCW.

23.1.3 Upon its adoption and the receipt of any necessary consents under this Article, an amendment to the Declaration or the Map will become effective when it is recorded or filed in the real property records in the county in which the Condominium is located. The amendment shall be indexed in the name of the Condominium and shall contain a cross-reference by recording number to the Declaration and each previously recorded amendment thereto. No action to challenge the validity of an amendment to the Declaration or Map adopted by the Association pursuant to this Article with all written consents required by this Declaration may be brought more than one year after the amendment is recorded. Upon its due adoption and any consents required under this Declaration, an amendment to the Articles shall be effective upon filing the amendment with the Secretary of State. An amendment to the Bylaws shall be effective upon adoption and receipt of any consents required under this Declaration.

23.1.4 Amendments under this section shall be prepared, executed, recorded and certified on behalf of the Association by any officer of the Association designated for that purpose or, in the absence of designation, by the president of the Association.

Section 23.2 Consent Required. The consents of Owners, Mortgagees and Investor required for adoption of amendments to the Declaration, the Map, the Articles and the Bylaws are as follows:

23.2.1 Except as provided in Section 8.3 relating to reallocation of Limited Common Elements, Article 20 and Article 21 relating to damage or condemnation of the Property, Article 22 relating to subdividing, combining, altering and relocating boundaries of Units, an amendment to the Declaration, the Map, the Articles or the Bylaws shall require (i) the unanimous consent of the Unit Owners and (ii) the consent of the Investor.

23.2.2 An amendment that increases the number of Units (other than pursuant to Article 22), changes the boundaries of any Unit (other than pursuant to Article 22), modifies any Allocated Interest of a Unit (other than pursuant to, Article 22), modifies or increases the restrictions on the use or any Unit, materially restricts the rights of any Unit Owner, or materially increases the burdens or obligations of a Unit or its Owner, shall require the vote or agreement of (i) the Owner of each Unit particularly affected and the Eligible Mortgagee(s) of such Unit; (ii) the Declarant, if the Declarant owns a Unit; (iii) unanimous consent of the Unit Owners; and (iv) the Investor.

23.2.3 All requests to Eligible Mortgagees and the Investor shall be in writing and delivered by certified or registered mail, return receipt requested.

ARTICLE 24 TERMINATION OF CONDOMINIUM

Section 24.1 Action Required. Except in the case of the taking of all Units by condemnation, the Condominium may be terminated only by agreement of 90% of Owners of Units, all Eligible Mortgagees and the Investor. All requests for consent to Eligible Mortgagees and the Investor shall be in writing and delivered by certified or registered mail, return receipt requested. The failure of an Eligible Mortgagee or the Investor to respond shall be deemed disapproval thereof.

Section 24.2 Condominium Act Governs. The provisions of the Condominium Act relating to termination of a condominium contained in RCW 64.90.290, as it may be amended, shall govern the termination of the Condominium, including, but not limited to, the disposition of the real property in the Condominium, the distribution of insurance proceeds upon termination, and the distribution of proceeds from the sale of that real property.

ARTICLE 25 DEVELOPMENT RIGHTS

25.1.1 Reservation of Rights. Declarant hereby reserves the right to (i) complete improvements indicated on the Map recorded with this Declaration, and (ii) exercise any development rights under RCW 64.90.250 as further described in this Article.

25.1.2 Property Subject to Development Rights. The development rights under RCW 64.90.250 reserved to Declarant shall apply to the property within the Condominium as described on the Map. Any Development Right or combination of rights reserved by Declarant in this Declaration include the right to (a) divide any limited common element allocated to a Unit owned by the Declarant into additional limited common elements and (b) allocate and reallocate limited common elements with respect to Units that have not been conveyed by Declarant. The Map indicates that the Condominium shall be SUBJECT TO DEVELOPMENT RIGHTS SET FORTH IN THE DECLARATION.

25.1.3 Documentation. In exercising the rights in Sections 25.1.2, Declarant shall have the sole and exclusive right to execute and record the necessary amendments to the

Declaration and Map to reallocate limited common elements to reflect the required information related to them.

25.1.4 Expiration of Development Rights. These development rights shall expire within twenty-five (25) years of the recording of this Declaration, unless earlier terminated by Declarant by recording a termination of Development rights with the Clark County Auditor.

25.1.5 Consent Required. The Declarant shall not exercise these development rights under this Article 25 without the consent of Eligible Mortgagees and the Investor.

ARTICLE 26 NOTICES

Section 26.1 Form and Delivery of Notice. Unless provided otherwise in this Declaration, all notices given under the provisions of this Declaration or the Bylaws or rules or regulations of the Association shall be in writing and may be delivered either personally, by mail or by electronic transmission. If delivery is made by mail, the notice shall be deemed to have been delivered upon being deposited in the United States mail, first class, postage prepaid, addressed to the Person entitled to such notice at the most recent address known to the Board, the Owner or the Mortgagee. Notice to the Owner of any Unit shall be sufficient if mailed to the Unit if no other mailing address has been given in writing to the Board. Notices to the Board shall be given to the president or secretary of the Association. Notices to the Declarant shall be given at the following address, or such other address as Declarant may specify in written notice to the Board or the Owners:

Declarant:

Housing Authority of the City of Vancouver
2500 Main Street
Vancouver, Washington 98660
Attention: Andy Silver

Investor:

Wells Fargo Affordable Housing
Community Development Corporation
550 S. Tryon Street
23rd Floor, D1086-239
Charlotte, NC 28202-4200
Attention: Director of Tax Credit Asset Management

Commercial Unit Owner:

City of Vancouver

PO Box 1995
Vancouver, WA 98668-1995
Attention: Housing Program Manager, Community Development

Section 26.2 Notices to Mortgagees. An Eligible Mortgagee shall be entitled to receive timely written notice of:

26.2.1 Any proposed amendment of the Declaration or Map;

26.2.2 Any proposed termination of condominium status or transfer of any part of the Common Elements;

26.2.3 Any condemnation loss or casualty loss that affects a material portion of the Condominium or that affects the Unit on which the Mortgagee has Mortgage;

26.2.4 Any delinquency that has continued for 60 days in the payment of Assessments or charges owed by an Owner of a Unit;

26.2.5 Any lapse, cancellation, or material modification of any insurance policy or fidelity bond maintained by the Association, or notice regarding any such action that is intended or threatened; and

26.2.6 Any proposed action that would require the consent of the Eligible Mortgagee or of a specified percentage of Eligible Mortgagees under this Declaration or the Condominium Act.

Section 26.3 Investor Notice. The Investor shall be entitled to receive: (1) the same notices as an Eligible Mortgagee hereunder; (2) all notices to the Residential Unit Owner; (3) the budgets as proposed, ratified or supplement under Section 15.3 or Section 15.4 hereof; (4) any notice provided to an Owner under Section 20.3 hereof; and (5) any notices required to be delivered to the Investor. Furthermore, the Investor will have the right, but not the obligation to cure a default on behalf of the Owner of Unit 1.

Notices to the Investor shall be given at the following address, or such other address as the Investor may specify in written notice to the Board or the Owners:

Wells Fargo Affordable Housing Community Development Corporation
301 South College Street
Charlotte, North Carolina 28288
Email Address: [_____]_____
Attention: Director of Tax Credit Asset Management

ARTICLE 27 ASSIGNMENT BY DECLARANT

The Declarant reserves the right to assign, transfer, sell, lease, or rent all or a portion of the property then owned by Declarant.

DECLARANT'S SIGNATURE PAGE FOR CONDOMINIUM DECLARATION

Dated this ____ day of _____, 2024.

**HOUSING AUTHORITY OF THE CITY OF VANCOUVER, a
public body corporate and politic of the State of Washington,**

By: Andy Silver

Its: Chief Executive Officer

By: _____
Name: Andy Silver
Title: Executive Director

State of Washington)
) ss.
County of Clark)

I certify that I know or have satisfactory evidence that Andy Silver is the person who appeared before me and said person acknowledged that said person signed this instrument, on oath stated that said person was authorized to execute the instrument and acknowledged it as the Executive Director of the Housing Authority of the City of Vancouver, a Washington public body and corporate politic, to be the free and voluntary act of such party for the uses and purposes mentioned in the instrument.

Dated: _____, 2024.

Notary Seal

Notary Public for Washington

Name of Notary

My appointment expires: _____

SCHEDULE A

LEGAL DESCRIPTION OF PROPERTY

[SEE CONDOMINIUM SURVEY DEPICTED ON FOLLOWING SIX PAGES]

C

4TH PLAINS COMMONS CONDOMINIUMS

LOCATED IN A PORTION OF "NORRIS ACRE TRACTS",
IN THE SW 1/4 OF SECTION 24 TOWNSHIP 02 NORTH,
RANGE 01 EAST OF THE WILLAMETTE MERIDIAN,
CITY OF VANCOUVER, CLARK COUNTY, WASHINGTON

DECLARATION

THE UNDERSIGNED OWNER OF THE INTEREST IN THE REAL ESTATE DESCRIBED HEREIN HEREBY DECLARE THIS MAP AND DEDICATES THE SAME FOR A CONDOMINIUM NAMED 4TH PLAIN COMMONS CONDOMINIUM, A CONDOMINIUM, AS THAT TERM IS DEFINED IN THE WASHINGTON COMMON INTEREST OWNERSHIP ACT, SOLELY TO MEET THE REQUIREMENTS OF THE WASHINGTON UNIFORM COMMON INTEREST OWNERSHIP ACT AND NOT FOR PUBLIC PURPOSE.

THIS MAP AND ANY PORTION THEREOF IS RESTRICTED BY LAW AND THE DECLARATION FOR 4TH PLAIN COMMONS CONDOMINIUM, RECORDED UNDER CLARK COUNTY RECORDING NUMBER _____

IN WITNESS WHEREOF I SET MY HAND AND SEAL.

VANCOUVER HOUSING AUTHORITY, A WASHINGTON MUNICIPAL CORPORATION

BY: _____

PRINTED NAME: _____

TITLE: _____

ACKNOWLEDGMENT

STATE OF WASHINGTON }
COUNTY OF CLARK } SS

THIS INSTRUMENT WAS ACKNOWLEDGED BEFORE ME ON

THIS ____ DAY OF _____ 20____ BY _____

AS _____ OF VANCOUVER HOUSING AUTHORITY, A WASHINGTON MUNICIPAL CORPORATION,

NOTARY SIGNATURE _____

NOTARY PUBLIC FOR OREGON _____

MY COMMISSION EXPIRES: _____

COMMISSION NO. _____

SURVEYOR'S CERTIFICATE

THIS MAP CORRECTLY REPRESENTS A SURVEY MADE BY ME OR UNDER MY DIRECTION IN CONFORMANCE WITH THE REQUIREMENTS OF THE SURVEY RECORDING ACT AT THE REQUEST OF VANCOUVER HOUSING AUTHORITY, A WASHINGTON MUNICIPAL CORPORATION ON JUNE 15, 2020.

I HEREBY CERTIFY THAT THIS MAP FOR 4TH PLAIN COMMONS CONDOMINIUM IS BASED UPON AN ACTUAL SURVEY OF THE PROPERTY HEREIN DESCRIBED. THAT THE BEARINGS AND DISTANCES ARE CORRECTLY SHOWN, THAT ALL INFORMATION REQUIRED BY THE WASHINGTON UNIFORM COMMON INTEREST OWNERSHIP ACT IS SUPPLIED HEREIN, AND THAT ALL HORIZONTAL AND VERTICAL BOUNDARIES OF THE UNITS, (1) TO THE EXTENT DETERMINED BY THE WALLS, FLOORS, OR CEILINGS THEREOF, OR OTHER PHYSICAL MONUMENTS, ARE SUBSTANTIALLY COMPLETED IN ACCORDANCE WITH SAID MAP, OR (2) TO THE EXTENT SUCH BOUNDARIES ARE NOT DEFINED BY PHYSICAL MONUMENTS, SUCH BOUNDARIES ARE SHOWN ON THE MAP.

JERED MCGRATH
PROFESSIONAL LAND SURVEYOR NO. 45763

PERIMETER LEGAL DESCRIPTION

A PORTION OF THAT TRACT OF LAND LABELED AND DESCRIBED AS "NORRIS ACRE TRACTS", A B/LA PARCEL 1" IN THAT BOUNDARY LINE ADJUSTMENT DEED UNDER CLARK COUNTY AUDITORS FILE NUMBER 528822 B/LA (RECORDED DECEMBER 8, 2015) AND TRANSFERRED IN DEED UNDER CLARK COUNTY AUDITORS FILE 588648 (RECORDED NOVEMBER 17, 2021), LOCATED IN A PORTION OF THE ROBERT ROCKETS DONATION LAND CLAIM (D.L.C.) IN THE SOUTHWEST QUARTER OF THE SOUTHWEST QUARTER OF SECTION 24, TOWNSHIP 2 NORTH, RANGE 1 EAST, WILLAMETTE MERIDIAN, CITY OF VANCOUVER, CLARK COUNTY, WASHINGTON, DESCRIBED AS FOLLOWS:

BEGINNING AT THE INITIAL POINT BEING A 1/2" IRON ROD WITH YELLOW PLASTIC CAP MARKED "RENTON 37535" MARKING THE SOUTHWEST CORNER OF SAID PARCEL 1; THENCE ALONG THE SOUTH LINE OF SAID PARCEL 1, SOUTH 81°44'54" EAST, 48.25 FEET TO THE WEST RIGHT-OF-WAY LINE OF NORRIS ROAD, BEING 27 FEET FROM THE CENTERLINE THEREOF; THENCE ALONG SAID WEST RIGHT-OF-WAY LINE, NORTH 07°58'44" EAST, 184.08 FEET; THENCE NORTH 44°01'10" WEST, 12.16 FEET TO THE SOUTHERLY RIGHT OF WAY LINE OF EAST 4TH PLAIN BLVD, BEING 50 FEET FROM THE CENTERLINE THEREOF; THENCE ALONG SAID SOUTHERLY RIGHT OF WAY LINE, NORTH 81°44'54" WEST, 236.24 FEET TO THE WESTERLY LINE OF SAID PARCEL 1; THENCE ALONG SAID WESTERLY LINE, SOUTH 01°32'22" WEST, 150.25 FEET; THENCE NORTH 89°28'50" WEST, 138.45 FEET; THENCE SOUTH 01°32'22" WEST, 32.78 FEET TO THE POINT OF BEGINNING.

CONTAINING 64,737 SQUARE FEET, MORE OR LESS.

PERIMETER LEASE AREA LEGAL DESCRIPTION

A PORTION OF THAT TRACT OF LAND LABELED AND DESCRIBED AS "NORRIS ACRE TRACTS", A B/LA PARCEL 2" IN THAT BOUNDARY LINE ADJUSTMENT DEED UNDER CLARK COUNTY AUDITORS FILE NUMBER 528822 B/LA (RECORDED DECEMBER 8, 2015), LOCATED IN A PORTION OF THE ROBERT ROCKETS DONATION LAND CLAIM (D.L.C.) IN THE SOUTHWEST QUARTER OF THE SOUTHWEST QUARTER OF SECTION 24, TOWNSHIP 2 NORTH, RANGE 1 EAST, WILLAMETTE MERIDIAN, CITY OF VANCOUVER, CLARK COUNTY, WASHINGTON, DESCRIBED AS FOLLOWS:

BEGINNING AT THE INITIAL POINT BEING A 1/2" IRON ROD WITH YELLOW PLASTIC CAP MARKED "RENTON 37535" MARKING THE NORTHWEST CORNER OF SAID PARCEL 2; THENCE ALONG THE NORTH LINE OF SAID PARCEL 2, SOUTH 81°44'54" EAST, 173.66 FEET; THENCE LEAVING SAID NORTH LINE, SOUTH 08°15'00" WEST, 200.00 FEET TO THE SOUTH LINE OF SAID PARCEL 2; THENCE ALONG SAID SOUTH LINE, NORTH 81°44'54" WEST, 150.24 FEET TO THE WEST LINE OF SAID PARCEL 2; THENCE ALONG SAID WEST LINE, NORTH 01°32'22" EAST, 201.38 FEET TO THE POINT OF BEGINNING.

CONTAINING 32,422 SQUARE FEET, MORE OR LESS.

NARRATIVE

THE BOUNDARY OF PARCELS 1 & 2 OF B/LA SURVEY RECORDED IN BOOK 62 PAGE 18 WAS ESTABLISHED BY HOLDING FOUND MONUMENTS AND RECORD DATA PER SAID B/LA SURVEY.

RECORD DATA PER DEED OF DEDICATION RECORDED AS APN ##### WAS HELD TO ESTABLISH THE RIGHT-OF-WAY LINES.

NOTES:

- ALL LAND IS SUBJECT TO DEVELOPMENT RIGHTS SET FORTH IN THE DECLARATION.
- FLOOR ELEVATION (FE) IS THE TOP OF SLAB/CONCRETE (UNDER CARPET, VINYL, TILE, ETC.).
- CEILING ELEVATION (CE) IS THE BOTTOM OF CEILING MATERIAL.
- SQUARE FOOTAGES ARE APPROXIMATE AND ROUNDED TO THE NEAREST SQUARE FOOT.

SHEET INDEX:

- SHEET 1: DECLARATION, ACKNOWLEDGMENT, SURVEYORS CERTIFICATE, LEGAL DESCRIPTIONS, NARRATIVE, SHEET INDEX, NOTES, ASSESSORS CERTIFICATE, AUDITORS CERTIFICATE, AND RECORDING CERTIFICATE.
- SHEET 2: BOUNDARY, GCE AND LCE PLAN, LEGEND, BUILDING LOCATION & DIMENSIONS, DATUM NOTES, AND RECORDING CERTIFICATE.
- SHEET 3: LEVEL 1-2 UNIT, GCE AND LCE PLAN DETAILS, LEGEND, AND NOTES.
- SHEET 4: LEVEL 3-4 UNIT, GCE AND LCE PLAN DETAILS, LEGEND, AND NOTES.
- SHEET 5: LEVEL 5-6 UNIT, GCE AND LCE PLAN DETAILS, LEGEND, AND NOTES.
- SHEET 6: VERTICAL ELEVATION DETAILS, DATUM NOTES, LEGEND, AND NOTES.

CLARK COUNTY ASSESSOR'S CERTIFICATE

EXAMINED AND APPROVED THIS ____ DAY OF _____ 20____
COUNTY SURVEYOR, CLARK COUNTY, WASHINGTON

CLARK COUNTY ASSESSOR _____

DEPUTY _____

CLARK COUNTY AUDITOR'S CERTIFICATE

EXAMINED AND APPROVED THIS ____ DAY OF _____ 20____
COUNTY SURVEYOR, CLARK COUNTY, WASHINGTON

CLARK COUNTY AUDITOR _____

DEPUTY _____

AUDITORS FILE NUMBER FOR CONDOMINIUM DECLARATION _____

RECORDING CERTIFICATE

FILED FOR RECORD AT THE REQUEST OF _____ THIS
DAY OF _____ 20____ AT _____ MINUTES PAST
_____, M. AND RECORDED IN BOOK _____ OF CONDOMINIUM PLATS AT PAGE _____
RECORDS OF CLARK COUNTY, WASHINGTON.

S&F Land Services

PROFESSIONAL LAND SURVEYORS

4805 SW 14TH AVE. SUITE 100
PORTLAND, OR 97225

(503) 345-0338

SHEET 1 OF 6

2/31/2020 4:14 PM

DATE

2/31/2020

FILED

2/31/2020

FILED

2/31/2020

FILED

2/31/2020

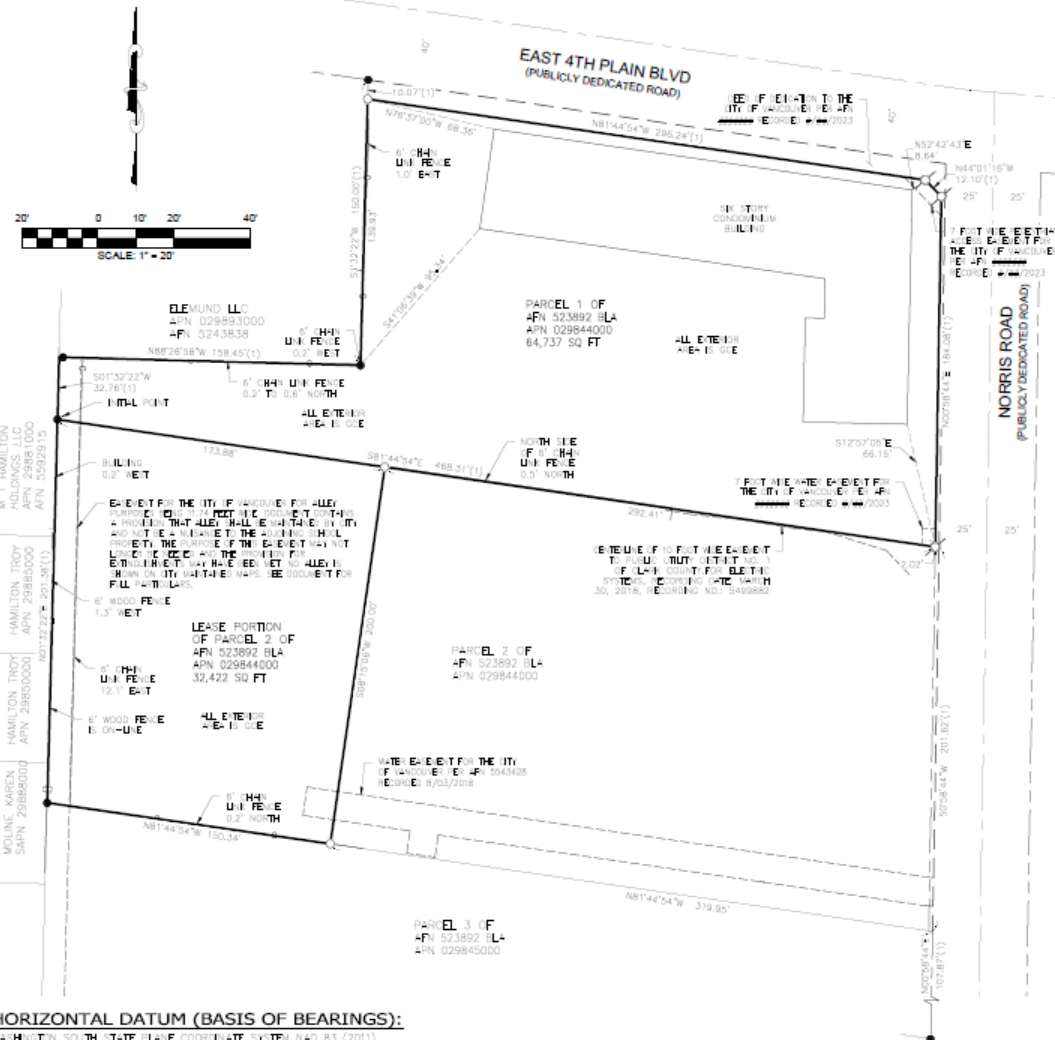
SURVEY FOR:
4TH PLAIN COMMONS
CONDOMINIUMS

LOCATED IN THE SW 1/4 OF SEC 24,
T2N, R1E, OF THE W.M.
CITY OF VANCOUVER, CLARK COUNTY, WASHINGTON



4TH PLAINS COMMONS CONDOMINIUMS

LOCATED IN A PORTION OF "NORRIS ACRE TRACTS",
IN THE SW 1/4 OF SECTION 24 TOWNSHIP 02 NORTH,
RANGE 01 EAST OF THE WILLAMETTE MERIDIAN,
CITY OF VANCOUVER, CLARK COUNTY, WASHINGTON



LEGEND:

- FOUND 1/2" IRON ROD W/HPY MARKED "NENTON 37539",
 PER BLA SURVEY RECORDED IN BOOK 52 PAGE 18, BELIEVED
 *UNLESS OTHERWISE NOTED
 ○ SET 1/2" IRON ROD W/HPY MARKED "SM LANDS SERVICES",
 SET ON SEPTEMBER 16, 2023
 ○ SET 1 1/4" COPPER B/C MARKED "SF LAND SERVICES", SET ON
 SEPTEMBER 16, 2023
 W/HPY WITH YELLOW PLASTIC CAP, MARKED AS NOTED
 SQ FT SQUARE FEET
 ELEV ELEVATION
 LCE LIMITED COMMON ELEMENT
 GCE GENERAL COMMON ELEMENT
 FFE FINISHED FLOOR ELEVATION
 RE ROOF ELEVATION

- LOT LINE
 PLAT BOUNDARY LINE
 UNIT BOUNDARY
 6' TALL WOODEN FENCE, UNLESS OTHERWISE NOTED.
 6' TALL CHAIN LINK FENCE, UNLESS OTHERWISE NOTED.

SURVEY REFERENCES:

(1) SURVEY RECORDED IN BOOK 62 PAGE 18

DEED REFERENCES:

(D1) ~~AFN~~ 5238922 RECORDED SEPTEMBER 9, 2015
(D2) ~~AFN~~ ~~RECORDED~~ SEPTEMBER 11, 2023

HORIZONTAL DATUM (BASIS OF BEARINGS):

WASHINGTON SOUTH STATE PLANE COORDINATE SYSTEM NAD 83 (2011)
BASED ON OBSERVATIONS FROM ORGN GPS NETWORK.
DISTANCES SHOWN HEREON ARE GROUND DISTANCES, US SURVEY FEET.
SCALED ABOUT CONTROL POINT NO 1.
TO CONVERT TO GRID DISTANCES MULTIPLY BY THE COMBINED FACTOR OF 1.00004526.

S&F Land Services

PORTLAND, VANCOUVER, BEND, SEASIDE

4805 SW SHILLS FERRY RD
PORTLAND, OR 97225
(503) 345-0328

E-MAIL: INFO@SEAFRANCIS.COM

SHEET 2 OF 8
06_PLAT CONDOL.dwg

WWW.SFLANDS.CO

DATE	
JUL 12, 2023	2

FIELD
SH/BV

EVAL: IN	
DRAWN	
TLB	

ISLANDS.COM
CHECK
LM

SURVEY FOR:

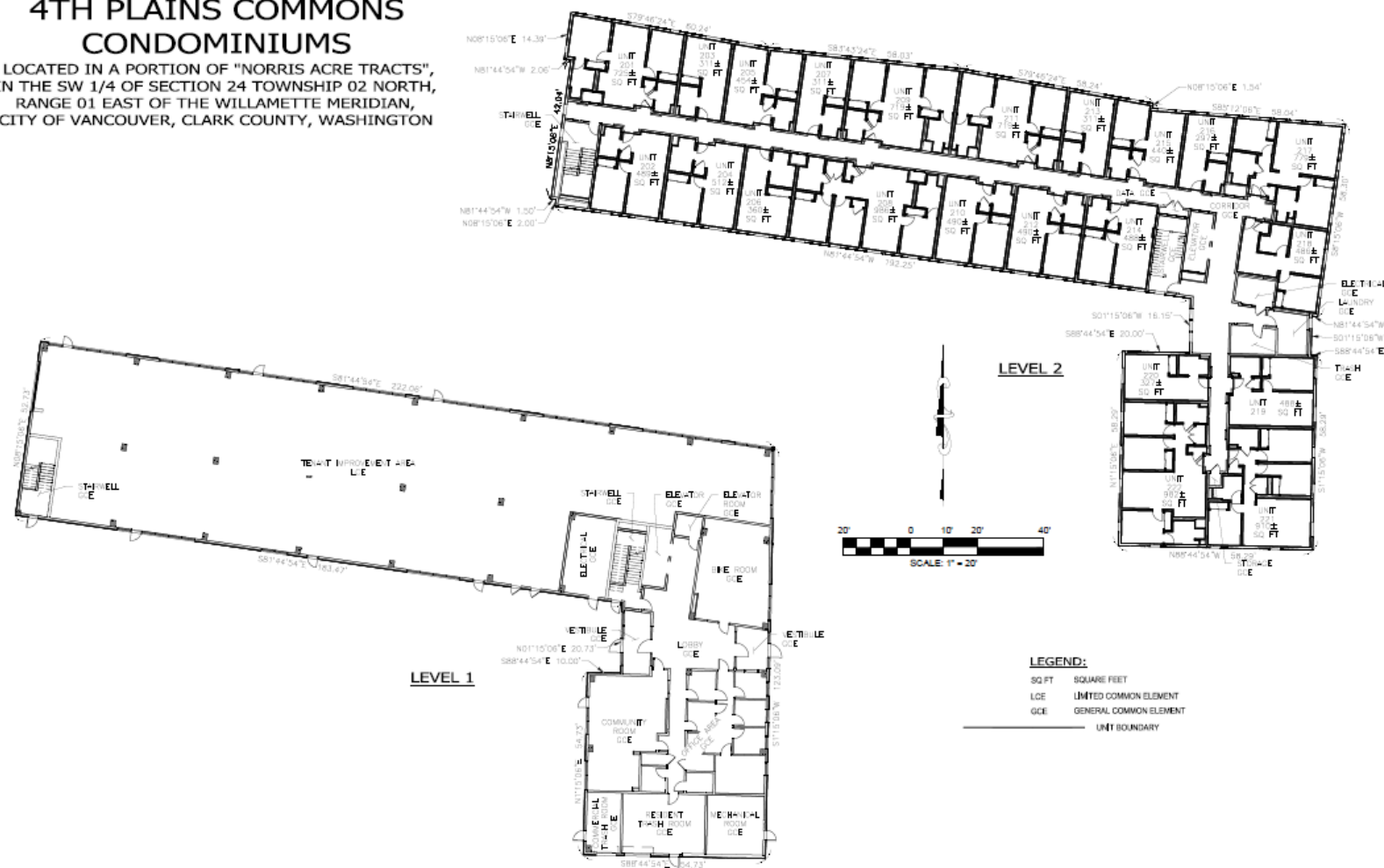
4TH PLAIN COMMONS
CONDOMINIUMS

LOCATED IN THE SW 1/4 OF SEC 24,
T2N, R1E, OF THE W.M.
CITY OF VANCOUVER, CLARK COUNTY, WASHINGTON



4TH PLAINS COMMONS CONDOMINIUMS

LOCATED IN A PORTION OF "NORRIS ACRE TRACTS",
IN THE SW 1/4 OF SECTION 24 TOWNSHIP 02 NORTH,
RANGE 01 EAST OF THE WILLAMETTE MERIDIAN,
CITY OF VANCOUVER, CLARK COUNTY, WASHINGTON



S&F Land Services

PORTLAND, VANCOUVER, IRVING, SEASIDE

PHILIP J. FORD, P.E.

1400 SW 10TH AVE., SUITE 100

PORTLAND, OR 97205

(503) 345-1228

SHEET 3 OF 8

WWW.S&FLANDS.COM

EMAIL: INFO@S&FLANDS.COM

231.2806 PLAT CONDO 140

DATE: 4-15-2023

JOB NO.: 2023-025-08

FIELD: H/REV

DRAWN: TLI

CHECKED: LVI

SURVEY FOR:

4TH PLAIN COMMONS
CONDOMINIUMS

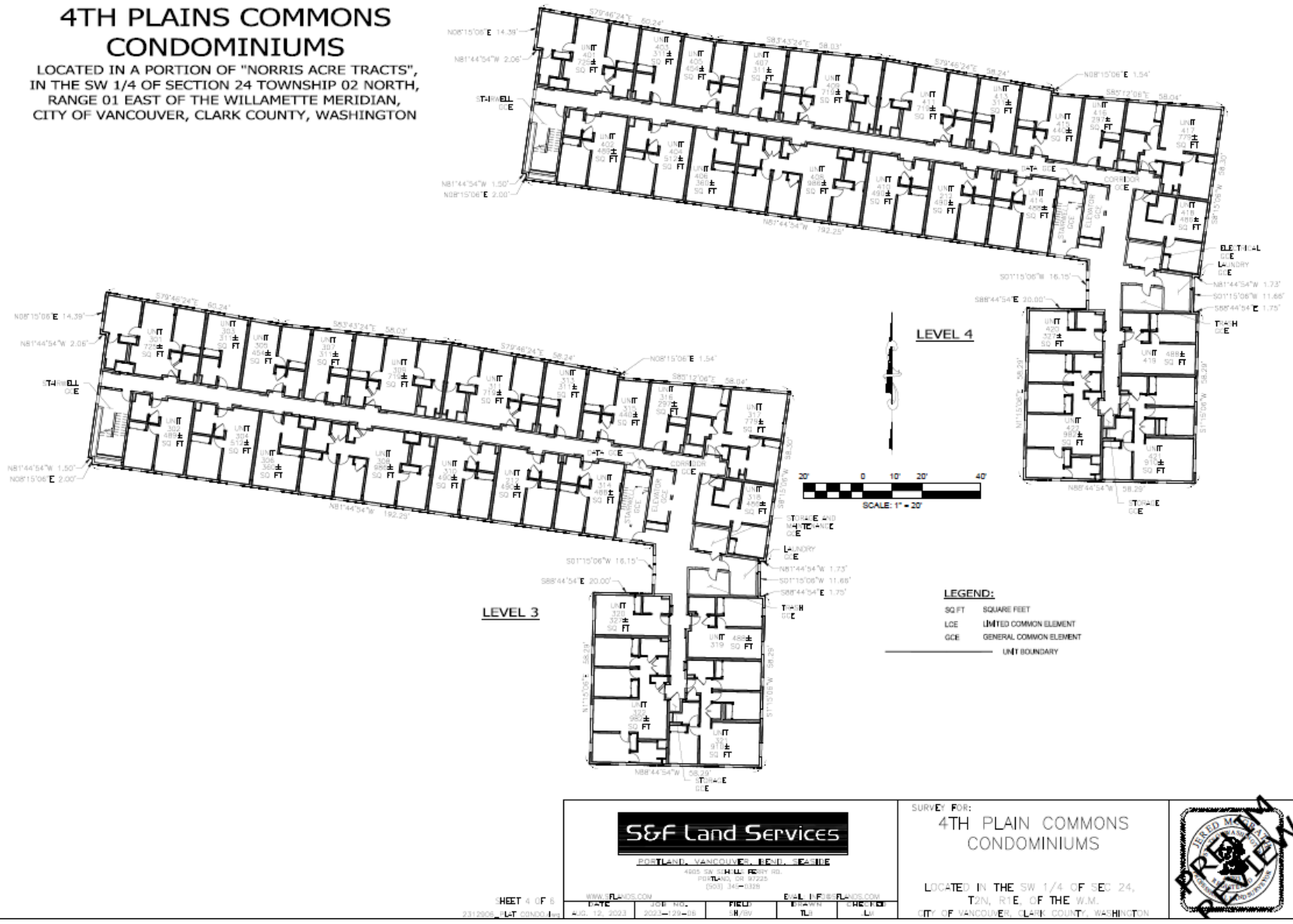
LOCATED IN THE SW 1/4 OF SEC 24,
T2N, R1E, OF THE W.M.

CITY OF VANCOUVER, CLARK COUNTY, WASHINGTON



4TH PLAINS COMMONS CONDOMINIUMS

LOCATED IN A PORTION OF "NORRIS ACRE TRACTS",
IN THE SW 1/4 OF SECTION 24 TOWNSHIP 02 NORTH,
RANGE 01 EAST OF THE WILLAMETTE MERIDIAN,
CITY OF VANCOUVER, CLARK COUNTY, WASHINGTON



S&F Land Services
PORTLAND, VANCOUVER, EDU, SEASIDE
4805 SW 9TH AVE, SUITE 100
PORTLAND, OR 97205
(503) 340-0325

SURVEY FOR:
**4TH PLAIN COMMONS
CONDOMINIUMS**



LOCATED IN THE SW 1/4 OF SEC 24,
T2N, R1E, OF THE W.M.
CITY OF VANCOUVER, CLARK COUNTY, WASHINGTON

DATE	DATE	FILED	DATE	FILED
2021-12-20	2021-12-20	2021-12-20	2021-12-20	2021-12-20
CLERK	CLERK	CLERK	CLERK	CLERK

4TH PLAINS COMMONS CONDOMINIUMS

LOCATED IN A PORTION OF "NORRIS ACRE TRACTS",
IN THE SW 1/4 OF SECTION 24 TOWNSHIP 02 NORTH,
RANGE 01 EAST OF THE WILLAMETTE MERIDIAN,
CITY OF VANCOUVER, CLARK COUNTY, WASHINGTON



S&F Land Services

PORTLAND, VANCOUVER, EDU, SEATTLE

4805 SW 10TH AVE, SUITE 200

PORTLAND, OR 97205

(503) 340-0328

SHEET 5 OF 6

DATE: 12-20-2023

DATE: 12-20-23

FILED: SR/20

PREPARED BY: TLU

CHECKED BY: Luv

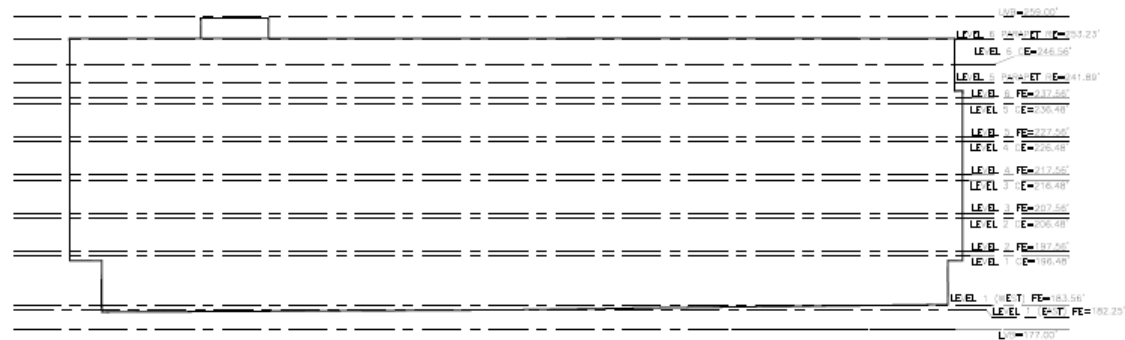
SURVEY FOR:
4TH PLAIN COMMONS
CONDOMINIUMS

LOCATED IN THE SW 1/4 OF SEC 24,
T2N, R1E, OF THE W.M.
CITY OF VANCOUVER, CLARK COUNTY, WASHINGTON

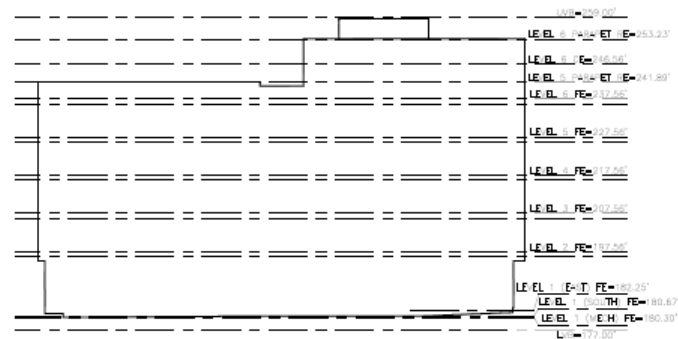


BOOK _____ PAGE _____

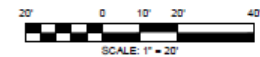
NORTH ELEVATION VIEW
(FACING SOUTH)



EAST ELEVATION VIEW
(FACING WEST)



GCE	GENERAL COMMON ELEMENT
LCE	LIMITED COMMON ELEMENT
FE	FINISHED FLOOR ELEVATION
CE	CEILING ELEVATION
RE	ROOF ELEVATION
LVB	LOWER VERTICAL BOUNDARY
UVB	UPPER VERTICAL BOUNDARY
	UNIT BOUNDARY



SHEET 6 OF 6
06. PLAT CONDOL-

DATE	JOB NO.	FIELD
AUG. 12, 2023	2023-129-08	SH/BN

EVAL: INFO@FLANDS.COM	
DRAWN	CHECKED
TJR	JM

LOCATED IN THE SW 1/4 OF SEC 24,
T2N, R1E, OF THE W.M.
CITY OF VANCOUVER, CLARK COUNTY, WASHINGTON



SCHEDULE B

FOURTH PLAIN COMMON CONDOMINIUMS UNIT DATA AND ALLOCATED INTERESTS

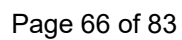
- The Unit Number is the Identifying Number of the Unit.
- The Floor Area is the approximate floor area of the Unit, based on the square footage reflected in the Salazar Site Plan.
- The Level refers to the levels or story within the Building.
- “COI” shows the “Common Ownership Interest” of each Unit based on the formula set forth in Article 6. Allocated Interests have been rounded.
- “CEL” shows the “Common Expense Liability” of each Unit based on the formula set forth in Article 6. Allocated Interests have been rounded.
- “AI” shows the “Allocated Interest” of each Unit based on the formula set forth in Article 6. Allocated Interests have been rounded.
- Because the Units are non-residential units for the purpose of the Condominium Act, bedrooms, bathrooms and fireplaces are not stated.

UNIT #	FLOOR AREA	LEVELS	COI	CEL	AI
1	88,296	A Portion of the Ground Floor & Floors 2-6	83%	83%	83%
2	19,006	A Majority of Ground Floor & Outdoor Plaza, Lawn, and Playground	17%	17%	17%
TOTAL			100%	100%	100%

SCHEDULE C
FOURTH PLAIN COMMONS CONDOMINIUMS
SALAZAR SITE PLAN

[SEE EXTERIOR ELEVATIONS DEPICTED ON FOLLOWING THREE PAGES]

C



SCHEDULE D

FOURTH PLAIN COMMONS CONDOMINIUMS SPECIALLY ALLOCATED EXPENSES

The following Common Expenses are not subject to the Common Expense Liability described in Article 6 and Schedule B, and are instead subject to the special allocation described in this Schedule D.

Common Expense Description	Unit 1 Share of Common Expense	Unit 2 Share of Common Expense
Landscaping Water Utility	100% of total expense	0% of total expense
Landscaping/Grounds Maintenance Cost	0% of total expense	100% of total expense
Exterior Site Lighting	100% of total expense	0% of total expense
Parking Lot Maintenance	100% of total expense	0% of total expense

The Unit Owners agree that the percentage share of specially allocated expenses will be reviewed within 30 days of the one year anniversary of the Effective Date and the parties will mutually determine if the share of specially allocated expense should be revised and this Schedule D updated accordingly.

**ARTICLES OF INCORPORATION
OF
2200 NORRIS CONDOMINIUM ASSOCIATION**

THE UNDERSIGNED, acting as incorporator of a corporation under the Washington Non-profit Corporation Act, RCW 24.03, adopts the following Articles of Incorporation for the corporation.

ARTICLE 1. NAME. The name of this corporation shall be 2200 Norris Condominium Association (the "Corporation").

ARTICLE 2. DURATION. The duration of this Corporation shall be perpetual.

ARTICLE 3. PURPOSES. The Corporation is organized to provide an entity pursuant to the Washington Uniform Common Ownership Interest Act (RCW 64.90) hereinafter called the "Condominium Act," for the operation of Fourth Plain Commons Condominium located in Vancouver, Washington (hereafter referred to as the "Condominium") and to engage in all such activities as are incidental or conducive to the attainment of the objectives of the Corporation and all activities which are permitted to be done by a non-profit corporation under any laws that may now or hereafter be applicable or available to this Corporation. The powers of this Corporation shall be subject to and shall be exercised in accordance with the provisions of the Condominium Act and the provisions of the Condominium Declaration for Fourth Plain Commons Condominium recorded in Clark County, Washington, as it may from time to time be amended, hereinafter referred to as the "Declaration." Capitalized terms used herein and not otherwise defined shall have the same meaning given to them in the Declaration.

ARTICLE 4. DISSOLUTION. Upon dissolution or final liquidation of the corporation, the assets of the Corporation shall be distributed among the members of the Corporation in accordance with the Declaration and the Condominium Act.

ARTICLE 5. MEMBERS. The Corporation shall have one class of members, which shall consist of the Owners of the Units in the Condominium. The rights, privileges and obligations of the members are set forth in the Condominium Act, the Declaration and the Bylaws of the Corporation. In case of any conflict, the terms of the Declaration shall prevail over the Bylaws.

ARTICLE 6. REGISTERED OFFICE AND AGENT. The name of the initial registered agent of the Corporation is Housing Authority of the City of Vancouver. The address of the initial registered office of the Corporation is 2500 Main Street Vancouver, Washington 98660.

ARTICLE 7. DIRECTORS. The number of directors of this Corporation shall be fixed by the Declaration. The initial Board of Directors shall consist of three directors. The names and addresses of the persons who shall serve as directors until their successors are duly appointed unless they resign or are removed are:

Position 1 (Unit 1):
[INSERT]

Position 2 (Unit 1):
[INSERT]

Position 3 (Unit 2):
[INSERT]

ARTICLE 8. LIMITATION OF LIABILITY. A director of the Corporation shall not be personally liable to the Corporation or its members for monetary damages for conduct as a director, except for liability of the director (i) for acts or omissions which involve intentional misconduct by the director or a knowing violation of law by the director, (ii) for any transaction from which the director will personally receive a benefit in money, property or services to which the director is not legally entitled, or (iii) for conduct violating RCW Section 23B.08.310 of the Washington Business Corporation Act.

Any repeal or modification of this article by the directors or members of the Corporation shall not adversely affect any right or protection of any individual which existed at the time of such repeal or modification.

ARTICLE 9. INDEMNIFICATION. The Corporation shall indemnify each director and officer as set forth in Section 14.7 of the Declaration. The Corporation shall indemnify any individual made a party to a proceeding because that individual is or was a director of the Corporation and shall advance or reimburse the reasonable expenses incurred by such individual in advance of final disposition of the proceeding, without regard to the limitations in RCW 23B.08.510 through 23B.08.550 of the Washington Business Corporation Act, or any other limitation which may hereafter be enacted to the extent such limitation may be disregarded if authorized by the Articles of Incorporation, to the full extent and under all circumstances permitted by applicable law.

Any indemnification provided under this Article shall, unless limited by the terms of the undertaking to indemnify, continue as to a person who has ceased to be a director, officer, employee or agent and shall inure to the benefit of his or her heirs, executors and administrators.

Any repeal or modification of this Article by the directors or members of the Corporation shall not adversely affect any right or protection of any individual who is or was a director or officer of the Corporation existing at the time of such repeal or modification.

ARTICLE 10. AMENDMENT. Any amendment to these Articles of Incorporation shall require the unanimous approval of the members of the Corporation and such other approvals as may be required in Article 23 of the Declaration.

ARTICLE 11. INCORPORATOR. The name and address of the incorporator is:

Ryan R. Nisle
Miller Nash LLP
111 SW 5th Avenue, Suite 3400
Portland, OR 97204.

IN WITNESS WHEREOF, the incorporator has hereunto set his hand and seal this ____ day of November 2024.

Ryan R. Nisle

CONSENT TO SERVE AS REGISTERED AGENT

Housing Authority of the City of Vancouver (“VHA”) hereby consents to serve as registered agent in the State of Washington for 2200 Norris Condominium Association. As agent for the association, VHA will be responsible to accept service of process in the name of the 2200 Norris Condominium Association; to forward all mail and license renewals to the appropriate members of the association; and to immediately notify the Office of the Secretary of State of its resignation or of any change in the address of the registered office of the association for which it is agent.

Housing Authority of the City of Vancouver

By:_____

Name: Andy Silver

Its: Executive Director

**BYLAWS
OF
2200 NORRIS CONDOMINIUM ASSOCIATION**

2200 Norris Condominium Association (the “Association”) is a corporation organized under RCW Chapter 24.03, the Washington Nonprofit Corporation Act. These Bylaws provide for operation of the Fourth Plain Commons Condominium (the “Condominium”), located in Vancouver, Washington, created pursuant to the Washington Uniform Common Interest Ownership Act (RCW 64.90, the “Condominium Act”). They apply to the entire Condominium, each Unit therein, and all Common Elements including Limited Common Elements. Each Owner automatically, by virtue of such ownership, becomes a member of the Association. All present and future Owners are subject to these Bylaws, the Condominium Declaration for Fourth Plain Commons Condominium, recorded in Clark County, Washington, as it may from time to time be amended (the “Declaration”). Capitalized terms used herein and not otherwise defined have the meaning given to them in the Declaration. In case of conflict, the terms of the Declaration prevail over these Bylaws.

ARTICLE 1 MEMBERSHIP; VOTING

Section 1.1 Membership. The qualifications for membership in the Association are as set forth in the Declaration. Corporations, partnerships, associations, and other legal entities, trustees under an express trust, and other fiduciaries, as well as natural persons may be members of the Association.

Section 1.2 Number of Votes. Each Unit Owner is entitled to the number of votes, voting power, and rights to appoint Directors as set forth in the Declaration.

Section 1.3 Voting by Multiple Owners. Multiple Owners of a Unit, such as joint tenants, tenants in common, husband and wife, or other ownership involving more than one Owner, shall be joint members of the Association, but the sum total of their vote shall not exceed the voting power allocated to the Unit owned. If only one of the multiple Owners of a Unit is present at a meeting of the Association, that Owner is entitled to cast all the votes allocated to that Unit. If more than one of the multiple Owners is present, then the votes allocated to that Unit may be cast only in accordance with the majority agreement of the present Owners. There is majority agreement if any one of the multiple Owners casts the votes allocated to that Unit without protest being made promptly to the person presiding over the meeting by any of the other present Owners of the Unit. If there is no majority agreement, the vote of those Owners shall not be counted.

Section 1.4 Voting Representative. An Owner may, by written notice to the Board, designate a voting representative for the Unit. The voting representative need not be an Owner. The designation may be revoked at any time by written notice to the Board from a person having an ownership interest in a Unit, or by actual notice to the Board of the death or judicially declared incompetence of any person with an ownership interest in the Unit, except in cases in which the person designated is a Mortgagee of the Unit. This power of designation and revocation may be exercised by the guardian of an Owner, the attorney in fact of the Owner under a durable power of attorney, or the administrators or executors of an Owner’s estate. If no designation has been made,

or if a designation has been revoked and no new designation has been made, the voting representative of each Unit shall be the Owners.

Section 1.5 Voting by Proxy; Pledged Votes to Mortgagee. Votes allocated to a Unit may be cast pursuant to a proxy duly executed by an Owner. A Unit Owner may not revoke a proxy given pursuant to this section except by actual notice of revocation to the person presiding over a meeting of the Association. A proxy is void if it is not dated or purports to be revocable without notice. Unless stated otherwise in the proxy, a proxy terminates 11 months after its date of issuance. An Owner may, but shall not be obligated to, pledge his or her vote on all issues or on specific issues to a Mortgagee. If the Association has been notified by the Mortgagee that it is enforcing its right to vote pursuant to such pledge, only the vote of the Mortgagee will be recognized on the issues that are subject to the pledge; provided, however, that if the Association has received such notices from more than one Mortgagee, the Mortgagee holding the Mortgage with the highest level of priority among the Mortgages held by those Mortgagees shall be entitled to vote.

ARTICLE 2 MEETINGS OF MEMBERS

Section 2.1 Place. Meetings of the members of the Association shall be held at such suitable place in Vancouver, Washington as may be convenient to the membership and designated from time to time by the Board.

Section 2.2 Annual Meeting. The annual meeting of the Association shall be held in the first quarter of each fiscal year on a date fixed by the Board, which date shall not be less than 14 nor more than 60 days after notice of the meeting is given to the members.

Section 2.3 Budget Meeting. Within 30 days after adoption of any proposed budget for the Association, the Board shall provide a copy of the proposed budget to all of the members and set a date for a meeting of the members to consider ratification of the budget, which date shall be not less than 14 nor more than 60 days after mailing the summary. Unless at that meeting the owners of units to which 75 percent of the Voting Interest in the Association are allocated reject the budget, the budget is ratified. In the event the proposed budget is not ratified at such meeting, the budget last ratified by the Owners shall be continued until a budget proposed by the Board is ratified as provided herein.

Section 2.4 Special Meetings. A special meeting of the Association may be called by the president, by resolution of the Board or upon the written request of a majority of the Board or upon the written request of Owners having not less than 10% of the Voting Interest in the Association not less than 14 nor more than 60 days in advance of the meeting. If the Association does not provide notice within 30 days after the requisite number or percentage of Owners request so, the requesting members may directly provide notice to all the Owners of the meeting. No business shall be transacted at a special meeting except as stated in the notice given therefor unless consented to by each of the Owners present either in person or by proxy.

Section 2.5 Notice of Meetings. It shall be the duty of the secretary to give notice of each annual budget and special meeting. Such notice shall be sent by electronic transmission, facsimile, hand- delivered or sent prepaid by first-class United States mail to the address

designated in writing by the Unit Owner, to each member of the Association, to each Eligible Mortgagee and to the Investor. If notice is delivered by electronic transmission, such notice shall comply with the requirements of RCW 24.03.009. The notice of any meeting shall state the time and place of the meeting and the items on the agenda to be voted on by the members, including any proposed amendment to the Declaration or Bylaws, changes in the previously approved budget that result in a change in Assessment obligations, and any proposal to remove a director or officer. Before, during or after any meeting of the Association, any member may, in writing, waive notice of such meeting. Attendance by a member at a meeting of the Association shall be a waiver by him of timely and adequate notice unless he expressly challenges the notice when the meeting begins.

Section 2.6 Quorum. The presence in person or by proxy of members of the Association or voting representatives holding 50% of the Voting Interest in the Association shall constitute a quorum for the transaction of business at any meeting of members of the Association. If a quorum is present at a meeting, a majority of the members present may adjourn the meeting from day to day or to such time and place as may be decided by and no notice of such adjournment need be given. No business shall be transacted at an adjourned meeting that could not have been transacted at the meeting from which the adjournment was taken.

Section 2.7 Adjournment of Meetings. If any meeting of Owners cannot be organized because a quorum has not attended, the Owners present, in person or by proxy, may adjourn the meeting to a time not less than 48 hours from the time the original meeting was called. Notice of adjournment of such meeting shall be given to all members.

Section 2.8 Manner of Acting. Except as otherwise provided by the Condominium Act by the Declaration, or by these Bylaws, passage of any matter submitted to vote at a meeting where a quorum is present, shall require the affirmative vote of at least 51% of the Voting Interest present in person or by proxy.

Section 2.9 Order of Business. The order of business at meetings of the Association shall be as follows unless dispensed with on motion:

- (a) Roll call;
- (b) Proof of notice of meeting or waiver of notice;
- (c) Minutes of preceding meeting;
- (d) Reports of officers;
- (e) Miscellaneous business.

Section 2.10 Parliamentary Authority. In the event of dispute, the parliamentary authority for the meetings shall be the most current available edition of Robert's Rules of Order or such other published code of parliamentary procedure as shall be approved by a majority at the meeting.

Section 2.11 Presumption of Assent. A member of the Association present at a membership meeting at which action is taken on any matter put to a vote of the membership shall be presumed to have assented to the action taken unless that member's dissent or abstention is entered in the minutes of the meeting, or unless such member files a written dissent or abstention to such action with the person acting as secretary of the meeting before the adjournment thereof, or forwards such dissent or abstention to the secretary of the Association within 24 hours after the adjournment of the meeting. The right to dissent or abstain shall not apply to a member who voted in favor of an action.

Section 2.12 Minutes. Minutes of all membership meetings shall be recorded by the secretary of the Association or by another person designated by the board of directors. Minutes for every meeting shall be approved by the Association before or at the next Association meeting.

Section 2.13 Action of Members by Communications Equipment. Any action required or which may be taken at a meeting of the members may be taken by means of a conference telephone or similar communications equipment whereby all persons participating in the meeting may hear the other participants at the same time and participation by such means shall constitute presence in person at such meeting.

Section 2.14 Action of Members by Written Consent. Any corporate action required or permitted by the Articles of Incorporation, these Bylaws, or the laws of the State of Washington to be taken at a meeting of Members may be taken without a meeting if a consent in writing, setting forth the action so taken, shall be signed by all of the Members entitled to vote with respect to the subject matter thereof. Such written consent may be signed in two or more counterparts, each of which shall be deemed an original and all of which, taken together, shall constitute one and the same document. Such consent shall have the same force and effect as a unanimous vote and may be described as such.

Section 2.15 Mortgagee's Right to Attend Meetings. A Mortgagee and the Investor may attend any meeting of the Association, but shall not be entitled to participate except with consent of the Board.

ARTICLE 3 BOARD OF DIRECTORS

Section 3.1 Term. Each director appointed to the Board shall serve at the pleasure of the appointing Owner or class of Owners.

Section 3.2 Powers and Duties. The Board shall have the powers and duties provided for in the Condominium Act and in the Declaration, and all other power necessary for the administration of the affairs of the Association, and may do all such acts and things as are not prohibited by statute or by the Declaration required to be done in another manner. The Board may delegate the Board's administrative responsibilities to a Managing Agent including, without limitation, those responsibilities set forth in Article 7 of these Bylaws.

Section 3.3 Vacancies. Vacancies on the Board shall be filled by appointment of a replacement director pursuant to Article 14 of the Declaration.

Section 3.4 Removal of Directors. At any time, any member, or class of members, may remove the director whom the member or class of members previously appointed, with or without cause, and may appoint a successor to fill the vacancy thus created..

Section 3.5 Compensation. No compensation shall be paid to directors for their services as directors.

Section 3.6 Regular Meetings. Regular meetings of the Board may be held at such time and place as shall be determined from time to time by a majority of the directors, but at least one such meeting shall be held during each fiscal year. Notice of regular meetings of the Board shall be given to each director personally or by electronic transmission, mail, telephone, or facsimile, at least seven days before the day fixed for the meeting. If notice is delivered by electronic transmission, such notice shall comply with the requirements of RCW 24.03.009.

Section 3.7 Special Meetings. Special meetings of the Board may be called by the president on three days' notice to each director, given personally or by electronic transmission, mail, telephone, or facsimile, which notice shall state the time, place, and purpose of the meeting. Special meetings of the Board shall be called by either the president or secretary in like manner and on like notice on the written request of any two directors. If notice is delivered by electronic transmission, such notice shall comply with the requirements of RCW 24.03.009.

Section 3.8 Waiver of Notice. Before any meeting of the Board, any director may, in writing, waive notice of such meeting. Attendance by a director at any meeting of the Board shall be a waiver by him of timely and adequate notice unless he expressly challenges the notice when the meeting begins. If all directors are present at any meeting of the Board, no notice shall be required and any business may be transacted at the meeting.

Section 3.9 Quorum. A quorum of the Board shall be deemed present throughout any meeting of the Board if a majority of Directors are present at the beginning of the meeting. Except as otherwise provided in the Declaration or the Act, the act of the majority of the directors present at a meeting at which a quorum is present shall be the acts of the Board. If there is less than a quorum present at any meeting of the Board, the majority of those present may adjourn the meeting from time to time. At the adjourned meeting, any business which might have been transacted at the meeting as originally called may be transacted without further notice.

Section 3.10 Open Meeting. Any Owner, Mortgagee, the Investor or voting representative may attend any meeting of the Board. Mortgagees and voting representatives shall not be entitled to participate except with the consent of the Board. The Board may, however, go into private, executive session to discuss with legal counsel litigation in which the Association is or is likely to become a party if public discussion would adversely affect the interests of the Association in such litigation.

Section 3.11 Action of Directors by Communications Equipment. Any action required or which may be taken at a meeting of directors or of a committee thereof may be taken by means of a conference telephone or similar communications equipment whereby all persons participating in the meeting may hear the other participants at the same time.

Section 3.12 Action of Directors by Written Consent. Any corporate action required or permitted by the Articles of Incorporation, these Bylaws, or the laws of the State of Washington to be taken at a meeting of Directors, or committee thereof, may be taken without a meeting if a consent in writing, setting forth the action so taken, shall be signed by all of the Directors or committee members, as the case may be, entitled to vote with respect to the subject matter thereof. Such written consent may be signed in two or more counterparts, each of which shall be deemed an original and all of which, taken together, shall constitute one and the same document. Such consent shall have the same force and effect as a unanimous vote and may be described as such.

Section 3.13 Duties of Directors. A Director shall perform the duties of a Director, including the duties of a member of any committee of the Board upon which the Director may serve, in good faith, in such manner as the Director believes to be in the best interests of the Association. A Director appointed by the Declarant during the period of declarant control (if any) is required to exercise the degree of care required of fiduciaries of the Unit Owners. A Director elected or appointed by Unit Owners is required to exercise ordinary and reasonable care, including reasonable inquiry as an ordinarily prudent person in a like position would use under similar circumstances. In performing the duties of a Director, a Director shall be entitled to rely on information, opinions, reports, or statements, including financial statements and other financial data, in each case prepared or presented by:

- (a) One or more officers or employees of the Association whom the Director believes to be reliable and competent in the matter presented;
- (b) Counsel, public accountants, or other persons as to matters which the Director believes to be within such person's professional or expert competence; or
- (c) A committee of the Board upon which the Director does not serve, duly designated in accordance with a provision in the Articles of Incorporation or Bylaws as to matters within its designated authority, which committee the Director believes to merit confidence; as long as, in any such case, the Director acts in good faith, after reasonable inquiry when the need thereof is indicated by the circumstances and without knowledge that would cause such reliance to be unwarranted.

ARTICLE 4 OFFICERS

Section 4.1 Designation. The principal officers of the Association shall be a president, a secretary, a treasurer and a vice president, all of whom shall be appointed by and from the Board. The directors may appoint from the Board such other officers as in their judgment may be necessary or desirable. Two or more offices may be held by the same person, except that a person may not hold the offices of president and secretary simultaneously.

Section 4.2 Appointment of Officers. The officers of the Association shall be appointed annually by the Board at the first Board meeting of the year. The Officers must take office upon adjournment of the meeting at which they were appointed or, if not appointed at a meeting, at the time of such appointment, and must serve until their successor takes office.

Section 4.3 Removal of Officers. At any regular meeting of the Board or at any special meeting of the Board called for such purpose, upon an affirmative vote of a majority of the

members of the Board, any officer may be removed, either with or without cause. A successor to the removed officer may be elected at any such meeting. The removal of the Officer must be recorded in the minutes of the next Board meeting.

Section 4.4 President. The president shall be the chief executive officer of the Association. The president shall preside at all meetings of the Association and of the Board and shall have all powers and duties usually vested in the office of the president.

Section 4.5 Vice President. The vice president shall, in the absence or incapacity of the president, perform the duties of that officer and shall perform all such other duties as the Board may designate from time to time.

Section 4.6 Secretary. The secretary shall keep the minutes of all meetings of the Board and of the Association and shall have custody of the business records of the Board and the Association, other than financial records kept by the treasurer. The secretary shall also perform such other duties as may be prescribed by the Board.

Section 4.7 Treasurer. The treasurer shall have responsibility for Association funds and securities and shall be responsible for keeping full and accurate accounts of all receipts and disbursements in books belonging to the Association.

Section 4.8 Other Officers and Employees. Other officers of the Association and any persons employed to assist the officers, shall have such authority and shall perform such duties as the Board may prescribe within the provisions of the applicable statutes, the Declaration, and these Bylaws.

Section 4.9 Compensation. The officers shall not be entitled to compensation for their service as officers.

Section 4.10 Vacancies. Vacancies in any office arising from any cause may be filled by the Board of Directors at any regular or special meeting of the Board.

ARTICLE 5 COMMITTEES

Section 5.1 Committees of Directors. The Board may appoint one or more committees that consist of one or more directors. Such committees, if composed entirely of Board members, shall have and exercise, to the extent provided in the resolution establishing the committee, the authority of the Board in the management of the Association. If a committee is not composed entirely of Board members, it shall not have the authority of the Board in the management of the Association. The appointment of any such committee shall not relieve the Board of its ultimate responsibility for the administration and management of the Condominium.

Section 5.2 Other Committees. Other committees, not having or exercising the authority of the Board in the management of the Association, may be appointed by the president or the directors, and such committees may be composed of one or more members of the Association.

Section 5.3 Limitation on Committees. No committee shall have the authority to: amend the articles of incorporation; adopt or amend bylaws; recommend the sale, lease or transfer of

substantially all the assets of the Association; recommend a voluntary dissolution of the Association; declare distributions; make assessments; approve a plan of merger, consolidation or exchange; or take any action prohibited under RCW 24.03 or otherwise reserved to the full Board of Directors or to the members of the Association.

ARTICLE 6 HANDLING OF FUNDS

Section 6.1 Accounts. The Association shall establish the necessary funds or accounts to provide properly for the operation and maintenance of the Condominium. The Treasurer shall be responsible for supervising the funds of the Association.

Section 6.2 Deposit or Investment of Funds. All funds of the Association shall be (1) kept in accounts or deposits that are insured by agencies of the United States of America or shall be (2) invested in debt obligations of the United States government. The funds of the Association shall not be commingled with the funds of any other association or with the funds of any manager, director, officer or member of the Association.

ARTICLE 7 KEEPING RECORDS AND REPORTS

The Board shall cause to be kept complete, detailed, and accurate books and records of the receipts and expenditures of the Association, in a form that complies with generally accepted accounting principles. The books and records, authorizations for payment of expenditures, and all contracts, documents, papers, and other records of the Association shall be available for examination by the Owners, Mortgagees, the Investor and the agents or attorneys of any of them, during normal business hours and at any other reasonable time or times.

ARTICLE 8 ADMINISTRATIVE AND FINANCIAL PROVISIONS

Section 8.1 Fiscal Year. The fiscal year of the Association shall be the calendar year.

Section 8.2 Contracts. The Board, except as otherwise provided in the Bylaws, may by resolution authorize any officer or agent of the Association to enter into any contract or execute and deliver any instrument in the name of and on behalf of the Association. Such authority may be general or confined to specific instances. Unless so authorized, no officer, agent, or employee shall have power or authority to bind the Association in any contract or engagement or to pledge its credit or to render it liable for any purpose in any amount.

Section 8.3 Checks, Drafts, Etc. Except as otherwise specifically determined by resolution of the Board, or as otherwise required by the laws of the State of Washington, checks, drafts, promissory notes, orders for the payment of money or other evidence of indebtedness of the Association shall be signed by such officer or officers, or agent or agents, of the Association and in such manner as is from time to time determined by resolution of the Board.

Section 8.4 Books and Records. The Association shall keep at its registered office, its principal office in Washington, or at its secretary's office in Washington, the following:

- (a) The Association's current Articles of Incorporation and any amendments thereto;

- (b) The Association's current Bylaws and any amendments thereto;
- (c) The Association's records of accounts and finances;
- (d) The name and addresses of the Association's current officers and directors;
and
- (e) Minutes of the proceedings of the Board, and any minutes, which may be maintained by committees of the Board. Records may be written or electronic if capable of being converted to writing.

Section 8.5 Copies of Resolutions. Any person dealing with the Association may rely upon a copy of any of the records of the proceedings, resolutions, or votes of the Board when certified by the president or secretary.

Section 8.6 A Director's Inspection Rights. Every Director shall have the right at any reasonable time to inspect and copy all books, records, and documents of any kind and inspect the physical properties of the Association and shall have such other rights to inspect the books, records, and properties of this Association as may be required under the Articles of Incorporation, the Bylaws, the Declaration, or by the provisions of the laws of the State of Washington.

Section 8.7 Right To Copy and Make Extracts. Any inspection under the provisions of this Article 8 may be made in person or by an agent or attorney of that person, and the right to make such inspection shall include the right to make copies and to make extracts at the sole expense of the party conducting the inspection.

ARTICLE 9 AMENDMENTS

The procedure and necessary consents required for adoption of amendments to the Bylaws are set forth in Article 23 of the Declaration.

[Signature on next page]

CERTIFICATE

I hereby certify that the foregoing Bylaws were duly adopted by the Directors of the Association by unanimous consent on _____, 20____.

Name: _____

Title: _____

Date: _____

Staff Report: 028-24

TO: Mayor and City Council

FROM: Eric Holmes, City Manager

DATE: 2/5/2024
2/26/2024

SUBJECT Termination of Boldyn Networks Right-of-Way Franchise

Key Points

- City Council approved Ordinance M-4202 on June 5, 2017, granting a 10-year telecommunication franchise to Mobilitie, LLC, which subsequently changed its name to Boldyn Networks; and
- Boldyn Networks constructed and has operated certain telecommunication facilities in the City's public ways since that time; and
- On November 19, 2023, the City received a request from Boldyn Networks to terminate the franchise in order to release it from the terms; and
- Ordinance M-4202, Section 4, contains a provision allowing the grantee to terminate the franchise by removing its Facilities from the City's public ways; and
- City staff have verified that Boldyn Networks has removed its facilities and the franchise is appropriate for termination pursuant to its terms.

Strategic Plan Alignment

Not Applicable

Present Situation

Boldyn Networks ("Boldyn") has provided telecommunication services in the City since 2017, but recently requested that the franchise be terminated. Boldyn removed all of its facilities from the City's public ways, as required by Ordinance M-4202 in granting the original franchise. As such, Boldyn is allowed to request this termination and release certain on-going financial obligations such as for insurance.

Advantage(s)

Allows for the removal of unused telecommunication facilities in the City's public ways.

Disadvantage(s)

None

Budget Impact

None

Prior Council Review

Council approved the franchise pursuant to Ordinance M-4202 on June 5, 2017.

Action Requested

On February 5, 2024, approve ordinance on first reading, setting date of second reading and public hearing for February 26, 2024.

Aaron Lande, Program and Policy Development Manager, 360-487-8612; Cary Driskell, Assistant City Attorney

ATTACHMENTS:

- ▢ Ordinance terminating franchise to Boldyn Networks
- ▢ Ordinance M-4202 approved June 5, 2017, granting franchise

2/5/24
2/26/24

ORDINANCE M - _____

AN ORDINANCE terminating the 10-year franchise previously granted to Boldyn Networks, formerly known as Mobilitie, LLC (“Boldyn”), authorizing the construction, operation, and maintenance of its telecommunication facilities (“Facilities”) in the City of Vancouver’s (“City”) Public Ways; providing for severability; and setting an effective date.

WHEREAS, the City has authority to manage its Public Ways in the best interest of the community and its residents pursuant to RCW 35A.11.020; and

WHEREAS, the City Council previously granted Boldyn, formerly known as Mobilitie, LLC, a 10-year franchise on June 5, 2017 through adoption of Ordinance M-4202 to construct, operate, and maintain its Facilities in the Public Ways; and

WHEREAS, Ordinance M-4202, Section 4, contains a provision allowing the grantee to terminate the franchise by removing its Facilities from the City’s Public Ways; and

WHEREAS, Boldyn has operated its facilities pursuant to the franchise since 2017, but notified the City on November 20, 2023 that it removed its Facilities from the City’s Public Ways, and requested that the City terminate this franchise; and

WHEREAS, City staff verified that Boldyn removed all of its Facilities from City property, fulfilling the condition upon which termination may occur pursuant to Section 4; and

WHEREAS, Ordinance M-4202 also contains Section 23, which requires survival of certain Sections of that franchise after it expires or is terminated. However, survival of those terms ends once all Facilities are removed from the City’s Public Ways, which has occurred here; and

ORDINANCE - 1

Does not require codification

WHEREAS, it is appropriate to pass an ordinance terminating the franchise previously granted by Ordinance M-4202 in order to relieve both parties of any ongoing obligations which arose from that Ordinance.

NOW, THEREFORE, BE IT ORDAINED BY THE CITY OF VANCOUVER:

Section 1. Termination. The grant of franchise to Boldyn Networks, formerly known as Mobilitie, LLC, through adoption of Ordinance M-4202 is terminated pursuant to a request from Boldyn Networks dated November 20, 2023, and all rights and obligations of each party are void.

Section 2. Severability. If any clause, sentence, paragraph, section, or part of this Ordinance or the application thereof to any person or circumstances is determined by a court with jurisdiction to be invalid, such order or judgment shall be confined in its operation to the controversy in which it was rendered and shall not affect or invalidate the remainder of this Ordinance. Each clause, sentence, paragraph, section or part of this Ordinance is severable.

Section 3. Effective Date. This Ordinance shall be effective five days after its recording.

DATE OF FINAL PASSAGE by the Vancouver City Council:_____

SIGNED this _____ day of _____, 2024.

Anne McEnery-Ogle, Mayor

Attest:

Natasha Ramras, City Clerk

Approved as to form:

ORDINANCE - 2
Does not require codification

Jonathan Young, City Attorney

ORDINANCE - 3

Does not require codification

SUMMARY

ORDINANCE M-_____

AN ORDINANCE authorizing the termination of the telecommunications franchise granted to Boldyn Networks, formerly known as Mobilitie, LLC, through adoption of Ordinance M-4202; providing for severability; and setting an effective date. The full text of this Ordinance will be mailed upon request. Contact Raelyn McJilton, Records Officer at (360) 487-8799, or via www.cityofvancouver.us (Go to City Government and Public Records).

ORDINANCE - 4

Does not require codification

STAFF REPORT NO. 034-17

TO: Mayor and City Council
FROM: Eric Holmes, City Manager



DATE: 4/03/2017
5/15/2017

Subject: Right-of-way Franchise Ordinance for Mobilitie LLC

Key Points:

- The proposed franchise ordinance establishes the terms and conditions of the right to construct and maintain telecommunications facilities within the City's right-of-way.

Objective: Adopt the proposed franchise ordinance.

Present Situation: Mobilitie LLC, a Nevada limited liability company, wishes to occupy and utilize portions of the public rights-of-way in the City. A city may require a permit or franchise for the use of its right-of-way for telecommunication facilities (RCW 35.99.030); however, the City may not charge a franchise fee for the franchise (RCW 35.21.860). The proposed ordinance establishes the terms and conditions of the right to construct and maintain telecommunications facilities within the City's right-of-way.

Advantage(s): The franchise ordinance would formalize and establish the terms and conditions for use of the City's right-of-way by Mobilitie LLC.

Disadvantage(s): Construction of telecommunications infrastructure pursuant to the franchise may result in temporary disruptions to neighborhoods or business districts in the city. In addition, some actions in the right-of-way may have minor visual impacts.

Budget Impact: None.

Prior Council Review: None.

Action Requested:

1. Approve the proposed franchise ordinance on first reading, setting date of second reading and public hearing for Monday, May 15, 2017.
2. On Monday, May 15, 2017, following second reading and public hearing, approve the proposed franchise ordinance.

Attachments: Franchise Ordinance



To request other formats, please contact:
City Manager's Office
(360) 487-8600 | WA Relay: 711
Amanda.Delapena@cityofvancouver.us

04/03/17
05/15/17
06/05/17

ORDINANCE M - M-4202

AN ORDINANCE relating to management of the public rights-of-way, granting to Mobilitie, LLC (hereinafter referred to as the "Franchisee"), a Nevada limited liability company, a non-exclusive and revocable franchise to install, operate and maintain a telecommunications system in, on, over, upon, along, and across public rights-of-way of the City of Vancouver, Washington (hereinafter referred to as the "City"), prescribing certain rights, duties, terms and conditions with respect to such franchise; providing for setting an effective date and conditions.

WHEREAS, Franchisee is a telecommunications company that provides fiber-optic based telecommunications services; and

WHEREAS, Franchisee has requested that the City grant it the right to install, operate, and maintain a telecommunications system within the public ways of the City; and

WHEREAS, the City Council has found it desirable for the welfare of the City and its residents that such a non-exclusive franchise be granted to the Franchisee; and

WHEREAS, the City Council has the authority, including pursuant to Chapter 35.99 of the Revised Code of Washington (RCW), to grant franchises for the use of its streets and other public properties; and

WHEREAS, the City is willing to grant the rights requested subject to certain terms and conditions authorized by law.

NOW, THEREFORE, BE IT ORDAINED BY THE CITY OF VANCOUVER:

ORDINANCE - 1

Does not require codification

Section 1. Definitions. For the purposes of this Franchise, the following terms, phrases, words, and abbreviations shall have the meanings ascribed to them below. When not inconsistent with the context, words used in the present tense include the future tense, words in the plural number include the singular number and words in the singular number include the plural number.

"Affiliate" means an entity that owns or controls, is owned or controlled by, or is under common ownership with the Franchisee.

"City" means the City of Vancouver, Washington, and either or both, as applicable, the person designated by the City.

"Telecommunications Service" shall mean any "telecommunications service" as defined by RCW 35.99.010(7), excluding "cable television service" as defined by RWC 35.99.010(1) and further excluding "personal wireless services" as defined by RCW 35.99.010(4), provided by the Franchisee over its Communication System, either directly or as a carrier for its subsidiaries, Affiliates, or customers.

"Communication System" or "Facilities" shall mean the Franchisee's system of cables, wires, conduits, ducts, pedestals, poles, antennas, and any associated converter, equipment, or facilities within the City managed and controlled by Franchisee to provide Telecommunications Service, including without limitation those Facilities that are existing or currently planned by Franchisee.

"FCC" means the Federal Communications Commission or any successor governmental entity hereto.

ORDINANCE - 2

Does not require codification

"Franchise" shall mean initial authorization, or renewal thereof, issued by the City, which authorizes construction and operation of the Franchisee's Communication System.

"Franchisee" means Mobilitie, LLC, a Nevada limited liability company.

"Indefeasible Right of User Interest" or "IRU" means a form of acquired capital in a telecommunications system, in which the holder of the interest possesses a right to use the telecommunications system, but not the right to control, maintain, construct or revise the telecommunications system.

"Person" means an individual, partnership, association, joint stock company, trust, corporation, or governmental entity.

"Public Way" shall mean the surface of, and any space on, above or below, any street, public right-of-way or utility easement for which the City now or hereafter holds any interest and which, consistent with the purpose for which it was acquired or dedicated, may be used for the installation or maintenance of the Communication System. Public Way shall not mean utility easements dedicated for a specific utility system or systems and not specifically identifying telecommunications as a permitted use within the easement.

"Service Area" means the present municipal boundaries of the City, and shall include any additions thereto by annexation or other legal means.

"Small Cell Equipment" means Franchisee communication systems or facilities attached, mounted, or installed on a proprietary or leased pole located in the Public Ways of the City used to provide telecommunications services. This definition shall include new types of small cell equipment that may evolve or be adopted using wireless technologies.

ORDINANCE - 3

Does not require codification

"Small Cell Site" means a location in the Public Ways of the City selected for Franchisee's deployment of small cell equipment.

"Subscriber" or "Customer" means a Person who lawfully receives Telecommunication Services from the Communications System with the Franchisee's express permission.

Section 2. Authority Granted. The City hereby grants to the Franchisee, its heirs, successors, legal representatives, and assigns, subject to the terms and conditions hereinafter set forth, a nonexclusive Franchise within the Service Area which authorizes the Franchisee to erect, construct, operate and maintain in, upon, along, across, above, over and under the Public Ways, now in existence and as may be created or established during the term of this Franchise, any Facilities necessary for the maintenance and operation of a Communication System. The authority granted herein is a limited authorization to occupy and use of Public Ways of the City for the purpose of providing telecommunications services. Nothing contained herein shall be construed to grant, warrant or convey any right, title, or interest in the public rights-of-way of the City to the Franchisee.

Section 3. Grant Limited to Occupation and Service. Nothing contained herein shall be construed to grant or convey to the Franchisee or warrant any right, title, or interest in the Public Ways.

Section 4. Term of Franchise. The first term of this Franchise shall be for an initial period of ten (10) years from the date of acceptance, unless sooner terminated. Thereafter, this Franchise may be renewed for an additional five (5) year term unless either party notifies the other of its intent to terminate or renegotiate the Franchise at least ninety (90) days prior to expiration of the then current term. Either party may terminate this Franchise upon sixty (60)

ORDINANCE - 4

Does not require codification

days prior written notice to the other party upon a default of any term hereof by the other party, which default is not cured within sixty (60) days of receipt of written notice of default, or if such default is not curable within sixty (60) days, if the defaulting party fails to commence such cure within sixty (60) days or fails thereafter diligently to prosecute such cure to completion, provided that the grace period for any monetary default shall be ten (10) days from receipt of written notice. Notwithstanding anything to the contrary herein, Franchisee may remove its Facilities at any time, with or without cause upon notice to the City, subject to restoration as provided in Section 12.

Section 5. Non-Exclusive Grant. This Franchise shall not in any manner prevent the City from entering into other similar agreements or granting other or further franchises in, under, on, across, over, through, along or below any of said Public Ways of the City. Further, this Franchise shall in no way prevent or prohibit the City from using any of its Public Ways or affect its jurisdiction over them or any part of them, and the City shall retain power to make all necessary reasonable changes, relocations, repairs, maintenance, establishment, improvement, dedication of the same as the City may deem fit, including the dedication, establishment, maintenance, and improvement of all new Public Ways, and in compliance with Section 8, below.

Section 6. Relocation of Communications System. The Franchisee agrees to relocate its Facilities as provided by the Vancouver Municipal Code (VMC) as it currently exists (See: VMC 11.50.120) or may hereinafter be amended or replaced. Upon the request of the City, in order to facilitate the design and construction of City projects, the Franchisee agrees to, at its sole cost and expense, locate, and if reasonably determined necessary by the City, to excavate and

ORDINANCE - 5

Does not require codification

expose portions of its communication Facilities for inspection so that the location of same may be taken into account in the improvement design, PROVIDED that, Franchisee shall not be required to excavate and expose its Facilities if the Franchisee provides as-built plans and maps of its Facilities that are reasonably determined by the City to be adequate for purposes of this paragraph. The decision to require the relocation of Facilities in order to accommodate the City's projects shall be made by the City upon review of the location and construction of the Franchisee's Facilities.

Section 7. Undergrounding of Facilities. In any area of the City in which there are no aerial facilities other than antennas or other equipment required to remain above ground in order to be functional, or in any Public Ways in which all telephone, electric power wires and cables have been placed underground, the Franchisee shall not be permitted to erect poles or to run or suspend wires, cables or other Facilities thereon, unless required to do so by the City, but shall lay such wires, cables or other Facilities underground in the manner required by the City.

Whenever the City or other governmental entity requires or initiates undergrounding of aerial utilities in any area of the City, the Franchisee shall underground its Facilities in the manner specified by the City, concurrently with and in the area of all the other affected utilities. The location of any such relocated and underground Facilities shall be approved by the City. The Franchisee is encouraged to contact and agree with other affected utilities so that all costs for common trenching, common utility vaults and other costs not specifically attributable to the undergrounding of any particular facility are shared fairly and proportionately by all the utilities involved in the underground project. The costs of the undergrounding of Facilities shall be as provided in RCW 35.99.060 as existing or hereinafter amended.

ORDINANCE - 6

Does not require codification

Section 8. Work Within Public Ways. The Franchisee agrees to undertake all work related to the installation, construction or maintenance of its Facilities within the Public Ways in compliance with state and local law as now existing or hereinafter enacted. The local laws include, without limitation:

Chapter 11.50 VMC Utilities in the Right-of-Way

Chapter 11.60 VMC Street Use Permits

Chapter 11.80 VMC Street and Development Standards

Chapter 11.90 VMC Construction in the Right-of-Way

Section 9. Emergency Work -- Permit Waiver. In the event of any emergency in which any of the Franchisee's Facilities located in, above, or under any Public Way breaks, are damaged, or if the Franchisee's construction area is otherwise in such a condition as to immediately endanger the property, life, health, or safety of any individual, the Franchisee shall immediately take the proper emergency measures to repair its Facilities, to cure or remedy the dangerous conditions for the protection of property, life, health, or safety of individuals without first applying for and obtaining a Construction Permit as required by this Franchise. However, this shall not relieve the Franchisee from the requirement of notifying the City of the emergency work and obtaining any permits necessary for this purpose after the emergency work. The Franchisee shall notify the City by telephone immediately upon learning of the emergency and shall apply for all required permits not later than the second succeeding day during which the City's Public Works Department Offices are open for business.

ORDINANCE - 7

Does not require codification

The City retains the right and privilege to cut or move any Facilities located within the Public Ways of the City, as the City may determine to be necessary, appropriate or useful in response to any public health or safety emergency. The City shall not be liable to the Franchisee or any other party for any direct, indirect, or any other such damages suffered by any person or entity of any type as a direct or indirect result of the City's actions under this Section.

City shall provide Franchisee reasonable advance written notice which notice shall not be less than forty-eight (48) hours, of its intent to inspect the Facilities except in the event of emergency when safety considerations justify the need for immediate inspection without delay.

Section 10. Dangerous Conditions, Authority for City to Abate.

Whenever construction, installation, or excavation of Facilities authorized by this Franchise has caused or contributed to a condition that appears to substantially impair the lateral support of the adjoining public way, street, or public place, or endangers the public, street utilities, or City-owned property, the Public Works Director may direct the Franchisee, at the Franchisee's own expense, to take action to protect the public, adjacent public places, City-owned property, streets, utilities, and Public Ways. Such action may include compliance within a prescribed time.

In the event that the Franchisee fails or refuses to promptly take the actions directed by the City, or fails to comply with such directions, or if emergency conditions exist which require immediate action, the City may enter upon the property and take such actions as are necessary to protect the public, the adjacent streets, utilities, public ways, to maintain the lateral support thereof, or actions regarded as necessary safety precautions;

ORDINANCE - 8

Does not require codification

and the Franchisee shall be liable to the City for the costs thereof. The provisions of this Section shall survive the expiration, revocation, or termination of this Franchise.

Section 11. The Franchisee's Maps and Records. Upon acceptance and thereafter as construction is completed, the Franchisee shall provide the City with accurate copies of all as-built plans and maps in a form and content prescribed by the City. These plans and maps shall be provided at no cost to the City.

The Franchisee shall supply and maintain updated, at no cost and locally available, any information reasonably requested by the City to coordinate municipal functions with the Franchisee's activities and fulfill any municipal obligations under state law. Said information may include, but is not limited to, any installation inventory, location of existing or planned facilities, maps, plans, operational data, and as-built drawings of Franchisee's installations in the City. Said information may additionally include, but is not limited to, the GIS coordinates of small cell sites, the date of installation, type of pole used for installation, pole owner, and description of small cell equipment used at each small cell site. Said information may be requested either in hard copy and/or electronic format compatible with the City's data base system, as now or hereafter existing. Franchisee shall keep the City reasonably informed of its long-range plans for coordination with the City's long-range plans.

If the Franchisee informs the City that any information to be provided pursuant to this paragraph is confidential, or proprietary, a trade secret, or otherwise entitled to protection from disclosure, then, subject to the Public Records Act, the City will not disclose such information to any third party without first giving the Franchisee ten (10) days prior written notice of the City's intent to do so in order to give the Franchisee, at its sole expense, the opportunity to seek judicial

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Does not require codification

protection. In such instance, the Franchisee will reimburse the City for all reasonable attorneys' fees and costs, and any penalties, attorneys' fees, and costs awarded, as a result of not disclosing such information.

Section 12. Restoration after Construction or Damage. The Franchisee shall, after installation, construction, relocation, maintenance, removal, or repair of its communication Facilities within the Public Ways, restore the surface of said Public Ways and any other City-owned property which may be disturbed by the work, to at least the same condition the Public Way or City-owned property was in immediately prior to any such installation, construction, relocation, maintenance, or repair, reasonable wear and tear excepted. Said restorations shall be done in conformance with the most recent edition of City ordinances and standards. The City shall have final approval of the condition of such Public Ways and City-owned property after restoration. The Franchisee agrees to promptly complete all restoration work and to promptly repair any damage caused by such work to the Public Ways or other affected areas and City-owned property at its sole cost and expense and shall be responsible for said restoration work and repair of damage done by Franchisee to City facilities for the life of the Franchisee's Facility. Franchisee also agrees to restore all other existing facilities and/or property affected by Franchisee's work, at its sole cost and expense.

Section 13. Recovery of Costs. The Franchisee shall be subject to all permit fees reflecting actual reasonable administrative costs associated with activities undertaken through the authority granted in this Franchise or under the laws of the City. Where the City incurs costs and expenses for review, inspection, or supervision of activities undertaken through the authority granted in this Franchise or any ordinances relating to the subject, for which a fee is not

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Does not require codification

established, the Franchisee shall reimburse the City directly for any and all actual reasonable costs, after receipt of an itemized bill.

In addition to the above, the Franchisee shall promptly reimburse the City for any and all reasonable costs the City incurs in response to any emergency involving the Franchisee's communication Facilities, after receipt of an itemized bill. All billings will be itemized as to specifically identify the costs and expenses for each project for which the City claims reimbursement. The billing may be on an annual basis, but the City shall provide the Franchisee with the City's itemization of costs at the conclusion of each project for information purposes.

Section 14. City's Reservation of Rights. Pursuant to RCW 35.21.860 the City may recover from Franchisee its actual administrative expenses as well as any applicable tax authorized by RCW 35.21.865. This Franchise is premised upon the City and Franchisee's agreement that either Franchisee is a "service operator" as used in RCW 35.21.860 and defined in RCW 35.99.010(6) or Franchisee's Telecommunications Services fall within the definition of "telephone business" set forth in RCW 82.16.010(6)(b)(iii). As such, the rights granted under this Franchise are not conditioned upon payment of a franchise fee or other compensation for use of the Public Ways. Provided, however, that the Franchisee's exercise of the rights granted in this Franchise are conditioned upon reimbursement for actual administrative costs including as set forth for use of City-owned poles, if any, and payment of any other fee set forth herein. The City hereby reserves its right to impose a fee on the Franchisee, to the extent authorized by law, for purposes other than to recover its administrative expenses, in the event that (1) statutory prohibitions on the imposition of such fees are removed, or that (2) Franchisee no longer falls within the definition of "service operator" in RCW 35.99.010(6) and Franchisee's

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Does not require codification

Telecommunications Services fall outside the definition of “telephone business” in RCW 82.16.010(7)(b)(iii). Under those circumstances, the City also reserves its right to require that the Franchisee obtain a separate Agreement for its change in use, which Agreement may include provisions intended to regulate the Franchisee's operations, as allowed under applicable law. Nothing in this Franchise shall limit the City’s right of taxation as authorized by law.

Section 15. Small Cell Site Location. Franchisee small cell equipment may be installed on City owned poles under the terms of a separate license agreement between the Franchisee and the City, on utility poles under the terms of an agreement with the owner of such poles, or on Franchisee proprietary poles in the Public Ways of the City.

Prior to finalizing a small cell site location, Franchisee shall consult with the City Public Works department, or designee, to discuss proposed small cell site installations and request input on potential design modifications appropriate for the installation, including but not limited to, design concepts and the use of camouflage or stealth materials, as necessary to blend its installations with the overall character of locations selected as small cell sites.

Placement of Franchisee small cell equipment is conditioned upon the availability of sufficient right-of-way at the proposed small cell site, and minimum pedestrian and Americans with Disabilities Act (ADA) passage along a sidewalk of at least 48 inches of unobstructed space along all sidewalks within the City,

Franchisee understands and acknowledges that small cell site installations are incompatible with the character and aesthetics of the City of Vancouver, WA downtown core areas as described in the Vancouver City Center Vision Subarea Plan, and shall not place any small cell equipment within said downtown core area.

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Does not require codification

Section 16. Utility Owned Poles. The parties acknowledge that the poles which the Franchisee desires to use for the location of its small cell equipment are poles owned by a third party or parties, and that Franchisee has entered or shall enter into an agreement with the third party or parties, setting forth the terms and conditions under which the Franchisee shall be permitted to do so.

Section 17. City Owned Poles. In the event Franchisee desires to use City poles or other infrastructure for the location of its small cell equipment, such use will be determined on a case-by-case basis pursuant to a separate license agreement between Franchisee and the City, setting forth the terms and conditions under which the Franchisee shall be permitted to do so, including but not limited to, whether the current infrastructure is sufficient to address structural loading requirements for the small cell equipment, ownership and maintenance of the infrastructure, and small cell equipment design standards.

Franchisee shall comply with all relevant legal requirements for connecting small cell equipment to electricity and telecommunications service. The City is not responsible for providing electricity or transport connectivity to Franchisee.

This Franchise Agreement does not authorize the co-location of small cell equipment on any City poles or other infrastructure. To the extent there is an interest by multiple providers to install small cell equipment on any City poles or other infrastructure, access to small cell equipment on any City poles or other infrastructure will be determined on a first-come first-serve basis. Exceptions may be granted by the City based on Franchisee's network demand considerations and the unavailability of alternative small cell sites.

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Does not require codification

Section 18. Vacation of Right of Way. The process for the vacation of rights of way is provided for in City code, currently chapter 11.05 VMC. The City will endeavor to follow the process provided for in the code. If at any time the City, by ordinance, vacates all or any portion of the area affected by this Franchise, the City shall not be liable for any damages or loss to the Franchisee by reason of such vacation. The Franchisee shall remove its Facilities from any vacated right of way unless such vacation provides for the continuing right of the Facilities to exist within the vacated area.

Section 19. Indemnification and Waiver.

A. Franchisee hereby releases and covenants not to bring suit and agrees to indemnify, defend and hold harmless the City, its officers, employees, agents and representatives from any and all claims, costs, judgments, awards or liability to any person for injury, sickness, or death of any person or damage to any property or interests:

1. Arising as a result of the acts or omissions of Franchisee, its agents, servants, officers or employees or the construction, placement, operation or maintenance of Facilities in the Public Ways; or

2. Based on the City's inspection or lack of inspection of work performed by Franchisee, its agents and servants, officers or employees in connection with work authorized on the Public Ways or property over which the City has control pursuant to this Franchise or pursuant to any other permit or approval issued in connection with this Franchise;

B. The provisions of Subsection A of this Section shall apply to claims by Franchisee's own employees and the employees of the Franchisee's agents, representatives, contractors, and subcontractors to which Franchisee might otherwise be immune under Title 51 RCW. This

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Does not require codification

waiver of immunity under Title 51 RCW has been mutually negotiated by the parties hereto, and Franchisee acknowledges that the City would not enter into this Franchise without Franchisee's waiver thereof.

C. Inspection or acceptance by the City of any work performed by the Franchisee at the time of completion of construction shall not be grounds for avoidance of any of these covenants of indemnification. Provided that Franchisee has been given prior written notice by the City of any such claim, said indemnification obligations shall extend to claims which are not reduced to a suit and any claims which may be compromised with Franchisee's consent prior to the culmination of any litigation or the institution of any litigation. The City has the right to defend or participate in the defense of any such claim, and has the right to approve any settlement or other compromise of any such claim, provided that Franchisee shall not be liable for such settlement or other compromise unless it has consented thereto.

D. The obligations of Franchisee under the indemnification provisions of this Section shall apply regardless of whether liability for damages arises out of bodily injury to persons or damages to property, except to the extent that such claims, actions, damages, costs, expenses, and attorney's fees were caused by the sole negligence or willful misconduct of the City. In the event that a court of competent jurisdiction determines that this Franchise is subject to the provisions RCW 4.24.115, the parties agree that the indemnity provisions hereunder shall be deemed amended to conform to said statute and liability shall be allocated as provided therein.

E. Notwithstanding any other provisions of this Section, Franchisee assumes the risk of damage to its Facilities located in the Public Ways and upon City-owned property from such activities conducted by the City, its officers, agents, employees and contractors, except to the

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Does not require codification

extent any such damage or destruction is caused by or arises from the negligent, willful or malicious action on the part of the City, its officers, agents, employees or contractors. Franchisee releases and waives any and all such claims against the City, its officers, agents, employees or contractors. Franchisee further agrees to indemnify, hold harmless and defend the City against any claims for damages, including, but not limited to, business interruption damages and lost profits, brought by or under users of Franchisee's Facilities as the result of any interruption of service due to damage or destruction of Franchisee's Facilities caused by or arising out of activities conducted by the City, its officers, agents, employees or contractors, except to the extent any such damage or destruction is caused by or arises from the negligent, willful or malicious actions on the part of the City, its officers, agents, employees or contractors.

F. Notwithstanding anything contained herein to the contrary, other than in connection with the foregoing third party claims indemnification and damages incurred for breach of confidentiality, neither party shall be liable to the other for consequential, incidental, special or indirect damages.

Section 20. Abandonment and Removal of Franchisee's Communication Facilities.

Upon the expiration, termination, or revocation of the rights granted under this Franchise, or upon the removal of any Facility from service, the Franchisee shall remove the Facility or Facilities from the Public Ways of the City within 90 days of receiving notice from the City. If the Franchisee fails to remove its Facilities, the City may declare said Facilities to be the property of the City.

In the alternative, the City may, in its sole discretion, permit the Franchisee to abandon its Facilities in place, upon such terms and conditions as the City may reasonably prescribe by

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Does not require codification

written notice. Upon agreement by the Franchisee, ownership of the Facilities shall be transferred to the City and the Franchisee shall submit to the City the necessary transfer documents. If the Franchisee does not transfer ownership within 90 days of receiving notice from the City, the City may commence legal action to enforce the transfer.

In the event that the City does not grant the Franchisee permission to abandon the Facilities or the Franchisee does not comply with the terms and conditions set by the City for such abandonment, the City may elect, in its sole discretion to declare the Facilities permanently abandoned and assume ownership of the Facilities; proceed with legal action to compel the Franchisee to remove such Facilities; or remove the Facilities and recover the costs of such removal from the Franchisee.

Section 21. Modification. The City and the Franchisee hereby reserve the right to alter, amend or modify the terms and conditions of this Franchise Agreement upon the written agreement of both parties to such alteration, amendment or modification. Said modifications shall be expressed by ordinance of the City Council passed for that purpose and accepted by the Franchisee consistent with Section 31 of this Franchise Agreement.

Section 22. City Ordinances and Regulations. Nothing herein shall be deemed to direct or restrict the City's ability to adopt and enforce all necessary and appropriate ordinances regulating the performance of the conditions of this Franchise, including any valid ordinance made in the exercise of its police powers in the interest of public safety and for the welfare of the public. The City shall have the authority at all times to control by appropriate regulations the locations, elevation, manner or construction and maintenance of any Facilities by the Franchisee,

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Does not require codification

and the Franchisee shall promptly conform with all such regulations, unless compliance would cause the Franchisee to violate other requirements of the law.

Section 23. Survival. All of the provisions, conditions, and requirements of this Franchise shall be in addition to any and all other obligations and liabilities the Franchisee may have to the City at common law, by statute, or by contract. The provisions, conditions, and requirements of Sections 6, Relocation of Telecommunications Facilities; 7, Undergrounding of Facilities; 8, Work in the Public Ways; 10, Dangerous Conditions; 12, Restoration after Construction; 19, Indemnification; 20, Abandonment and Removal of the Franchisee's Facilities, shall survive the expiration or termination of this Franchise, and any renewals or extensions thereof and remain effective until such time as the Franchisee removes its communication Facilities from the Public Ways, transfers ownership of said Facilities to a third party, or abandons said System in place, all as provided herein. All of the provisions, conditions, regulations and requirements contained in this Franchise shall further be binding upon the heirs, successors, executors, administrators, legal representatives and assigns of the Franchisee and all privileges, as well as all obligations and liabilities of the Franchisee shall inure to its heirs, successors, and assigns equally as if they were specifically mentioned wherever the Franchisee is named herein.

Section 24. Severability. If any section, sentence, clause, or phrase of this Franchise should be held to be invalid or unconstitutional by a court of competent jurisdiction, such invalidity or unconstitutionality shall not affect the validity or constitutionality of any other section, sentence, clause, or phrase of this Franchise.

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Does not require codification

Section 25. Assignment. This agreement may not be assigned without the written approval of the City, which approval shall not be unreasonably withheld, conditioned or delayed, except that the Franchisee may freely assign this Franchise in whole or part to a parent, subsidiary, or affiliated corporation or as part of any corporate financing, reorganization or refinancing. In the case of transfer or assignment as security by mortgage or other security instrument in whole or in part to secure indebtedness, such consent shall not be required unless and until the secured party elects to realize upon the collateral. The Franchisee shall provide prompt, written notice to the City of any such assignment.

In addition, Franchisee may, without the prior written consent of the City

(i) lease the Facilities, or any portion thereof, to another Person, provided, that such other Person shall obtain a City Franchise, if required; or (ii) grant an Indefeasible Right of User Interest in the Facilities, or any portion thereof, to another Person; or (iii) offer or provide capacity or bandwidth in its Facilities to another Person; provided that Franchisee at all times retains exclusive control over such Facilities and remains responsible for locating, servicing, repairing, relocating or removing its facilities pursuant to the terms and conditions of this Franchise.

Section 26. Liability Insurance. Franchisee shall, at its own expense, upon adoption, obtain and maintain throughout the term this Franchise, a commercial general liability insurance policy with limits of at least five million dollars (\$5,000,000.00) per occurrence and five million dollars (\$5,000,000.00) aggregate, with the City named as an additional insured, protecting and saving the City harmless against liability for loss or damage for personal injury, death, or property damage occasioned by the operation of the Franchisee under this Franchise. Franchisee

ORDINANCE - 19

Does not require codification

may utilize primary and umbrella liability policies to satisfy the preceding per occurrence and aggregate insurance policy limit requirements. The Franchisee shall, within thirty (30) days from the effective date of this Franchise, file with the City Clerk proof of continued insurance coverage, at least in the amounts required in this Section, through a Certificate of Insurance including the additional insured endorsement indicating City coverage required herein and a provision that said coverage may not be canceled without at least thirty (30) days' notice to the City, filed as above provided. Such additional evidence thereof shall be furnished to the City from time to time as it shall require. In those situations where, through the Franchisee's negligent or intentional acts or omissions, damage has occurred Franchisee's insurance shall be primary to any City insurance coverage or, in the event the City is self-insured, any Franchisee policy shall afford first dollar protection coverage for risks included in Franchisee's operations. The insurance required under this section may be through a utility self-insurance fund under which the Franchisee is insured.

Section 27. Legal Action to Enforce Franchise Terms. This Franchise is entered into in Clark County, Washington. In the event that legal action is brought with respect to this Franchise, the State of Washington shall have personal jurisdiction over each of the parties and venue of any such action shall lie in the Superior Court of Clark County. In the event that legal action is brought with respect to this Franchise, the prevailing party shall be awarded its costs and reasonable attorney's fees in an amount to be determined by the Court.

Section 28. Revocation. In accordance with Section 4 herein, this franchise may be revoked by the City Council by resolution in the event the Franchisee or any of Franchisee's lessees or other users shall fail, after notice or demand, to comply with any provision hereunder

ORDINANCE - 20

Does not require codification

following applicable cure periods, but the City shall have no obligation to do so. No forbearance by the City of any term of condition of this franchise in any instance or at any time shall ever comprise a waiver or estoppel of the City's right to enforce said term condition.

Section 29. Notice. Any notice or information required or permitted to be given to the parties under this Franchise may be sent to the following addresses unless otherwise specified:

City:

City Manager
City of Vancouver
PO Box 1995
Vancouver, WA 98668-1995

Franchisee:

Attention: Asset Management
Mobilitie, LLC
2220 University Drive
Newport Beach, CA 92660

with an additional copy to:

Attention: Legal Department
Mobilitie, LLC
2220 University Drive
Newport Beach, CA 92660

Notice shall be deemed given upon receipt in the case of personal delivery, three days after deposit in the United States Mail in the case of regular mail, or the next day in the case of overnight delivery.

Section 30. Entire Franchise. This Franchise constitutes the entire understanding and agreement between the parties as to the subject matter herein and no other agreements or understandings, written or otherwise, shall be binding upon the parties upon approval and acceptance of this Franchise.

Section 31. Acceptance. Within 60 days after the passage and approval of this ordinance, this Franchise may be accepted by Franchisee by its filing with the City Clerk its

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Does not require codification

written and sworn unconditional written acceptance and promise to comply with all terms of this Franchise. Failure of the Franchisee to so accept this Franchise within said period of time shall be deemed a rejection thereof, and the rights and privileges herein granted shall, after the expiration of the 60 day period, absolutely cease and determine, unless the time period is extended by ordinance duly passed for that purpose.

Section 32. Effective Date. Subject to compliance with Section 30 of this Ordinance, this ordinance shall become effective five (5) days from and after its final passage by the Vancouver City Council and publication of a summary of the ordinance pursuant to City Charter.

ORDINANCE - 22
Does not require codification

Read First Time: April 3, 2017

Ayes: Councilmembers Topper, McEnerny-Ogle, Turley, Hansen, Burkman

Nays: Councilmembers

Absent: Councilmembers Stober, Mayer Leavitt

Read Second Time: May 15, 2017; June 5, 2017

Ayes: Councilmembers Stober, Topper, McEnerny-Ogle, Hansen, Burkman,

Nays: Councilmembers

Absent: Councilmembers Turley

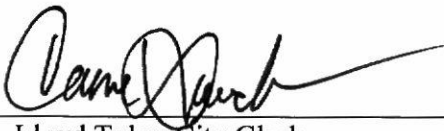
Mayer Leavitt

SIGNED this 5th day of June, 2017.



Timothy D. Leavitt, Mayor

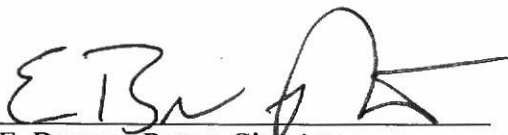
Attest:



R. Lloyd Tyler, City Clerk

By: Carrie Lewellen, Deputy City Clerk

Approved as to form:



E. Bronson Potter, City Attorney

ORDINANCE - 23

Does not require codification

SUMMARY

ORDINANCE M- 4202

AN ORDINANCE relating to management of the public rights-of-way, granting to Mobilitie, LLC, a Nevada limited liability company, a non-exclusive and revocable franchise to install, operate and maintain a telecommunications system in, on, over, upon along, and across public rights-of-way of the City of Vancouver, Washington, prescribing certain rights, duties, terms and conditions with respect to such franchise; providing for setting an effective date and conditions.

The full text of this ordinance will be mailed upon request. Contact Raelyn McJilton, Records Officer at 487-8711, or via www.cityofvancouver.us (Go to City Government and Public Records).

ORDINANCE - 24

Does not require codification



Item #9.

TO: Mayor and City Council

FROM: Eric Holmes, City Manager

DATE: 2/5/2024

SUBJECT Approval of Claim Vouchers

Action Requested

Approve claim vouchers for February 5, 2024.

ATTACHMENTS:

- ▯ Claim Vouchers for February 5, 2024

VOUCHER APPROVAL

We, the undersigned council members of the City of Vancouver, Clark County, Washington, do hereby certify that the merchandise or services hereinafter specified have been received and that the vouchers listed below are approved for payment in the amount of:

\$ 17,224,069.65 this 5th day of February 2024.

MAYOR

COUNCILMEMBER

AUDITING OFFICER

COUNCILMEMBER

DATE	INCLUSIVE CHECK NUMBERS	CHECK TOTAL
January 15, 2024 - January 28, 2023	Accounts Payable Checks (see attached)	\$ 12,994,506.97
January 15, 2024 - January 28, 2023	Hansen City Payments (see attached)	\$ 19,039.81
January 15, 2024 - January 28, 2023	Visa Refunds (see attached)	\$ 8,717.57
January 15, 2024 - January 28, 2023	Payroll Checks (see attached)	\$ 4,201,805.30
TOTAL		\$ 17,224,069.65

INVOICE PAYMENTS REPORT

<u>Payment Category</u>	<u>Payment Type</u>	<u>Transaction Reference</u>	<u>Payment Date</u>	<u>Payment Amount</u>	<u>Payment Payee</u>	<u>Memo</u>
Ad Hoc Payment	Check	16229	1/17/2024	52.24	Gaynor,Shannan J	Utility Refunds: 0028025700-03
Ad Hoc Payment	Check	16230	1/17/2024	98.08	Kana,Balvant or Sneha	Utility Refunds: 0000005795-03
Ad Hoc Payment	Check	16231	1/17/2024	204.97	Ridgeway,Rachel or Philip	Utility Refunds: 0118015208-03
Supplier Payment	Check	16232	1/18/2024	188.00	Allegiance Benefit Plan Management Inc	
Supplier Payment	Check	16233	1/18/2024	3,093.00	Allegis Group Holdings Inc - Remit-To: TekSystems Inc - Atlanta	
Supplier Payment	Check	16234	1/18/2024	136.00	American Sani-Can	
Supplier Payment	Check	16235	1/18/2024	147.07	Aramark Uniform & Career Apparel LLC - Remit-To: Aramark - Pasadena	
Supplier Payment	Check	16236	1/18/2024	100,418.00	Association of Washington Cities	
Supplier Payment	Check	16237	1/18/2024	86.46	AT & T Mobility II LLC	
Supplier Payment	Check	16238	1/18/2024	2,780.38	BHC Consultants LLC	
Supplier Payment	Check	16239	1/18/2024	131,737.50	Clark County - Remit-To: Clark County - Treasurer Vancouver	
Supplier Payment	Check	16240	1/18/2024	1,746.20	Clark Public Utility District No. 1	
Supplier Payment	Check	16241	1/18/2024	49,726.64	Clary Longview LLC	
Supplier Payment	Check	16242	1/18/2024	156.23	Columbia Resource Company	
Supplier Payment	Check	16243	1/18/2024	15,000.00	Columbia Springs	
Supplier Payment	Check	16244	1/18/2024	674.23	Connecta Satellite Solutions LLC	
Supplier Payment	Check	16245	1/18/2024	1,391.28	Day Management Corp - Remit-To: Day Wireless - Milwaukee	
Supplier Payment	Check	16246	1/18/2024	3,052.12	Esix Sportswear	
Supplier Payment	Check	16247	1/18/2024	179,355.00	ESRI Inc	
Supplier Payment	Check	16248	1/18/2024	963.05	Examworks Inc	
Supplier Payment	Check	16249	1/18/2024	644.00	Galls LLC	
Supplier Payment	Check	16250	1/18/2024	11,075.44	General Pacific Inc	
Supplier Payment	Check	16251	1/18/2024	2,550.00	Groundwater Solutions, Inc.	
Supplier Payment	Check	16252	1/18/2024	840.00	H&H Wood Recyclers	
Supplier Payment	Check	16253	1/18/2024	132,382.03	Herrera Environmental Consultants Inc	
Supplier Payment	Check	16254	1/18/2024	3,000.00	Kindness 911	
Supplier Payment	Check	16255	1/18/2024	56,078.34	Knox Associates Inc	
Supplier Payment	Check	16256	1/18/2024	43,745.17	Life Insurance Company of North America	
Supplier Payment	Check	16257	1/18/2024	500.00	State of Washington Department of Labor & Industries	
Supplier Payment	Check	16258	1/18/2024	500.00	State of Washington Department of Labor & Industries	
Supplier Payment	Check	16259	1/18/2024	500.00	State of Washington Department of Labor & Industries	
Supplier Payment	Check	16260	1/18/2024	500.00	State of Washington Department of Labor & Industries	
Supplier Payment	Check	16261	1/18/2024	500.00	State of Washington Department of Labor & Industries	
Supplier Payment	Check	16262	1/18/2024	500.00	State of Washington Department of Labor & Industries	
Supplier Payment	Check	16263	1/18/2024	500.00	State of Washington Department of Labor & Industries	
Supplier Payment	Check	16264	1/18/2024	500.00	State of Washington Department of Labor & Industries	
Supplier Payment	Check	16265	1/18/2024	500.00	State of Washington Department of Labor & Industries	
Supplier Payment	Check	16266	1/18/2024	18.55	United Parcel Service	
Supplier Payment	Check	16267	1/18/2024	20.61	Waste Connections of Washington - Remit-To: Waste Connections - Vancouver	
Supplier Payment	Check	16268	1/18/2024	313,943.21	Willis Towers Watson Insurance Services West inc	
Miscellaneous Payment	Check	16269	1/18/2024	115.00	Andrew Richards	Refund of Lot 18 P1/P2 Parking Permit
Miscellaneous Payment	Check	16270	1/18/2024	13.40	Caylah Clark	Refund on street parking fee
Miscellaneous Payment	Check	16271	1/18/2024	1,211.00	CBC 1, LLC	PIR-83921(jobsite: parcel 502380000)
Miscellaneous Payment	Check	16272	1/18/2024	176.12	Claudia Ross	Lot 18 P3 Parking Permit Refund
Miscellaneous Payment	Check	16273	1/18/2024	91.00	Guardian Fire Protection, Inc.	Refund of duplicate payment to INV#77058750

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INVOICE PAYMENTS REPORT

Miscellaneous Payment	Check	16274	1/18/2024	286.11	JDI Construction NW LLC	RES-340765 (jobsite: 36 Algona Drive)
Miscellaneous Payment	Check	16275	1/18/2024	54.00	MICROPUMP CORP	Refund of compressed gas permit
Miscellaneous Payment	Check	16276	1/18/2024	19,315.14	National Subrogation Services, LLC	Claim #GL20220991-Morter
Miscellaneous Payment	Check	16277	1/18/2024	26.75	Pueblo Combined Court	
Customer Refund	Check	16278	1/18/2024	12,000.00	ZOOM INFO	Customer cancelled permits.
Supplier Payment	Check	16293	1/24/2024	33,856.94	Action Technology Systems	
Supplier Payment	Check	16294	1/24/2024	3,298.14	A-Line Asphalt Maintenance Inc	
Supplier Payment	Check	16295	1/24/2024	1,344.00	Allegis Group Holdings Inc - Remit-To: TekSystems Inc - Atlanta	
Supplier Payment	Check	16296	1/24/2024	10,464.13	Brown & Wilson Partnership LLC	
Supplier Payment	Check	16297	1/24/2024	7,632.10	CECO Inc	
Supplier Payment	Check	16298	1/24/2024	724.60	Cellco Partnership - Remit-To: Cellco - Dallas	
Supplier Payment	Check	16299	1/24/2024	1,502.91	Chicago Title Company of WA	
Supplier Payment	Check	16300	1/24/2024	892.57	Clark Public Utility District No. 1	
Supplier Payment	Check	16301	1/24/2024	875.28	Clark Public Utility District No. 1	
Supplier Payment	Check	16302	1/24/2024	409,130.17	Clark Public Utility District No. 1	
Supplier Payment	Check	16303	1/24/2024	944.49	Clark Public Utility District No. 1	
Supplier Payment	Check	16304	1/24/2024	129.20	Clark Regional Wastewater District	
Supplier Payment	Check	16305	1/24/2024	310.73	Clifford & Martin, Inc	
Supplier Payment	Check	16306	1/24/2024	15,900.00	Colliers International Holdings (USA) Inc.	
Supplier Payment	Check	16307	1/24/2024	108.33	Comcast Holdings Corporation - Remit-To: Comcast Business - City of Industry	
Supplier Payment	Check	16308	1/24/2024	193.33	Comcast Holdings Corporation - Remit-To: Comcast Business - City of Industry	
Supplier Payment	Check	16309	1/24/2024	151.15	Comcast Holdings Corporation - Remit-To: Comcast Business - City of Industry	
Supplier Payment	Check	16310	1/24/2024	118.59	Comcast Holdings Corporation - Remit-To: Comcast Business - City of Industry	
Supplier Payment	Check	16311	1/24/2024	188.33	Comcast Holdings Corporation - Remit-To: Comcast Business - City of Industry	
Supplier Payment	Check	16312	1/24/2024	118.59	Comcast Holdings Corporation - Remit-To: Comcast Business - City of Industry	
Supplier Payment	Check	16313	1/24/2024	113.59	Comcast Holdings Corporation - Remit-To: Comcast Business - City of Industry	
Supplier Payment	Check	16314	1/24/2024	118.59	Comcast Holdings Corporation - Remit-To: Comcast Business - City of Industry	
Supplier Payment	Check	16315	1/24/2024	18,856.25	Conso North America Inc	
Supplier Payment	Check	16316	1/24/2024	6,615.00	Davidson Benefits Planning	
Supplier Payment	Check	16317	1/24/2024	11,057.59	Dell Marketing LP	
Supplier Payment	Check	16318	1/24/2024	927.07	DKS Associates Inc	
Supplier Payment	Check	16319	1/24/2024	819.03	Echo Electric LLC	
Supplier Payment	Check	16320	1/24/2024	275.00	ERF Company Inc	
Supplier Payment	Check	16321	1/24/2024	3,745.00	Esix Sportswear	
Supplier Payment	Check	16322	1/24/2024	9,433.47	Esther Short Commons LLP	
Supplier Payment	Check	16323	1/24/2024	19,127.99	FFA Architecture and Interiors, Inc	
Supplier Payment	Check	16324	1/24/2024	1,832.75	Fidelity National Title Co of Washington	
Supplier Payment	Check	16325	1/24/2024	39,978.61	Fourth Plain Forward	
Supplier Payment	Check	16326	1/24/2024	16,416.99	Genuine Parts Company - Remit-To: NAPA - Vancouver	
Supplier Payment	Check	16327	1/24/2024	12,484.51	Herrera Environmental Consultants Inc	
Supplier Payment	Check	16328	1/24/2024	6,500.00	Hispanic Metropolitan Chamber	
Supplier Payment	Check	16329	1/24/2024	1,320.98	HMI Oregon - Remit-To: Pacific WRO	
Supplier Payment	Check	16330	1/24/2024	550.00	James Wallace Armstrong	
Supplier Payment	Check	16331	1/24/2024	10,925.08	Janus Youth Programs Inc	

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INVOICE PAYMENTS REPORT

Supplier Payment	Check	16332	1/24/2024	303.72	Kittelson & Associates Inc
Supplier Payment	Check	16333	1/24/2024	955,613.82	Lakeside Industries Inc - Remit-To: Lakeside - LB Seattle
Supplier Payment	Check	16334	1/24/2024	29,743.20	LSW Architects PC
Supplier Payment	Check	16335	1/24/2024	179.36	Mark IV Enterprises Inc
Supplier Payment	Check	16336	1/24/2024	535.00	Maul Foster & Alongi Inc
Supplier Payment	Check	16337	1/24/2024	46,536.00	McFarlanes Bark Inc
Supplier Payment	Check	16338	1/24/2024	2,766.37	Motorola Solutions Inc
Supplier Payment	Check	16339	1/24/2024	25,621.29	Municipal Emergency Services Inc - Remit-To: Municipal Emergency Services - Chicago
Supplier Payment	Check	16340	1/24/2024	600.00	Nagra & Atwal Corporation
Supplier Payment	Check	16341	1/24/2024	4,997.80	National Park Service - Remit-To: National Park Service - Pearson Lease
Supplier Payment	Check	16342	1/24/2024	5,962.12	Nelson Nygaard Consulting Associates Inc - Remit-To: Nelson Nygaard Consulting Associates Inc
Supplier Payment	Check	16343	1/24/2024	24,197.23	Northwest Staffing Resources Inc - Remit-To: Northwest Staffing Resources
Supplier Payment	Check	16344	1/24/2024	274,379.88	Pallet SPC
Supplier Payment	Check	16345	1/24/2024	38,319.61	Parametrix, Inc
Supplier Payment	Check	16346	1/24/2024	27,783.97	Parkeon
Supplier Payment	Check	16347	1/24/2024	6,684.83	Pediatric Emergency Standards Inc
Supplier Payment	Check	16348	1/24/2024	325.00	Performance Occupational Health Services, LLC
Supplier Payment	Check	16349	1/24/2024	3,011.00	Portland Adventist Medical Center
Supplier Payment	Check	16350	1/24/2024	32,378.04	PPC Solutions Inc
Supplier Payment	Check	16351	1/24/2024	11,098.00	Prestige Care & Rehabilitation - Camas
Supplier Payment	Check	16352	1/24/2024	21,969.27	Prestige Truck Accessories
Supplier Payment	Check	16353	1/24/2024	22,241.62	Quetel Corporation
Supplier Payment	Check	16354	1/24/2024	2,352.09	Raimi & Associates, Inc.
Supplier Payment	Check	16355	1/24/2024	21,131.00	Rapid Response Bio Clean Inc.
Supplier Payment	Check	16356	1/24/2024	600.00	Robert Fuller
Supplier Payment	Check	16357	1/24/2024	2,735.59	Shrums Pest Control
Supplier Payment	Check	16358	1/24/2024	555.02	Software House International SHI - Remit-To: SHI - Dallas
Supplier Payment	Check	16359	1/24/2024	1,400.00	Sonar Insights, LLC
Supplier Payment	Check	16360	1/24/2024	45,095.00	Southwest Washington Humane Society
Supplier Payment	Check	16361	1/24/2024	7,631.29	SP Plus Corporation
Supplier Payment	Check	16362	1/24/2024	10,800.00	State of Washington Department of Ecology - Remit-To: State of Washington Department of Ecology
Supplier Payment	Check	16363	1/24/2024	601.16	State of Washington Department of Licensing - Remit-To: DOL - Seattle Remit
Supplier Payment	Check	16364	1/24/2024	1,526.09	State of Washington Department of Retirement Systems (DRS)
Supplier Payment	Check	16365	1/24/2024	2,582.88	State of Washington Office of the State Treasurer
Supplier Payment	Check	16366	1/24/2024	2,314.33	State of Washington Office of the State Treasurer
Supplier Payment	Check	16367	1/24/2024	5,652.40	Sunbelt Controls Inc - Remit-To: Sunbelt Controls - Pasadena
Supplier Payment	Check	16368	1/24/2024	2,074.00	Tapani Electric, LLC
Supplier Payment	Check	16369	1/24/2024	8,878.51	The ADT Security Corporation
Supplier Payment	Check	16370	1/24/2024	1,028.29	Triple J Enterprises
Supplier Payment	Check	16371	1/24/2024	14,151.46	UKG Kronos Systems LLC Remit-To: Atlanta
Supplier Payment	Check	16372	1/24/2024	24.47	United States Department of Agriculture - Remit-To: USDA APHIS - St Louis
Supplier Payment	Check	16373	1/24/2024	4,677.58	Univar Solutions USA Inc - Remit-To: Supplier Univar Solutions USA Inc
Supplier Payment	Check	16374	1/24/2024	2,785.00	Universal Music - MGB NA LLC
Supplier Payment	Check	16375	1/24/2024	351.00	Vancouver Aire LLC
Supplier Payment	Check	16376	1/24/2024	81.53	W.B. Sprague Co. Inc.
Supplier Payment	Check	16377	1/24/2024	11,700.00	Wahl and Associates LLC

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INVOICE PAYMENTS REPORT

Supplier Payment	Check	16378	1/24/2024	27,473.07	Waste Connections of Washington - Remit-To: Waste Connections - Vancouver	
Supplier Payment	Check	16379	1/24/2024	42,500.61	West Coast Fire & Rescue	
Supplier Payment	Check	16380	1/24/2024	66,039.11	WSP USA Inc. - Remit-To: WSP USA Inc. Dallas	
Supplier Payment	Check	16381	1/24/2024	1,484.95	WVP OF Washington PC	
Supplier Payment	Check	16382	1/24/2024	118.84	XPO Logistics Enterprise Services, Inc - Remit-To: XPO - Portland	
Miscellaneous Payment	Check	16383	1/24/2024	2,024.85	Apex Investments LLC	RES-344267 (jobsite: Parcel 986064424)
Miscellaneous Payment	Check	16384	1/24/2024	57.00	BNSF	Refund duplicate payment of INV#77056605
Miscellaneous Payment	Check	16385	1/24/2024	25.00	David K Shaver	Refund of duplicate payment to citation#7204801592
Miscellaneous Payment	Check	16386	1/24/2024	177.98	Melissa King	GL20230820
Miscellaneous Payment	Check	16387	1/24/2024	68.13	Professional Credit Service	Refund for invoice #34513 negative trust
Miscellaneous Payment	Check	16388	1/24/2024	9,200.00	The Coalition for Clean Water	City of Vancouver Public Works - 2024 Membership
Miscellaneous Payment	Check	16389	1/24/2024	173.00	Vancouver Housing Authority	PIR-83919 (jobsite: 301 S Lieser Rd)
Miscellaneous Payment	Check	16390	1/24/2024	57.00	Washington Department of Transportation	Refund duplicate payment to Invoice #77058751 / CUST# 794340
Ad Hoc Payment	Check	16391	1/24/2024	304.00	Darrel F Carter Jr or Samantha Carter	Utility Refunds: 0000007932-03
Ad Hoc Payment	Check	16392	1/24/2024	423.60	Dechaine, Lyn	Utility Refunds: 0500003619-02 Consolidated refund created from multiple refunds
Ad Hoc Payment	Check	16393	1/24/2024	187.71	Edwards, Otis	Utility Refunds: 0067027884-03
Ad Hoc Payment	Check	16394	1/24/2024	108.32	Gretchen Guinasso, Personal Representative of, The Estate of Shirley A Page	Utility Refunds: 0048052800-00
Ad Hoc Payment	Check	16395	1/24/2024	50.08	Hamide, Adam or Damla	Utility Refunds: 0000002918-02
Ad Hoc Payment	Check	16396	1/24/2024	1,386.20	Kirkwood Properties Two LLC	Utility Refunds: 0000002433-08
Ad Hoc Payment	Check	16397	1/24/2024	54.01	of the Amended and Restated Ellett Revocable Trust, Ernestine H Ellett Trustee	Utility Refunds: 0054007006-02
Ad Hoc Payment	Check	16398	1/24/2024	171.63	Terry or Roy Potts Trustee	Utility Refunds: 0010036000-07
Ad Hoc Payment	Check	16399	1/24/2024	27.03	The Estate of William Albert McVay Jr	Utility Refunds: 0099090030-01
Ad Hoc Payment	Check	16400	1/24/2024	320.00	Tina M or Brian D Kent	Utility Refunds: 0000007746-03
Supplier Payment	Check	16279	1/25/2024	6,455.39	Aflac	
Supplier Payment	Check	16280	1/25/2024	5,898.79	AFSCME Local #307	
Supplier Payment	Check	16281	1/25/2024	334.00	California State Disbursement Unit	
Supplier Payment	Check	16282	1/25/2024	1,033.50	Chapter 13 - Trustee	
Supplier Payment	Check	16283	1/25/2024	491.00	Hawaii SDU	
Supplier Payment	Check	16284	1/25/2024	830.25	IAM Local #1374	
Supplier Payment	Check	16285	1/25/2024	9,178.48	Life Insurance Company of North America	
Supplier Payment	Check	16286	1/25/2024	950.00	MFS Service Center Inc	
Supplier Payment	Check	16287	1/25/2024	25.00	OPEIU Local #11	
Supplier Payment	Check	16288	1/25/2024	4,354.08	OPEIU Local #11	
Supplier Payment	Check	16289	1/25/2024	793.50	Teamsters Local #58	
Supplier Payment	Check	16290	1/25/2024	280.00	UA Local #290	
Supplier Payment	Check	16291	1/25/2024	2,866.41	Western Conference of Teamsters	
Supplier Payment	Check	16292	1/25/2024	1,237.86	Western Metal Industry Pension Plan	
			Check	3,615,209.60		
Expense Payment	Direct Deposit	EFT-00229630	1/19/2024	51.40	Jeffrey Anaya	Employee Reimbursement
Expense Payment	Direct Deposit	EFT-00229631	1/19/2024	90.64	Tommy Myrick	Employee Reimbursement
Expense Payment	Direct Deposit	EFT-00229632	1/19/2024	179.95	Rian Stein	Employee Reimbursement
Expense Payment	Direct Deposit	EFT-00229633	1/19/2024	207.00	Christopher Roberts	Employee Reimbursement
Expense Payment	Direct Deposit	EFT-00229634	1/19/2024	250.00	Geronia Coyle III	Employee Reimbursement
Expense Payment	Direct Deposit	EFT-00229635	1/19/2024	7.60	Patrick Kennedy	Employee Reimbursement
Expense Payment	Direct Deposit	EFT-00229636	1/19/2024	75.00	David McGrath	Employee Reimbursement
Expense Payment	Direct Deposit	EFT-00229637	1/19/2024	141.25	Sean Hansen	Employee Reimbursement
Expense Payment	Direct Deposit	EFT-00229638	1/19/2024	104.00	John Sexson	Employee Reimbursement
Expense Payment	Direct Deposit	EFT-00229639	1/19/2024	211.25	Paul Wooden	Employee Reimbursement
Expense Payment	Direct Deposit	EFT-00229640	1/19/2024	198.00	Phillip Medina	Employee Reimbursement
Expense Payment	Direct Deposit	EFT-00229641	1/19/2024	212.21	Rodney Trumpf	Employee Reimbursement
Expense Payment	Direct Deposit	EFT-00229642	1/19/2024	16.24	Valerie McAlister	Employee Reimbursement
Expense Payment	Direct Deposit	EFT-00229643	1/19/2024	250.00	Larry Blatnik	Employee Reimbursement
Expense Payment	Direct Deposit	EFT-00229644	1/19/2024	10.00	Kimberly Kapp	Employee Reimbursement
Expense Payment	Direct Deposit	EFT-00229645	1/19/2024	75.00	Aleesa Stoolfire	Employee Reimbursement
Expense Payment	Direct Deposit	EFT-00229646	1/19/2024	65.25	Erik Jennings	Employee Reimbursement
Expense Payment	Direct Deposit	EFT-00229647	1/19/2024	742.95	Gene Juve	Employee Reimbursement
Expense Payment	Direct Deposit	EFT-00231443	1/25/2024	305.00	Matthew Hanns	Employee Reimbursement

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INVOICE PAYMENTS REPORT

Expense Payment	Direct Deposit	EFT-00231444	1/25/2024	32.57	Adrienne Powers	Employee Reimbursement
Expense Payment	Direct Deposit	EFT-00231445	1/25/2024	529.02	Lon Pluckhahn	Employee Reimbursement
Expense Payment	Direct Deposit	EFT-00231446	1/25/2024	190.00	Erica Nilsen	Employee Reimbursement
Expense Payment	Direct Deposit	EFT-00231447	1/25/2024	188.99	Mike Shrum	Employee Reimbursement
Expense Payment	Direct Deposit	EFT-00231448	1/25/2024	154.99	Michael Summerhill	Employee Reimbursement
Expense Payment	Direct Deposit	EFT-00231449	1/25/2024	75.00	Sutton Moon	Employee Reimbursement
Cash Advance Payment	Direct Deposit	EFT-00231450	1/25/2024	302.88	Drew Klaetsch	Travel Advance
Cash Advance Payment	Direct Deposit	EFT-00231451	1/25/2024	110.00	Kady Mercer	Travel Advance
Cash Advance Payment	Direct Deposit	EFT-00231452	1/25/2024	110.00	Pennie McCarty	Travel Advance
Cash Advance Payment	Direct Deposit	EFT-00231453	1/25/2024	110.00	Darrin Deming	Travel Advance
Cash Advance Payment	Direct Deposit	EFT-00231454	1/25/2024	333.00	Miranda Skeeter	Travel Advance
Cash Advance Payment	Direct Deposit	EFT-00231455	1/25/2024	289.31	Jackie Caldwell	Travel Advance
Cash Advance Payment	Direct Deposit	EFT-00231456	1/25/2024	302.88	Franklin Gomez	Travel Advance
Cash Advance Payment	Direct Deposit	EFT-00231457	1/25/2024	148.13	Anne McEnery-Ogle	Travel Advance
Cash Advance Payment	Direct Deposit	EFT-00231458	1/25/2024	148.13	Aaron Lande	Travel Advance
Cash Advance Payment	Direct Deposit	EFT-00231459	1/25/2024	110.00	Kevin Lundy	Travel Advance
Cash Advance Payment	Direct Deposit	EFT-00231460	1/25/2024	110.00	Bryan Fredrickson	Travel Advance
Direct Deposit				6,437.64		
Supplier Payment	EFT	EFT-00229626	1/19/2024	1,500.00	James E Lingeman	
Supplier Payment	EFT	EFT-00229627	1/19/2024	70,688.00	Keen Independent Research LLC	
Supplier Payment	EFT	EFT-00229628	1/19/2024	15,426.81	HDR Engineering Inc - Remit-To: HDR Engineering - Chicago	
Supplier Payment	EFT	EFT-00229629	1/19/2024	13,984.47	Jacobs Engineering Group Inc	
Supplier Payment	EFT	EFT-00231438	1/25/2024	1,259.64	Vancouver Command Guild	
Supplier Payment	EFT	EFT-00231439	1/25/2024	12,664.92	Vancouver Police Officer Guild	
Supplier Payment	EFT	EFT-00231440	1/25/2024	30,905.63	IAFF Local #452	
Supplier Payment	EFT	EFT-00231441	1/25/2024	144.43	Legal Shield	
Supplier Payment	EFT	EFT-00231442	1/25/2024	16,198.63	Allegiance Benefit Plan Management Inc	
Supplier Payment	EFT	EFT-00231461	1/25/2024	3,472.50	Talitha Consults LLC	
Supplier Payment	EFT	EFT-00231462	1/25/2024	20,304.32	Thrive2Survive	
Supplier Payment	EFT	EFT-00231463	1/25/2024	18,208.79	Council for the Homeless	
Supplier Payment	EFT	EFT-00231464	1/25/2024	370.53	Miller Mendel Inc	
Supplier Payment	EFT	EFT-00231465	1/25/2024	32,688.15	Marten Law LLP	
Supplier Payment	EFT	EFT-00231466	1/25/2024	5,045.00	Pitney Bowes Inc	
Supplier Payment	EFT	EFT-00231467	1/25/2024	375.00	Canopy Wellbeing	
Supplier Payment	EFT	EFT-00231468	1/25/2024	3,950.30	Restored and Revived - Remit-To: Restored and Revived	
Supplier Payment	EFT	EFT-00231469	1/25/2024	2,900.01	Lifeline Connections	
Supplier Payment	EFT	EFT-00231470	1/25/2024	164.00	Tierra Right of Way Services LTD	
Supplier Payment	EFT	EFT-00231471	1/25/2024	40.81	Ziply Fiber	
Supplier Payment	EFT	EFT-00231472	1/25/2024	19,567.78	Fire Systems West	
Supplier Payment	EFT	EFT-00231473	1/25/2024	654,430.65	Rotschy Inc	
Supplier Payment	EFT	EFT-00231474	1/25/2024	4,898.66	United Site Services of Nevada, Inc.	
Supplier Payment	EFT	EFT-00231475	1/25/2024	105.00	Columbia West Engineering	
Supplier Payment	EFT	EFT-00231476	1/25/2024	2,445.75	Better Air Northwest, LLC	
Supplier Payment	EFT	EFT-00231477	1/25/2024	7,896.14	HDR Engineering Inc - Remit-To: HDR Engineering - Chicago	
Supplier Payment	EFT	EFT-00231478	1/25/2024	78,523.05	Family Solutions, Inc.	
Supplier Payment	EFT	EFT-00231479	1/25/2024	195.44	Waxie's Enterprises Inc	
Supplier Payment	EFT	EFT-00231480	1/25/2024	30,066.15	Pacific Landscape Services Inc	
Supplier Payment	EFT	EFT-00231481	1/25/2024	14,797.63	PSI Water Technologies Inc	
Supplier Payment	EFT	EFT-00231482	1/25/2024	7,621.96	Retail Lockbox Inc	
Supplier Payment	EFT	EFT-00231483	1/25/2024	458.00	MacKay Sposito Inc	
Supplier Payment	EFT	EFT-00231484	1/25/2024	22,114.00	Mead and Hunt Inc	
Supplier Payment	EFT	EFT-00231485	1/25/2024	2,941.54	Del Sol Inc	
Supplier Payment	EFT	EFT-00231486	1/25/2024	1,041.47	Historic Music Preservation Project	
Supplier Payment	EFT	EFT-00231487	1/25/2024	23,302.50	Alta Planning & Design	
Supplier Payment	EFT	EFT-00231488	1/25/2024	2,601.69	Workforce Southwest Washington	
Supplier Payment	EFT	EFT-00231489	1/25/2024	40,970.07	Fehr & Peers	
Supplier Payment	EFT	EFT-00231490	1/25/2024	1,045.00	StreamlineAM LLC	
Supplier Payment	EFT	EFT-00231491	1/25/2024	277,217.61	SDB Inc	
Supplier Payment	EFT	EFT-00231492	1/25/2024	1,630.50	His Masterpiece LLC	
Supplier Payment	EFT	EFT-00231493	1/25/2024	4,012.50	Western Water Works Supply Co Inc	
Supplier Payment	EFT	EFT-00231494	1/25/2024	5,211.00	Sustainability Solutions Group USA, Inc. - Remit-To: Sustainability Solutions Group USA, Inc	
Supplier Payment	EFT	EFT-00231495	1/25/2024	7,817.00	Sustainability Solutions Group USA, Inc. - Remit-To: Sustainability Solutions Group USA, Inc	
Supplier Payment	EFT	EFT-00231496	1/25/2024	1,644.63	RELX Inc. - Remit-To: LexisNexis - Chicago	
Supplier Payment	EFT	EFT-00231497	1/25/2024	109,744.03	Halbert Construction Services LLC	
Supplier Payment	EFT	EFT-00231498	1/25/2024	68,406.50	Brown and Caldwell - Remit-To: Brown & Caldwell - San Francisco	
Supplier Payment	EFT	EFT-00231499	1/25/2024	4,280.00	T2 Systems Inc - Remit-To: T2- Atlanta	

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INVOICE PAYMENTS REPORT

Supplier Payment	EFT	EFT-00231500	1/25/2024	9,067.75	Otak Inc	
Supplier Payment	EFT	EFT-00231501	1/25/2024	3,412.79	Boys and Girls Clubs of Southwest Washington	
Supplier Payment	EFT	EFT-00231502	1/25/2024	35,000.00	Superior Exterior Systems, LLC	
Supplier Payment	EFT	EFT-00231503	1/25/2024	50,097.33	Jacobs Engineering Group Inc	
Supplier Payment	EFT	EFT-00231504	1/25/2024	17,038.98	Live Love Outreach	
Supplier Payment	EFT	EFT-00231505	1/25/2024	14,625.80	Wapiti NW LLC	
		EFT		1,774,520.84		
Supplier Payment	Manual Wire		1/8/2024	154.63	Allegiance Benefit Plan Management Inc - Remit-To: COBRA	
Supplier Payment	Manual Wire		1/17/2024	147.25	Bank Of America N.A.	
Supplier Payment	Manual Wire		1/18/2024	104,487.91	Liberty Mutual Group Inc.	
Supplier Payment	Manual Wire		1/19/2024	1,944.00	State of Washington Department of Licensing - Remit-To: DOL - Seattle Remit	
Supplier Payment	Manual Wire		1/19/2024	3,445.11	Superior, LLC	
Supplier Payment	Manual Wire		1/22/2024	14,940.30	Washington Dental Service	
Supplier Payment	Manual Wire		1/22/2024	316,543.09	Blue Cross Blue Shield of Oregon	
Supplier Payment	Manual Wire		1/22/2024	5,036,831.38	Fidelity National Title Co of Washington	
Supplier Payment	Manual Wire		1/23/2024	24,848.75	The Bank Of New York Mellon Trust Company	
Supplier Payment	Manual Wire		1/23/2024	138,625.55	Reliastar Life Insurance Co	
Supplier Payment	Manual Wire		1/23/2024	1,669.80	VSP Vision Care Inc	
Supplier Payment	Manual Wire		1/23/2024	6,963.58	Washington Dental Service	
Supplier Payment	Manual Wire		1/23/2024	92,738.08	Blue Cross Blue Shield of Oregon	
Supplier Payment	Manual Wire		1/23/2024	57,895.16	Paymentus Corporation	
Supplier Payment	Manual Wire		1/25/2024	654.00	Oregon SDU	
Supplier Payment	Manual Wire		1/25/2024	31,215.00	Vancouver Firefighters Union Health & Welfare Trust	
Supplier Payment	Manual Wire		1/25/2024	21,400.00	Washington State Firefighters	
Supplier Payment	Manual Wire		1/25/2024	22,072.24	Western States Health & Welfare Trust	
Supplier Payment	Manual Wire		1/25/2024	304,023.95	International City Management Association Retirement Corporation	
Supplier Payment	Manual Wire		1/25/2024	5,555.08	Washington SDU	
Supplier Payment	Manual Wire		1/25/2024	59,848.55	State of Washington Department of Retirement Systems (DRS)	
Supplier Payment	Manual Wire		1/25/2024	78,185.86	Liberty Mutual Group Inc.	
Supplier Payment	Manual Wire		1/26/2024	1,274,149.62	Internal Revenue Service	
		Manual Wire		7,598,338.89		
		Checks		3,615,209.60		
		Direct Deposit		6,437.64		
		EFT		1,774,520.84		
			1/22/2024	562.86	City Payments	Posted 01-15-24 to 01-21-24
			1/29/2024	18,476.95	City Payments	Posted 01-22-24 to 01-28-24
		Hansen Total		19,039.81		
			1/16/2024	210.00	Miscellaneous	Parks Class Refunds WREC 01-08-24 to 01-14-24
			1/22/2024	1,785.35	Miscellaneous	Parks Class Refunds FCC 01-15-24 to 01-21-24
			1/22/2024	2,501.48	Miscellaneous	Parks Class Refunds MCC 01-15-24 to 01-21-24
			1/29/2024	2,972.91	Miscellaneous	Parks Class Refunds FCC 01-22-24 to 01-28-24
			1/29/2024	1,247.83	Miscellaneous	Parks Class Refunds MCC 01-22-24 to 01-28-24
		VISA Total		8,717.57		
		Payroll Total		4,201,805.30		
		GRAND TOTAL		17,224,069.65		

*Please contact Procurement Services if you would like to review the justification for EMERGENCY procurement.

City of Vancouver
Payroll Council Report
January 15, 2024 - January 28, 2024

Check No.	Date	Explanation	Amount
1860 - 1876	01/25/24	January 25th Payroll	\$ 9,446.10
229648 - 231437	01/25/24	January 25th Direct Deposits	\$ 4,192,359.20

\$ 4,201,805.30



Staff Report: 029-24

TO: Mayor and City Council

FROM: Eric Holmes, City Manager

DATE: 2/5/2024

SUBJECT Multi-Family Tax Exemption- Waterfront Port of Vancouver Block 1

Key Points

- The Multifamily Tax Exemption Program (VMC 3.22) is designed as an incentive for developers to build new private multi-family development in targeted areas of the City.
- The applicant is requesting an 8-year tax exemption for a 194-unit market rate apartment building on the waterfront.
- The application was submitted and accepted under the MFTE regulations in place prior to July 3, 2023.

Strategic Plan Alignment

Housing and Human Needs – meeting basic needs and partnering with organizations to support the community.

Economic Opportunity - a place where a wide variety of businesses of all sizes grow and thrive.

Climate and Natural Systems – Environmental stewardship and efforts to address climate change to ensure a sustainable future.

Present Situation

The project is located on the Vancouver waterfront at 400 W. Columbia Way. The land is owned by the Port of Vancouver and the building will be part of a leasehold by the applicant. The applicant is requesting an 8-year multi-family housing limited property tax exemption for market rate rental housing. The project is a seven-story, 194-unit apartment building with 4,549 square feet of commercial space and 177 associated parking spaces. The proposed development will include studio, one, and two-bedroom units. The total estimated development cost is \$88 million.

The MFTE application was submitted and deemed complete prior to the MFTE program changes made July 3, 2023. When the application was reviewed by the CCRA the applicant was asked to

include a commercial component which required a substantial redesign of the building program. The application will be reviewed under the MFTE regulations in place at the time the application was deemed complete by staff.

In this case the property is already under a public lands tax exemption as the Port of Vancouver is the landowner. The applicant will own the structure through a lease. Only the residential portion of the structure is eligible for the exemption. Over the 20-year period following construction, the project (with the exemption) will generate over \$17 million in taxes benefiting all taxing districts (ports, schools, county, city, etc.). A total of \$2.36 million in taxes will directly benefit the City of Vancouver. The total estimated value of the tax exemption for all districts during the exemption is \$3.11 million. Of that amount the value of the tax exemption specific to the City of Vancouver would be \$1.06 million. Commercial structure property taxes, retail sales taxes, and unit utility taxes will still be collected during the exemption. It is also anticipated that new residents will support downtown businesses during and after the exemption period.

As a market rate project, a public benefit contribution with a value equal to \$777,500 (25% of the estimated value tax exemption amount) is required. The applicant is proposing to satisfy the public benefit contribution by providing funding towards future affordable housing investments to be determined by the City of Vancouver. This option is also most similar to the new MFTE regulations adopted on July 3, 2023. The contribution for future affordable housing activities can be used for land banking or construction of permanent affordable units where funding can leverage more units and larger unit types and at deeper levels of affordability. The advantage of this funding is also likely to last longer than the duration of the limited 8-year tax exemption. The public benefit contribution payment will be required prior to issuing the final tax certificate. The project requires a development agreement and therefore also falls under the City interim green building policy. Per the applicant's consultant the building is being constructed to exceed the minimum LEED gold score. The City green policy staff have reviewed the applicant's LEED summary indicating that the project satisfies the City's green building policy.

Advantage(s)

1. Adds 194 new multi-family units in the Waterfront residential target area.
2. Property will provide more in property taxes during the exemption than a vacant parcel.
3. Building will meet or exceed LEED gold status.
4. Provides \$777,500 in funding for future affordable housing activities.

Disadvantage(s)

1. Estimated value tax exemption revenue for all districts due to exemption is estimated at \$3.11 million.
2. Estimated value tax exemption revenue to the City of Vancouver due to exemption is estimated at \$1.06 million.

Budget Impact

The residential structure portion of the property taxes will be exempt for 8 years, however the City will still receive taxes from other additional revenues from the development, including retail sales tax, permit fees, and system development charges and impact fees. There will be a small incremental increase in demand for public services during the 8-year exemption period without the

exempted tax revenues. Following the 8-year exemption period, the properties will return to the tax base as new construction and the City and other taxing districts will begin receiving the residential portion of the property taxes.

Prior Council Review

None

Action Requested

On February 5, 2024, following a public hearing, adopt a resolution authorizing the City Manager, or designee, to execute a multi-family housing limited property tax exemption certificate and take any and all action necessary to enforce the terms thereof.

Bryan Monroe, Associate Housing Project Coordinator, 360-487-7958

ATTACHMENTS:

- ▢ Presentation
- ▢ Resolution
- ▢ Development Agreement



CITY OF
Vancouver
WASHINGTON

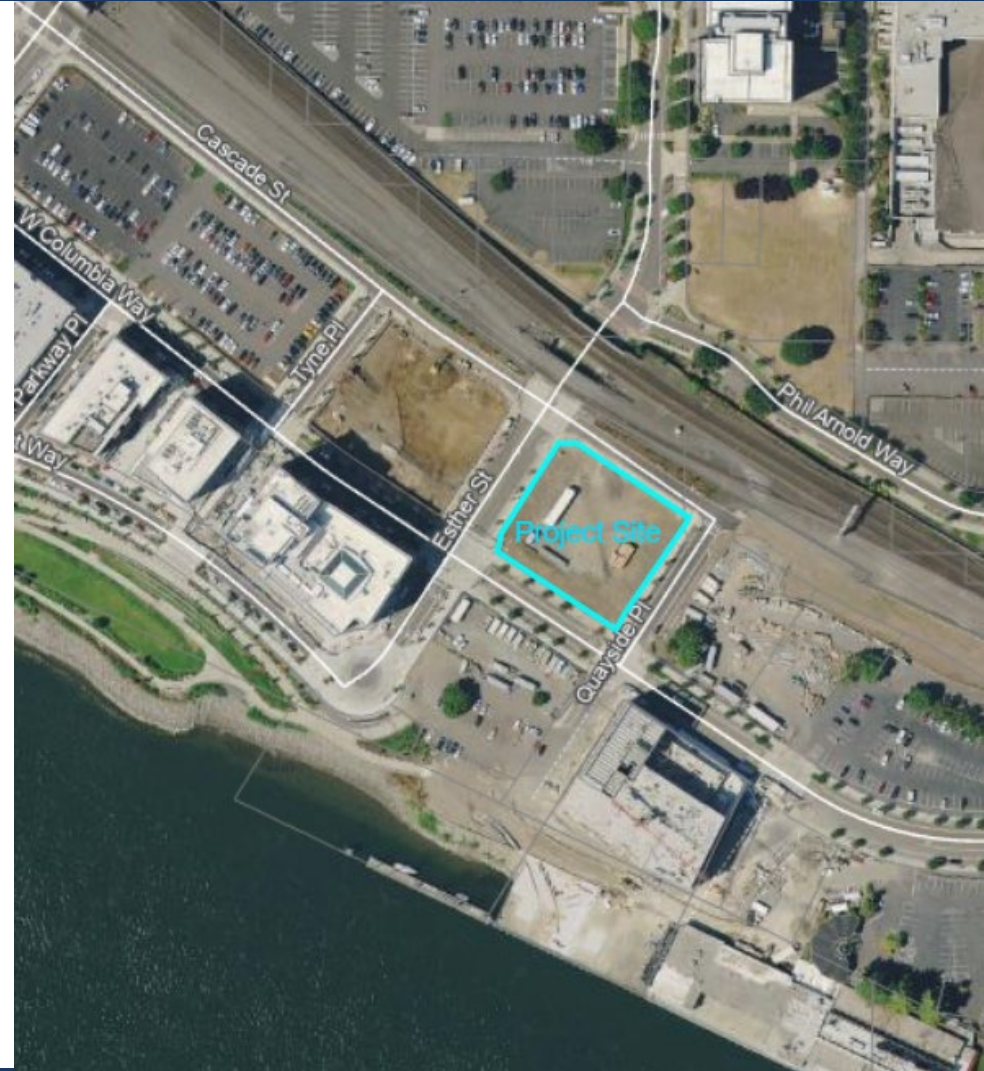
Port of Vancouver Block 1 MFTE Certificate

Bryan Monroe
Associate Housing Coordinator
Economic Prosperity and Housing
February 5, 2024 (public hearing)



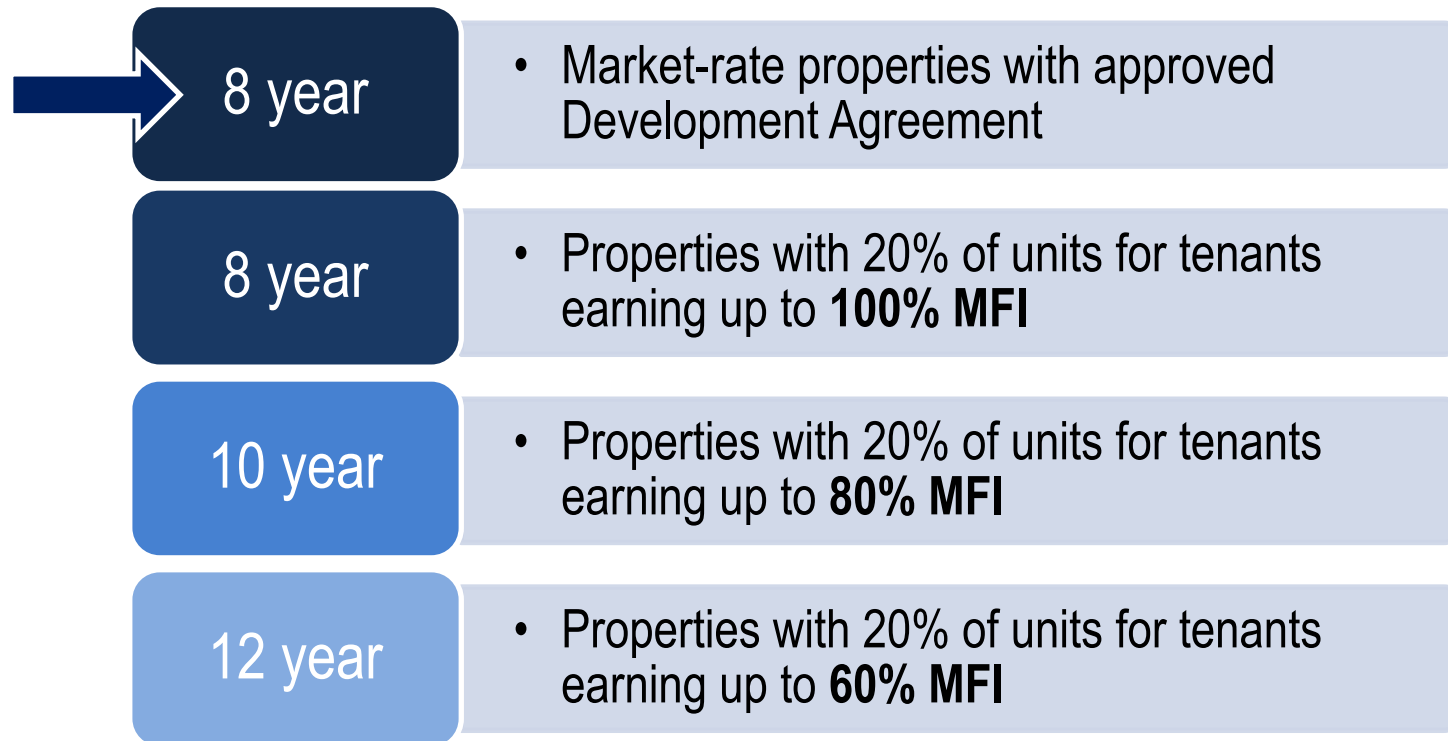
Presentation Overview

- **Exemption Option**
- **Project Details**
- **Financial Summary**
- **Public Benefit**
- **Green Building Policy**



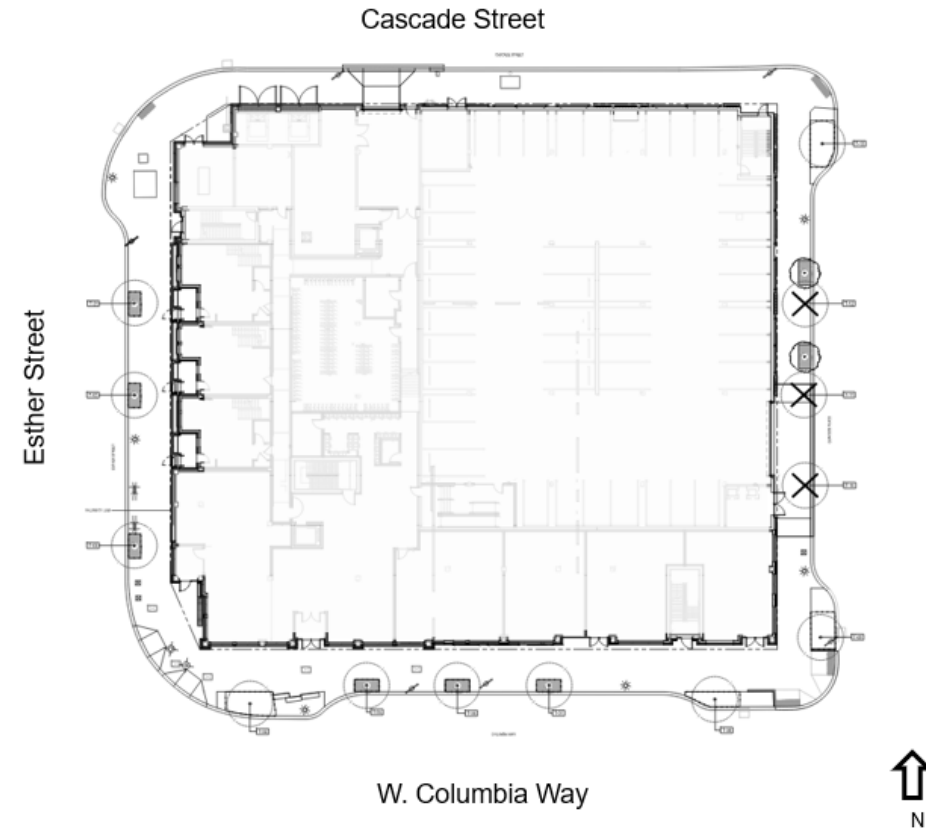
Exemption Type

Market Rate Option



Project Details

- 7 stories
- 194 total units
- Studio, 1-bd, 2-bd units
- 177 parking spaces
- 4549 s.f. commercial



Unit Details

Market Rate Units

Type	Av. Size	Units	Rent
Studio	469	40	\$1,550
Jr. 1 Bedroom	567	36	\$1,800
1 Bedroom	742	83	\$2,400
2 Bedroom	1,157	32	\$3,800
2 Bedroom Townhome	2,390	3	\$5,000



Financial Summary

Item Description Here	All Taxing Districts	City of Vancouver
Net Present Value (Over 20 years)	\$17,319,000	\$2,360,000
Value of Public Benefit	-	\$777,500
Subtotal	\$17,319,000	\$3,137,500
Estimated Value of Exemption (Net Present)	(\$3,110,000)	(\$1,061,000)
Net Present 20-year benefit	\$14,209,000	\$2,076,500



Green Building Policy

Preliminary scorecard indicates LEED gold met /exceeded.

- Installing 27 EV charging stations, (50% more than required by code) plus an additional 21 infrastructure ready stalls
- Solar-ready building
- Energy efficient heat pumps for heating and cooling in every unit
- Energy Star appliances and LED lighting
- Exterior lights are dark sky compliant
- Native, drought resistant landscaping
- Irrigation system and plumbing fixtures are low flow, water efficient design



Public Benefit Contribution

- Waterfront park and street infrastructure amenities abutting the site are already completed
- Applicant is therefore proposing to contribute \$777,500 towards future affordable housing projects and infrastructure
- Proposed funding can leverage more and larger unit types and at deeper levels of affordability lasting longer than 8 years



Questions / Discussion



Thank You



2/5/2024

RESOLUTION NO. M- [Resolution Number]

A RESOLUTION of the City Council of the City of Vancouver approving a development agreement with Boz Port Block 1 Owner LLC (Applicant) for an 8-year limited property tax exemption for market rate housing, providing a public benefit contribution, and green building elements, for the property located at 440 Columbia Way, Vancouver, WA 98660 (Exhibit A).

WHEREAS, the City of Vancouver desires to stimulate new construction of multi-family rental housing in specifically designated urban areas in order to reduce development pressure on single-family residential neighborhoods, to increase and improve housing opportunities, and encourage development densities supportive of tenant use, and

WHEREAS, the City has, pursuant to authority granted under the Revised Code of Washington (RCW), designated various “Residential Target Areas” for the provision of limited property tax exemptions for new multi-family residential housing; and

WHEREAS, the City is interested in promoting new rental housing in the Waterfront target area in the City of Vancouver; and

WHEREAS, the City has set forth in Chapter 3.22 of the Vancouver Municipal Code (VMC) a program whereby property owners may qualify for a “Final Certificate of Tax Exemption,” which certifies to the Clark County Assessor and Treasurer that a property is eligible to receive a limited property tax exemption; and

WHEREAS, BOZ PORT BLOCK 1 OWNER LLC (Applicant) is interested in receiving a limited property tax exemption for constructing 194 units of new, multifamily, market-rate rental

RESOLUTION - 1

housing within the Waterfront subarea, which is a designated “Residential Target Area” identified in Chapter 3.22 VMC; and,

WHEREAS, on June 30, 2023, the Applicant has submitted to the City a complete application for the City’s limited tax exemption program outlining a proposed development of new multi-family rental housing, with green building elements, and a proposed public benefit contribution. Development to be constructed on property located at 440 Columbia Way, Vancouver, WA 98660 (Property); and

WHEREAS, the City has determined that the Applicant’s proposed public benefit outlined in the Development Agreement (Exhibit B) will satisfy the requirements for a Final Certificate of Tax Exemption.

NOW, THEREFORE,

BE IT RESOLVED BY THE CITY OF VANCOUVER:

Section 1. The Agreement attached hereto as Exhibit B between BOZ PORT BLOCK 1 OWNER LLC and the City of Vancouver, is approved and the City Manager or their designee is authorized to execute the Agreement on behalf of the City.

RESOLUTION - 2

ADOPTED at a regular session of the Vancouver City Council this 5th day of February 2024.

Anne McEnery-Ogle, Mayor

Attest:

Approved as to form:

Natasha Ramras, City Clerk

Jonathan Young, City Attorney

RESOLUTION - 3

Resolution
Exhibit A
Legal Description

Tax lot 986049311

Adjusted Lot 1 of the Port of Vancouver Terminal 1 short plat, recorded in Book 4, Page 171,
records of Clark County, Washington.

RESOLUTION - 4

Resolution
Exhibit B
Agreement

DEVELOPMENT AGREEMENT

**for
MULTI-FAMILY HOUSING LIMITED PROPERTY TAX
EXEMPTION**

THIS AGREEMENT is entered into this 5th day of February 2024, by and between Boz Port Block 1 Owner LLC (or its assigns)(hereinafter referred to as “Applicant”), the PORT OF VANCOUVER, a municipal corporation under the State of Washington (or its assigns) and the CITY OF VANCOUVER, a Washington Charter City of the First Class (hereinafter referred to as “City”).

WITNESSETH:

WHEREAS, the City desires to stimulate new construction of multi-family housing in certain designated urban areas in order to reduce development pressure on single-family residential neighborhoods, to increase and improve housing opportunities, and to encourage development densities supportive of transit use, and

WHEREAS, the City is interested in promoting new housing in the downtown area of the City of Vancouver, and

WHEREAS, the City has, pursuant to authority granted to it under the Revised Code of Washington (RCW), designated various Residential Target Areas for the provision of limited property tax exemptions for new multi-family residential housing, and

WHEREAS, the City has, as set forth at Chapter 3.22 of the Vancouver Municipal Code (“VMC”), enacted a program whereby property owners may qualify for a Final Certificate of Tax Exemption which certifies to the Clark County Assessor and Treasurer that the Applicant is eligible to receive a limited property tax exemption, and

WHEREAS, on June 30, 2023, the Applicant submitted to the City a complete application for an 8-year market-rate tax exemption under the City’s limited tax exemption program for the Applicant’s proposed development of new multi-family residential housing development to be constructed on property described in the legal description in Exhibit A (“Property”).

WHEREAS, the City has determined that the public benefit contribution equal to \$777,500 (25% of the estimated value of the tax exemption), paid to the City of Vancouver shall be used for funding for future affordable housing development activities in the City. This payment, provided prior to the issuance of the final tax exemption certificate, will satisfy the public benefit requirement for a Final Certificate of Tax Exemption for the Property.

RESOLUTION - 5

WHEREAS, the Vancouver City Council enacted an interim climate action policy requiring all projects subject to a development agreement to meet certain green building methods; and,

WHEREAS, the Applicant has committed to the City's green building policy by constructing a building meeting LEED gold status criteria or equivalent from alternative rating system that is acceptable to the City.

WHEREAS, the Applicant is interested in receiving a limited property tax exemption for constructing units of new multi-family residential housing within the Vancouver City Center Vision Subarea, which is a designated Residential Target Area identified in Chapter 3.22 VMC, and

NOW THEREFORE, the City and Applicant mutually agree as follows:

1. The City agrees to issue the Applicant a Conditional Certificate of Acceptance of Tax Exemption.
2. The City has determined that the development provides a public benefit in the form of the Applicant's payment of funding for future affordable housing development activities in the amount of \$777,500 (25% of the estimated tax exemption value during the exemption period) paid prior to the issuance of the final tax exemption certificate, and agrees to issue the Applicant a Conditional Certificate of acceptance of tax exemption in accordance with VMC 3.22.040 (the "Conditional Certificate"). The foregoing public benefit contribution provided by the Applicant for this project is also set forth in Exhibit B attached hereto (the "Public Benefits").
3. The Applicant agrees to construct on the Property multi-family residential housing improvements as described in the most recent site plans, floor plans, and elevations on file with the City as of the date of City Council approval of this Agreement. In no event shall such construction provide fewer than 194 new permanent multi-family residential units.
4. The Applicant agrees to construct the building to LEED Gold level criterion or equivalent from an alternative green building rating system that is acceptable to the City to meet the City's interim green building policy as a condition to the City issuing a Final Certificate of Tax Exemption.
5. The Applicant agrees to complete construction of the agreed upon Property improvements and provide the Public Benefits (Exhibit B) within three years from the date the City issues the Conditional Certificate of Tax Exemption, or within any extension thereof granted by the City.

RESOLUTION - 6

6. The Applicant agrees, upon completion of the Property building improvements and upon issuance by the City of a temporary or permanent certificate of occupancy, to file with the City's Director of Community Development ("Director") for the building the following:
 - (a) A statement of expenditures made with respect to each multi-family housing unit and the total expenditures made with respect to the entire property;
 - (b) A description of the completed work and a statement of qualifications for the exemption; and
 - (c) A statement that the work was completed within the required three-year period plus any authorized extension thereof.
7. The City agrees, conditioned on the Applicant's successful completion of the Property improvements in accordance with the terms of this Agreement, provision of the public benefit requirement outlined in exhibit B, and on the Applicant's filing of the materials described in Paragraph 6 above, to file a Final Certificate of Tax Exemption with the Clark County Treasurer and Assessor.
8. The Applicant agrees, following the first anniversary of the City's filing of the Final Certificate of Tax Exemption, and each year thereafter for a period of eight years, to file a notarized declaration with the Director indicating the following:
 - (a) A statement identifying the total number of occupied and vacant multi-family units receiving a property tax exemption;
 - (b) A certification that the property continues to be in compliance with this Agreement, Chapter 3.22 VMC, and Chapter 84.14 RCW, as applicable;
 - (c) A description of any improvements or changes to the property constructed after the issuance of the Final Certificate of Tax Exemption; and
 - (d) The total monthly rent for each unit.
9. The Applicant agrees to pay an annual monitoring fee of \$500 during the exemption period.
10. The Applicant agrees to maintain the Property including all improvements in compliance with all applicable City codes and requirements.
11. The Applicant agrees to maintain records supporting all information provided to the City and to make those records available for inspection by the City upon request. Failure to submit the annual declaration identified in Paragraph 8 or to maintain adequate records may result in the tax exemption being canceled.
12. If the Applicant converts the multi-family residential housing units constructed under this Agreement to another use within the Tax Exemption Period of eight (8) years, the Applicant shall notify the Clark County Assessor and Treasurer and the City Economic Prosperity and Housing Director within 60 days of such change in use.

RESOLUTION - 7

13. The Applicant agrees to notify the Economic Prosperity and Housing Director promptly of any transfer of the Applicant's ownership interest in the site or in the improvements made to the site under this Agreement.
14. The City reserves the right to cancel the Final Certificate of Tax Exemption should the Applicant, its successors and assigns, fail to comply with any of the terms and conditions of this Agreement during the Exemption Period. Cancellation of the Final Certificate of Tax Exemption may subject the Applicant to potential tax liability as further described in RCW 84.14;
15. No modifications of this Agreement shall be made unless mutually agreed upon by the parties in writing.
16. In the event that any term or clause of this Agreement conflicts with applicable law, such conflict shall not affect other terms of this Agreement which can be given effect without the conflicting term or clause, and to this end, the terms of this Agreement are declared to be severable.
17. Applicant agrees that this Agreement is subject to the Vancouver Multi-Family Housing Tax Exemption set forth at Vancouver Municipal Code, Chapter 3.22.

CITY OF VANCOUVER

Boz Port Block 1 Owner LLC

Eric Holmes, City Manager

Name, Title

Port of Vancouver

Name, Title

Attest:

Approved as to form:

Natasha Ramras, City Clerk

Jonathan Young, City Attorney

RESOLUTION - 8

Development Agreement
EXHIBIT A
LEGAL DESCRIPTION

Adjusted Lot 1 of the Port of Vancouver Terminal 1 short plat, recorded in Book 4, Page 171, records of Clark County, Washington.

RESOLUTION - 9

Development Agreement
EXHIBIT B
PUBLIC IMPROVEMENTS

1. Prior to the issuance of the final certificate of tax exemption, the Applicant shall provide payment to the City of Vancouver for future affordable housing development activities in an amount of \$777,500. (25% of the expected tax exemption value).

RESOLUTION - 10

Development Agreement
EXHIBIT B
PUBLIC IMPROVEMENTS

2. Prior to the issuance of the final certificate of tax exemption, the Applicant shall provide funding for affordable housing development activities to be determined by the City of Vancouver in an amount of no less than \$1,067,500 (25% of the expected forgone tax exemption).

RESOLUTION - 11

**DEVELOPMENT AGREEMENT
for
MULTI-FAMILY HOUSING LIMITED PROPERTY TAX
EXEMPTION**

THIS AGREEMENT is entered into this 5th day of February 2024, by and between Boz Port Block 1 Owner LLC (or its assigns)(hereinafter referred to as “Applicant”), the PORT OF VANCOUVER, a municipal corporation under the State of Washington (or its assigns) and the CITY OF VANCOUVER, a Washington Charter City of the First Class (hereinafter referred to as “City”).

WITNESSETH:

WHEREAS, the City desires to stimulate new construction of multi-family housing in certain designated urban areas in order to reduce development pressure on single-family residential neighborhoods, to increase and improve housing opportunities, and to encourage development densities supportive of transit use, and

WHEREAS, the City is interested in promoting new housing in the downtown area of the City of Vancouver, and

WHEREAS, the City has, pursuant to authority granted to it under the Revised Code of Washington (RCW), designated various Residential Target Areas for the provision of limited property tax exemptions for new multi-family residential housing, and

WHEREAS, the City has, as set forth at Chapter 3.22 of the Vancouver Municipal Code (“VMC”), enacted a program whereby property owners may qualify for a Final Certificate of Tax Exemption which certifies to the Clark County Assessor and Treasurer that the Applicant is eligible to receive a limited property tax exemption, and

WHEREAS, on June 30, 2023, the Applicant submitted to the City a complete application for an 8-year market-rate tax exemption under the City’s limited tax exemption program for the Applicant’s proposed development of new multi-family residential housing development to be constructed on property described in the legal description in Exhibit A (“Property”).

WHEREAS, the City has determined that the public benefit contribution equal to \$777,500 (25% of the estimated value of the tax exemption), paid to the City of Vancouver shall be used for funding for future affordable housing development activities in the City. This payment, provided prior to the issuance of the final tax exemption certificate, will satisfy the public benefit requirement for a Final Certificate of Tax Exemption for the Property.

WHEREAS, the Vancouver City Council enacted an interim climate action policy requiring all projects subject to a development agreement to meet certain green building methods; and,

WHEREAS, the Applicant has committed to the City's green building policy by constructing a building meeting LEED gold status criteria or equivalent from alternative rating system that is acceptable to the City.

WHEREAS, the Applicant is interested in receiving a limited property tax exemption for constructing units of new multi-family residential housing within the Vancouver City Center Vision Subarea, which is a designated Residential Target Area identified in Chapter 3.22 VMC, and

NOW THEREFORE, the City and Applicant mutually agree as follows:

1. The City agrees to issue the Applicant a Conditional Certificate of Acceptance of Tax Exemption.
2. The City has determined that the development provides a public benefit in the form of the Applicant's payment of funding for future affordable housing development activities in the amount of \$777,500 (25% of the estimated tax exemption value during the exemption period) paid prior to the issuance of the final tax exemption certificate, and agrees to issue the Applicant a Conditional Certificate of acceptance of tax exemption in accordance with VMC 3.22.040 (the "Conditional Certificate"). The foregoing public benefit contribution provided by the Applicant for this project is also set forth in Exhibit B attached hereto (the "Public Benefits").
3. The Applicant agrees to construct on the Property multi-family residential housing improvements as described in the most recent site plans, floor plans, and elevations on file with the City as of the date of City Council approval of this Agreement. In no event shall such construction provide fewer than 194 new permanent multi-family residential units.
4. The Applicant agrees to construct the building to LEED Gold level criterion or equivalent from an alternative green building rating system that is acceptable to the City to meet the City's interim green building policy as a condition to the City issuing a Final Certificate of Tax Exemption.
5. The Applicant agrees to complete construction of the agreed upon Property improvements and provide the Public Benefits (Exhibit B) within three years from the date the City issues the Conditional Certificate of Tax Exemption, or within any extension thereof granted by the City.

6. The Applicant agrees, upon completion of the Property building improvements and upon issuance by the City of a temporary or permanent certificate of occupancy, to file with the City's Director of Community Development ("Director") for the building the following:
 - (a) A statement of expenditures made with respect to each multi-family housing unit and the total expenditures made with respect to the entire property;
 - (b) A description of the completed work and a statement of qualifications for the exemption; and
 - (c) A statement that the work was completed within the required three-year period plus any authorized extension thereof.
7. The City agrees, conditioned on the Applicant's successful completion of the Property improvements in accordance with the terms of this Agreement, provision of the public benefit requirement outlined in exhibit B, and on the Applicant's filing of the materials described in Paragraph 6 above, to file a Final Certificate of Tax Exemption with the Clark County Treasurer and Assessor.
8. The Applicant agrees, following the first anniversary of the City's filing of the Final Certificate of Tax Exemption, and each year thereafter for a period of eight years, to file a notarized declaration with the Director indicating the following:
 - (a) A statement identifying the total number of occupied and vacant multi-family units receiving a property tax exemption;
 - (b) A certification that the property continues to be in compliance with this Agreement, Chapter 3.22 VMC, and Chapter 84.14 RCW, as applicable;
 - (c) A description of any improvements or changes to the property constructed after the issuance of the Final Certificate of Tax Exemption; and
 - (d) The total monthly rent for each unit.
9. The Applicant agrees to pay an annual monitoring fee of \$500 during the exemption period.
10. The Applicant agrees to maintain the Property including all improvements in compliance with all applicable City codes and requirements.
11. The Applicant agrees to maintain records supporting all information provided to the City and to make those records available for inspection by the City upon request. Failure to submit the annual declaration identified in Paragraph 8 or to maintain adequate records may result in the tax exemption being canceled.

12. If the Applicant converts the multi-family residential housing units constructed under this Agreement to another use within the Tax Exemption Period of eight (8) years, the Applicant shall notify the Clark County Assessor and Treasurer and the City Economic Prosperity and Housing Director within 60 days of such change in use.
13. The Applicant agrees to notify the Economic Prosperity and Housing Director promptly of any transfer of the Applicant's ownership interest in the site or in the improvements made to the site under this Agreement.
14. The City reserves the right to cancel the Final Certificate of Tax Exemption should the Applicant, its successors and assigns, fail to comply with any of the terms and conditions of this Agreement during the Exemption Period. Cancellation of the Final Certificate of Tax Exemption may subject the Applicant to potential tax liability as further described in RCW 84.14;
15. No modifications of this Agreement shall be made unless mutually agreed upon by the parties in writing.
16. In the event that any term or clause of this Agreement conflicts with applicable law, such conflict shall not affect other terms of this Agreement which can be given effect without the conflicting term or clause, and to this end, the terms of this Agreement are declared to be severable.
17. Applicant agrees that this Agreement is subject to the Vancouver Multi-Family Housing Tax Exemption set forth at Vancouver Municipal Code, Chapter 3.22.

CITY OF VANCOUVER

Boz Port Block 1 Owner LLC

Eric Holmes, City Manager

Name, Title

Port of Vancouver

Name, Title

Attest:

Approved as to form:

Natasha Ramras, City Clerk

Jonathan Young, City Attorney

**MULTI-FAMILY HOUSING LIMITED PROPERTY
TAX EXEMPTION AGREEMENT
PORT TERMINAL 1 BLOCK 1- 8 YEAR EXEMPTION – 4**

Development Agreement
EXHIBIT A
LEGAL DESCRIPTION

Adjusted Lot 1 of the Port of Vancouver Terminal 1 short plat, recorded in Book 4, Page 171, records of Clark County, Washington.

Development Agreement
EXHIBIT B
PUBLIC IMPROVEMENTS

1. Prior to the issuance of the final certificate of tax exemption, the Applicant shall provide payment to the City of Vancouver for future affordable housing development activities in an amount of \$777,500. (25% of the expected tax exemption value).