

- Meetings may be viewed on the [City of Anacortes website](#), on the City of Anacortes [YouTube](#) Channel, or on TV [Channel 10](#).
- The public may also watch, listen to, or participate in the meeting live by visiting <https://us02web.zoom.us/j/89255646791> or by telephoning 1-253-215-8782 and entering Meeting ID 892 5564 6791.
- The public is encouraged to comment via email to cityclerk@cityofanacortes.org or via written comment addressed to City Clerk, P.O. Box 547, Anacortes, WA 98221. Public comments received by the [City Clerk](#) prior to 3:00 p.m. the day of the meeting will become part of the record for the meeting, just as if presented in person.
- Complete guidelines for virtual participation in Anacortes City Council meetings are available [here](#). View the quick video example for connecting to the meeting [here](#).



Anacortes City Council
Municipal Building Council Chambers
904 6th Street

April 3, 2023
6:00 PM

PRELIMINARY AGENDA
[Packet Materials](#) / [Watch Meeting](#)

1. **Call to Order**
2. **Pledge of Allegiance**
3. **Announcements and Committee Reports**
 - a. Public Works Committee (Report)
4. **Public Comment**
5. **Consent Agenda**
 - a. Minutes of March 27, 2023 (Action)
 - b. Approval of claims in the amount of \$301,613.90 (Action)
 - c. Contract Award: WWTP Odor Control Heat Trace Project - Insulation Installation #23-115-SEW-001 (Action)
 - d. Contract Award: Guemes View Aerial Fiber Construction #23-127-FBR-001 (Action)
6. **Public Hearings**
 - a. * Ordinance 4047: Amending the 2023-2028 Capital Facilities Plan (Discussion)
7. **Other Business**
 - a. * Community Action of Skagit County Quarterly Update (Report)
 - b. Contract Award: Microsoft Enterprise Agreement - Office 365 Renewal #23-122-ITS-001 (Action)
8. **Adjournment**

Per Resolution 3051, citizens wishing to comment on items not on the agenda may do so under Public Comment. Citizens wishing to comment on items indicated with an asterisk () may do so as those items are considered by Council during the course of the meeting.*

The City of Anacortes is committed to making public meetings available and accessible to all members of the community.
 For assistance with special needs, please contact the City Clerk at 360-299-1960 in advance of the meeting.

Municipal Building Council Chambers
904 Sixth Street

PUBLIC COMMENT SIGN IN SHEET

Please print your name legibly so we can recognize you correctly in the minutes. Thank you!

Topic

✓ Beth Bell
✓ MIKE PEARL
✓ EVAN SAXON

4044 Ordinance
BHC
~~PAVE~~ Power RV

Page 2 of 155

Anacortes City Council Minutes - March 27, 2023

Call to Order

Mayor Pro Tempore Anthony Young called to order the Anacortes City Council meeting of March 27, 2023 at 6:00 p.m. Councilmembers Ryan Walters and Carolyn Moulton were present.

Councilmembers Jeremy Carter, Bruce McDougall (joined at approximately 7:17pm), and Amanda Hubik participated in the meeting remotely via Zoom.

Councilmember Christine Cleland-McGrath was absent. Ms. Moulton moved, seconded by Mr. Carter, to excuse the absence of Ms. Cleland-McGrath. The motion carried unanimously by voice vote.

Pledge of Allegiance

The assembly joined in the Pledge of Allegiance.

Announcements and Committee Reports

Mayor Pro Tempore Young reported on Mayor Miller's absence to attend the National League of Cities Congressional City Conference. He then announced the Tommy Thompson Trestle Re-Opening ceremony to be hosted by the Samish Indian Nation at the Fidalgo Bay Resort located at 701 Fidalgo Bay Road from 2-4pm on Friday March 31, 2023 with Mayor Miller opening the festivities.

Fiber Committee

Mr. Walters reported from the Fiber Committee meeting held the previous week. The topics discussed included progress in the US Economic Development Administration grant expansion area, current status of the Guemes View expansion project, Robinson Brothers Construction continuing restoration work in the West End, IPv4 address acquisition, adding Fiber equipment to the Information Services maintenance and replacement program, appropriate outsourcing for administrative services, and a discussion of how to pay off the line of credit for the Guemes View expansion.

Northstar Project Housing Task Force

Mr. Walters also reported on the Northstar Project Housing Task Force where he relayed his vision for unincorporated Skagit County to remain an area characterized by the natural resource industry and for cities to develop without considerable expansion. Principal issues discussed included legislation passed in the last state session regarding how much housing in each county for each income bracket is required to be supported as determined by counties and distributed to cities, an enforcement mechanism for housing distribution, and workplan development.

Planning Committee

Ms. Moulton reported from the Planning Committee meeting held earlier in the evening. The topics discussed included the West Basin project pre-application from the Port of Anacortes, the MJB framework development plan for public review and comment, Office of Financial Management population projections, a parking code re-write, and Commercial Avenue improvements for pedestrians..

Library Committee

Mayor Pro Tempore Young reported that the Library Committee did not meet as scheduled.

Housing Affordability and Community Services Committee

Mr. Walters reported from the Housing Affordability and Community Services Committee meeting held the previous Thursday. The topics discussed included a policy and strategy regarding T Avenue with a discussion coming before the Council in the near term. Mayor Pro Tempore Young mentioned many public comments on the topic.

Public Comment

Mayor Pro Tempore Young invited the public to comment on any item not on the agenda.

Zach Wight of Anacortes representing Procession of the Species Anacortes provided background for the event that will occur on June 10th with preparatory workshops to be held in May. He invited interested members of the public to participate. Andy Stewart of Anacortes mentioned that there is significant community support for the event and thanked the Council for their consideration. He added that there is additional information on @potsanacortes on Facebook and Instagram, as well as at potsanacortes.org. Mr. Stewart asked for volunteers or donations of supplies for the event.

Beth Bell of Old Town Anacortes spoke about the homeless, RVs and drugs, terming the problem as a national one due to the lack of means and facilities for mental health that lead to drug addiction for affected individuals. She asserted that the rules have become skewed to protect the population without supporting them. She cited the commitment of the Anacortes Family Center and the City of Anacortes as important elements of community efforts to assist the homeless. She asked how do we handle the segment of the population that continues to resist help and violate laws in parks, residential areas, and other public spaces? She averred that it is not by creating laws that protect them like *Blake* or passing ordinances that result in arrests in a system that is understaffed and lacks sufficient time and resources to deal with the associated petty crimes and overdoses, adding that detox centers are not the answer. She allowed that giving them privileges is tricky and we should not reward lawless behavior, and that we are not trying to get rid of homeless individuals who are down on their luck. She expressed support for the agencies and organizations who give help to those who need and want it. She then mentioned that the state closed down its mental health institution and those who were served by that facility turned to drugs. She concluded by asserting that the state must take action and attend to mental health issues, or otherwise face potentially dangerous consequences of inaction. She implored the city, county and state to do the hard work by coming together as a team to create institutions that get homeless and addicted individuals help or off the street.

Boshie Morris of Anacortes voiced a concern regarding the Kiwanis Guemes Channel Park being overtaken by invasive species of willow and blackberry vines that are obstructing the views for which this park was built. She wondered who to take this issue to? Mr. Young responded that the Council can pass the concern on to Parks and Recreation Director, Jonn Lunsford.

John E. Hilburn of Anacortes addressed the Levy Lid Lift, wondering if this would be a one-time measure at the will of the Council or would it need to be put before the voters every time? He cited increasing assessments and their negative impact on his finances. He then addressed the population density and associated housing requirements as put forth by the state legislature. He lamented having to comply with a higher level government dictate, and wondered if adequate traffic and water infrastructure could be in place to support the new density and associated housing requirements. He mentioned that current road conditions in Anacortes are not really great. He then related that he moved to Anacortes for the small town atmosphere to get away from urbanization, and posited that the Council and state government are bent on urbanizing the area. Mr. Young responded that there would be forthcoming discussion before the Council regarding the future of Anacortes development and invited all interested citizens to come forth and voice their concerns so that the Council could better serve citizen interests. Mr. Walters added that the Levy Lid Lift does go to the voters every time.

Mike Pearl of Anacortes mentioned some of the comments Mr. Walters made regarding the R4 zone and asserted that it was shameful that the Council did not listen to him or support him, and that there is a lot of work to be done on the zoning issue. He then described coming to Anacortes 38 years ago to find a small town where he could raise his two school-age children and find affordable housing. He mentioned his own experience working for Skagit Self-Help Housing as a supervisor to provide housing for families in Anacortes. He mentioned the unique character of one and two-story homes in Anacortes that still exists today and decried the

development of five-story buildings as faceless and impersonal, citing Fidalgo Flats as an example of what is to come in the area. He wondered if the appearance of Commercial Avenue would continue to be the welcoming one it is today or would it be all five-story buildings. He mentioned that the 2-3 blocks on either side of Commercial Avenue have family homes and small businesses that are part of a thriving community, asserting that the Council's recent decision regarding bonus height had opened the door to a cold, canyon-like, dystopian future. He accused the Council of only considering the future and not giving any value to the people who have made Anacortes what it is today.

Consent Agenda

CAROLYN MOULTON moved, seconded by JEREMY CARTER, to approve Consent Agenda items a.-d.
Vote: Ayes - JEREMY CARTER, ANTHONY YOUNG, RYAN WALTERS, CAROLYN MOULTON, AMANDA HUBIK. Nays - None. Abstentions: BRUCE MCDUGALL. Result: Passed

a. Minutes of March 20, 2023

b. Approval of claims in the amount of \$387,133.99

The following vouchers/checks were approved for payment:

EFT numbers: 105859 through 105895, total \$184,286.44

Check numbers: 105854 through 105905, total \$188,191.31

Wire transfer numbers: 321135 through 321473, total \$14,656.24

c. Street Fair Application - Procession of the Species Anacortes

d. Contract Award: Skyline Drainage and ADA Updates #23-119-TRN-001

Other Business

Contract Award / Program Update: Anacortes Family Center Social Worker Agreement #23-113-APD-001

Police Chief, Dave Floyd, introduced the Anacortes Family Center Social Worker Agreement #23-113-APD-001, asking for renewal of the agreement. He then introduced the Anacortes Family Center (AFC) Director, Dustin Johnson, who provided remarks on the Social Worker Agreement citing statistics on T Avenue clients who have found housing elsewhere. He provided details from the most recent quarterly report dated March 15, 2023, including 25 outreach activities meeting 151 clients, of which 53 of those clients were distinctly served. He reported that five of those clients were able to leave T Avenue for housing elsewhere, the demographics on T Avenue consist of one family with children and single adults who are most resistant to assistance, and the AFC's efforts to provide deep engagement with the individuals to get them needed resources, and the policies for assistance. He qualified that assistance is provided to those who are compliant with city ordinances for waste and illegal dumping, not stealing electricity, or openly engaging in drug use, and that AFC would do everything in their power to get those individuals into a better housing situation. He added that other service providers are not setting those boundaries and thus making it more difficult to effectively incentivize responsible behavior, though much work has been done to convince other service providers of the merits of a unified policy. He expressed hope that there would be an agreement on this matter.

Ms. Moulton asked for a definition of HMIS. Mr. Johnson responded that it stands for the Homeless Management Information System that is required by the Washington State Department of Commerce for any agency nationwide that provides services to homeless individuals that provides information on an individual's participation in the human and social services system and rates service providers' success rates in helping clients out of the system. Ms. Moulton followed up by asking for the definition of the Community Options Program Entry System (COPES) program. Mr. Johnson responded that it is a resource-intensive program supporting children around schools and behavioral health. Ms. Moulton mentioned the accountability piece of the system and that the results are tied to compliance, and that benefits are not being given out without consideration or requirements. Mr. Johnson expressed his frustration with the lack of coordination between agencies and the misinformation related to benefits being provided freely without accountability. He concluded that ultimately

this uncoordinated response is harmful to the cause of helping those who need it.

Mr. Young thanked Mr. Johnson for his regular updates and mentioned that there is no specific roadmap for handling the problem of homelessness and social challenges. He asked Mr. Johnson to expand on the AFC's services, especially around mental health in the wake of the pandemic, pointing out the lack of available resources and the limited resources being spent on law enforcement actions, incarceration and cleanup, in addition to provision of services. Mr. Johnson mentioned that significant portions of budgets should be reallocated to human services, as it is mostly a local issue that must be handled on that level. He added that document recording fees are the only budget allocations that are statutorily required to go towards human social services, of which Anacortes receives 25%. More specifically, the Anacortes Family Center receives less than 10% of those funds year over year, as he pointed out that there is no one who lives or works in Anacortes on the county committee responsible for the document recording fee funding outlays. He asserted that this, in addition to the misconception of Anacortes as a relatively affluent community, has caused an inherent geographic bias that prevents Anacortes service providers from receiving their fair share of the document recording fees. He recommended that the Council take steps to demonstrate to Skagit County that it is deserving of those outlays through a more open, thoughtful and thorough process. Mr. Walters mentioned that the first step is for the City to draft a Homeless Housing Plan that would justify the recapture of those monies. He pointed out the annual stipend mentioned in the contract will change in the near future, as the County is signaling a change in the way funds are allocated, and that we must be concerned with success immediately and efficiency in the longer term.

RYAN WALTERS moved, seconded by JEREMY CARTER, to approve Anacortes Family Center Social Worker Agreement #23-113-APD-001. Vote: Ayes - JEREMY CARTER, ANTHONY YOUNG, RYAN WALTERS, CAROLYN MOULTON, AMANDA HUBIK. Nays - None. Result: Passed

Ordinance 4044: Amending the Qualifications for the Utility Discount Program

Finance Director, Steve Hoglund, re-introduced Ordinance 4044: Amending the Qualifications for the Utility Discount Program. He reviewed the principal elements of the proposed ordinance, including changing the qualifying income guidelines from 150% of the federal poverty rate to 50% of the average family median income as published by the federal Department of Housing and Urban Development and raising the discount rate to 30% for qualifying households. He outlined new proposed language in section 3.50.030.D. which reads, "In a mixed use building where the non-qualifying use is not metered or distinguishable from the qualifying residential use, the program applies to the entire utility bill if the amount of floor area attributable to a qualifying residential use exceeds the amount of floor area for the non-qualifying use."

Ms. Moulton asked if this would only be for existing buildings or would new buildings have meters for every resident? Mr. Hoglund responded that this would be for both existing and new buildings. Ms. Moulton asked if a building were to be built with 50% units of affordable housing, would that building qualify? Mr. Hoglund responded affirmatively. Ms. Moulton mentioned this would be a significant investment in the community below 50% of the area median family income that needs assistance, and avoids the more costly scenario of helping a household that has been forced out of its home.

Mr. Walters pointed out that this revised subsection is a hack to compensate for the inability of the accounting software to proportionally apply the discount in a mixed-use building, and could be changed once the software is updated. He continued that the ordinance provides a program framework and gives the Council a means by which they can provide a break to those who need it and automatically enroll those who are participants in the disabled senior property tax exemption program through the county. He expressed hope that the Council would move it forward.

Mayor Pro Tempore Young invited the public to comment on the agenda item.

Ward MacKenzie of Anacortes expressed support for the program as a whole, but disapproved of the method for calculating the discount for a large building.

Mr. Walters expressed agreement with Mr. MacKenzie's comment and suggested that the Council move forward with the ordinance as currently presented and have the Council come back to change it once the accounting software is updated, though he would also consider deleting subsection D. entirely if that helped move forward the ordinance in this meeting. Mayor Pro Tem Young asked Mr. Hoglund for guidance on how to proceed. Mr. Hoglund acknowledged that the current verbiage for mixed-use buildings is not perfect due to the shortcomings of the accounting software and that the committee tried to err on the side of making it easier to qualify for the program. He offered that he could take it back to staff for further consideration at the committee level or the Council could move it forward at the current meeting.

Ms. Moulton asked how many buildings would be included under subsection D qualification criteria. Mr. Hoglund responded that he is not certain and that previously multi-family and commercial buildings were charged at the same utility rates. Mr. Walters reminded the Council that this has been an ongoing accounting problem since the multi-family category was introduced, and added that the buildings that would qualify would be the Anacortes Housing Authority and Anacortes Family Center.

At 7:17pm Mr. McDougall stated that he had joined the meeting via Zoom.

Ms. Moulton asked if there was a way to ensure that the Council would come back and re-visit the program once the software is updated. Mr. Hoglund estimated that the new software would be operational in about four years, and that he could place it on the Finance Committee agenda as a standing item to be reviewed periodically until the software is updated. Ms. Moulton expressed support for moving forward and coming back to re-visit the program once the accounting software was updated.

RYAN WALTERS moved, seconded by AMANDA HUBIK, to approve Ordinance 4044 with presented changes to section 3.50.030.D. Vote: Ayes - JEREMY CARTER, ANTHONY YOUNG, RYAN WALTERS, CAROLYN MOULTON, AMANDA HUBIK. Nays - None. Abstentions: BRUCE MCDUGALL Result: Passed

Ordinance 4045: Title 9 Update

City Attorney, Darcy Swetnam, introduced the first reading of Ordinance 4045: Title 9 Update, referring to a slide presentation that was added to the packet materials for the meeting. She then introduced Police Chief, Dave Floyd, who answered questions from the Council and the public.

Mr. Walters mentioned that this is one of a series of steps to address public order without depending on the state legislature. He also pointed out that it is important for the city prosecutor to be able to send people into therapeutic courts in order to access treatment and proposed adding a general provision encouraging the prosecutor to use therapeutic courts, or community courts, or other alternatives to prosecution, and is required to file a reason as to why therapeutic court is not a viable venue. Otherwise, the other option would be sending individuals to jail, which is costly and often unavailable due to capacity limitations. He added that the ordinance provides a framework for further revision and that the Council must get a handle on the drug problem in Anacortes through action in the near term.

Mr. Young mentioned the problem of drug abuse, addiction, and mental illness and its deleterious effects on families, citing the confusing labyrinth of services and administrative barriers to effective treatment. He added that a balance must be struck between compassion and enforcing the law, as these issues have an impact on the entire community. He asked the public for ideas, adding that the Council, committees and staff are listening and that no one has a comprehensive solution.

Mayor Pro Tempore Young invited the public to comment on the agenda item.

Dan Maul of Anacortes asked what changed in light of the *Blake* decision to prevent lawsuits from coming against the city if the police were to commence taking enforcement actions against individuals who violated the proposed code.

Ms. Swetnam responded that the *Blake* decision applies to state law and prohibits local jurisdictions from enforcing those provisions, but that it does not prevent Anacortes from drafting its own ordinances to address the issue. Mr. Walters added that the new crime included in the proposed ordinance is drug use in public, which is distinguishable from the *Blake* decision. Chief Floyd added that this ordinance will address public drug use and the deposit of drug paraphernalia, as these items represent a distinct health hazard to the community that warrants a criminal penalty.

Ms. Moulton asked about drug use in public related to sitting in a vehicle doing drugs and being spotted by police. Chief Floyd responded affirmatively that doing drugs on a public roadway in public view would be prohibited under this ordinance. Ms. Moulton then asked if this applied to the use of cannabis. Chief Floyd mentioned this would be a citation under a separate provision of the Revised Code of Washington as a civil infraction.

Mr. Young asked about the illegality of drug paraphernalia in public places. Chief Floyd responded that if there is a way to show who is responsible for depositing these items illegally, then it would be cited under the code. Mr. Walters mentioned that drug paraphernalia would be more difficult to enforce and that illegal drug use is not a victimless crime and that it has effects on the wider community. He added that the Council must do what it can to eliminate drug use and drug dealing in our community. Ms. Moulton expressed agreement with Mr. Walters, and added that enforcement is needed and will be a benefit to the community.

Mark McEathron of Anacortes expressed that the Council should move forward with this ordinance and asked if video evidence that was collected by cameras (public and private) would be adequate evidence for enforcement. Chief Floyd mentioned that this ordinance would not meet the misdemeanor presence rule. Mr. Walters asked if the police could take follow-up targeted enforcement action with the assistance of video evidence. Chief Floyd responded that would be possible with targeted enforcement by allowing law enforcement to know the identity of the perpetrators, and where and when the activity would be likely to occur.

Beth Bell of Anacortes asked a clarifying question about visual or recorded evidence not allowing police to uphold the law or ordinance. Mr. Walters responded that in the criminal justice system, people are represented by two separate, but equally important, groups. The defense attorney will argue that the video evidence is not what it appears to be, and that the prosecution must prove the case beyond reasonable doubt. In many instances, video evidence does not meet the burden of proof. He added that public support in exposing and eliminating drug houses is needed.

Ms. Swetnam summarized that the ordinance would be brought back before the Council in two weeks.

Ordinance 4046: An Interim Ordinance declaring an emergency and adopting a moratorium on the acceptance of certain Land Use, Building Permit and Business License applications in the Commercial, Central Business District, Marine Mixed Use, and Commercial Marine Use Zones Regarding Short Term Rentals in Residential Dwelling Units

Planning, Community, and Economic Development Director, Don Measamer introduced Ordinance 4046 that would declare an emergency and adopt a moratorium on the acceptance of certain Land Use, Building Permit and Business License applications in the Commercial, Central Business District, Marine Mixed Use, and Commercial Marine Use Zones for Short-Term rentals in Residential Dwelling Units. He defined short-term rentals as units that were rented for periods of less than 30 days and that the moratorium will allow the Council and city staff to analyze the impact of short-term rentals on the surrounding area. He qualified that this moratorium would not impact currently licensed short-term rentals, hotels and motels. He added that staff would return to the Council within 60 days for a public hearing and a workplan with a way forward. He mentioned receipt of one public comment from Evergreen Islands in support of the moratorium.

Mr. Walters mentioned that the Planning Committee drafted and supports this ordinance because new housing is being turned into short-term rentals, which is contrary to the Council's housing goals. He added that short-term rentals should pay full retail price for impact and commercial fees. He added that short-term rentals take away from the community, as they are only occupied on a seasonal basis by temporary residents who are not invested in the long-term health of the community. He pointed out that there could be a need for more hotels and motels and that residential development must be used for long-term residents and this ordinance plugs that hole in the code.

Ms. Moulton wondered if there could be something done separately from this ordinance to address individuals who have second, third or fourth homes in the city that are largely unoccupied and expressed support for the ordinance. Mr. Young pointed out that there must be a way to find a balance between the desire to have more visitors come to Anacortes and the need for long-term housing.

Mr. Measamer added that staff does recommend approval and that staff will come back in 60 days for a public hearing.

Mayor Pro Tempore Young invited the public to comment on the agenda item.

Brian Wetcher of Anacortes spoke to the Council on behalf of Evergreen Islands, mentioning that the organization had submitted a proposed amendment to the Comprehensive Plan to regulate short-term vacation rentals and support affordable housing, and that the organization supports this interim ordinance. He added that Tom Glade, the President of Evergreen Islands, had submitted a letter to the Council and that he hoped this issue would be solved in a way to allow the community to find the right balance between affordable housing and community values. He thanked Mr. Measamer for his decades of public service.

Mayor Pro Tempore Young acknowledged receipt of Mr. Glade's letter and thanked Mr. Measamer for his service.

CAROLYN MOULTON moved, seconded by AMANDA HUBIK, to approve Ordinance 4046 as presented. Vote: Ayes - JEREMY CARTER, ANTHONY YOUNG, RYAN WALTERS, CAROLYN MOULTON, AMANDA HUBIK. Nays - None. Abstentions: BRUCE MCDUGALL. Result: Passed

Adjournment

There being no further business, at approximately 8:05 p.m. the Anacortes City Council meeting of March 27, 2023 was adjourned.

The following claims against the City of Anacortes have been preaudited and certified by the Clerk-Treasurer as ready for City Council approval at the April 3, 2023 City Council meeting:
[Download this file in OpenDocument spreadsheet format.](#)

Invoice Doc #	Invoice Date	Invoice #	Vendor Full Name	Description	Total Amount	Approval Queue
321527	11/10/2022	IN1788632	MUNICIPAL EMERGENCY SERVICES	MINERAL BASE FLUID VEH #2934	\$ 144.19	dshop
321532	1/3/2023	223204	BLYTHE MECHANICAL, INC	REZNOR HEATER PUMP REPLACEMENT	\$ 1,875.73	pwfac
321865	2/1/2023	2/1/2023	ANACORTES FAMILY CENTER	SOCIAL WORKER AGREEMENT - FEBRUARY 2023	\$ 4,166.67	apd
321878	2/7/2023	617003	THE LIBRARY STORE, INC	BAR CODE LABELS	\$ 1,195.98	publib
321535	2/11/2023	ReimbDodds	DODDS, BRIAN	REIMBURSEMENT FOR CHAIR PART BOUGHT ON PERSONAL CC	\$ 22.77	medic
321863	2/28/2023	08-0223ANCTWQAP-P2	CONFLUENCE ENGINEERING GROUP L	WATER QUALITY ASSESSMENT AND PLANNING - FEBRUARY 2023	\$ 5,921.00	dwtpt
321864	2/28/2023	24325260	KIMLEY-HORN AND ASSOCIATES, IN	CAMPBELL LAKE WATER MAIN RELOCATION DESIGN & PROJECT MANAGEMENT	\$ 1,685.00	dwtpt
321746	3/3/2023	17092 - 25	H W LOCHNER, INC	R AVENUE LONG-TERM IMPROVEMENT PROJECT - ENGINEERING - 2/4/23-2/10/23	\$ 35,230.71	pw1
321663	3/6/2023	404993	MUSCO SPORTS LIGHTING LLC	PARKS MAINTENANCE SUPPLIES	\$ 789.55	parks1
321861	3/7/2023	359812	DEPT OF LABOR & INDUSTRIES	WTP BOILER/PRESSURE VESSEL INSPECTIONS	\$ 209.30	dwtpt
321664	3/7/2023	8333	WASHINGTON RECREATION	PARKS STAFF CONFERENCE FEE	\$ 199.00	parks1
321841	3/10/2023	10988556	WORLD WIDE TECHNOLOGY, LLC	OPTICAL FIBER DISTRIBUTION CLOSURE	\$ 12,227.11	fiber
321747	3/10/2023	89697	RH2 ENGINEERING, INC	WATER METER ANTENNA DESIGN - THROUGH FEBRUARY 26, 2023	\$ 1,362.74	dwtpt
321656	3/10/2023	SUPMTL FEB2023	SKAGIT LAW GROUP, PLLC	PROSECUTION SERVICES - SUPMLT 2/2023	\$ 1,100.00	attorney
321851	3/13/2023	0524	FIDALGO CLEANING	APD CLEANING & SUPPLIES	\$ 800.00	apd
321842	3/13/2023	9331209994	GRAYBAR ELECTRIC COMPANY, INC	MICRO-DUCT	\$ 36,293.65	fiber
321594	3/13/2023	RE 41 JZ1797 L001	WASHINGTON STATE DEPARTMENT	PERMIT - INSTALL OAK HARBOR FIBER	\$ 464.34	wdist
321528	3/14/2023	1986054	MILES SAND & GRAVEL CO.	5/8" ROCK FOR STOCKPILE	\$ 97.92	dshop
321537	3/14/2023	9506717246	TELEFLEX LLC	3 NEEDLE SIZES, SETS	\$ 2,695.50	medic

Invoice Doc #	Invoice Date	Invoice #	Vendor Full Name	Description	Total Amount	Approval Queue
321583	3/15/2023	1986170	MILES SAND & GRAVEL CO.	GRAVEL FOR STOCKPILE	\$ 1,272.96	dshop
321847	3/15/2023	3832	SKAGIT 911	SKAGIT 911 USER-FEE AND LAW RADIO INFRASTRUCTURE; 2ND QTR 2023	\$ 73,381.00	apd
321536	3/15/2023	3833	SKAGIT 911	2ND QTR RADIO/INFRASTRUCTURE MAINTENANCE	\$ 9,434.00	medic
321529	3/16/2023	1986355	MILES SAND & GRAVEL CO.	1 1/4" ROCK FOR STOCKPILE	\$ 212.16	dshop
321539	3/17/2023	1018	WHATCOM COUNTY FIRE	CLASS: LEADING THE FIREGROUND (GH)	\$ 40.00	medic
321742	3/20/2023	0655803-IN	REISNER DISTRIBUTOR INC	MAINTENANCE SUPPLIES	\$ 483.99	dwwtp
321838	3/20/2023	1154635597	WILSON DDS, NICHOLAS J	DENTAL SERVICES, LEOFF1 RETIREE, D. MEAD	\$ 326.00	hr
321534	3/20/2023	230337	T-SHIRTS BY DESIGN	ANNUAL T-SHIRT, SHORTS ORDER	\$ 4,969.98	medic
321655	3/20/2023	272980	ENNIS-FLINT, INC, FLINT TRADING DIVISION	IGNITION PARTS	\$ 128.40	dshop
321586	3/20/2023	42702	ZUMAR INDUSTRIES, INC.	STREET SIGNS	\$ 596.72	dshop
321850	3/21/2023	038 200 0000 2	CASCADE NATURAL GAS CORP.	APD 2/16 - 3/20/23	\$ 1,800.85	apd
321839	3/21/2023	1154635597	WILSON DDS, NICHOLAS J	DENTAL SERVICES, LEOFF1 RETIREE, D. MEAD	\$ 1,380.00	hr
321753	3/21/2023	1200508654	HDR ENGINEERING, INC	WATER MODELING SUPPORT AND ROCK RIDGE BOOSTER PS EVALUATION - 01/29 - 02/25/23	\$ 2,277.37	dwwtp
321585	3/21/2023	14286119	PAPE MACHINERY INC.	SWITCH VEH #410	\$ 106.15	dshop
321876	3/21/2023	154 700 0000 9	CASCADE NATURAL GAS CORP.	LIBRARY 2/16-3/20/2023	\$ 2,257.25	publib
321854	3/21/2023	169 400 0000 9	CASCADE NATURAL GAS CORP.	STA 2: 2/16 - 3/20/23	\$ 398.99	medic
321857	3/21/2023	199 800 0000 4	CASCADE NATURAL GAS CORP.	R AVENUE 2/16-2/28/23	\$ 494.54	museum
321666	3/21/2023	260 037 3822 1	CASCADE NATURAL GAS CORP.	611 R AVENUE 02/16-3/20/23	\$ 655.85	parks1
321670	3/21/2023	304 713 4234 2	CASCADE NATURAL GAS CORP.	607 R AVE SERVICE DATES 02/16-3/20/23	\$ 13.83	parks1
321669	3/21/2023	440 400 0000 0	CASCADE NATURAL GAS CORP.	FIDALGO CENTER 02/16-3/20/23	\$ 978.19	parks1
321750	3/21/2023	52455	KRIEG CONSTRUCTION, INC	TACK	\$ 456.96	dshop
321671	3/21/2023	538 000 0000 1	CASCADE NATURAL GAS CORP.	411 HILLCREST DR. 02/16-3/20/23	\$ 95.99	parks1
321667	3/21/2023	638 000 0000 0	CASCADE NATURAL GAS CORP.	411 HILLCREST DR. #B, 02/16-3/20/23	\$ 109.82	parks1
321853	3/21/2023	674 400 0000 7	CASCADE NATURAL GAS CORP.	STA 1: 2/16 - 3/20/23	\$ 493.29	medic
321582	3/21/2023	795 700 0000 4	CASCADE NATURAL GAS CORP.	CITY HALL 2/16-3/20/23	\$ 1,810.93	finance

Invoice Doc #	Invoice Date	Invoice #	Vendor Full Name	Description	Total Amount	Approval Queue
321848	3/21/2023	8359	ANACORTES TOWING, LLC	TOWING; APD CASE 23-A01743	\$ 345.98	apd
321858	3/21/2023	912 800 0000 0	CASCADE NATURAL GAS CORP.	CARNEGIE 02/16-2/28/23	\$ 615.74	museum
321668	3/21/2023	917 600 0000 9	CASCADE NATURAL GAS CORP.	1915 13TH ST. 02/16-3/20/23	\$ 304.69	parks1
321867	3/21/2023	INV-33837	POWERDMS, INC	POLICE POLICY MANUAL & ACCREDITATION MANAGEMENT - 5/19/23-5/18/24	\$ 6,983.82	apd
321752	3/21/2023	INV057626	TRAFFIC SAFETY SUPPLY CO. INC	ROADMARKERS- WATER DEPT	\$ 1,381.15	wdist
321654	3/21/2023	SDW_PSI06694	WOOD'S LOGGING SUPPLY	PARTS #11961	\$ 137.71	dshop
321836	3/22/2023	1598873770	MARKER DDS, TIMOTHY J	LEOFF1 DENTAL SERVICES, R. COUSINS	\$ 291.00	hr
321533	3/22/2023	230341	T-SHIRTS BY DESIGN	UNIFORM- WATER DEPT	\$ 69.63	wdist
321584	3/22/2023	589664	HUGHES FIRE EQUIPMENT, INC.	LOW COOLANT PROBE #221	\$ 103.80	dshop
321855	3/22/2023	AN 855916	CENTRAL WELDING SUPPLY CO, INC	O2 FOR AMBULANCES	\$ 72.59	medic
321531	3/22/2023	E202303220014	SIMPLIFILE, LC	WEIDEMANN GUEMES CHANNEL TRAIL EASEMENT	\$ 219.38	legal
321868	3/22/2023	GC0010247	CODE PUBLISHING, LLC	CODIFICATION SERVICES	\$ 97.92	legal
321657	3/22/2023	I6344878	HD FOWLER COMPANY INC	WATER INVENTORY	\$ 1,181.75	wdist
321856	3/22/2023	INV22275	SEAWESTERN, INC.	PPE: MM, JB, MC	\$ 13,208.14	medic
321587	3/23/2023	112742	WALTON BEVERAGE COMPANY, INC	OPS BREAKROOM SUPPLY	\$ 280.50	dshop
321595	3/23/2023	112768	WALTON BEVERAGE COMPANY, INC	CITY HALL BREAK ROOM SUPPLIES	\$ 550.00	finance
321744	3/23/2023	112771	WALTON BEVERAGE COMPANY, INC	WTP BREAKROOM SUPPLIES	\$ 73.50	dwtp
321837	3/23/2023	1598873770	MARKER DDS, TIMOTHY J	LEOFF1 DENTAL SERVICES R. COUSINS	\$ 627.00	hr
321835	3/23/2023	223	ADVANTAGE WINDOW COVERINGS	REPLACEMENT BLIND FOR MAIN FLOOR CONFERENCE ROOM @ CITY HALL	\$ 249.15	pwfac
321658	3/23/2023	273060	ENNIS-FLINT, INC, FLINT TRADING DIVISION	Q30 VG 12" WHITE LINE	\$ 1,729.38	dshop
321834	3/23/2023	337091	BAY CITY SUPPLY	FACILITY SUPPLIES	\$ 668.26	pwfac
321751	3/24/2023	0154237-IN	SWS EQUIPMENT	PARTS- #515	\$ 162.18	dshop
321661	3/24/2023	02/28/2023	OLSEN TREE SERVICE	PARKS MAINTENANCE WORK	\$ 2,937.60	parks1
321665	3/24/2023	03/24/2023	NEEL, SIDNEY	REC EVENT SERVICES	\$ 500.00	pkrec
321748	3/24/2023	19172	TRANSPORTATION SOLUTIONS INC	32ND AND M INTERSECTION - DESIGN - FEB 16 - MAR 15, 2023	\$ 3,733.54	pw1

Invoice Doc #	Invoice Date	Invoice #	Vendor Full Name	Description	Total Amount	Approval Queue
321672	3/24/2023	2023 DMCMA CONF.	DMCMA TREASURER	INCIDENTAL FEE FOR DMCMA COURT CONFERENCE - MAY 7 - 10	\$ 280.00	court
321659	3/24/2023	224478	LAKESIDE INDUSTRIES, INC.	PARKS MAINTENANCE SUPPLIES	\$ 173.43	parks1
321662	3/24/2023	LTAC Raceweek	WHIDBEY ISLAND RACE WEEK LLC	LTAC RACEWEEK I	\$ 4,881.25	finance
320746	3/24/2023	WA33-00935563	MOTION INDUSTRIES, INC	MAINTENANCE SUPPLIES - INCINERATOR	\$ 1,719.61	dwwtp
321846	3/25/2023	00005W5A83123	UNITED PARCEL SERVICE, INC	UPS SHIPPING CHARGES; WEEK ENDING 3-25-23	\$ 23.24	apd
321871	3/25/2023	000087	HUNTER, JOSHUA	BLS OTEP TRAINER - FEBRUARY AND MARCH 2023	\$ 550.00	medic
321875	3/26/2023	75194064	INGRAM LIBRARY SERVICES, LLC	INGRAM ADULT BOOKS	\$ 334.21	publib
321743	3/27/2023	0298840-IN	REISNER DISTRIBUTOR INC	INCINERATOR FUEL	\$ 2,164.09	dwwtp
321845	3/27/2023	8263-1	ANACORTES TOWING, LLC	TOWING; APD CASE 23-A01950	\$ 169.73	apd
321844	3/27/2023	8263-2	ANACORTES TOWING, LLC	TOWING; APD CASE 23-A01971	\$ 182.78	apd
321843	3/27/2023	M23-C90071	IAPE	IAPE ANNUAL MEMBERSHIP; EVID CUSTODIAN NEWSOM	\$ 65.00	apd
321874	3/28/2023	22-186-SEW-0021	HECKMAN INC	RETAINAGE RELEASE	\$ 2,117.30	pw1
321860	3/28/2023	MARCH 2023	KORTERUD, WAYNE D	INDIGENT SCREENING	\$ 415.00	court
321862	3/28/2023	S202310488	SUPERIOR SYSTEMS, INC	WWTP INCINERATOR SCRUBBER ACCESS DOORS	\$ 33,857.47	dwwtp
321852	3/28/2023	SkagitCommonsTrust	SKAGIT COMMONS	RETURN TRUST DEPOSIT	\$ 7,500.00	finance
	Total				\$ 301,613.90	



City Council Contract Agenda Bill

Meeting Date: 4/3/2023

Subject: Contract Award – WWTP Odor Control Heat Trace Project - Insulation Installation #23-115-SEW-001

Item Summary:

City staff seeks City Council consent to award a contract in the amount of \$48,669.00 to Heckman Inc. perform the installation of insulation for the WWTP Odor Control Heat Trace Project.

Background:

1. **History:** The heat trace is installed on plumbing throughout the facility to protect against liquids freezing which leads to broken pipes and valving. The WWTP has experienced some failures of the system and is systematically replacing one area at a time, including in the Odor Control Chemical Storage Facility, which has exceeded its life expectancy. VECA Electric & Technologies will be performing the installation of the electrical components of the project under a separate contract for a not-to-exceed amount of \$43,500.00.
2. **Key Terms:**
 - Contract is on a time and materials basis not-to-exceed \$48,669.00.
 - The Contractor shall complete the work by December 31, 2023.
3. **Competitive Bidding:** In accordance with competitive bid requirements set forth under RCW 35.23.352 the project cost is under the competitive requirements and thus the Project Manager evaluated contractors and chose to contract with Heckman Inc.

Budget Impact:

Contractor	Heckman Inc.
Contract Amount	\$48,669.00
Earmarked Funds	\$125,000.00
BARS #	440.750.535.83.48 & 440.750.535.83.31
Budget Amendment Required?	No
Start Date	Notice to Proceed
End Date	12/31/23

Previous Council/Committee Action: N/A

Recommended Motion: I move that City Council authorize the Mayor to sign contract 23-115-SEW-001 with Heckman Inc. in the amount of \$48,669.00 to perform the WWTP Odor Control Heat Trace Project - Insulation Installation.

Alternative Actions: Not award the contract



CONTRACT #23-115-SEW-001
AGREEMENT WITH
HECKMAN INC.

This Contract is between the City of Anacortes, Washington, a Municipal Corporation (herein after referred to as "City") and HECKMAN INC., a private contractor at 29020 4th Avenue NW, Stanwood, WA 98292 (herein after referred to as "Contractor").

PROJECT
**WWTP ODOR CONTROL HEAT TRACE PROJECT - INSULATION
INSTALLATION**

1. **Scope of Work:** Contractor shall furnish all materials, equipment and labor to perform the installation of insulation for the WWTP Odor Control Heat Trace Project at the Anacortes Wastewater Treatment Plant (WWTP), 500 T Avenue, Anacortes, WA 98221. Contractor will insulate approximately 700' of 2" pipe & 200' of 6" pipe with fiberglass, aluminum jacket and stainless-steel straps and custom fabricate 16ea removeable blankets for the odd shaped equipment.
2. **Contract Price:** The Contractor will perform the scope of work above on a time and materials basis not-to-exceed **Forty-Eight Thousand Six Hundred Sixty-Nine Dollars (\$48,669.00)**. This includes all mobilization, demobilization, labor, materials, standard freight, 8.8% sales tax, and administrative overhead for the project. Before any payment is made by the City of Anacortes of sums under this contract, the contractor must provide a copy of the statement of *Intent to Pay Prevailing Wage* approved by the Department of Labor and Industries. Pursuant to RCW Chapter 60.28, a sum of five percent (5%) of the monies earned by the contractor will be retained.
3. **Bonds:** Pursuant to RCW 39.08.010, the Contractor shall provide the City a performance bond and payment bond for the full contract amount to be in effect as detailed in the incorporated General Provisions. The City may at its option release the bonds once all the conditions of RCW 39.08.010-1a have been discharged.
4. **Time of Completion:** The Contractor shall complete the work by December 31, 2023.
5. **Project Management.** Coordination and scheduling of the work, materials, and equipment shall be made with the Project Manager Steve Doeblner (360)-299-1504.
6. **Contract Requirements:** As detailed in the General Provisions, Contractor must have a valid contractor license number, insurance, and City of Anacortes business license. **Prevailing Wage Law Applies.** Forms Needed: 1) Proof of Insurance with Additional Insured Endorsements; 2) Intent to Pay Prevailing Wage; 3) Affidavit of Wages Paid; 4) Performance Bond; 5) Payment Bond; 6) Certification of Compliance with Wage Payment Statutes.
7. **Contract Documents:** The attached General Provisions are included in this Contract Agreement.

The parties acknowledge that there has been an opportunity to negotiate the terms and conditions of this Agreement and agree to each bind itself, its partners, successors, assigns, and legal representatives to the other party hereto, in respect of all covenants, agreements, and obligations contained in the Contract Documents. Each of the persons signing below on behalf of any party hereby represents and warrants that they are signing with full and complete authority to bind the party on whose behalf of whom they are signing, to each and every term of this Agreement.

Owner:

City of Anacortes

Mayor

Date

Contractor:

HECKMAN INC.

Date

Contractor License #

1. WASHINGTON STATE PREVAILING WAGES: Washington State Prevailing Wages apply to all Work. The Contractor and any of its Subcontractors are required to pay their laborers and mechanics minimum wage in compliance with Washington State Prevailing Wage Laws. Before any payment is made by the City of Anacortes of any sums under this contract, the contractor and each subcontractor must provide the City with a copy of the statement of *Intent to Pay Prevailing Wages* approved by the Washington State Department of Labor and Industries (L&I) (*ONE (1) filed per contractor and each subcontractor per contract*). Following contract completion, the City will not release any funds retained, according to the provisions of RCW 60.28.010, until the contractor and each subcontractor has provided the City a copy of the *Affidavit of Wages Paid* approved by L&I (*ONE (1) filed per contractor and each subcontractor per contract*). L&I provides the wage forms. ***All costs associated with such fees shall be included in the Contract price as part of the fixed costs of overhead for this Contract, including any anticipated subcontractor filing fees. Any change in the fee by L&I will not be grounds for revision in the Contract Amount. The City will only pay for the actual cost charged by L&I for the filing of the intent and affidavit.***

For contracts in excess of \$10,000, the contractor must post in a conspicuous place at the job site, a copy of the statement of *Intent to Pay Prevailing Wages* approved by L&I and the address and phone number of the Industrial Statistician where complaints or inquiries may be made. The City will refer any dispute regarding the prevailing rate of wage to L&I for arbitration.

The State of Washington prevailing wage rates applicable for this public works project, which is located in Skagit County, may be found at the following website address of the Department of Labor and Industries: <https://secure.lni.wa.gov/wagelookup/>. The prevailing wage schedule in effect for the work under the contract will be the one in effect upon the date of execution of the contract. A copy of the applicable prevailing wage rates are also available for viewing at the office of the City, located at 904 6th Street, Anacortes, WA. Upon request, the City will mail a hard copy of the applicable prevailing wages for this project.

At least once a month Contractor must file weekly certified payroll reports online with the Washington Department of Labor and Industries as required by RCW 39.12.120.

2. Performance and Payment Bonds. The City is required by RCW 39.08.010, with limited exceptions, to obtain both a Performance and a Payment bond for each public works project. The City requires separate Performance and Payment bonds for 100% of the contract amount furnished on bond forms standardized by the City Attorney's office. The bonds must meet the following provisions:

- Be for the full amount of the project, including tax.
- Name City of Anacortes as the obligee.
- List the correct Project Name and Project Number.
- Be signed by both the surety (the Attorney in Fact) and the Contractor.
- Be issued by a surety authorized to do business in the State of Washington (listed on the Insurance Commissioners website) and which meets the AM Best Rating required in the Contract Documents. If no requirement exists, a minimum of AM Best Rating A-7 or better will be required.

Release of Bonds - Bonds will not be released until the project has been completed and finally accepted.

Performance Bonds – Performance Bonds will be released at the end of the warranty period or twelve months after the date of final acceptance, whichever is later. The City may at its option release the bond once all the conditions of RCW 39.08.010-1a have been discharged.

Payment Bonds – Payment Bonds will be released either 45 days after final acceptance of the project or upon receipt of releases from the Washington Department of Revenue, Washington Employment Security Department, and the Washington Department of Labor and Industries, whichever is later. Release is contingent on the fact that no claims against the bond have been filed prior to the 45 day mark. If claims have been filed against the bond, it will not be released until the claims have been resolved.

Exceptions – On projects \$150,000 and under, the Contractor can, in lieu of providing a performance and payment bond, request to have the City withhold 10% of monies earned on the project for a period of 30 days after final acceptance of the completed work or until receipt of all necessary releases from the Washington Department of Revenue, Washington Employment Security Department, and the Washington Department of Labor and Industries and settlement of any liens filed under Chapter 60.28 RCW, whichever is later. This exception is dependent on pre-approval by the City Attorney, and the City reserves the right to reject requests to waive the bond requirements.

3. Retainage. Pursuant to RCW Chapter 60.28, a sum of five percent (5%) of the monies earned by the Contractor will be retained. The Contractor may elect to execute a Retainage Bond. The bond must be furnished on a bond form standardized by the City Attorney's office and issued by a surety currently authorized by the State Insurance Commissioner to do business in Washington State. Retainage will be released 45 days after Final Acceptance, provided that the following has occurred:

- a. All liens placed against the project have been released.
- b. For projects over \$35,000, releases from the Washington Department of Revenue, Washington Employment Security Department, and the Washington Department of Labor and Industries have been received.

Note: If the City has approved the Contractor's request to waive the bond requirements, the City will withhold a total of 10% of the monies earned for a period of 30 days after Final Acceptance of the completed work, or until receipt of all necessary releases from the Washington Department of Revenue, Washington Employment Securities Department, and the Washington Department of Labor and Industries, and settlement of any liens filed under Chapter 60.28 RCW, whichever is later.

4. Final Acceptance. Final Acceptance is defined as the date on which the City accepts the Work as complete, as indicated by notice issued by the City. For the purposes of the retainage statute (RCW 60.28.011), "completion of all contract work" is the same as the date of Final Acceptance. The following events must occur before the City will issue Final Acceptance:

- a. The physical Work on the project must be complete and accepted by the Project Manager; and
- b. The Contractor must submit to the City, and secure City approval of, all documentation required by the Contract and required by law, including but not limited to:
 - i. Invoices for all Work;
 - ii. Copies of the "Affidavit of Prevailing Wages Paid" as approved by L&I for the Contractor and all Subcontractors; and
 - iii. Any additional documentation required by the Contract.

5. Penalties for Noncompliance. If Contractor does not provide "Affidavit of Prevailing Wages Paid" to the City, the City may withhold any or all payments until required documentation is received. In addition, failure to provide "Intent to Pay Prevailing Wage" or "Affidavit of Wages Paid" may result in other sanctions as provided by State laws (RCW 39.12.050) and/or Federal regulations (29 CFR 5.12).

6. Subcontracts. The Contractor shall not subcontract the Scope of Work ("Work") unless the Project Manager approves in writing. If the Project Manager requests, the Contractor shall provide proof that the Subcontractor has the experience, ability, and equipment the Work requires. "Subcontractor" means an individual, partnership, firm, corporation, or joint venture who is sublet part of the Contract by the Contractor. Each request to subcontract shall include the following information (i) a description of the supplies or services to be subcontracted, (ii) identification of the type of subcontract to be used (iii) identification of the proposed subcontractor, (iv) proposed subcontract price, (v) identification of the percentage of work to be performed by subcontract. Approval of subcontract shall not:

- a. Relieve the Contractor of any responsibility to carry out the Contract,
- b. Relieve the Contractor of any obligations or liability under the Contract and the Contractor's bond,
- c. Create any contract between the City and the Subcontractor, or
- d. Convey to the Subcontractor any rights against the City.

As required by RCW 39.06.020, the Contractor must verify responsibility criteria for each first tier subcontractor, and a subcontractor of any tier that hires other subcontractors must verify responsibility criteria for each of its subcontractors. Verification is to include that, at the time of subcontract execution, each subcontractor meets the responsibility criteria listed in RCW 39.04.350(1) and additionally - if applicable - possesses an electrical contractor license or an elevator contractor license. This verification requirement, as well as the responsibility criteria, must be included in every public works contract and subcontract of every tier. Contractor remains fully responsible for obligations, services, and functions performed by its subcontractors to the same extent as if such obligations, services, and functions were performed by Contractor's employees, and for purposes of the Agreement such work will be deemed work performed by Contractor. The Contractor shall give immediate written notice of any action or suit filed and prompt notice of any claim made against the Contractor by any subcontractor or vendor that, in the opinion of the Contractor, may result in litigation related in any way to this contract, with respect to which the Contractor may be entitled to reimbursement from the City.

If dissatisfied with any part of the subcontracted Work, the Project Manager may request in writing that the Subcontractor be removed. The Contractor shall comply with this request at once and shall not employ the Subcontractor for any further Work under the Contract.

7. Job Safety & COVID-19 Safety Requirements Compliance. The Contractor, and its subcontractors of any tier, shall comply with all Washington Dept. of Labor & Industries safety standards, as well as comply with all current and future COVID-19 proclamations, regulations, requirements and/or related guidance issued by the Office of the Governor of Washington State and Office of the Mayor of the City of Anacortes as it may relate to City of Anacortes projects.

8. Taxes. The City will pay sales and use taxes imposed on goods or services acquired hereunder as required by law. The Contractor must pay all other taxes including, but not limited to: Business and Occupation Tax, taxes based on the Contractor's gross or net income, or personal property to which the City does not hold title. The City is exempt from Federal Excise Tax. Where applicable the City shall furnish a Federal Excise Tax Exemption certificate.

9. Invoicing. All invoices shall at a minimum include: Company Name, Invoice Date, Due Date (30 days), Invoice Number, **Agreement Number**, and Price. The Contractor must allow 30 calendar days from receipt of the invoice for payment. **If requested by the City the Contractor shall provide a cost breakdown of charges.** Invoices may be sent by US mail to City of Anacortes, Accounts Payable, PO Box 547, Anacortes, WA 98221, or by email to accountspayable@cityofanacortes.org. Contractors may complete a City furnished ACH/EFT form to receive electronic payments directly to their financial institution. The City shall notify the Contractor within fifteen (15) calendar days from

receipt of invoice if there are any objections or disputes with the invoice. The Contractor shall then resubmit a new invoice less the disputed amount and payment shall be made within 30 calendar days. Any disputed amounts may be submitted under the Disputes clause contained herein.

10. Withholding Payment. In the event the City determines that the Contractor has failed to perform any obligation under this Contract within the times set forth in this Contract, then the City may withhold from amounts otherwise due and payable to Contractor the amount determined by the City as necessary to cure the default, until the Contracting Officer determines that such failure to perform has been cured. Withholding under this clause shall not be deemed a breach entitling Contractor to terminate or damages, provided that the City promptly gives notice in writing to the Contractor of the nature of the default or failure to perform, and in no case more than 8 days after it determines to withhold amounts otherwise due. A determination of the City Attorney set forth in such notice to the Contractor of the action required and/or the amount required to cure any alleged failure to perform shall be deemed conclusive, except to the extent that the Contractor acts within the times and in strict accord with the provisions of the Disputes clause of this Contract. The City may act in accordance with any determination of the City Attorney which has become conclusive under this clause, without prejudice to any other remedy under the Contract, to take all or any of the following actions: (1) cure any failure or default, (2) to pay any amount so required to be paid and to charge the same to the account of the Contractor, (3) to set off any amount so paid or incurred from amounts due to become due the Contractor. In the event the Contractor obtains relief upon a claim under the Disputes clause, no penalty or damages shall accrue to Contractor by reason of good faith withholding by the City under this clause.

11. Final Payment: Waiver of Claim. The contractor's acceptance of final payment (excluding withheld retainage) shall constitute a waiver of claims, except those previously and properly made and identified by the contractor as unsettled at the time request for final payment is made.

12. Inspection.

A. Of the Work: All materials furnished and work done shall be subject to inspection. The City Project Manager administering the Contract shall at all times have access to the work wherever it is in progress or being performed, and the Contractor shall provide proper facilities for such access and inspection. Such inspection shall not relieve the Contractor of the responsibility of performing the work correctly, utilizing the best labor and materials in strict accordance with the Specifications of the Contract. All material or work approved and later found to be defective shall be replaced without cost to the City.

B. Project Manager's Authority: The Project Manager shall have power to reject materials or workmanship which do not fulfill the requirements of these Specifications, but in case of dispute the Contractor may appeal to the City Attorney whose decision shall be final. The Contract shall be carried out under the general control of the representative of the City administering the Contract, who may exercise such control over the conduct of the work as may be necessary, in their opinion, to safeguard the interest of the City. The Contractor shall comply with any and all orders and instructions given by the representative of the particular Department administering the Contract in accordance with the terms of the Contract. Nothing herein contained, however, shall be taken to relieve the Contractor of their obligations or responsibilities under the Contract.

13. New and Unused. All units, equipment, parts and material shall be new, unused, manufacturer's current model year and in current production and shall meet any current applicable regulations and/or codes. All materials shall have physical and chemical properties to withstand the intended purpose. Equipment design shall have sufficient excess capacity for durability and safety.

14. Warranty. The Contractor shall return to the project and repair or replace all defects in workmanship and material discovered within one year after Final Acceptance of the Work, including any necessary labor and materials. The Contractor shall start work to remedy any such defects within 7 calendar days of receiving City's written notice of a defect, and shall complete such work within the time stated in the City's notice. In case of an emergency, where damage may result from delay or where loss of services may result, such corrections may be made by the City's own forces or another contractor, in which case the cost of corrections shall be paid by the Contractor. In the event the Contractor does not accomplish corrections within the time specified, the work will be otherwise accomplished and the cost of same shall be paid by the Contractor. For one year after acceptance of any corrections by the City the Contractor shall be responsible for correcting all defects in workmanship and materials in the corrected work. In addition, the Contractor shall obtain and submit to the City any necessary documentation to secure any extended manufacturer's warranty and warranty terms. This guarantee is supplemental to and does not limit or affect the requirements that the Contractor's work comply with the requirements of the Contract or impact any other legal rights or remedies of the City.

15. Indemnification / Hold Harmless. The Contractor shall defend, indemnify and hold the City, its officers, officials, employees and volunteers harmless from any and all claims, injuries, damages, losses or suits including attorney fees, arising out of or in connection with the performance of this Agreement, except for injuries and damages caused by the sole negligence of the City. However, should a court of competent jurisdiction determine that this Agreement is subject to RCW 4.24.115, then, in the event of liability for damages arising out of bodily injury to persons or damages to property caused by or resulting from the concurrent negligence of the Contractor and the City, its officers, officials, employees, and volunteers, the Contractor's liability hereunder shall be only to the extent of the Contractor's negligence. It is further specifically and expressly understood that the indemnification provided herein constitutes the Contractor's waiver of

immunity under Industrial Insurance, Title 51 RCW, solely for the purposes of this indemnification. This waiver has been mutually negotiated by the parties. The provisions of this section shall survive the expiration or termination of this Agreement.

16. Insurance.

A. Insurance Term: The Contractor shall procure and maintain insurance, as required in this Section, without interruption from commencement of the Contractor's work through the term of the contract and for thirty (30) days after the Physical Completion date, unless otherwise indicated herein.

B. No Limitation: The Contractor's maintenance of insurance, its scope of coverage and limits as required herein shall not be construed to limit the liability of the Contractor to the coverage provided by such insurance, or otherwise limit the City's recourse to any remedy available at law or in equity.

C. Minimum Scope of Insurance: The Contractor's required insurance shall be of the types and coverage as stated below:

1. Automobile Liability insurance covering all owned, non-owned, hired and leased vehicles. Coverage shall be at least as broad as Insurance Services Office (ISO) form CA 00 01.
2. Commercial General Liability insurance shall be as least as broad as ISO occurrence form CG 00 01 and shall cover liability arising from premises, operations, independent contractors, products-completed operations, stop gap liability, personal injury and advertising injury, and liability assumed under an insured contract. The Commercial General Liability insurance shall be endorsed to provide a per project general aggregate limit using ISO form CG 25 03 05 09 or an equivalent endorsement. There shall be no exclusion for liability arising from explosion, collapse or underground property damage. **The City of Anacortes and its officers, elected officials, employees, agents, and volunteers shall be named as an additional insured** under the Contractor's Commercial General Liability insurance policy with respect to the work performed for the City using ISO Additional Insured endorsement CG 20 10 10 01 and Additional Insured-Completed Operations endorsement CG 20 37 10 01 or substitute endorsements providing at least as broad coverage.
3. Worker's Compensation coverage as required by the Industrial Insurance laws of the State of Washington.

D. Minimum Amounts of Insurance: The Contractor shall maintain the following insurance limits:

1. Automobile Liability insurance with a minimum combined single limit for bodily injury and property damage of \$1,000,000 per accident.
2. Commercial General Liability insurance shall be written with limits no less than \$2,000,000 each occurrence, \$2,000,000 general aggregate and \$2,000,000 products-completed operations aggregate limit.

E. City Full Availability of Contractor Limits: If the Contractor maintains higher insurance limits than the minimums shown above, the City shall be insured for the full available limits of Commercial General and Excess or Umbrella liability maintained by the Contractor, irrespective of whether such limits maintained by the Contractor are greater than those required by this contract or whether any certificate of insurance furnished to the City evidences limits of liability lower than those maintained by the Contractor.

F. Other Insurance Provision: The Contractor's Automobile Liability and Commercial General Liability insurance policies are to contain, or be endorsed to contain, that they shall be primary insurance as respect the City. Any insurance, self-insurance, or self-insured pool coverage maintained by the City shall be excess of the Contractor's insurance and shall not contribute with it.

G. Acceptability of Insurers: Insurance is to be placed with insurers with a current A.M. Best rating of not less than A:VII.

H. Verification of Coverage: The Contractor shall furnish the City with original certificates and a copy of the amendatory endorsements, including but not necessarily limited to the additional insured endorsements, evidencing the insurance requirements of the Contractor **within 10 days of contract execution and before scheduling of the work**. Upon request by the City, the Contractor shall furnish certified copies of all required insurance policies, including endorsements, required in this contract and evidence of all subcontractors' coverage. Failure of the City to demand such verification of coverage with these insurance requirements or failure of the City to identify a deficiency from the insurance documentation provided shall not be construed as a waiver of Contractor's obligation to maintain such insurance.

Verification of coverage shall include:

1. An ACORD certificate or a form determined by the City to be equivalent.
2. Copies of all endorsements naming the City as additional insured, showing the policy number. The Contractor may submit a copy of any blanket additional insured clause from its policies instead of a separate endorsement.
3. Any other amendatory endorsements to show the coverage required herein.
4. **A notation of coverage enhancements on the Certificate of Insurance shall not satisfy these requirements – actual endorsements must be submitted.**

I. Subcontractors' Insurance: The Contractor shall cause each and every Subcontractor to provide insurance coverage that complies with all applicable requirements of the Contractor-provided insurance as set forth herein, except the Contractor shall have sole responsibility for determining the limits of coverage required to be obtained by Subcontractors.

The Contractor shall ensure that the City is an additional insured on each and every Subcontractor's Commercial General liability insurance policy using an endorsement at least as broad as ISO CG 20 10 10 01 for ongoing operations and CG 20 37 10 01 for completed operations.

J. Notice of Cancellation: The Contractor shall provide the City and all Additional Insureds for this work with written notice of any policy cancellation within two (2) business days of their receipt of such notice.

K. Failure to Maintain Insurance: Failure on the part of the Contractor to maintain the insurance as required shall constitute a material breach of contract, upon which the City may, after giving five business days notice to the Contractor to correct the breach, immediately terminate the contract or, at its discretion, procure or renew such insurance and pay any and all premiums in connection therewith, with any sums so expended to be repaid to the City on demand, or at the sole discretion of the City, offset against funds due the Contractor from the City.

17. Acceptance. Contractor acknowledges and agrees that these General Provisions are incorporated in, and are a part of, each purchase order or other agreement relating to the provision of goods and/or related services by Contractor. These General Provisions supersede all conflicting or additional terms pre-printed on any purchase order, quote, invoice, or otherwise set forth on any release, acknowledgement, confirmation, requisition, work order, shipping instruction, specification and similar document or communication.

18. Registered or Licensed Contractor. The City is prohibited by RCW 39.06.010 from executing an Agreement with a Contractor who is not registered or licensed as required by the laws of the state. In addition, Anacortes Municipal Code requires that every person engaging in business within the city limits of Anacortes register their business with the state and include a City of Anacortes Endorsement. Businesses from outside city limits with a gross annual income of \$2,000 in Anacortes are also required to obtain a city endorsement. Business licenses and city endorsements can be obtained through the State of Washington Department of Revenue (DOR) Business Licensing Service (BLS) at bls.dor.wa.gov.

19. Standard Title VI / Non-Discrimination Assurances. During the performance of this contract, the Contractor, for itself, its assignees, and successors in interest agrees to the clauses in "Appendix A" and "Appendix E" of the Standard Title VI Assurances (USDOT1050.2A), which are hereby incorporated by reference and made a part hereof.

20. Contractor is an Independent Contractor. The parties intend that an independent Contractor relationship will be created by this Agreement. No agent, employee or representative of the Contractor shall be deemed to be an agent, employee or representative of the City for any purpose. Contractor shall be solely responsible for all acts of its agents, employees, representatives and Subcontractors during the performance of this Agreement.

21. No Third-Party Beneficiary Rights. This Agreement is not intended to and shall not be construed to give any Third Party any interest or rights (including, without limitation, any Third-Party beneficiary rights) with respect to or in connection with any agreement or provision contained herein or contemplated hereby, except as otherwise expressly provided for in this Agreement.

22. The City's Right to Terminate Agreement.

A. Termination for Default: If the Contractor defaults by failing to perform any of the obligations of the Agreement or becomes insolvent or is declared bankrupt or commits any act of bankruptcy or insolvency or makes an assignment for the benefit of creditors, the City may, by depositing written notice to the Contractor in the U.S. mail, postage prepaid, terminate the Agreement, and at the City's option, obtain performance of the work elsewhere. If the Agreement is terminated for default, the Contractor shall not be entitled to receive any further payments under the Agreement until the Scope of Services under this Agreement has been fully performed. Any extra cost or damage to the City resulting from such default(s) shall be deducted from any money due or coming due to the Contractor. The Contractor shall bear any extra expenses incurred by the City in completing the work, including all increased costs for completing the work, and all damage sustained, or which may be sustained by the City by reason of such default. If a notice of termination for default has been issued and it is later determined for any reason that the Contractor was not in default, the rights and obligations of the parties shall be the same as if the notice of termination had been issued pursuant to the Termination for Public Convenience paragraph hereof.

B. Termination for Public Convenience: The City may terminate the Agreement in whole or in part whenever the City determines, in its sole discretion that such termination is in the best interests of the City. Whenever the Agreement is terminated in accordance with this paragraph, the Contractor shall be entitled to payment for actual work performed at unit Agreement prices for completed items of work through the date of termination. If the City exercises its option under this Paragraph, the City shall not be responsible for payment for loss of anticipated profit on deleted or uncompleted work. Termination of this Agreement by the City at any time during the term, whether for default or convenience, shall not constitute a breach of Agreement by the City.

23. Changes/Additional Work. The City may engage Contractor to perform services in addition to those listed in this Agreement, and Contractor will be entitled to additional compensation for authorized additional services or materials. The City shall not be liable for additional compensation until and unless any and all additional work and compensation is approved in advance in writing and signed by both parties to this Agreement. If conditions are encountered which are not anticipated in the Scope of Services, the City understands that a revision to the Scope of Services and fees may be

required. Provided, however, that nothing in this paragraph shall be interpreted to obligate the Contractor to render or the City to pay for services rendered in excess of the Scope of Services unless or until a modification to this Agreement is approved in writing by both parties.

24. Non-waiver. Waiver by the City of any provision of this Agreement or any time limitation provided for in this Agreement shall not constitute a waiver of any other provision.

25. Covenant Against Contingent Fees. The Contractor warrants that they have not employed or retained any company or person, other than a bona fide employee working solely for the Contractor, to solicit or secure this Agreement, and that they have not paid or agreed to pay any company or person, other than a bona fide employee working solely for the Contractor, any fee, commission, percentage, brokerage fee, gifts, or any other consideration contingent upon or resulting from the award of making of this Agreement. For breach or violation of this warranty, the City shall have the right to annul this Agreement without liability or, in its discretion to deduct from the Agreement price or consideration, or otherwise recover, the full amount of such fee, commission, percentage, brokerage fee, gift, or contingent fee.

26. Disputes

A. General: Differences between the Contractor and the City, arising under and by virtue of this Agreement shall be brought to the attention of the City at the earliest possible time in order that such matters may be settled or other appropriate action promptly taken. The provisions of this Clause shall survive the expiration or termination of this Agreement.

B. Notice of Potential Claims: The Contractor shall not be entitled to additional compensation which otherwise may be payable, or to extension of time for (1) any act or failure to act by the City, or (2) the happening of any event or occurrence, unless the Contractor has given the City a written Notice of Potential Claim within 10 days of the commencement of the act, failure, or event giving rise to the claim, and before final payment by the City. The written Notice of Potential Claim shall set forth the reasons for which the Contractor believes additional compensation or extension of time is due, the nature of the cost involved, and insofar as possible, the amount of the potential claim. Contractor shall keep full and complete daily records of the Work performed, labor and all costs and additional time claimed to be additional.

C. Detailed Claim: The Contractor shall not be entitled to claim any such additional compensation, or extension of time, unless within 30 days of the accomplishment of the portion of the work from which the claim arose, and before final payment by the City, the Contractor has given the City a detailed written statement of each element of cost or other compensation requested and of all elements of additional time required, and copies of any supporting documents evidencing the amount or the extension of time claimed to be due.

D. Dispute Resolution: In the event of a dispute between the City and the Contractor arising out of this Agreement, or any obligation hereunder the dispute shall first be referred to the representatives designated by the City and the Contractor to have oversight over the administration of this Agreement. Said representatives shall meet within thirty (30) calendar days of receipt of detailed claim, and the parties shall make a good faith effort to achieve a resolution of the dispute. In the event the parties are unable to resolve the dispute under the procedure set forth above, then the parties hereby agree that the matter shall be referred to mediation. The parties shall mutually agree upon a mediator to assist them in resolving their differences. Any expenses incidental to mediation shall be borne equally by the parties. If either party is dissatisfied with the outcome of the mediation, that party may then pursue any available judicial remedies.

27. Force Majeure. Neither party shall be liable to the other or deemed in breach or default for any failure or delay in performance under this Agreement during the time and to the extent its performance is prevented by reasons of Force Majeure. For the purposes of this Agreement, Force Majeure means an occurrence that is beyond the reasonable control of and without fault or negligence of the party claiming force majeure and which, by exercise of due diligence of such party, could not have been prevented or overcome. Force Majeure shall include natural disasters, including fire, flood, earthquake, windstorm, avalanche, mudslide, and other similar events; acts of war or civil unrest when an emergency has been declared by appropriate governmental officials; acts of civil or military authority; freight embargoes; epidemics; pandemics; quarantine restrictions; labor strikes; boycotts; terrorist acts; riots; insurrections; explosions; and nuclear accidents. A party claiming suspension or termination of its obligations due to force majeure shall give the other party prompt written notice of the impediment and its effect on the ability to perform, with such notice to be provided no more than two (2) working days after the force majeure event or reasonable discovery of the event's impact on performance. Failure to provide such notice shall preclude recovery under this provision. Such delay shall cease as soon as practicable and written notification of same shall be provided. The time of completion shall be extended by Agreement modification for a period of time equal to the time that the results or effects of such delay prevented the delayed party from performing in accordance with this Agreement. Rights Reserved: The City reserves the right to cancel the Agreement and/or purchase materials, equipment or services from the best available source during the time of force majeure, and Contractor shall have no recourse against the City.

28. Governing Law. This Agreement shall be governed by and construed under the laws of the State of Washington. Any action brought under the Agreement or relating to the Project shall be brought in the Superior Court of the State of Washington in Skagit County Washington.

29. Compliance with Laws. The Contractor in the performance of this Agreement shall comply with all applicable Federal, State or local laws and ordinances, including regulations for licensing, certification and operation of facilities, programs and accreditation, and licensing of individuals, and any other standards or criteria as described in the Agreement to assure quality of services. Contractor will follow all applicable laws and requirements for excavation and disposal of material.

30. Severability. If any term or condition of this Agreement or the application thereof to any person(s) or circumstances is held invalid, such invalidity shall not affect other terms, conditions or applications which can be given effect without the invalid term, condition or application. To this end, the terms and conditions of this Agreement are declared severable.

31. Survival of Contract Termination. The provisions of the following paragraphs, the provisions of the non collusion affidavit, and the liability of the Contractor for default during the term of the Contract shall survive, notwithstanding the termination or invalidity of this Contract for any reason: Taxes; Warranty; The City's Right to Terminate Contract; Governing Law; Indemnification / Hold Harmless; Disputes.

32. Notices. Receipt of any notice shall be deemed effective three days after deposit of written notice in the U.S. mail, with proper postage and properly addressed. Notices shall be sent to the following addresses:

CITY:

City of Anacortes
Tiffany Matson
904 6th Street
PO Box 547
Anacortes, WA 98221

CONTRACTOR:

Heckman Inc.
29020 4th Avenue NW
Stanwood, WA 98292

APPENDIX A

During the performance of this contract, the contractor, for itself, its assignees, and successors in interest (hereinafter referred to as the "contractor") agrees as follows:

1. **Compliance with Regulations:** The contractor (hereinafter includes consultants) will comply with the Acts and the Regulations relative to Non-discrimination in Federally-assisted programs of the U.S. Department of Transportation, Washington State Department of Transportation, as they may be amended from time to time, which are herein incorporated by reference and made a part of this contract.
2. **Non-discrimination:** The contractor, with regard to the work performed by it during the contract, will not discriminate on the grounds of race, color, or national origin in the selection and retention of subcontractors, including procurements of materials and leases of equipment. The contractor will not participate directly or indirectly in the discrimination prohibited by the Acts and the Regulations, including employment practices when the contract covers any activity, project, or program set forth in Appendix B of 49 CFR Part 21.
3. **Solicitations for Subcontracts, Including Procurements of Materials and Equipment:** In all solicitations, either by competitive bidding, or negotiation made by the contractor for work to be performed under a subcontract, including procurements of materials, or leases of equipment, each potential subcontractor or supplier will be notified by the contractor of the contractor's obligations under this contract and the Acts and the Regulations relative to Non-discrimination on the grounds of race, color, or national origin.
4. **Information and Reports:** The contractor will provide all information and reports required by the Acts, the Regulations, and directives issued pursuant thereto and will permit access to its books, records, accounts, other sources of information, and its facilities as may be determined by the Recipient or the Washington State Department of Transportation to be pertinent to ascertain compliance with such Acts, Regulations, and instructions. Where any information required of a contractor is in the exclusive possession of another who fails or refuses to furnish the information, the contractor will so certify to the Recipient or the Washington State Department of Transportation, as appropriate, and will set forth what efforts it has made to obtain the information.
5. **Sanctions for Noncompliance:** In the event of a contractor's noncompliance with the Non-discrimination provisions of this contract, the Recipient will impose such contract sanctions as it or the Washington State Department of Transportation may determine to be appropriate, including, but not limited to:
 - a. withholding payments to the contractor under the contract until the contractor complies; and/or
 - b. cancelling, terminating, or suspending a contract, in whole or in part.
6. **Incorporation of Provisions:** The contractor will include the provisions of paragraphs one through six in every subcontract, including procurements of materials and leases of equipment,

unless exempt by the Acts, the Regulations and directives issued pursuant thereto. The contractor will take action with respect to any subcontract or procurement as the Recipient or the Washington State Department of Transportation may direct as a means of enforcing such provisions including sanctions for noncompliance. Provided, that if the contractor becomes involved in, or is threatened with litigation by a subcontractor, or supplier because of such direction, the contractor may request the Recipient to enter into any litigation to protect the interests of the Recipient. In addition, the contractor may request the United States to enter into the litigation to protect the interests of the United States.

APPENDIX E

During the performance of this contract, the contractor, for itself, its assignees, and successors in interest (hereinafter referred to as the "contractor") agrees to comply with the following non-discrimination statutes and authorities; including but not limited to:

Pertinent Non-Discrimination Authorities:

- Title VI of the Civil Rights Act of 1964 (42 U.S.C. § 2000d et seq., 78 stat. 252), (prohibits discrimination on the basis of race, color, national origin); and 49 CFR Part 21.
- The Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, (42 U.S.C. § 4601), (prohibits unfair treatment of persons displaced or whose property has been acquired because of Federal or Federal-aid programs and projects);
- Federal-Aid Highway Act of 1973, (23 U.S.C. § 324 et seq.), (prohibits discrimination on the basis of sex);
- Section 504 of the Rehabilitation Act of 1973, (29 U.S.C. § 794 et seq.), as amended, (prohibits discrimination on the basis of disability); and 49 CFR Part 27;
- The Age Discrimination Act of 1975, as amended, (42 U.S.C. § 6101 et seq.), (prohibits discrimination on the basis of age);
- Airport and Airway Improvement Act of 1982, (49 USC § 471, Section 47123), as amended, (prohibits discrimination based on race, creed, color, national origin, or sex);
- The Civil Rights Restoration Act of 1987, (PL 100-209), (Broadened the scope, coverage and applicability of Title VI of the Civil Rights Act of 1964, The Age Discrimination Act of 1975 and Section 504 of the Rehabilitation Act of 1973, by expanding the definition of the terms "programs or activities" to include all of the programs or activities of the Federal-aid recipients, sub-recipients and contractors, whether such programs or activities are Federally funded or not);
- Titles II and III of the Americans with Disabilities Act, which prohibit discrimination on the basis of disability in the operation of public entities, public and private transportation systems, places of public accommodation, and certain testing entities (42 U.S.C. §§ 12131-12189) as implemented by Department of Transportation regulations at 49 C.F.R. parts 37 and 38;
- The Federal Aviation Administration's Non-discrimination statute (49 U.S.C. § 47123) (prohibits discrimination on the basis of race, color, national origin, and sex);
- Executive Order 12898, Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations, which ensures Non-discrimination against minority populations by discouraging programs, policies, and activities with disproportionately high and adverse human health or environmental effects on minority and low-income populations;
- Executive Order 13166, Improving Access to Services for Persons with Limited English Proficiency, and resulting agency guidance, national origin discrimination includes discrimination because of Limited English proficiency (LEP). To ensure compliance with Title VI, you must take reasonable steps to ensure that LEP persons have meaningful access to your programs (70 Fed. Reg. at 74087 to 74100);
- Title IX of the Education Amendments of 1972, as amended, which prohibits you from discriminating because of sex in education programs or activities (20 U.S.C. 1681 et seq).



City Council Agenda Bill

Meeting Date: April 3,
2023

Agenda Item: 5.d.

Agenda Item Title: Contract Award: Guemes View Aerial Fiber Construction #23-127-FBR-001

Staff Contact(s): JAMES LEMBERG , Henry Hash

<u>Approved for Submittal to Council by</u>	<u>Action Type</u>
TIFFANY MATSON	Contract Award

Item Summary: City staff seeks City Council consent to award a contract in the amount of \$109,773.87 to Cannon Companies to perform the aerial construction work for the Guemes View area of the City's fiber network. The work to be performed includes deployment of aerial fiber optic network infrastructure in the area bounded on the west by Anacopper Mine Road, on the east by A Avenue, on the north by approximately the shoreline, and on the south by the bounds of forest lands. The infrastructure to be deployed will be comprised of steel strand, lashing wire, fiber optic cables, outdoor fiber distribution closures, and miscellaneous hardware.

Background:

1. **History:** Council approved Resolution 2013 on May 29, 2018, directing that a business plan be developed for a fiber optic network to provide high-speed internet service to City residents and businesses. Council then approved slightly over \$3.1 million in the 2019-20 biennial budget for construction and operation of such a fiber optic network in three pilot areas. In subsequent years, Council has approved Fiber Division budgets that have included funds for continued deployment of the City's fiber project.
2. **Key Terms:**
 - Contract is for a firm fixed price of \$109,773.87.
 - The Contractor shall complete the work by May 30, 2023.
3. **Competitive Bidding:** Per RCW 39.04.155 five contractors were selected from the City's MRSC Small Works Roster to provide quotes for this scope of work. Cannon Companies was the lowest responsive, responsible bidder to respond.

Budget Impact:

Contractor	Cannon Companies
Contract Amount	\$109,773.87
Earmarked Funds	\$7,830,000.00
BARS #	001.260.594.32.63
Budget Amendment Required?	No
Start Date	Notice to Proceed
End Date	5/30/2023

Previous Action: N/A

Recommended Motion: I move that City Council authorize the Mayor to sign contract 23-127-FBR-001 with Cannon Companies in the amount of \$109,773.87 to perform the Guemes View Aerial Fiber Construction.

Alternative Actions: Not award the contract.

Attachments (listed in order presented):

1. 23-127-FBR-001
2. SWR Bid Tabulation 23-127-FBR-001



CONTRACT 23-127-FBR-001
AGREEMENT WITH
CANNON CONSTRUCTION, LLC
dba Cannon Companies

This Contract is between the City of Anacortes, Washington, a Municipal Corporation (herein after referred to as "City") and Cannon Construction, LLC, dba Cannon Companies, a private contractor at 406 Porter Way, Milton, WA 98354 (herein after referred to as "Contractor").

PROJECT
Guemes View Aerial Fiber Construction

1. **Scope of Work:** Contractor shall furnish all materials, equipment and labor to perform the Guemes View Aerial Fiber Construction project as detailed in Exhibit A. Work is subject to the Pole Attachment Agreement between Puget Sound Energy, Inc. and City of Anacortes dated 10/16/2019, herein referred to as Exhibit B, and the City of Anacortes Engineering Standards.
2. **Contract Price:** The Contractor will perform the scope of work above for a firm fixed price of **One Hundred Nine Thousand Seven Hundred Seventy-Three Dollars and Eighty-Seven Cents (\$109,773.87)**, which includes \$8,878.77 sales tax at an 8.8% rate. This includes all mobilization, demobilization, labor, materials, standard freight, and administrative overhead for the project. Before any payment is made by the City of Anacortes of sums under this contract, the contractor must provide a copy of the statement of *Intent to Pay Prevailing Wage* approved by the Department of Labor and Industries. Pursuant to RCW Chapter 60.28, a sum of five percent (5%) of the monies earned by the contractor will be retained.
3. **Bonds:** Pursuant to RCW 39.08.010, the Contractor shall provide the City a performance bond and payment bond for the full contract amount to be in effect as detailed in the incorporated General Provisions. The City may at its option release the bonds once all the conditions of RCW 39.08.010-1a have been discharged.
4. **Time of Completion:** The Contractor shall complete the work by May 30, 2023.
5. **Project Management:** Coordination and scheduling of the work, materials, and equipment shall be made with the Project Manager John Norris (360) 770-4664.
6. **Contract Requirements:** As detailed in the General Provisions, Contractor must have a valid contractor license number, insurance, and City of Anacortes business license. **Prevailing Wage Law Applies.** Forms Needed: 1) Proof of Insurance with Additional Insured Endorsements; 2) Intent to Pay Prevailing Wage; 3) Affidavit of Wages Paid; 4) Performance Bond; 5) Payment Bond; 6) Certification of Compliance with Wage Payment Statutes.
7. **Contract Documents:** The attached General Provisions, Exhibit A, Exhibit B, and City of Anacortes Engineering Standards are included in this Contract Agreement and are hereby incorporated by reference and made a part hereof.

The parties acknowledge that there has been an opportunity to negotiate the terms and conditions of this Agreement and agree to each bind itself, its partners, successors, assigns, and legal representatives to the other party hereto, in respect of all covenants, agreements, and obligations contained in the Contract Documents. Each of the persons signing below on behalf of any party hereby represents and warrants that they are signing with full and complete authority to bind the party on whose behalf of whom they are signing, to each and every term of this Agreement.

Owner:

City of Anacortes

Mayor

Date

Contractor:

Cannon Construction, LLC, dba Cannon Companies

Date

Contractor License #

CONTRACT 23-127-FBR-001
EXHIBIT A



Page | 1

406 Porter Way
Milton, WA 98354-96354
Contact: Shane Gottbreht
Phone: 253-922-2787
Fax: 253-922-3245

Date: 2-23-2023
Job location: Oakes Ave, Anacortes
Bid number: B23-1399

Project Title: Guemes View and Aerial Repair

Thank you for the opportunity to participate in the above referenced project. The following is our cost proposal.

Bid Item	Description	Unit	Qty	Unit Price	Bid Total
10	9580' of Aerial work – 3760' of UG work – 1 Span to rework	SUM	1	\$86,807.66	\$86,807.66
20	Material	SUM	1	\$14,084.448	\$14,087.44

	Sub Total	\$100,895.10
8.8%	Sales Tax	\$8,878.77
	Total	\$109,773.87

Scope of Work

- 9580' of new strand.
- 9411' of lash owner provided fiber.
- 9 Pupi arms, 3 FG arms and transfers to new arms.
- 3760' of UG fiber placement in existing conduit.
- 983' of tree trimming to clear comm space.
- 16 screw anchors.
- Vertical ground bonding.
- Purchase of material to complete scope of work not including fiber.
- Traffic control. (Excludes UPO's if required by the city)

Exclusions

- Night and weekend work
- Survey and engineering
- Permitting
- Fiber Splicing
- UPO's

**CONTRACT 23-127-FBR-001
EXHIBIT B**



**POLE ATTACHMENT AGREEMENT
BETWEEN
PUGET SOUND ENERGY, INC.
AND
CITY OF ANACORTES**

Date: 10/16/2019

TABLE OF CONTENTS

SECTION 1. SCOPE AND DEFINITIONS.....	3
SECTION 2. ATTACHMENT.....	5
SECTION 3. MAINTENANCE.....	8
SECTION 4. EMERGENCIES.....	8
SECTION 5. RELOCATION, REPLACEMENT, AND REMOVAL OF POLES.....	9
SECTION 6. FEES.....	10
SECTION 7. DEFAULT AND REMEDIES.....	12
SECTION 8. PERFORMANCE OF WORK.....	13
SECTION 9. PROTECTION OF PROPERTY AND PERSONS.....	14
SECTION 10. COOPERATION AND COORDINATION.....	14
SECTION 11. LIENS.....	15
SECTION 12. COMPLIANCE WITH LAWS.....	15
SECTION 13. TAXES.....	15
SECTION 14. PERMITS AND PROTECTION OF EXISTING RIGHTS.....	16
SECTION 15. EXAMINATION OF RECORDS.....	16
SECTION 16. STATUS OF CITY.....	16
SECTION 17. RELEASE, INDEMNITY, HOLD HARMLESS AND LIMITATION OF LIABILITY.....	16
SECTION 18. WORKER'S COMPENSATION, INSURANCE AND BONDS.....	17
SECTION 19. RISK OF LOSS.....	18
SECTION 20. REIMBURSEMENT AND PAYMENT.....	18
SECTION 21. ATTORNEY'S FEES.....	19
SECTION 22. LATE CHARGES AND INTEREST.....	19
SECTION 23. NONWAIVER.....	19
SECTION 24. ASSIGNMENT; SUCCESSORS AND ASSIGNS.....	19
SECTION 25. NOTICES AND OTHER COMMUNICATIONS.....	20
SECTION 26. VOLUNTARY EARLY TERMINATION.....	21
SECTION 27. SURVIVAL.....	21
SECTION 28. REGULATORY APPROVALS.....	21
SECTION 29. MISCELLANEOUS.....	21
SECTION 30. APPLICABLE LAW.....	22
 SIGNATURES.....	 22
APPENDICES.....	A

POLE ATTACHMENT AGREEMENT FOR CITY OF ANACORTES

This Agreement, dated as of 10/16/2019, is made by and between **Puget Sound Energy, Inc.**, a Washington corporation ("PSE"), and **City of Anacortes**, a Washington municipal corporation ("City"). In this Agreement PSE and City are sometimes referred to individually as a "Party" and collectively as the "Parties."

PSE and City agree as follows:

SECTION 1. SCOPE AND DEFINITIONS

1.1 This Agreement governs all attachments of City's fiber optic communications system (the "System") and related Equipment now or hereafter made in relation to any utility poles owned in whole by PSE (individually a "Pole", collectively the "Poles"), with or without PSE's consent.

1.2 The Parties hereby acknowledge a Pole Attachment Agreement dated 12/21/2016 between Puget and the City, providing for the attachment of City communication cable to approximately 265 PSE Poles. Said Pole Attachment Agreement is hereby incorporate by reference and any conflicts between this Agreement and the 2016 Agreement shall be controlled by this Agreement. The Parties also acknowledge existing Attachments in the City Central Business District. It is the Parties' intention that any existing Attachments that predate execution of this Agreement be governed by this Agreement.

1.3 When used in this Agreement with the initial letter capitalized, the following terms shall have the following specified meanings:

"Agreement" means this Pole Attachment Agreement between PSE and City together with all exhibits attached hereto.

"Annual Rental Fee" means the fees described in the attached Appendix III.

"Arm" means any wood, fiberglass or steel extension from a Pole used to support Equipment.

"Assignment" as described in Section 24 of this Agreement.

"Attach" (or any conjugation thereof) means to affix, fasten or otherwise attach Equipment to a Pole, either directly or indirectly, including, without limitation, by overlashing or attaching any Equipment to other equipment, cables, attachments or devices affixed, fastened or otherwise attached to a Pole.

"Attachment" will have the meaning given to it on Section 2.1 of the Agreement.

"Attachment Application" a written or electronic application form(s) requesting permission to attach any Equipment to any Pole.

"Attachment Permit" or "Permitted Attachment" will mean a completed permit in the form of Appendix II attached hereto that has been duly and properly executed by PSE or an Attachment authorized in such permit.

"Calendar Year" means any period from January 1 through December 31 of any given year.

"Certificate of Insurance" means a standard ACORD certificate or documentation from an agent authorized by the insurer(s) demonstrating insurance carriers, policy numbers, effective dates, limits of liability and deductible amounts.

"Electronic Notice" will have the meaning given to it in Section 25.2 of the Agreement.

"Equipment" means any coaxial and fiber optic cables, messenger strand, conduit or risers, span guys, down guys, anchors, service drops, mainline, overlash (i.e., any conductor that is overlash on an existing conductor after the initial permit), a configuration of equipment attached to the Pole that includes one or more of the following: power supplies, equipment enclosures, amplifiers and terminal boxes or other similar equipment, other attachments and related equipment made in relation to a utility pole.

"Event of Default" will have the meaning given to it in Section 7.1 of the Agreement.

"Facilities" means any poles, towers, arms, transformers, down guys and anchors, vaults, conduits, handholds, and/or electric system appendices.

"First Trip Costs" means any expenses and costs incurred by PSE for transfer of City's Attachment(s) to a replacement Pole (at the same time PSE is transferring its own facilities to the replacement Pole).

"Indemnitees" means PSE, its successors and assigns, and the respective directors, officers, employees, and agents of PSE and its lawful successors and assigns.

"Make-ready" means any and all work relating to the installation of additional Poles, Poles of greater height or strength, additional guying, or re-arrangements of PSE's Equipment or the Equipment of any other party licensed by PSE to use the Poles as required in order for PSE to provide City with access to the Poles.

"NESC" means, at any given point in time, the then-current version of the National Electric Safety Code.

"NJUNS" means the National Joint Utility Notification System or a substantially comparable electronic communication system agreed upon in writing by the Parties.

"Notice of Termination" means any one hundred-eighty (180) calendar day Written Notice by Party requesting Termination of the Agreement to non-terminating Party.

"Plan of Correction" means a mutually agreeable plan to correct any Unauthorized Attachment.

"Pole" will have the meaning given to it in Section 1.1 of the Agreement.

"PSE Pole Attachment Specifications" means, at any given point in time, the then current version of the specifications set forth in the attached Appendix V.

"Return Trip Costs" means any fee assessed by PSE to City when PSE must return to job site to perform transfer work.

"System" will have the meaning given to it in Section 1.1 of the Agreement.

"Termination" cancellation and/or voidance of this Agreement or any Attachments made pursuant thereto.

"Termination of Attachment Notice" means any Written Notice by Party requesting Termination of the Attachment to non-terminating Party.

"Topping Fee" means any fee assessed by PSE to City for removal of the upper portion of any replaced Pole in the event PSE does not transfer City's Attachment(s) to the replacement Pole.

"Unauthorized Attachment" means any Attachment(s) to any Pole(s) by City in violation of the terms and conditions of this Pole Attachment Agreement.

"Work" means any work relating to the attachment, maintenance, repair, relocation, replacement or removal of Equipment and other work performed by City in connection with this Agreement, or the attachment of Equipment to Poles performed by City in connection with this Agreement.

"Written Notice" will have the meaning given to it in Section 25.1 of the Agreement.

SECTION 2. ATTACHMENT

2.1 Any piece of Equipment that occupies space on a Pole will be considered an "Attachment." Any and all City Attachments are subject to this Agreement. Attachments are limited to:

- coaxial and fiber optic cables
- messenger strand
- conduit or risers
- span guys
- down guys
- anchors
- service drops
- mainline
- a configuration of equipment attached to the Pole that includes one or more of the following: power supplies, equipment enclosures, amplifiers and terminal boxes or other similar equipment

2.2 City shall not attach any Equipment to any Pole without PSE's prior written consent in accordance with paragraph 2.3 below, regardless of whether or not City has a valid permit

for Attachments previously attached on such Pole. This Agreement shall not in itself constitute any such consent. Should City fail to obtain a valid permit prior to attaching Equipment to any Pole, in accordance with Section 2.3, City shall be liable for an Unauthorized Attachment in accordance with Section 6.

- 2.3** If City desires to attach any Equipment to any Pole, City shall submit to PSE an "Attachment Application", via the written application form in Appendix II or an "Electronic Notification" as outlined in paragraph 25.2. At a minimum, the pole Attachment Application shall include the information specified in Appendix II, which is attached and incorporated by reference. PSE retains sole discretion to modify the information required in the Attachment Application, upon thirty (30) days Written Notice to City, and such modification shall be effective on the date referenced in the notification.

The Attachment shall be deemed installed on the date the Attachment Permit is approved. However, should City fail to install an Attachment on a Pole for which an Attachment Permit has been granted within six (6) months from the approval date of the Attachment Permit, that Permit shall expire and no Attachment shall be made on that Pole by City until a new Attachment Permit is granted.

If City wishes to remove an Attachment, it must submit a "Termination of Attachment Notice" to PSE via "Electronic Notification" as outlined in paragraph 25.2. If City wished to assign an Attachment to a third party, City must comply with the requirement of Section 24 (Assignment). If City does not submit a Termination of Attachment Notice (and thereafter timely remove the affected Attachment) or an assignment is not made in accordance with Section 24 (Assignment), prior to the beginning of a Calendar Year, the applicable Attachment Permit shall be considered active and City shall be assessed the appropriate Annual Rental Fee.

An Attachment Permit does not relieve City of obligations or liabilities due under this Agreement. Any Attachment made without an Attachment Permit or not in accordance with the specifications listed in the Attachment Permit shall be considered an Unauthorized Attachment.

- 2.4** Unless otherwise directed by PSE, City shall submit each Attachment Application to:

Puget Sound Energy, Inc. | 3380 146th PL SE #310 | Bellevue | WA | 98007 | Pole Services

- 2.5** PSE may deny any Attachment Application for the following reasons:

- (a) insufficient capacity (when all potential accommodations have been reviewed by PSE and communicated to City);
- (b) Facilities are necessary for PSE's sole utility business use;
- (c) City's proposed Attachment violates the National Electrical Safety Code (NESC) or any other applicable code, law, rule or regulation, or unduly compromises safety;
- (d) City's proposed Attachment threatens the reliability of PSE's system;
- (e) City's proposed Attachment does not comply with general applicable engineering standards; or
- (f) City's account is not in good standing.

In the event that PSE gives its written or electronic consent for any Equipment to be Attached to a Pole, City shall Attach such Equipment only in strict accordance with:

- a) such Application;
- b) any conditions or qualifications set forth in PSE's consent; and
- c) the provisions of this Agreement.

City shall have the right to make Attachments to PSE Facilities in accordance with the terms of the Attachment Permit and this Agreement. No application shall be deemed approved without Written Notice or Electronic Notice indicating approval from PSE.

2.6 City shall reimburse PSE for any and all costs and expenses incurred by PSE in connection with the processing and review of each Application (including but not limited to the cost of identifying and estimating the cost of required changes under paragraph 2.7) and in connection with services performed by PSE at the request of City (whether prior to or after the submittal of an Application), including, without limitation, any of the following:

- a) Field engineering review of proposed routes to identify potential problems with the proposed Attachment;
- b) Preparation and provision of drawings or other documents relating to the Poles or any facilities on the Poles;
- c) Engineering review of proposed Attachments to determine the consequences of additional strain on the Poles;
- d) Review of proposed routes to identify easement problems that may limit or preclude the proposed Attachment;
- e) Rights-of-Way services to obtain easements or other rights from private land owners to enable Equipment to be Attached to the Pole;
- f) Transmission poles with no communication attachment or distribution underbuild are not available to attach to;
- g) Transmission pole requests must have a structural pole analysis completed prior to review of approval of attachment at the cost of the applicant; and
- h) PSE may require distribution pole attachment requests have a structural analysis completed prior to review of approval of attachment at the cost of the applicant.

Amounts recoverable by PSE hereunder shall consist of fully allocated costs for labor (including but not limited to all payroll costs and overhead and all applicable engineering, supervision, and administrative overheads), transportation, employee expenses, attorney's fees, reprographic services, supplies, telephone service and other expenses. This paragraph 2.6 shall not obligate or be construed to obligate PSE to perform any service or to take any action whatsoever with respect to an Attachment, an Attachment Application, or any request made by City.

2.7 City understands and acknowledges that nothing in this Agreement grants or purports to grant to City any right or interest of any kind in or to the real property on which any Pole is located and, subject to applicable law, City is solely responsible for seeking and

obtaining all permits, licenses, easements, franchise rights and other rights required from the owner of the underlying property (including, without limitation, PSE) for City to Attach, maintain, repair, relocate or remove any Equipment in relation to any Pole. In no event, however, shall such actions in any way limit or relieve City of its obligations under Section 14 or any other provision of this Agreement.

- 2.8** If, in the judgment of PSE, the accommodation of any proposed Attachment requires the replacement of an existing Pole to provide adequate Pole facilities, PSE will inform City of the required changes and the estimated cost of such changes based on PSE's engineering work standards. If City desires to Attach such Equipment and so notifies PSE within thirty (30) days after PSE informs City of the required changes and estimated cost, PSE shall perform such work and City shall reimburse PSE for the entire expense thereby incurred. If City decides that it does not wish to Attach such Equipment after receiving notification of the required change(s) and estimated cost(s) of such changes, City may decline to do so; provided, however, that City shall still be required to pay the reasonable cost(s) incurred by PSE with respect to providing the change information and estimated cost(s) for the proposed Attachment(s).
- 2.9** Unless otherwise directed by PSE, City shall install guys and anchors necessary to support the additional strain imposed on any Pole by any Attachment in a manner satisfactory to PSE. If PSE installs or replaces guys or anchors to support the strain imposed by such Attachment, City shall reimburse PSE for the entire cost and expense of such installation or replacement (including, but not limited to, the cost of installing or transferring guys to such anchors).
- 2.10** City shall clearly identify all new Attachments at each Pole in distinctive color marking or number marking and as otherwise agreed to by the Parties. In the event that City performs general maintenance to existing Attachments, or takes such other action affecting such existing Attachments, City shall clearly identify such existing Attachments in distinctive color marking or number marking and as otherwise agreed to by the Parties.

In the event City acquires another entity's Equipment, or enters this Agreement with existing Equipment on PSE Facilities, City shall properly identify the newly acquired Equipment in distinctive orange marking and as otherwise agreed to by the Parties within twelve (12) months or within a mutually agreeable earlier timeframe.

If City removes some or all of its Equipment from a Pole, City shall remove all corresponding identification tags, pole tags, and any other method of identification from the Pole.

SECTION 3. MAINTENANCE

City shall maintain all Equipment Attached to any Pole in good and safe condition. City shall maintain current and accurate location maps and records of all such Attachments.

SECTION 4. EMERGENCIES

In the event of an emergency, PSE may relocate any Attachments and take such other action affecting such Attachments, as PSE deems appropriate in the circumstances. The

Parties' respective emergency phone numbers are as follows:

Puget Sound Energy, Inc. | 1-888-225-5773
City of Anacortes | 1-360-428-1598

Each Party shall promptly notify the other of any change in such Party's emergency phone number.

SECTION 5. RELOCATION, REPLACEMENT, AND REMOVAL OF POLES

- 5.1** City understands and agrees that PSE Facilities are essentially for PSE's exclusive use. PSE reserves the right at any time, without City's knowledge or consent, to add to its Facilities, raise the voltage on its circuits or change their character or to remove, replace, or relocate the Facilities. In the event PSE modifies, removes, replaces or relocates its Facilities and such change requires City to remove or relocate City's Equipment, PSE shall provide City with either Written Notice or Electronic Notice. City shall relocate or remove its Equipment, at City's sole expense, within thirty (30) days from the date of PSE's Written Notice or Electronic Notice requesting the relocation or removal of City's Equipment. Following the thirty (30) days, at PSE's discretion, PSE may remove or relocate the Equipment and bill City for the cost of such removal or relocation. If City performs the removal or relocation work, City shall be responsible for any liability or additional costs associated with removing the old Facilities and relocating them.
- 5.2** PSE may in an emergency, relocate, replace, or remove such Attachment and perform any other work in connection with such Attachment that may be required for the maintenance, relocation, replacement, or removal of said Poles, or the facilities thereon or which may be placed thereon, or for the service needs of PSE. All such work shall be performed at City's sole risk and expense and City shall reimburse PSE for the entire expense thereby incurred.
- 5.3** If, in the judgment of PSE, an existing Attachment on any Pole interferes with or prevents the attachment of any additional facilities of PSE or any other person or entity having a joint ownership interest with PSE in such Pole, and if such additional facilities could be attached to such Pole by removing the Attachment or by rearranging existing facilities thereon, PSE will so notify City. Such notice shall state what rearrangement of facilities or Pole replacement and transfer of facilities is required to continue the accommodation of the Attachment. If City desires to continue to maintain the Attachment on such Pole and so notifies PSE within thirty (30) days after PSE gives notice to City, City shall make such rearrangement at the sole risk and expense of City. If City does not so notify PSE prior to the end of such thirty (30) day period, PSE shall make such rearrangement at the sole risk and expense of City, and City shall reimburse PSE for the entire expense thereby incurred. If City does not desire to continue to maintain the Attachment on such Pole, City shall remove the Attachment from such Pole within thirty (30) days from the date of PSE's original notice to City. If the Attachment is not removed from the Pole at the end of the thirty (30) day period, PSE may remove the Attachment at City's sole risk and expense and City shall reimburse PSE for the entire expense thereby incurred.
- 5.4** If PSE replaces or relocates an existing Pole, PSE will be responsible for transferring its Facilities to the replacement Pole. PSE may, in its discretion, also transfer City's Attachment(s) to the replacement Pole, provided that City has given its prior approval. The

physical transfer will be made at the sole risk and expense of City. If PSE transfers City's Attachment(s) to the replacement Pole at the same time PSE is transferring its own facilities to the replacement Pole, City shall reimburse PSE for any and all costs and expense thereby incurred in connection with such transfer in accordance with Appendix IV, "First Trip Costs" which may be amended from time to time upon written notice to City from PSE.

If PSE replaces or relocates an existing Pole on which there is an Attachment, and PSE does not have City's approval or for any other reason does not transfer City's Attachment(s) to the replacement Pole, then PSE may remove the upper portion of the replaced Pole approximately one (1) foot above the highest communication attachment and City shall transfer its Attachment(s) to the replacement Pole within thirty (30) days and reimburse PSE the "Topping Fee" in accordance with Appendix IV, which may be amended from time to time. If City fails after thirty (30) days' notice to transfer its Attachment(s) from the replaced Pole to the replacement Pole, PSE may have such work performed by a licensed contractor competent to perform such work, and PSE will charge City for such work in accordance with Appendix IV, "Return Trip Costs".

- 5.5** PSE may, in its sole discretion, choose to install an Arm to support facilities on a Pole, whether such Pole is solely owned by PSE or is jointly owned by PSE and another owner. In such case, PSE may require City to relocate any of its Attachments to the Arm in accordance with paragraph 5.2 above.
- 5.6** If at any time PSE determines, in its reasonable judgment, that a Pole is required for the sole use of PSE or is no longer suitable for attachment of City's Equipment because of safety or the other factors set forth in Section 2.5, PSE may require City to remove its Attachments from such Pole upon sixty (60) days' advance notice. In the event City fails to remove its Attachments from the Pole within such sixty (60) day period, PSE may remove such Attachments at City's sole risk and expense and City shall reimburse PSE for the entire expense thereby incurred.

SECTION 6. FEES

- 6.1** City shall pay PSE "Annual Rental Fees" when due, in accordance with and incorporated by reference as Appendix III. PSE may adjust the Annual Rental Fee payable by City under this Agreement at any time and from time to time by notice submitted in accordance with Section 25.1
- 6.2** Payment from City for Annual Rental Fees for each Calendar Year and all other PSE invoices are due within thirty (30) days of receipt of the invoice from PSE.
- 6.3** Annual Rental Fees for Attachments permitted on or after the beginning of the current Calendar Year shall be billed after the Attachment Permits for those attachments are approved by PSE; provided, however, that the foregoing will not relieve City from any liability for Attachments made without PSE approval, including, without limitation, payment of any and all Annual Rental Fees with respect thereto. There shall be no abatement or reduction in such fees for Attachments in place for less than the full Calendar Year, for Attachments permitted but not yet actually made or Attachments that are acquired, assigned, or purchased by City during the Calendar Year from another entity.

6.4 Fees for Transferring Communication Equipment (Appendix IV) may be adjusted by PSE from time to time. PSE shall provide to City at least sixty 60 days prior Written Notice before the effective date of the new fees.

6.5 City may overlash its Equipment onto existing Equipment owned by it and such overlash shall not be considered a separate Attachment for purposes of assessing the PSE Annual Rental Fee. City must submit a new Attachment Application prior to overlashing. Such overlash cable shall be subject to all other terms and conditions of the Pole Attachment Agreement including inspection by PSE prior to City overlashing.

In the event of an emergency or for general maintenance purposes, City may overlash its Equipment without submitting a new Attachment Application prior to overlashing. City must promptly notify PSE pursuant to City overlashing. Such overlash cable shall not exceed four (4) Pole span lengths and shall be subject to all other terms and conditions of the Pole Attachment Agreement including inspection by PSE pursuant to City overlashing.

In addition, PSE may recover its administrative, engineering and inspection costs associated with approving City's overlashing. Under no circumstances shall City overlash its Equipment onto existing Equipment that is not owned by City, nor shall City allow third parties to overlash its existing Equipment. PSE shall assume that the strand owner also owns the overlash cable, unless otherwise notified by City or a third party. Any overlash that does not comply with this Section shall be considered an Unauthorized Attachment.

6.6 City may attach guy wires to PSE anchors with PSE's prior approval according to paragraph 2.9 above using the method described in the PSE Attachment Specifications.

6.7 Unauthorized Attachments shall be addressed as follows:

- a) within sixty (60) days of receipt of notice specifying the Unauthorized Attachment, City shall correct the Unauthorized Attachment in accordance with this Agreement and send Written Notice to PSE of its compliance; or
- b) within thirty (30) days of receipt of notice specifying the Unauthorized Attachment, City shall submit to PSE a mutually agreeable plan to correct the Unauthorized Attachment ("Plan of Correction") and thereafter City complies with the plan, if accepted by PSE or with another plan approved by PSE. City's Plan of Correction shall, at a minimum, set out the completion date, as well as reasons to support that date.
- c) Notwithstanding Section 6.7 (a & b) above, should PSE determine that the Unauthorized Attachment poses an immediate hazard, PSE may require a shorter period of time to correct the Unauthorized Attachment.
- d) If City has failed to meet the timeline specified in Section 6.7 (a or b) by sixty (60) days or more, PSE may
 - (i) Correct the Unauthorized Attachment and City shall be liable for all costs associated with this correction, or
 - (ii) remove City's Attachments and City shall be liable for all costs associated with this removal.

- 6.8** If the rearrangement of PSE's Facilities or the Equipment of any other party licensed by PSE to use the Facilities are required in order for PSE to provide City with access to the Facilities ("Make-ready"), the costs for such additional Facilities and Make-ready, including, but not limited to, special inspections, pre-construction, engineering, make ready, change out, rearrangement work, shall be at the sole expense of the City, and City agrees to pay all invoices when due.
- 6.9** For the purposes of this Agreement, an account is in good standing if all invoices are paid in accordance with Article 6 (Fees).

SECTION 7. DEFAULT AND REMEDIES

- 7.1** PSE expects City to respond to PSE notices, including timely payment of invoices, and to remove abandoned Equipment, identify Equipment, and provide prior Written Notice of any proposed assignment of Equipment or entity. The occurrence of any one or more of the following events constitutes an "Event of Default" by City:
- a)** City fails to pay any amount due under this Agreement within ten (10) days after receipt of Written Notice of such failure from PSE.
 - b)** City fails to provide prior Written Notice to PSE of intent to assign this Agreement or the Equipment attached to PSE Facilities.
 - c)** City assigns this Agreement, in violation of the terms and conditions of this Agreement, without prior written consent from PSE.
 - d)** A petition is filed by or against City under the Federal Bankruptcy Code or any similar law or statute of the United States or any state (and with respect to any petition filed against City, such petition is not dismissed within sixty (60) days after the filing thereof) or City is adjudged a bankrupt or insolvent, or receiver, custodian or trustee is appointed for City or for any of the assets of City which appointment is not vacated within thirty (30) days of the date of appointment, or City becomes insolvent, is unable to pay its debts and they become due, or makes a transfer in fraud of creditors.
 - e)** City fails to perform or observe any other term or condition of this Agreement and such failure continues for thirty (30) days after Written Notice from PSE; provided, however that if such failure is capable of being cured, but not within such 30-day period, PSE may extend such period as approved in writing by PSE, so long as City commences appropriate curative action and diligently prosecutes such cure to completion.
- 7.2** So long as an Event of Default applicable to this Agreement continues beyond the specified period or, if no period is specified, beyond thirty (30) days, PSE may terminate this Agreement without notice or demand except as expressly required above, revoke all PSE Attachment Permits issued to City, and pursue any other remedy it may have under applicable law. In the event PSE terminates this Agreement pursuant to this Article, City shall disconnect City's Equipment from PSE Facilities within nine (9) months. Should City fail to remove its Equipment within the nine (9) month period, or should City fail to begin such removal promptly after termination and thereafter work diligently and continuously to effect such removal, PSE may remove City's Equipment at City's expense.

SECTION 8. PERFORMANCE OF WORK

- 8.1** The Attachment, maintenance, repair, relocation, replacement, and removal of Equipment and other work performed by City in connection with this Agreement or the Attachment of Equipment to Poles is sometimes collectively referred to herein as the "Work."
- 8.2** City shall furnish all personnel, supervision, labor, transportation, tools, equipment and materials for performance of the Work. City shall expeditiously and efficiently perform the Work in accordance with the provisions of this Agreement. City shall ensure that all personnel who perform its Work shall be fully experienced and properly qualified to perform the same. City shall not hire any employee of PSE to perform any of the Work.
- 8.3** City shall perform the Work in a workmanlike and skillful manner. City shall ensure that the Work and the Equipment is in all respects (a) safe, (b) of first-class quality, (c) free from all faults and defects in workmanship, material and design, and (d) in conformance with such requirements of the current PSE Pole Attachment Specifications (Appendix V) and all laws and the regulations, orders and decrees of all lawfully constituted bodies and tribunals pertaining to Pole line construction, operation and maintenance, including without limitation, the requirements of the latest edition of the National Electrical Safety Code.
- 8.4** City shall promptly and satisfactorily correct or replace any Work or Equipment found to be defective or not in conformity with the requirements of this Agreement (including, but not limited to, the requirements of paragraph 8.3). If City fails or refuses to perform any Work required by this Agreement or to make any such corrections or replacements, PSE may perform such Work and make such corrections and replacements at City's expense.
- 8.5** City shall ensure that all personnel who perform the Work shall be fully experienced and properly qualified to perform the same. City shall, if so requested by PSE, remove from performance of the Work any personnel whom PSE finds to be incompetent, careless or otherwise objectionable.
- 8.6** Whenever City has knowledge of any actual or potential labor dispute involving its employees which may in any way affect, delay or arise in connection with or as a result of the performance of the Work or this Agreement, City shall immediately notify and submit all relevant information to PSE.
- 8.7** City shall, at all times, keep its work areas cleared of rubbish, refuse and other debris and in a neat, clean and safe condition. Upon completion of any portion of any of the Work, City shall promptly remove all rubbish, refuse and other debris and all of its equipment and surplus materials.
- 8.8** City shall give immediate attention to, and shall use its best efforts to promptly, courteously and equitably respond to, adjust and settle (without obligating PSE in any way), all complaints received by City from third parties arising out of or in connection with performance of the Work. City shall promptly notify PSE of all such complaints and any action taken (or to be taken) in connection therewith. In handling any complaints, City shall use its best efforts to maintain and promote good public relations for PSE.

SECTION 9. PROTECTION OF PROPERTY AND PERSONS

- 9.1** City shall take all precautions necessary to prevent bodily injury (including death) to persons and damage to any property or environment arising in connection with performance of the Work or the operation of the Equipment. Without limiting the generality of the foregoing, City shall erect and maintain such barricades, signs, flags, flashers, and other safeguards as are required from time to time by PSE. City shall inspect all goods, materials, tools, equipment, and other items to discover any conditions which involve a risk of bodily injury (including death) to persons, or a risk of damage to any property or environment, and shall be solely responsible for discovery and correction of, and protection against, all such conditions.
- 9.2** All property damaged, altered or removed in connection with City's performance of the Work or the operation of the Equipment shall be promptly repaired, replaced or otherwise restored by City to at least as good quality and condition as existed prior to such damaging, alteration or removal.
- 9.3** City shall ensure that no utility (including all supply, disposal, distribution and communication systems, and all similar or related facilities, equipment and other property) is damaged, altered, removed or interrupted in connection with the performance of the Work or the operation of the Equipment. If City requires the temporary shutoff of any of PSE's electric circuits or other elements of its or a third party's utility system, City shall request PSE's approval thereof at least forty-eight (48) hours in advance of the time it requires the shutoff. City shall perform the Work requiring the shutoff only after such approval has been obtained and on such days and at such hours as PSE may direct.
- 9.4** Prior to performing any of the Work, City shall obtain from PSE all relevant information as to the nature of the electric circuits attached to the Poles to which such Work relates. City shall ensure that such circuits continue in normal operation at all times during performance of the Work. Without limiting paragraph 9.1, City shall take all precautions which are necessary to prevent bodily injury (including death) and property damage resulting from such circuits in the course of performing the Work.

SECTION 10. COOPERATION AND COORDINATION

- 10.1** City acknowledges and anticipates that the Work may be interfered with and delayed from time to time on account of the concurrent performance of work by PSE or others. City shall fully cooperate with PSE and others and coordinate the Work with such other work so as to minimize any delay or hindrance of any work.
- 10.2** If any part of the Work depends upon the results of other work by PSE or others, City shall, prior to commencing such Work, notify PSE in writing of any actual or apparent deficiencies or defects in such other work that renders it unsuitable for performance of the Work. Failure of City to so notify PSE shall constitute an acceptance by City of such other work as suitable for performance of the Work, except as to latent defects which may subsequently be discovered in such other work.

SECTION 11. LIENS

City shall timely pay all (and shall promptly secure the discharge of any liens asserted by any) persons and entities furnishing labor, equipment, materials or other items in connection with the Work. City shall furnish to PSE such releases of claims and other documents as may be requested by PSE from time to time to evidence such payment (and discharge). If any such persons or entities are not timely paid (or if any of such liens are not promptly discharged), PSE may make such payments (and secure such discharge) at City's expense and City shall reimburse PSE for the entire expense thereby incurred.

SECTION 12. COMPLIANCE WITH LAWS

12.1 In the performance of the Work and this Agreement, City shall comply and shall ensure that all contractors of any tier comply with all applicable:

- a) Laws, ordinances, rules, regulations, orders, licenses, permits and other requirements, now or hereafter in effect, of any governmental authority;
- b) Industry standards and codes; and
- c) PSE Pole Attachment Specification, which is attached and incorporated by reference as Appendix V and may be modified by PSE from time to time.

City shall furnish such documents as may be required to effect or evidence compliance. All laws, regulations, and orders required to be incorporated in agreements of this character are hereby incorporated herein by this reference.

12.2 If applicable, City shall comply with Executive Order No. 11246, Executive Order No. 11701, the Vietnam Era Veterans' Readjustment Assistance Act of 1972 and the Rehabilitation Act of 1973, and all orders, rules and regulations promulgated thereunder (including, but not limited to 41 C.F.R. Part 60-1, 41 C.F.R. Part 60-250 and 41 C.F.R. Part 60-741), all as the same may have been or may be amended. The "equal opportunity clause" of 41 C.F.R. § 60-1.4(b), the "Affirmative Action Obligations for Disabled Veterans and Veterans of the Vietnam Era" clause of 41 C.F.R. § 60-250.4 and the "Affirmative Action for Handicapped Workers" clause of 41 C.F.R. § 60-741.4 are incorporated herein by this reference. By signing the Agreement, City certifies that segregated facilities (within the meaning of 41 C.F.R. § 60-1.8) are not and will not be maintained or provided for City's employees and that City will not permit its employees to perform Work at any location under City's control where segregated facilities are maintained. City shall obtain a similar certification from any of its subcontractors or suppliers as required by 41 C.F.R. § 60-1.8. This paragraph 12.2 shall apply only if and to the extent required by law or by any agreement now or hereafter entered into between PSE and the United States of America.

SECTION 13. TAXES

City shall pay (except as otherwise required by law) all taxes applicable to or incurred in connection with the Work, the Equipment, or the System of which the Equipment constitutes a part.

SECTION 14. PERMITS AND PROTECTION OF EXISTING RIGHTS

- 14.1** City shall obtain and comply (and shall ensure that all of City's suppliers and subcontractors of any tier comply) with all permits, licenses, franchises, rights-of-way, easements and other rights required to perform the Work and operate the Equipment and the System in accordance with this Agreement. City shall furnish to PSE such evidence thereof as PSE may request. Compliance with this paragraph 14.1 shall be the sole responsibility of City and a continuing condition of the use of the Poles by City.
- 14.2** City shall release and defend, indemnify and hold harmless PSE, its successors and assigns, and the respective directors, officers, employees, and agents of PSE and its successors and assigns (collectively referred to hereafter as the "Indemnitees") from any and all claims, losses, costs, liabilities, damages and expenses (including, but not limited to, reasonable attorneys' fees) arising out of or in connection with any violation (or alleged violation) of any contract, permit, license, franchise, right-of-way, easement or other rights of PSE that is based on or relates to any Attachment. Upon the request of PSE, City shall immediately remove any Attachment that violates, is alleged to violate or, in the judgment of PSE, jeopardizes any contract, permit, license, franchise, right-of-way, easement or other rights of PSE. If City fails to remove the Attachment within fifteen (15) days after PSE makes its request, PSE may remove the Attachment at City's sole risk and expense and City shall reimburse PSE for the entire expense thereby incurred.

SECTION 15. EXAMINATION OF RECORDS

City shall promptly furnish PSE with such information related to the Work or the Equipment as may from time to time be requested by PSE. Until the expiration of three (3) years after the termination of the Term, PSE shall have access to examine all of City's books, documents, papers and records which are related to the Work, the Equipment, or this Agreement, provided the City is required to retain such records pursuant to the Public Records Act at RCW 42.56.

SECTION 16. STATUS OF CITY

- 16.1** City represents and warrants that it is, and that at all times during the Term it shall be properly authorized, licensed, organized, equipped and financed to perform the Work and to operate the Equipment and the System.
- 16.2** City shall be and operate as an independent entity (not a contractor, agent or representative of PSE) in the performance of the Work and the operation of the Equipment and City's System. In no event shall City be authorized to enter into any agreements or undertakings for or on behalf of PSE or to act as or be an agent or representative of PSE.

SECTION 17. RELEASE, INDEMNITY, HOLD HARMLESS AND LIMITATION OF LIABILITY

- 17.1** City releases and shall defend, indemnify and hold harmless the Indemnitees from any and all claims, losses, costs, liabilities, damages and expenses (including, but not limited to, reasonable attorneys' fees) arising (whether before or after termination of the Term) out of or in connection with any Attachment, the performance of the Work, the operation of the Equipment or the System by City, the enforcement of this Agreement by PSE, any

default under or breach of this Agreement by City or the acts or omissions of City or any of its suppliers or subcontractors of any tier, the respective successors and assigns of City or any such suppliers or subcontractors, the directors, officers, employees and agents of each of the foregoing, or anyone acting on City's behalf in connection with this Agreement. To the fullest extent permitted by applicable law, the foregoing release, indemnity and hold harmless shall apply regardless of any act, omission, fault, negligence or strict liability of the Indemnitees; provided, however, that City shall not be required to so indemnify any Indemnatee(s) against any claim, loss, cost, liability, damage or expense to the extent the same is caused by or results from the negligence of any Indemnatee(s). In connection with any action to enforce this Section 17, City waives any immunity, defense, or protection under any workers' compensation, industrial insurance, or similar laws (including, but not limited to, the Washington Industrial Insurance Act, Title 51, of the Revised Code of Washington). PSE is willing to permit Attachments for the fees described in Section 6 only in consideration of and in reliance upon such release, indemnity and hold harmless. Consequently, such release, indemnity, and hold harmless shall be construed broadly in favor of the Indemnitees.

- 17.2** NOTWITHSTANDING ANY OTHER PROVISION OF THIS AGREEMENT, PSE SHALL NOT HAVE ANY LIABILITY TO CITY FOR ANY: LOSS OF PROFIT OR REVENUE, LOSS OF USE OF THE EQUIPMENT OR THE SYSTEM, CLAIMS OF CUSTOMERS OF CITY FOR SERVICE INTERRUPTIONS, OR DIRECT, INDIRECT, INCIDENTAL, SPECIAL, ECONOMIC OR CONSEQUENTIAL DAMAGES, AS A RESULT OF OR RELATED TO THE EQUIPMENT, ANY ATTACHMENT, OR THIS AGREEMENT, WHETHER ARISING IN CONTRACT, TORT (INCLUDING, WITHOUT LIMITATION, NEGLIGENCE, PRODUCT LIABILITY OR STRICT LIABILITY) OR OTHERWISE, EVEN IF PSE HAS BEEN ADVISED OF THE POSSIBILITY OF THE SAME.

SECTION 18. WORKER'S COMPENSATION AND INSURANCE

- 18.1 Insurance Required.** At all times during the term of this Agreement, City and all persons performing the Work, City or its suppliers or subcontractors, shall keep in force and effect insurance policies as described below:
- a) Workers Compensation and Employers' Liability Insurance. Statutory workers' compensation benefits as required for all employees by Title 51 of the Revised Code of Washington and Employer's Liability Insurance, including Occupational Disease coverage, in the amount of \$1,000,000 for each accident, each employee, and policy limit. City shall require subcontractors to obtain and maintain such insurance.
 - b) Commercial General Liability Insurance. Policy will be written to provide coverage for, but not limited to, the following: premises and operations, products and completed operations, personal injury, blanket contractual coverage, broad form property damage, independent contractor's coverage with Limits of liability not less than \$ 2,000,000 general aggregate, \$ 2,000,000 products/completed operations aggregate, \$ 2,000,000 personal injury, \$ 2,000,000 each occurrence.
 - c) Automobile Liability Insurance. Commercial automobile policy covering all owned, hired and non-owned autos and commercial vehicles to be used in the performance of the Work. Limits of liability not less than \$1,000,000 each occurrence combined single limit for bodily injury and property damage.

- d) Umbrella/Excess Liability Insurance. Coverage is to be responsible in excess of the sum employers' liability, commercial general liability, and auto liability. Limits of liability not less than \$ 4,000,000 each occurrence/ \$ 4,000,000 aggregate.
- e) Property Insurance. Each party will be responsible for costs associated with maintaining their own property.

- 18.2** City shall ensure compliance with insurance requirements as outlined above such as will protect the Indemnitees from any and all claims, losses, harm, costs, liabilities, damages and expenses arising out of personal injury (including death) or property damage that may result from performance of the Work or this Agreement or the operation of the Equipment or the System, whether such performance or operation is by City or any of its suppliers or subcontractors of any tier.
- 18.3** No policies of insurance required to be obtained by City or its subcontractors shall contain provisions that: (1) exclude coverage of liability assumed by this Agreement with PSE except as to infringement of patents of copyrights of for libel and slander in program material, (2) exclude coverage of liability arising from excavating, collapse, or underground work, (3) exclude coverage from injuries to PSE's employees or agents, or (4) exclude coverage of liability for injuries or damages caused by City's subcontractors' employees, or agents. This list of prohibited provisions shall not be interpreted as exclusive.
- 18.4** Within thirty (30) days after any notice of termination, cancellation, expiration or alteration in any policy of insurance required under this Agreement, City shall deliver to PSE a Certificate of Insurance acceptable to PSE with respect to any replacement policy.
- 18.5** The requirements of this Agreement as to insurance and acceptability to PSE of insurers and insurance to be maintained by City are not intended to and shall not in any manner limit or qualify the liabilities and obligations of or assumed by City under this Agreement.
- 18.6** The Parties acknowledge that the City's participates in a municipal risk pool. City shall provide evidence or confirmation that the coverage provided by such participation provides coverage at least as broad as the requirements outlined in this Section 18.

SECTION 19. RISK OF LOSS

City shall be responsible for and shall bear any and all risk of loss, deterioration, theft, vandalism or destruction of or damage to the System and anything used (or to be used or consumed) in connection with the Work.

SECTION 20. REIMBURSEMENT AND PAYMENT

PSE shall invoice City for all amounts payable by City to PSE under this Agreement (including, without limitation, the payments described in Section 6 and all reimbursable costs and expenses described elsewhere in this Agreement) as they become due. City shall pay each such invoice in full within thirty (30) days after City's receipt thereof.

SECTION 21. ATTORNEY'S FEES

The prevailing Party in any suit, action, or arbitration filed or held concerning this Agreement shall be entitled to recover, in addition to all other relief, its reasonable attorney's fees incurred in connection therewith, both at trial and on any appeal.

SECTION 22. LATE CHARGES AND INTEREST

- 22.1** City acknowledges that late payment of any fee or other amounts due to PSE under this Agreement will cause PSE to incur certain administrative, processing accounting costs not otherwise contemplated by this Agreement, the exact amount of which will be extremely difficult, if not impossible, to ascertain. Accordingly, if any fee or other amounts shall not be received by PSE within thirty (30) days after such amounts shall first become due, City shall pay to PSE a late charge, as liquidated damages and not as a penalty, equal to two percent (2%) of such overdue amounts as a reasonable estimate of the administrative, processing and accounting costs PSE will incur by reason of late payment by City. Such late charge is intended to be in lieu of City's liability for such costs, but shall not relieve or release City from liability for any other costs or damages suffered by PSE by reason of late payment. Payment of such late charge shall in no event excuse or cure any default under or breach of this Agreement by City.
- 22.2** In addition to any late charge under paragraph 22.1, City shall pay to PSE interest, compounded daily, at the rate of one percent (1%) per month or the maximum rate permitted by applicable law, whichever is less, on any fees or other amounts not paid to PSE when due under this Agreement, from the date due until the date paid. Payment of such interest shall not excuse or cure any breach of or default under this Agreement by City.

SECTION 23. NONWAIVER

The failure of PSE to insist upon or enforce strict performance by City of any of the provisions of this Agreement, or to exercise any rights under this Agreement, shall not be construed as a waiver or relinquishment to any extent of its right to assert or rely upon any such provisions or rights in that or any other instance; rather, the same shall be and remain in full force and effect.

SECTION 24. ASSIGNMENT; SUCCESSORS AND ASSIGNS

City shall not assign, apportion, delegate or sublease any of its rights or obligations under this Agreement or assign this Agreement in whole or in part, by operation of law or otherwise, without the prior written consent of PSE, which consent shall not be unreasonably withheld. Any apportionment, delegation, sublease or assignment or purported apportionment, delegation, sublease or assignment without the prior written consent of PSE shall be voidable by PSE. In any event, no sublease or assignment of this Agreement shall relieve City from any of its liabilities or obligations under this Agreement. Subject to the foregoing restrictions on assignments without the prior written consent of PSE, this Agreement shall be fully binding upon, inure to the benefit of and be enforceable by the successors and assigns of the respective Parties hereto.

SECTION 25. NOTICES AND OTHER COMMUNICATIONS

25.1 Written Notice. As referenced elsewhere in this Agreement, PSE and City shall provide notice, approval, consent, instruction, direction or other communication to each other in writing ("Written Notice"). The following notices, requests, demands and other communications hereunder shall be in writing, and shall be deemed given if personally delivered, sent via overnight delivery, or within five days of being deposited in the US Mail with appropriate postage:

- a) Notice of adjustment of the Annual Rental Fee (Appendix III).
- b) Notice of code violation: City's Equipment fails to comply with the requirements of NESC.
- c) Notice of permit violation: City's Equipment fails to comply with the requirements of Appendix V.
- d) Notice of termination of Agreement by either Party.
- e) Notice of failure to respond to an invoice.
- f) Notice in lieu of payment of an invoice.
- g) Notice of consent of assignment of Agreement to a third party.
- h) Notice of rearrangement of City's Equipment by PSE.
- i) Notice of City failure to perform or observe any other term or condition of this Agreement.

Written Notice shall be made to the following addresses and either Party may from time to time change such address by giving the other Party notice of such change in accordance with the provisions of this section:

If to:

Puget Sound Energy, Inc.: 3380 146th PL SE #310, Bellevue, WA 98007 / Pole Services

City of Anacortes: 904 6th Street, PO Box 547, Anacortes, WA 98221 / Municipal Fiber Manager

25.2 Electronic Notice. As referenced in this Agreement, PSE and City may provide notice to each other electronically ("Electronic Notice"). The following notices, requests, demands and other communications hereunder shall be in electronic format, via the Internet or NJUNS (National Joint Use Notification System); or other mutually agreed to Joint-Use Notification System:

- a) Attachment Applications
- b) Notice of denial or approval of Attachment Applications
- c) Notice of pole transfers or other work on PSE Facilities
- d) Other notifications and communications as approved by PSE
- e) Termination of Attachment Notice

SECTION 26. VOLUNTARY EARLY TERMINATION

Either Party shall have the right to terminate this Agreement or any Attachment/s made pursuant hereto, for any reason and at any time, upon providing the non-terminating Party with one hundred and eighty (180) calendar days prior Written Notice. Where City or PSE exercises such right, City will remove the impacted Attachments and Equipment from PSE's Facilities at City's expense, within six (6) months from the date of Termination as specified in the Notice of Termination. City will return the poles utilized by City to their original condition, with the exception of normal wear and tear.

SECTION 27. SURVIVAL

The obligations imposed on City under Sections 6, 11, 15, 17, 20, 21, 22, 23, 24, 25, 28, 29, and 30, and paragraph 7.2, and all provisions of this Agreement which may reasonably be interpreted or construed as surviving the completion, termination or cancellation of this Agreement, shall survive the completion, termination or cancellation of this Agreement.

SECTION 28. REGULATORY APPROVALS

This Agreement and any transfers of property pursuant to this Agreement are subject to the authority of regulatory agencies having jurisdiction over the Parties, or either of them, with respect thereto. Each Party shall promptly submit this Agreement to the regulatory agencies having such jurisdiction over such Party and shall take such additional action as may reasonably be required to promptly obtain any required approvals or other action by such agencies.

SECTION 29. MISCELLANEOUS

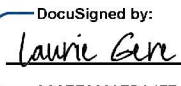
- 29.1** The rights and obligations of the Parties hereunder shall be subject to and governed by this Agreement. This Agreement sets forth the entire agreement of the Parties, and supersedes any and all prior agreements, with respect to Attachments.
- 29.2** This Agreement may not be modified except by a writing executed contemporaneously herewith or subsequent hereto signed by both Parties.
- 29.3** Each Party shall take such action (including, but not limited to, the execution, acknowledgment and delivery of documents) as may reasonably be requested by the other Party for the implementation or continuing performance of this Agreement.
- 29.4** The invalidity or unenforceability of any provision of this Agreement shall not affect the other provisions hereof, and this Agreement shall be construed in all respects as if such invalid or unenforceable provisions were omitted.
- 29.5** The headings of sections and paragraphs of this Agreement are for convenience of reference only and are not intended to restrict, affect, or be of any weight in the interpretation or construction of the provisions of such sections or paragraphs.

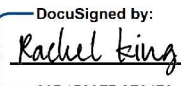
SECTION 30. APPLICABLE LAW

This Agreement shall in all respects be interpreted, construed, and enforced in accordance with the laws of the State of Washington.

City /Accepted and Agreed:
City of Anacortes

PSE /Accepted and Agreed:
Puget Sound Energy, Inc.

By  _____
DocuSigned by:
9C8EE8989EBA4F7...

By  _____
DocuSigned by:
09D1500FDC76473...

Title: Mayor

Title: Supervisor, Account Management

Date: 10/14/2019

Date: 10/16/2019

Address:

904 6th Street (PO Box 547)
Anacortes, WA 98221
Attn: Municipal Fiber Manager

Address:

3380 146th PL SE #310
Bellevue, WA 98007
Attn: Pole Services

APPENDICES

- I** Certificate of Insurance, referenced in § 18 of the Agreement
- II** Pole Attachment Application, referenced at § 2.3 of the Agreement
- III** Annual Rental Fee, referenced at § 6.1 of the Agreement
- IV** Fees for Transferring Communication Equipment, referenced at § 5.4 of the Agreement
- V** PSE Pole Attachment Specifications

Appendix I

INSURANCE REQUIREMENTS

**Attach Certificate of Insurance of
Puget Sound Energy, Inc. Mandatory Requirements**

Appendix II**APPLICATION FOR ATTACHMENT**Application or
Job Number

Date

TO: Puget Sound Energy**Licensee:****Name:****Address:****Email/Phone #:**

Please grant permission to occupy your poles in accordance with the conditions set forth in Pole Attachment Agreement, dated _____

- ☐ Application for rental on _____ distribution poles
- ☐ Application for rental on _____ transmission poles

DESCRIPTION OF WORK:

Overlashing

New Cable

- | | |
|--------------------------|---|
| ☐ | PSE Universal maps attached with requested poles highlighted. |
| ☐ | Licensee's work sketch showing PSE grid numbers is attached. |
| ☐ | Appendix A Attached |
| ☐ | Fiber Specs Attached |
| ☐ | Photos Attached (Optional up to 10 poles) |

POWER _____ Will be installed. Pole list is attached and power
SUPPLIES _____ supply specifications are included.

Failure to supply requested information may delay acceptance of the application.

- ☐ Application or notification accepted.
- ☐ Billing of new contacts to be effective _____

LICENSOR PUGET SOUND ENERGY
BY

PSE Joint Use Coordinator

Date

Appendix III

ANNUAL RENTAL FEE Computation of Annual Rate for Poles Owned by PSE

A.	Net Cost of Bare Pole Calculation	PV
	1. Gross Distribution Plant	
	2. Gross Pole Investment (Acct. 364)	
	3. Distribution Plant Accumulated Depreciation	
	4. Depreciation Reserve (Poles)	
	5. Gross Plant Investment (Electric)	
	6. Accumulated Deferred Taxes (Electric) (190, 281-3)	
	7. Accumulated Deferred Taxes (Accts. 190, 281-3) (Poles)	
	8. Net Pole Investment	
	9. Appurtenances Factor	0.85
	10. Net Pole Investment Allocable to Attachments	
	11. Total Number of Poles	
	Net Cost of a Bare Pole	
B.	Carrying Charge Calculation	CC
	1. Total General and Administrative	
	2. Gross Plant Investment (Electric)	
	3. Depreciation Reserve (Electric)	
	4. Accumulated Deferred Taxes (Electric) (190, 281-3)	
	Administrative Carrying Charge	
	5. Account 593 (Maintenance of Overhead Lines)	
	6. Investment in Accts. 364, 365 & 369	
	7. Depreciation (Poles) related to Accts. 364, 365 & 369	
	8. Accumulate Deferred Income Taxes for 364, 365 & 369	
	Maintenance Carrying Charge	
	9. Gross Pole Investment (Acct. 364)	
	10. Net Pole Investment	
	11. Depreciation Rate for Gross Pole Investment	
	Depreciation Carrying Charge	
	12. Taxes (Accts. 408.1 + 409.1 + 410.1 + 411.4 - 411.1)	
	13. Gross Plant Investment (Total Plant)	
	14. Depreciation Reserve (Total Plant)	
	15. Accumulated Deferred Taxes (Total Plant) (190, 281-3)	
	Taxes Carrying Charge	
	16. Rate of Return	
	Return Carrying Charge	
	Total Carrying Charge	
C.	Space Factor Calculation	PR
	1. Occupied Space	1
	2. Usable Space	13.5
	3. Space Factor	
D.	Annual Pole Attachment Rental Rate Calculation	
	1. Net Cost of a Bare Pole	(PV)
	2. Total Carrying Charges	(CC)
	3. Space Factor	(PR)
	Pole Attachment Rental Rate	(PR*CC*PR)

Appendix IV

FEES FOR TRANSFERRING COMMUNICATIONS EQUIPMENT

FIRST TRIP COSTS – Fees for performing transfer work while PSE is in the process of doing its own work.

Crossarms, all types	\$ 145.00
Anchor strand or overhead guy	145.00
Sidewalk anchor guy and pipe	155.00
Drop wire (no splicing)	145.00
Service Conduit	195.00
Messenger and cable bolted to pole or cable arm (no splicing)	150.00
Messenger dead-end	165.00
Cable riser (including pipe and molding – no splicing)	195.00
Cable terminal (no splicing)	155.00

RETURN TRIP COSTS - Cost of performing transfer work when PSE must return to the job site. The following amounts include travel time.

Crossarms, all types	\$ 235.00
Anchor strand or overhead guy	235.00
Sidewalk anchor guy and pipe	265.00
Drop wire (no splicing)	250.00
Service Conduit	385.00
Messenger and cable bolted to pole or cable arm (no splicing)	235.00
Messenger dead-end	295.00
Cable riser (including pipe and molding – no splicing)	385.00
Cable terminal (no splicing)	265.00

TOPPING FEE \$125.00

Appendix V

POLE ATTACHMENT SPECIFICATIONS

Attached

Conductor-to-Ground Clearances

0700.3001

Scope

This standard describes the requirements for vertical clearance of overhead conductors above ground, roadways, rail, and water.

Design Practice

Clearances for conductors that PSE owns and/or operates shall meet the requirements of WAC 468-34-290 and NESC 232.

Clearances shall be calculated with the conductor temperature and loading conditions that produce the maximum final sag.

See Standard 6450.3000 for information on conductor design temperature and design tensions.

See Standard 6550.6200 for information on how to measure conductor sag.

Joint Use Construction

In joint use construction, the lowest communication conductor shall be considered. Its required clearance, plus the required spacing between the communication and power conductors may force the power conductors to have more than the minimum amount of clearance.

New Construction

If the terrain will be altered under the power line that effect the grade (such as filling, repaving a street, installing sidewalks, or adding landscaping) the clearances required by this standard shall be increased so when the terrain is at final grade, the minimum clearances are met.

Clearance Requirements

Table 1 lists the requirements for most situations that will be encountered. In rare cases, the NESC may allow reduced clearances. If the conductor is at an elevation above 3000 feet and it operates at 115 kV or more, additional clearance is required.

Conductor-to-Ground Clearances**0700.3001****Table 1**

Clearance requirements (all measurements are in feet)

	CONDUCTORS							
	Communications and common neutral	Insulated service or secondary	Uninsulated service or secondary	Primary 4.0 kV thru 34.5 kV	55	66	115	230
	GUYS							
	Guys for structures carrying 0 thru 300 V		Guys for structures carrying 301 thru 750 V	Guys for systems carrying 751 V thru 34.5 kV				
Interstate highways, state highways, and bridges on those highways (crossing).	24.0 *	24.0	24.0	4 and 15 kV = 30 34.5 kV = 32	34.0	34.0	34.0	34.0
Interstate highways, state highways, and bridges on those highways (longitudinal).	20.0	24.0	24.0	4 and 15 kV = 27 34.5 kV = 32	32.0	32.0	32.0	32.0
Municipal roads, streets, parking lots, alleys, private driveways, horse trails and areas subject to truck traffic (including farmland, orchards, pastures, and forests).	15.5	16.0	16.5	18.5	18.9	19.1	20.1	22.4
Railroad tracks (except electrified railroads using overhead trolley conductors). [†]	23.5	24.0	24.5	26.5	26.9	27.1	28.1	30.4
Pedestrian ways where vehicles are prohibited by regulation or permanent obstructions and not reasonably expected to be used by vehicles.	9.5	12.0	12.5	14.5	14.9	15.1	16.1	18.4
Water areas not suitable for sailboating or where sailboating is prohibited.	14.0	14.5	15.0	17.0	17.4	17.6	18.6	20.9

* This value is 20' for communications cables on joint use structures.

[†] The railroad company may require greater clearance than shown here.*Continued on next page*

Conductor-to-Ground Clearances**0700.3001**

	CONDUCTORS							
	Communications and common neutral	Insulated service or secondary	Uninsulated service or secondary	Primary 4.0 kV thru 34.5 kV	55	66	115	230
	GUYS							
	Guys for structures carrying 0 thru 300 V		Guys for structures carrying 301 thru 750 V	Guys for systems carrying 751 V thru 34.5 kV				
Water suitable for sailboating (including lakes, ponds, reservoirs, tidal waters, rivers, streams, and canals), that are less than 20 acres.	17.5	18.0	18.5	20.5	20.9	21.1	22.1	24.4
Water suitable for sailboating, but greater than 20 acres, but less than 200 acres.	25.5	26.0	26.5	28.5	28.9	29.1	30.1	32.4
Water suitable for sailboating, but greater than 200 acres, but less than 2000 acres.	31.5	32.0	32.5	34.5	34.9	35.1	36.1	38.4
Water suitable for sailboating, and greater than 2000 acres.	37.5	38.0	38.5	40.5	40.9	41.1	42.1	44.4
Boat ramps and rigging areas.	The clearance shall be 5 ft greater than that required for the water area being served by the boat ramp or rigging area.							

These values are from NESC Table 232-1, except for the state highway clearance that is from WAC 468-34-290.

References

The following Puget Sound Energy documents apply to this standard:

6450.3000 Overhead Distribution Line Design
6550.6200 Conductor Sag Measurement

Sources

IEEE C2-2012
NESC

Rule 232 Vertical clearances of wires, conductors, cables, and equipment above
ground, roadway, rail, or water surfaces

WAC

468-34-290 Vertical clearance

Attachment and Clearance Requirements
for Overhead Joint Utility Construction

0700.8000

Scope

This standard establishes the attachment, grounding, structural, and clearance requirements for communications cables and equipment attached to Puget Sound Energy-owned poles.

This standard does not address RF antenna equipment (see Standard 0700.8500).

In This Standard

This standard contains the following topics.

Topic	See Page
Definitions	1
Transmission Pole Loading	3
Cables	4
Guys and Anchors	4
Pole Drilling	6
Unused Facilities	6
Equipment Mounting	6
Risers	7
Underground Service Drops	9
Grounding Requirements	9
Clearance Requirements	10
Streetlight Clearances	15

Definitions

These are definitions of terms used in this standard. *Figure 1* illustrates these terms.

Term	Definition
Communication Worker Safety Zone	See Safety Space.
Communications Space	The space on a pole below the Communication Worker Safety Zone where communications lines are installed. The lower bound of the Communications Space is the lowest point on the pole where communications lines may be installed and maintain adequate pole-to-pole ground clearance.
Covered Streetlight Wire	Insulated streetlight conductor covered with protective molding.
Field Face Quadrant	The quarter section of a pole on the field side of the pole gain.

Continued on next page

Attachment and Clearance Requirements for Overhead Joint Utility Construction

0700.8000

Definitions, *continued*

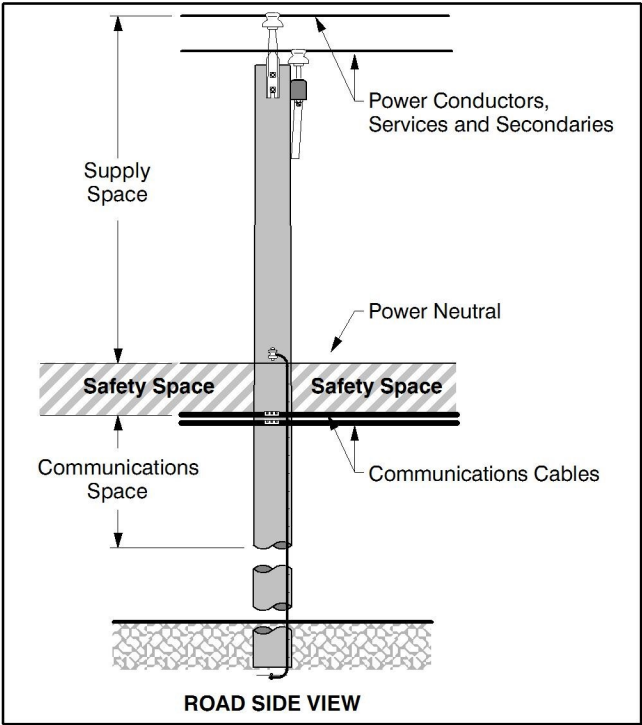
Term	Definition
Joint Utility	For the purposes of this standard, any entity (utility, public agency, communications company, or other) other than Puget Sound Energy that attaches to any Puget Sound Energy-owned facility.
Pole Face	The side or half of the pole that contains the pole gain.
Pole Gain	The notch in the pole that contains the pole manufacturing information. The pole gain is located 12 feet from the butt of the pole.
Road Face Quadrant	The quarter section of a pole on the road side of the pole gain.
Safety Space (or Communication Worker Safety Zone)	The vertical space on a pole below the supply space and above the communications space. This space is intended to provide a safe working clearance for workers in the communications space. It is defined in the NESC, Section 235C4. NOTE: The term “safety space” is used in this standard for purposes of clarity.
Supply Space	The space above the Communication Worker Safety Zone. Except for some streetlights, this is where electric supply equipment and electric supply lines (power lines) are installed. The Supply Space extends to the lower of: ▪ 120 inches down from a 115 or 230 kV transmission line conductor. ▪ 96 inches down from a 19.9/34.5 kV primary line conductor. ▪ 84 inches down from a 2.4/4.0 kV and 7.2/12.47 kV primary line conductor. ▪ The lowest attachment point of a secondary or neutral conductor.

Attachment and Clearance Requirements
for Overhead Joint Utility Construction

0700.8000

Figure 1

Space Allocation on a Pole



Approval Required

Joint utilities must receive written approval from Puget Sound Energy before attaching to Puget Sound Energy-owned poles. This includes overlashing cable to existing bundles on a strand. Joint utilities must also have a signed Joint Use Agreement with PSE. Joint Users must also refer to their Joint Use Agreement for any additional specific requirements.

Codes

All equipment and hardware shall be mounted on the pole in a way that provides adequate climbing and working space. In all cases, clearances and separations as required in the NESC shall be met, both at the pole and midspan.

All poles where attachments are made shall have sufficient structural capacity to support the loadings for all facilities attached. Poles should be reviewed for NESC strength compliance where new or modified facilities are proposed that would increase loading on the pole.

Transmission Pole Loading

PSE will structurally review all proposed attachments to PSE transmission poles. Attachment to transmission poles without distribution underbuild may not be approved.

Attachment and Clearance Requirements for Overhead Joint Utility Construction

0700.8000

Cables

Joint utilities' cables shall:

- Attach to the same side of the pole as the power neutral conductor.
- Be installed on the road side of the pole if the power neutral conductor is on a primary crossarm.
- Be tensioned or guyed so the angle of existing structures is not altered and the sag characteristics of the power conductors do not change. All unbalanced tensions must be guyed.
- Meet all applicable NESC clearances at the time of installation or alteration.

When present, PSE-owned fiber shall take the uppermost position on the pole.

Guys and Anchors

The following requirements apply to joint utilities' guys and anchors:

- Each company is responsible for installing the appropriate guying to balance the maximum horizontal tension of its cables/messengers. This includes at deadends, angles, taps, and other such locations. Service drops do not require guying unless deemed prudent by the attaching company.
 - Guys shall be installed with anchors provided and installed by the communications company. Existing PSE anchors may be used only with permission from PSE on a per location basis. Such requests may only be granted if:
 - The communication guy attachment is insulated or grounded.
 - The anchor has sufficient strength. PSE anchors have either 2 or 3 integral “eye” positions depending on the anchor type and this number of attachments shall not be exceeded. ***Installing auxiliary eyes is also not permitted (see Figure 2).***
 - New anchors must be a minimum of 5 feet from existing PSE anchors and the pole (see *Figure 3*).
 - Crossing down guys or fastening two span guys together for ground clearance is not permitted.
 - Pole-to-pole span guying may not utilize a pole as an anchoring device unless a down guy meeting the requirements of this section is installed.
 - Guy markers shall be installed on all communication down guys.
 - Guys must be grounded or insulated.
-

Attachment and Clearance Requirements
for Overhead Joint Utility Construction

0700.8000

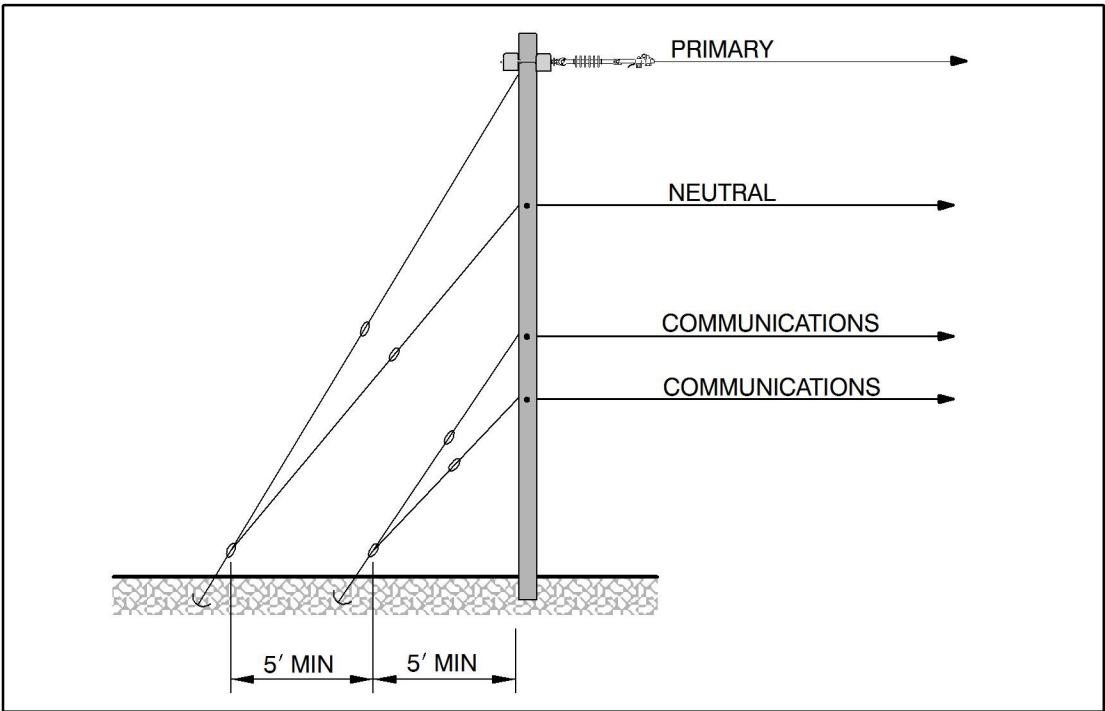
Figure 2

This type of installation is not permitted! PSE anchors have either 2 or 3 integral “eye” positions depending on the anchor type and this number of attachments may not be exceeded.



Figure 3

Anchor Placement



Attachment and Clearance Requirements for Overhead Joint Utility Construction

0700.8000

Pole Drilling

Existing holes shall be used for equipment mounting whenever possible.

When new holes must be drilled in wood poles, they shall be treated with PSE's current approved wood preservative. Treatment shall be applied using a pressure-type oil can or a bottle brush. All communication attachments on PSE steel poles must be banded to the pole unless factory predrilled holes are available. Field drilling is not allowed on steel poles unless approved by PSE on a per case basis.

Refer to PSE Standard 6450.7500 for field treatment requirements for wood poles.

Unused Facilities

Unused communication facilities that are not required for normal service, redundancy, or emergency use shall be removed.

Equipment Mounting

Joint utility-owned communications enclosures mounted more than 8 feet abovegrade on PSE-owned poles shall be no larger than 24 inches wide x 24 inches high x 18 inches deep (24" W x 24" H x 18" D). The joint utility shall provide and install all materials necessary to support a communications enclosure a minimum of **5 inches** from the face of the pole. If the enclosure is to be energized, then the joint utility shall also provide enough supply wire coiled at the weatherhead to reach the transformer secondary connections.

Communications enclosures shall be mounted directly above the pole gain. If this is not possible, they shall be mounted on the road face quadrant of the pole.

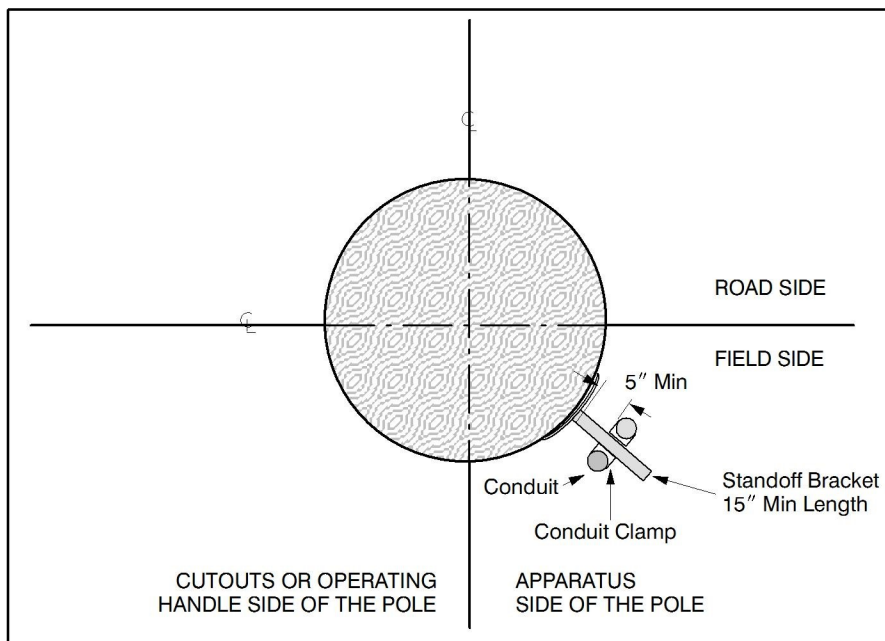
NOTE: A city or state electrical inspection is required before PSE connects communications power supply wires to power conductors.

Figure 4 illustrates the attachment requirements for risers and enclosures.

Attachment and Clearance Requirements for Overhead Joint Utility Construction

0700.8000
Figure 4

Attachment Requirements for Risers and Enclosures



Risers

Communications risers shall be mounted:

- Where they will not interfere with climbing space or the operation of pole-mounted equipment. The best position is on the field face side of the pole (see *Figure 4*); the exact location will depend on the position of obstructions and the direction of the cable or conduit run.
- On standoff brackets and provide a minimum **5-inch** clearance from the pole. Existing standoff brackets shall be used when available. If new brackets are needed, the communications company shall provide and install them.
- High enough on the pole to ensure the 40-inch safety space requirement is maintained between the bottom of the drip loop and the top of the communications space (see *Figure 5*). The bottom of the drip loop shall be no lower than the lowest piece of pole hardware in the supply space.

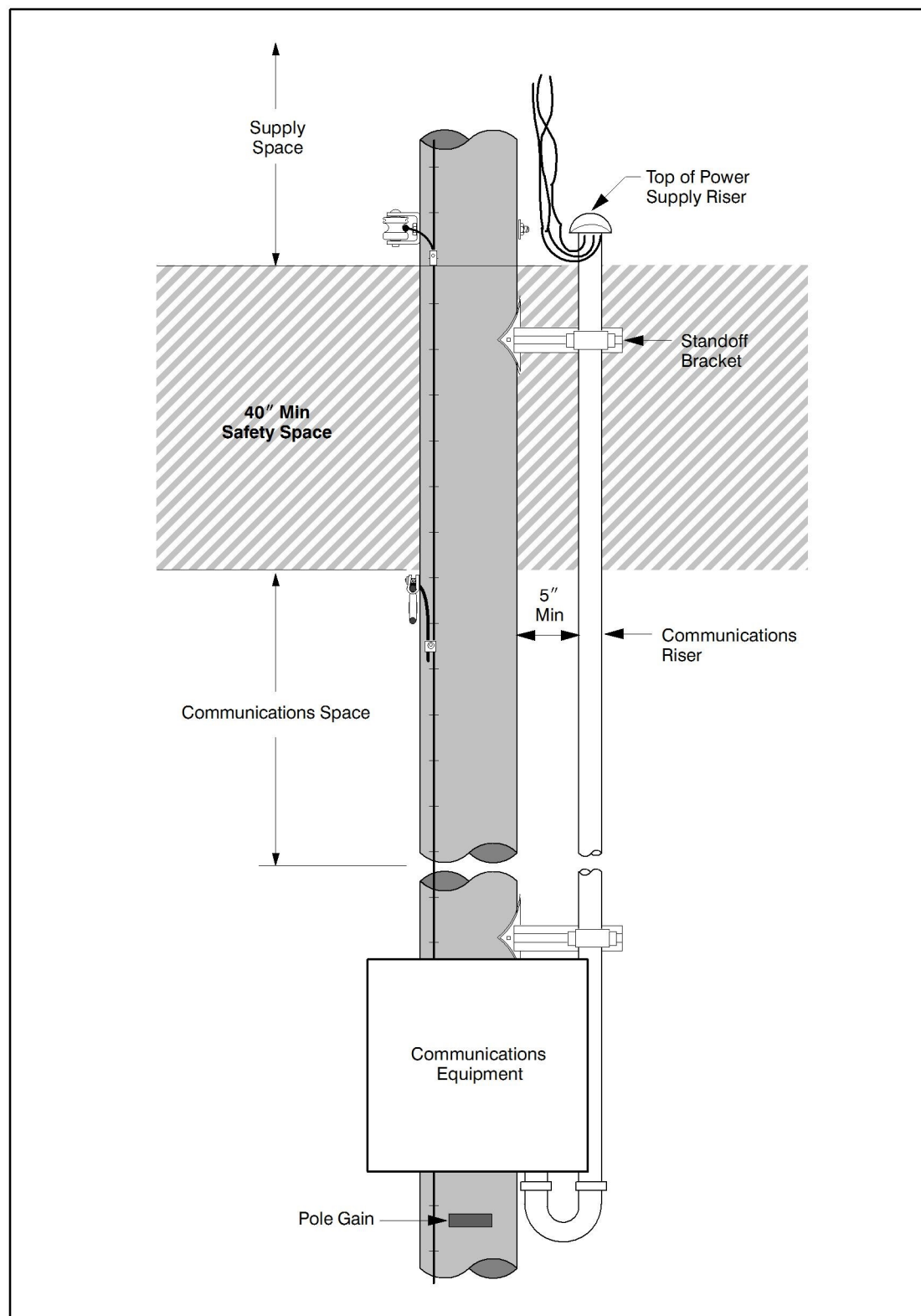
Attachment and Clearance Requirements for Overhead Joint Utility Construction

0700.8000

Risers, *Continued*

Figure 5

Attachment Requirements for Communications Risers



Attachment and Clearance Requirements for Overhead Joint Utility Construction

0700.8000

Underground Service Drops

Communications drops less than 1/2-inch in diameter may be attached directly to a pole under the following circumstances:

- They shall be securely attached, in accordance with NESC 239D, from the ground to the communications level, using staples or other means to ensure that the cables cannot be pulled away from the pole and become a tripping or snagging hazard to the public or anyone climbing the pole.
- To minimize climbing hazards, they shall only run vertically; they shall not wrap around the pole.
- All vertical runs shall be installed on the same quadrant of the pole. If there are existing conduit risers on the pole, the vertical runs shall be placed within the same quadrant as the existing riser(s).
- Any coils of spare cable will be attached to the pole no less than 8 feet abovegrade.
- Connection blocks will be mounted on the pole in the same quadrant as the drop and shall be no larger than 20 square inches.

Grounding Requirements

Metallic Messenger Bonding

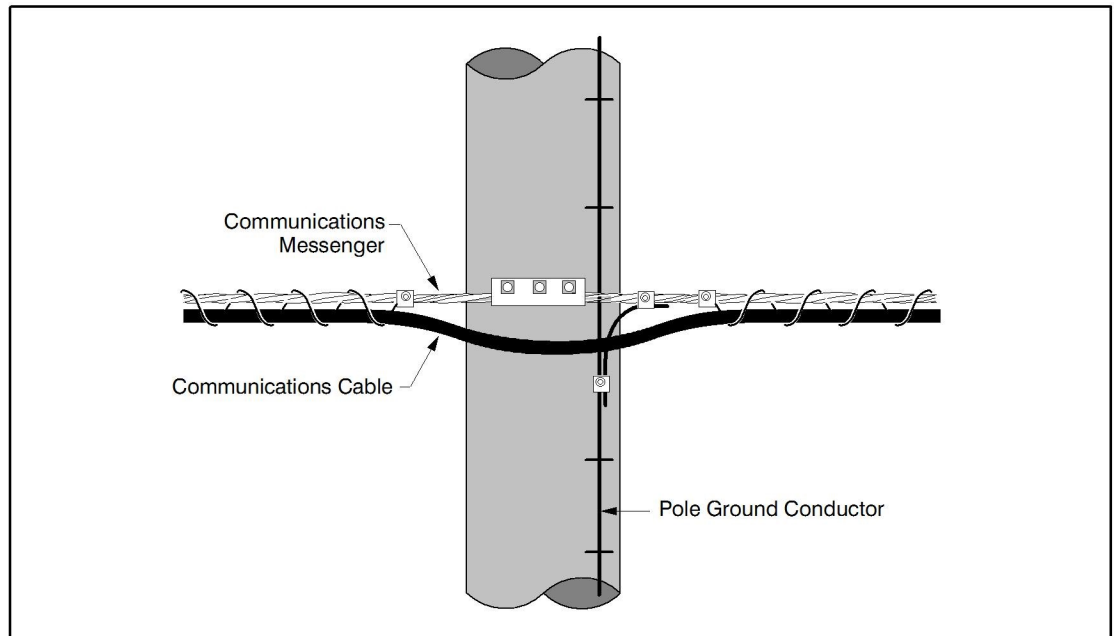
Communications metallic or conductive messengers may be bonded to the pole ground conductor, in accordance with NESC 97G, by the attaching company.

NOTE: Nonmetallic/nonconductive self-supporting messengers (i.e., Kevlar-type) do not require bonding.

Figure 6 illustrates how to construct the grounding.

Figure 6

Grounding Communications Messengers at Supports



Attachment and Clearance Requirements
for Overhead Joint Utility Construction

0700.8000

Clearance Requirements

Transmission
Clearances

PSE does not allow attachments to transmission poles above 100 kV unless the pole has distribution underbuild. For applications to transmission poles with existing distribution underbuild, PSE personnel will determine whether the attachment will be allowed and, if so, provide clearance requirements.

Distribution
Clearances
(up to and
including 34.5 kV)

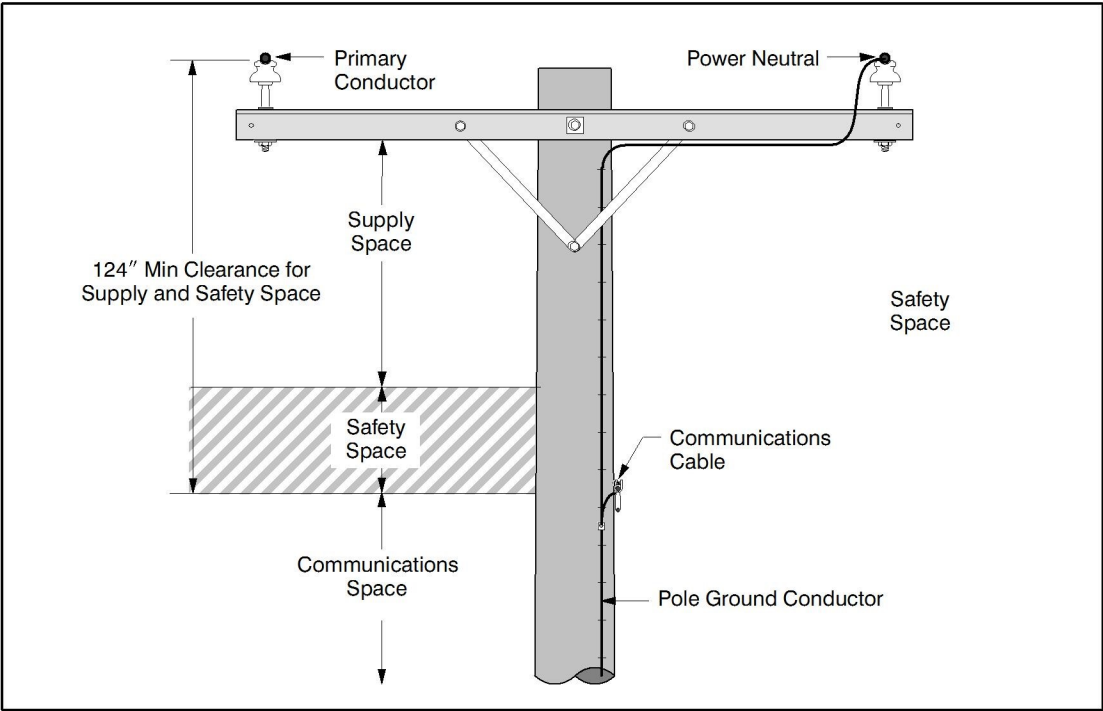
It is the responsibility of the joint utility to determine which clearance listed below applies, based upon the type of supply equipment or construction on the pole.
NOTE: All clearances are measured vertically.

Clearance at
Supports

The minimum clearance at supports between power company equipment and the top of the communications space depends upon the type of construction and equipment on the pole.

If . . .	And . . .	Then . . .
All primary conductors are mounted on a crossarm at the same level (either single or double arm construction),	There is no additional power equipment mounted below the primary arm,	124-inch (10'-4") minimum clearance is required (<i>Figure 7</i> illustrates this clearance). <i>NOTE:</i> This clearance is measured from the tie wire or conductor clamp on the insulator to the top of the communications space. This distance encompasses the supply and safety space and provides room for future installation of supply equipment and/or service conductor.

Figure 7 Clearance Between Power Conductors and Communications Space



Attachment and Clearance Requirements for Overhead Joint Utility Construction

0700.8000

Supply Equipment

If any of the following supply equipment is mounted on the pole, a minimum clearance of 40 or 30 inches is required, depending upon whether the supply equipment is ungrounded or grounded.

This clearance is measured from the **bottom of the lowest piece** of supply equipment to the top of the communications space.

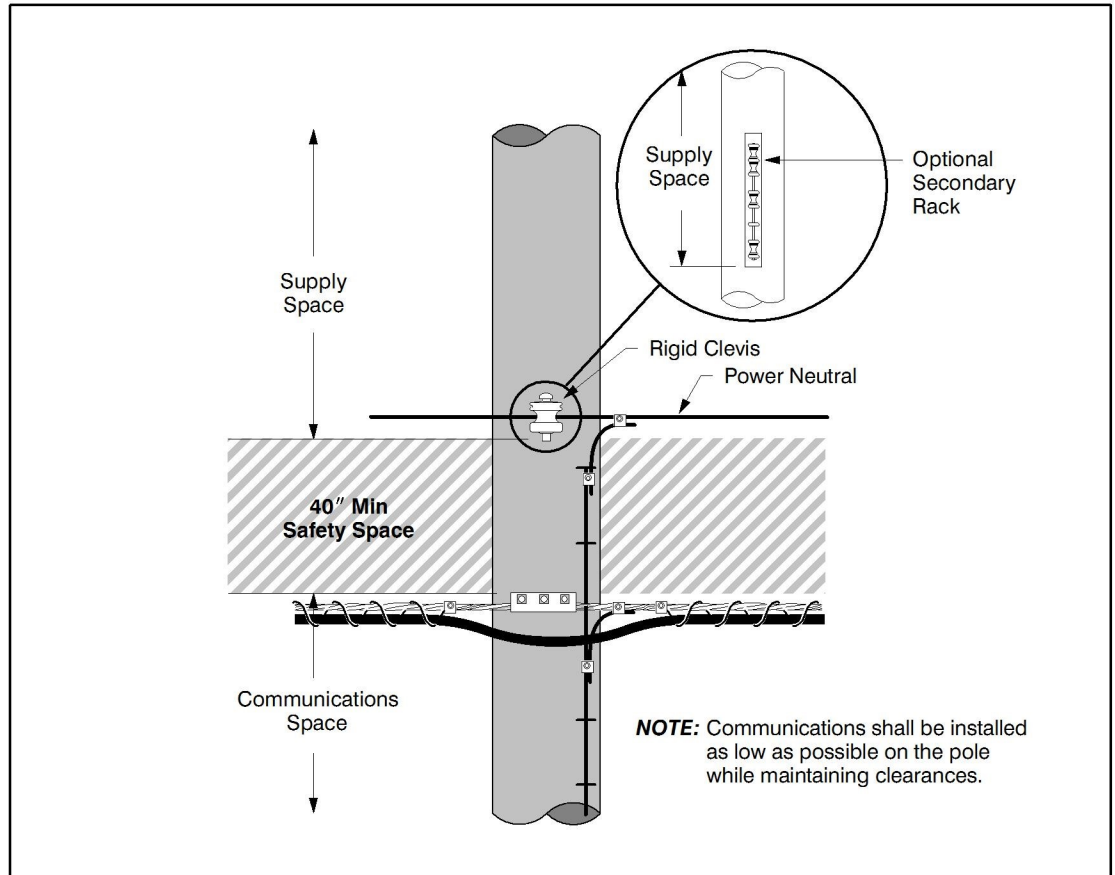
Ungrounded Equipment

Ungrounded equipment has a 40-inch clearance.

Equipment	See Illustration
Rigid clevis	Figure 8
Secondary rack	Figure 8
Exposed supply wire This does not apply to streetlight supply wire drip loops.	Figure 9 and Figure 10
Secondary crossarm brace	None

Figure 8

Clearance Between Ungrounded Supply Equipment and Communications Space



Clearance Requirements, *continued*

Figure 9 Clearance Between Supply Conductor Drip Loop and Communications Space

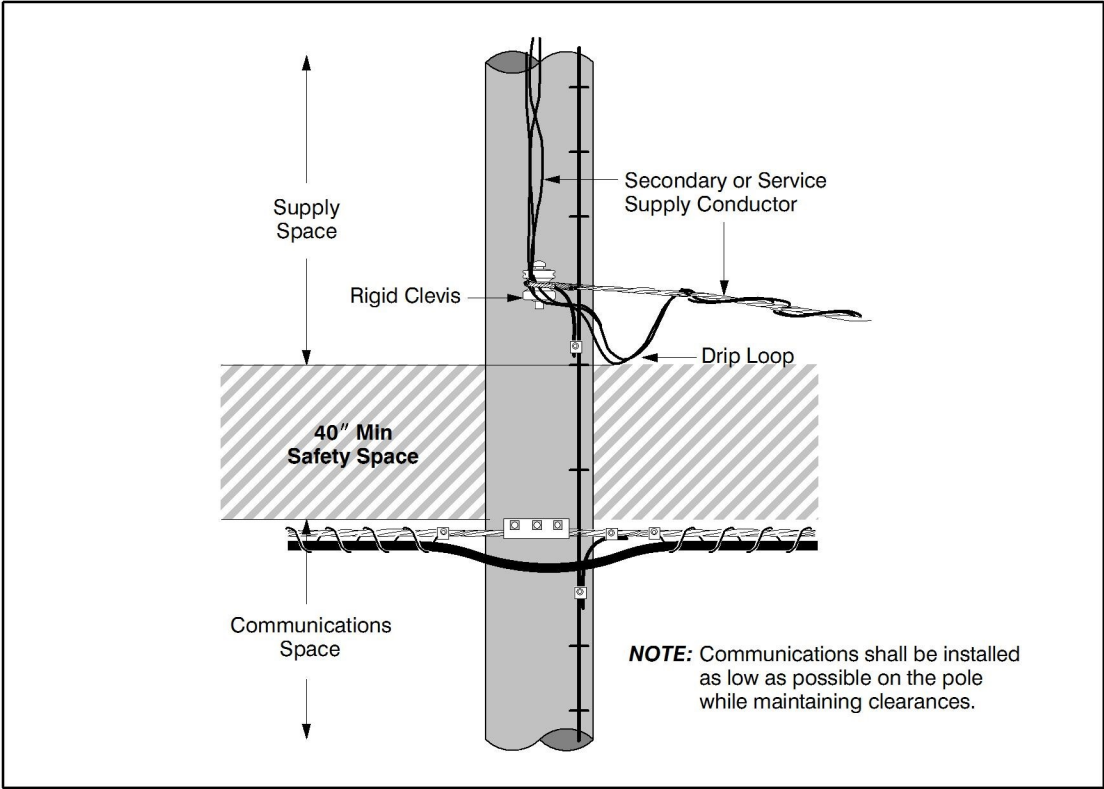
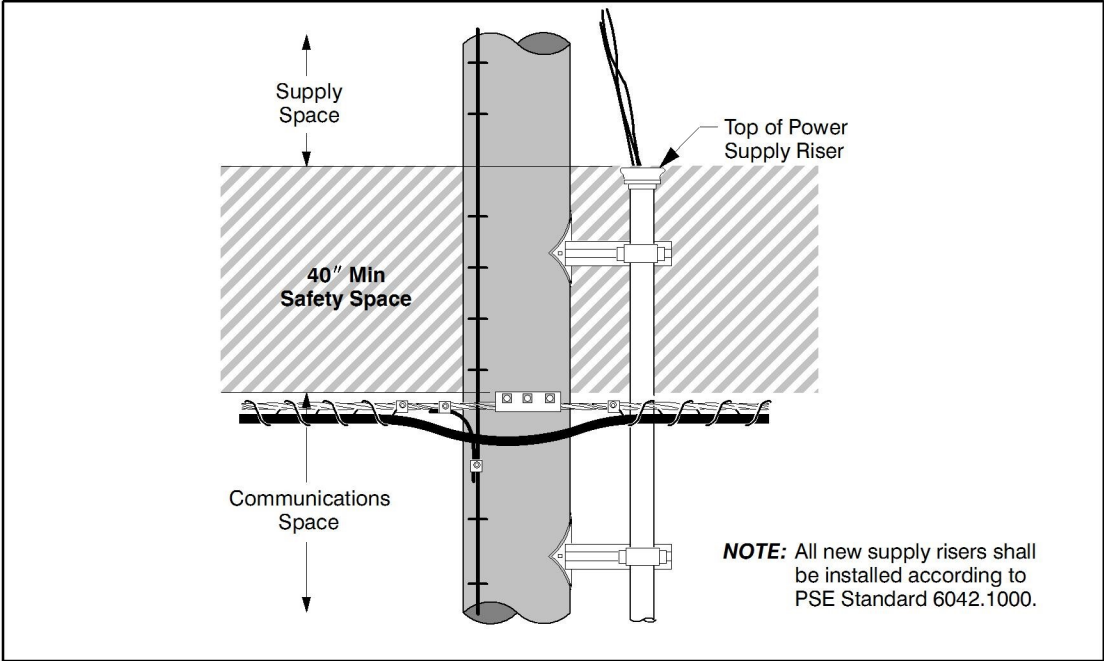


Figure 10 Clearance Between Top of Power Riser and Communications Space



Attachment and Clearance Requirements for Overhead Joint Utility Construction

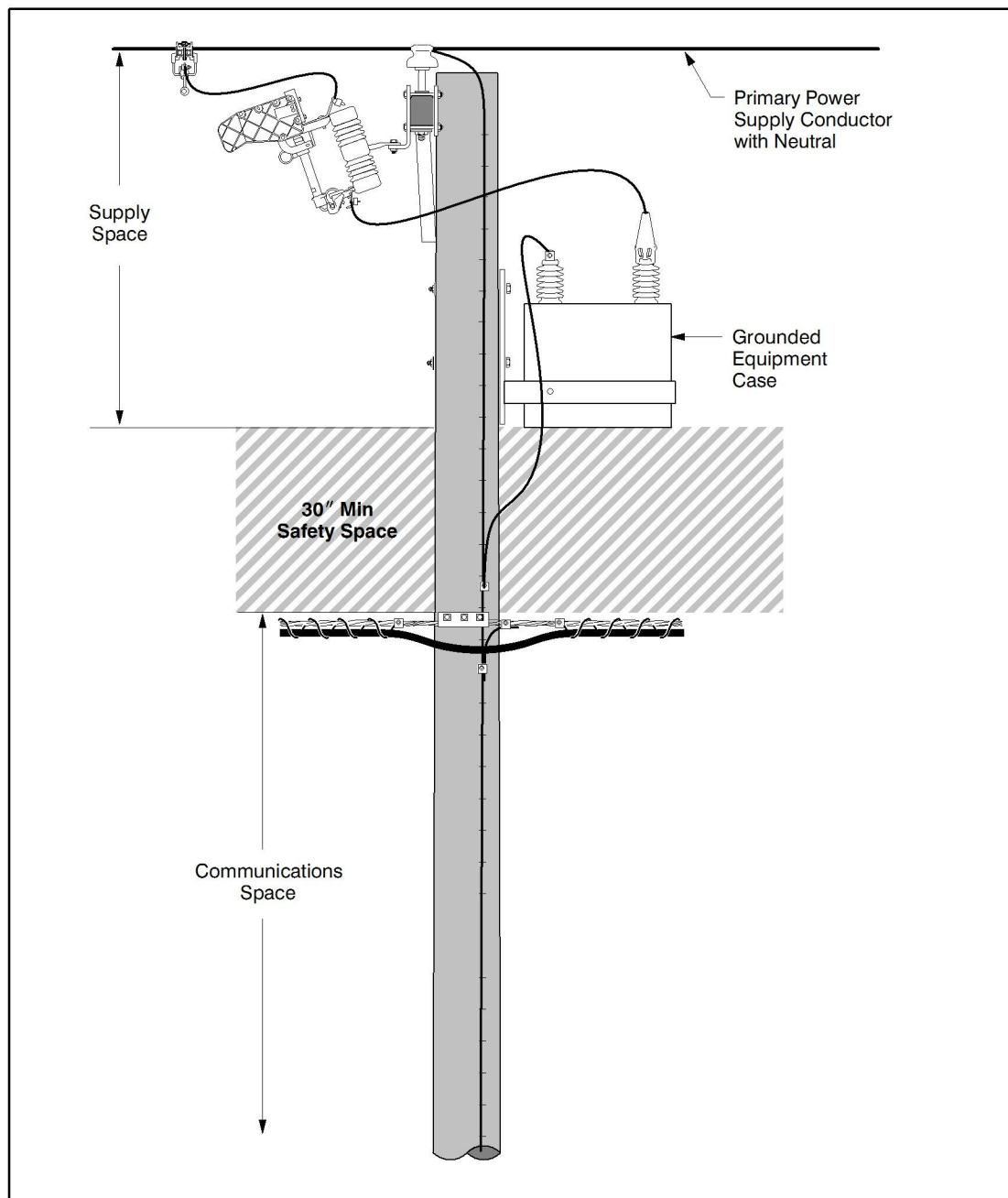
0700.8000

Grounded Equipment

Grounded equipment has a 30-inch clearance. *Figure 11* illustrates a typical (in this case a capacitor bank) equipment installations.

Figure 11

Clearance Between Grounded Supply Equipment and Communications Space



Attachment and Clearance Requirements for Overhead Joint Utility Construction

0700.8000

Clearance Requirements, *continued*

Midspan Clearance The minimum vertical clearance at any point in the span between power conductors and communications cables is **63, 40, or 30 inches**, depending upon the power line voltage. There are no horizontal clearance dimensions that can alleviate vertical clearance requirements between power conductors and communications cables jointly attached to PSE poles.

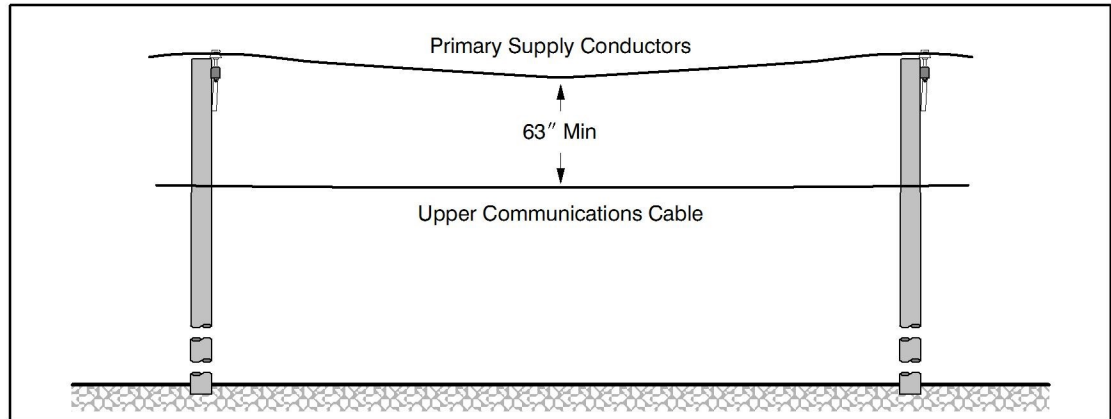
These midspan clearances must be met with the upper conductor (PSE) and the lower conductor (communications) at their final unloaded sag in the same ambient conditions and with the power conductor at its maximum design operating temperature (75°C for phase, 50°C for neutral, and 75°C for secondary).

NOTE: Meeting the midspan clearance requirements may require increasing the clearance distance at the supports (poles) beyond the minimum values.

Equipment	Voltage	Clearance
Primary supply conductors <i>Figure 12</i>	750 V to 34.5 kV	A 63-inch clearance is required.
Power neutral or triplex <i>Figure 13</i>	0-750 V	A 30-inch clearance is required
Open wire secondary	0-750 V	A 40-inch clearance is required

Figure 12

Midspan Clearance Between Primary Supply Conductors and Communications Cables

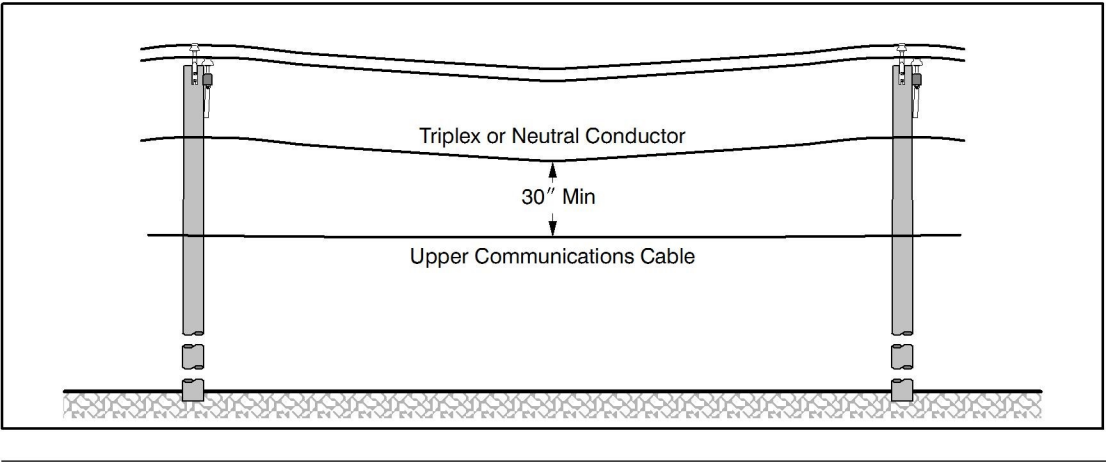


Attachment and Clearance Requirements
for Overhead Joint Utility Construction

0700.8000

Figure 13

Midspan Clearance Between Secondary or Neutral Conductors and Communications Cables



Streetlight Clearances

Special clearances exist between streetlights and communications cables because:

- They may be installed anywhere on the pole, assuming all clearance requirements are met.
- Vertical runs of streetlight supply wire may or may not be covered with protective molding.

All clearances apply 360° around the entire pole.

Cables Installed
Below Streetlights

When communication cables are installed below a streetlight on a pole, **all** of the following minimum clearance requirements shall be met:

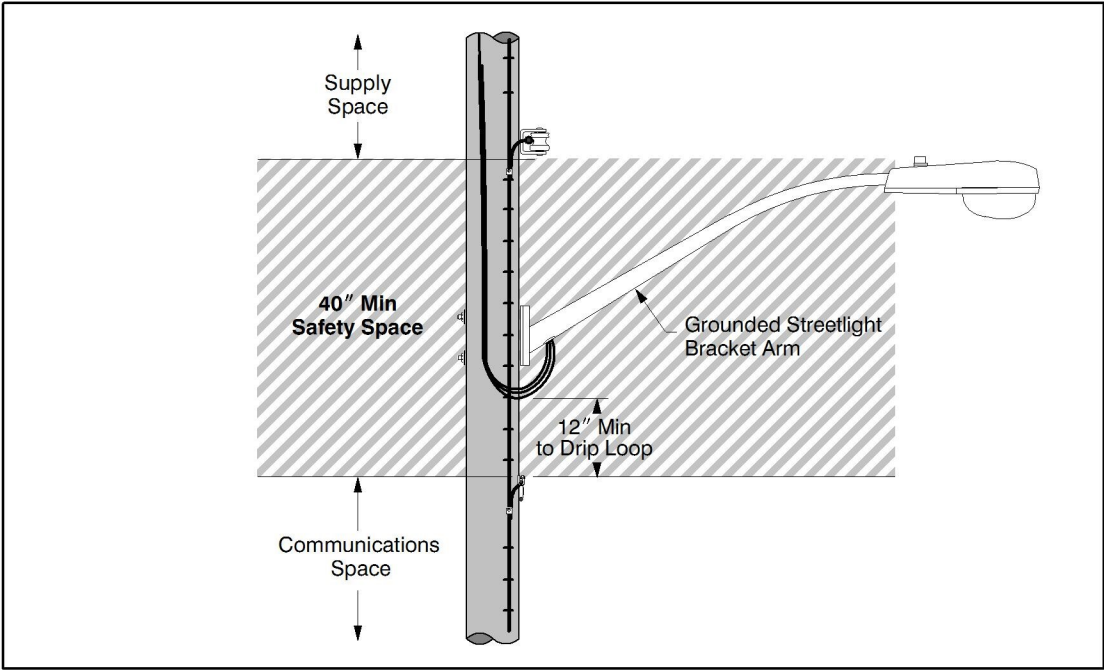
Between the bottom of . . .	This clearance is required
Drip loop of the streetlight supply wire and the top of the communications space.	12 inches *
Supply space and the top of the communications space.	40 inches

* This may be reduced to 3 inches if the loop is covered by a suitable nonmetallic covering that extends at least 2 inches beyond the loop.

Figure 14 illustrates these clearance requirements.

Streetlight Clearances, *Continued*

Figure 14 Clearances for Communications Cables Installed Below Streetlights



Streetlights
Installed Beneath
Communication
Conductors

Proper streetlight mounting heights may require that the bracket be installed beneath the communication conductors.

When this is the case, *all* of the following minimum clearance requirements shall be met:

Between . . .	This clearance is required
Top of the streetlight bracket and the bottom of the communications space.	20 inches
Bottom of the streetlight supply wire molding (where wire is exposed at drip loop) and the bottom of the communications space.	40 inches
Top of the streetlight supply wire molding (where wire is exposed) and the top of the communications space.	40 inches

Figure 15 illustrates these clearance requirements.

⚠ CAUTION!

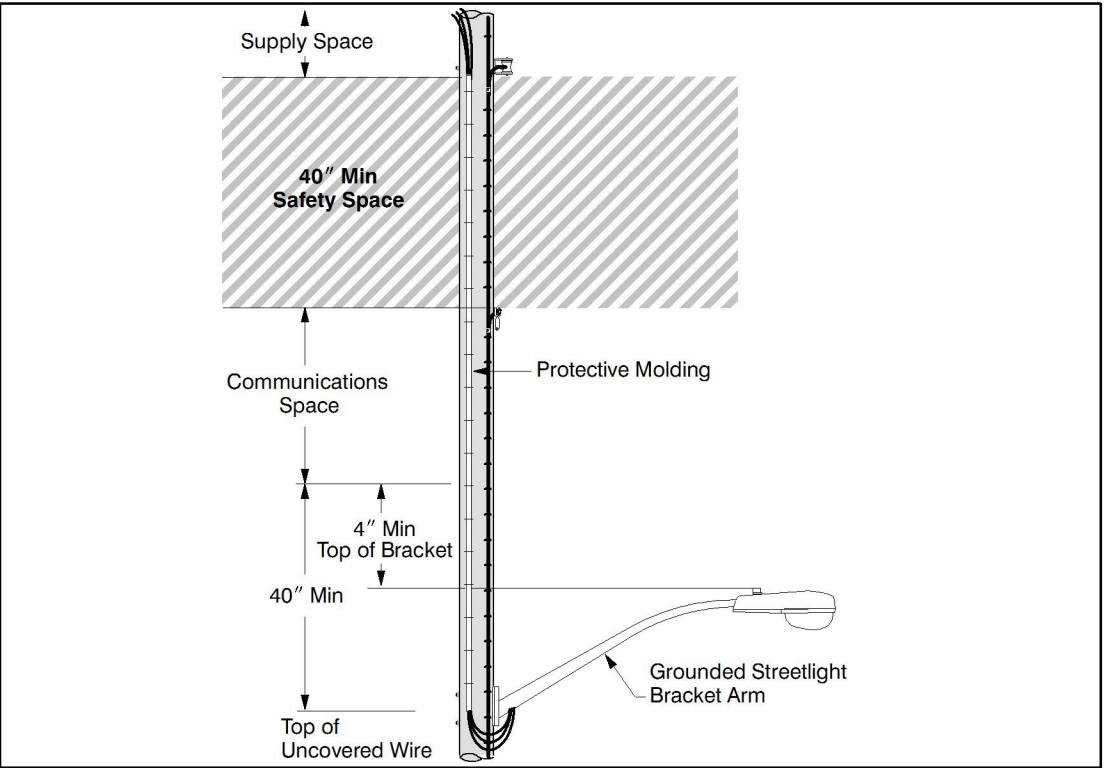
Communications cables shall not be installed above streetlights if the vertical run of streetlight supply wire is not covered with protective molding.

Attachment and Clearance Requirements
for Overhead Joint Utility Construction

0700.8000

Figure 15

Clearances for Communications Cables Installed Above Streetlights



References

The following Puget Sound Energy documents relate to this standard:

0700.8500	RF Antenna Equipment on Power Poles
6042.1000	Conduit Riser
6450.3900	Wood Pole Information
6450.7500	Field Drilling, Roofing, and Treating Wood Poles and Crossarms

Sources

ANSI	O5.1	Wood Poles: Specifications and Dimensions
IEEE C2-2012 NESC	Rule 97G	Bonding of communication systems to electric supply systems
	Rule 235	Clearance for wires, conductors, or cables carried on the same supporting structure
	Rule 235C4	Communication worker safety zone
	Rule 238	Vertical clearance between certain communications and supply facilities located on the same structure
	Rule 239D	Guarding and protection near ground

List of Changes for 0700.8000

Date	Description of Revisions
04/26/19	▪ Added "Communication Worker Safety Zone" to the definitions.

1. WASHINGTON STATE PREVAILING WAGES: Washington State Prevailing Wages apply to all Work. The Contractor and any of its Subcontractors are required to pay their laborers and mechanics minimum wage in compliance with Washington State Prevailing Wage Laws. Before any payment is made by the City of Anacortes of any sums under this contract, the contractor and each subcontractor must provide the City with a copy of the statement of *Intent to Pay Prevailing Wages* approved by the Washington State Department of Labor and Industries (L&I) (*ONE (1) filed per contractor and each subcontractor per contract*). Following contract completion, the City will not release any funds retained, according to the provisions of RCW 60.28.010, until the contractor and each subcontractor has provided the City a copy of the *Affidavit of Wages Paid* approved by L&I (*ONE (1) filed per contractor and each subcontractor per contract*). L&I provides the wage forms. ***All costs associated with such fees shall be included in the Contract price as part of the fixed costs of overhead for this Contract, including any anticipated subcontractor filing fees. Any change in the fee by L&I will not be grounds for revision in the Contract Amount. The City will only pay for the actual cost charged by L&I for the filing of the intent and affidavit.***

For contracts in excess of \$10,000, the contractor must post in a conspicuous place at the job site, a copy of the statement of *Intent to Pay Prevailing Wages* approved by L&I and the address and phone number of the Industrial Statistician where complaints or inquiries may be made. The City will refer any dispute regarding the prevailing rate of wage to L&I for arbitration.

The State of Washington prevailing wage rates applicable for this public works project, which is located in Skagit County, may be found at the following website address of the Department of Labor and Industries: <https://secure.lni.wa.gov/wagelookup/>. The prevailing wage schedule in effect for the work under the contract will be the one in effect upon the date of execution of the contract. A copy of the applicable prevailing wage rates are also available for viewing at the office of the City, located at 904 6th Street, Anacortes, WA. Upon request, the City will mail a hard copy of the applicable prevailing wages for this project.

At least once a month Contractor must file weekly certified payroll reports online with the Washington Department of Labor and Industries as required by RCW 39.12.120.

2. Performance and Payment Bonds. The City is required by RCW 39.08.010, with limited exceptions, to obtain both a Performance and a Payment bond for each public works project. The City requires separate Performance and Payment bonds for 100% of the contract amount furnished on bond forms standardized by the City Attorney's office. The bonds must meet the following provisions:

- Be for the full amount of the project, including tax.
- Name City of Anacortes as the obligee.
- List the correct Project Name and Project Number.
- Be signed by both the surety (the Attorney in Fact) and the Contractor.
- Be issued by a surety authorized to do business in the State of Washington (listed on the Insurance Commissioners website) and which meets the AM Best Rating required in the Contract Documents. If no requirement exists, a minimum of AM Best Rating A-7 or better will be required.

Release of Bonds - Bonds will not be released until the project has been completed and finally accepted.

Performance Bonds – Performance Bonds will be released at the end of the warranty period or twelve months after the date of final acceptance, whichever is later. The City may at its option release the bond once all the conditions of RCW 39.08.010-1a have been discharged.

Payment Bonds – Payment Bonds will be released either 45 days after final acceptance of the project or upon receipt of releases from the Washington Department of Revenue, Washington Employment Security Department, and the Washington Department of Labor and Industries, whichever is later. Release is contingent on the fact that no claims against the bond have been filed prior to the 45 day mark. If claims have been filed against the bond, it will not be released until the claims have been resolved.

Exceptions – On projects \$150,000 and under, the Contractor can, in lieu of providing a performance and payment bond, request to have the City withhold 10% of monies earned on the project for a period of 30 days after final acceptance of the completed work or until receipt of all necessary releases from the Washington Department of Revenue, Washington Employment Security Department, and the Washington Department of Labor and Industries and settlement of any liens filed under Chapter 60.28 RCW, whichever is later. This exception is dependent on pre-approval by the City Attorney, and the City reserves the right to reject requests to waive the bond requirements.

3. Retainage. Pursuant to RCW Chapter 60.28, a sum of five percent (5%) of the monies earned by the Contractor will be retained. The Contractor may elect to execute a Retainage Bond. The bond must be furnished on a bond form standardized by the City Attorney's office and issued by a surety currently authorized by the State Insurance Commissioner to do business in Washington State. Retainage will be released 45 days after Final Acceptance, provided that the following has occurred:

- a. All liens placed against the project have been released.
- b. For projects over \$35,000, releases from the Washington Department of Revenue, Washington Employment Security Department, and the Washington Department of Labor and Industries have been received.

Note: If the City has approved the Contractor's request to waive the bond requirements, the City will withhold a total of 10% of the monies earned for a period of 30 days after Final Acceptance of the completed work, or until receipt of all necessary releases from the Washington Department of Revenue, Washington Employment Securities Department, and the Washington Department of Labor and Industries, and settlement of any liens filed under Chapter 60.28 RCW, whichever is later.

4. Final Acceptance. Final Acceptance is defined as the date on which the City accepts the Work as complete, as indicated by notice issued by the City. For the purposes of the retainage statute (RCW 60.28.011), "completion of all contract work" is the same as the date of Final Acceptance. The following events must occur before the City will issue Final Acceptance:

- a. The physical Work on the project must be complete and accepted by the Project Manager; and
- b. The Contractor must submit to the City, and secure City approval of, all documentation required by the Contract and required by law, including but not limited to:
 - i. Invoices for all Work;
 - ii. Copies of the "Affidavit of Prevailing Wages Paid" as approved by L&I for the Contractor and all Subcontractors; and
 - iii. Any additional documentation required by the Contract.

5. Penalties for Noncompliance. If Contractor does not provide "Affidavit of Prevailing Wages Paid" to the City, the City may withhold any or all payments until required documentation is received. In addition, failure to provide "Intent to Pay Prevailing Wage" or "Affidavit of Wages Paid" may result in other sanctions as provided by State laws (RCW 39.12.050) and/or Federal regulations (29 CFR 5.12).

6. Subcontracts. The Contractor shall not subcontract the Scope of Work ("Work") unless the Project Manager approves in writing. If the Project Manager requests, the Contractor shall provide proof that the Subcontractor has the experience, ability, and equipment the Work requires. "Subcontractor" means an individual, partnership, firm, corporation, or joint venture who is sublet part of the Contract by the Contractor. Each request to subcontract shall include the following information (i) a description of the supplies or services to be subcontracted, (ii) identification of the type of subcontract to be used (iii) identification of the proposed subcontractor, (iv) proposed subcontract price, (v) identification of the percentage of work to be performed by subcontract. Approval of subcontract shall not:

- a. Relieve the Contractor of any responsibility to carry out the Contract,
- b. Relieve the Contractor of any obligations or liability under the Contract and the Contractor's bond,
- c. Create any contract between the City and the Subcontractor, or
- d. Convey to the Subcontractor any rights against the City.

As required by RCW 39.06.020, the Contractor must verify responsibility criteria for each first tier subcontractor, and a subcontractor of any tier that hires other subcontractors must verify responsibility criteria for each of its subcontractors. Verification is to include that, at the time of subcontract execution, each subcontractor meets the responsibility criteria listed in RCW 39.04.350(1) and additionally - if applicable - possesses an electrical contractor license or an elevator contractor license. This verification requirement, as well as the responsibility criteria, must be included in every public works contract and subcontract of every tier. Contractor remains fully responsible for obligations, services, and functions performed by its subcontractors to the same extent as if such obligations, services, and functions were performed by Contractor's employees, and for purposes of the Agreement such work will be deemed work performed by Contractor. The Contractor shall give immediate written notice of any action or suit filed and prompt notice of any claim made against the Contractor by any subcontractor or vendor that, in the opinion of the Contractor, may result in litigation related in any way to this contract, with respect to which the Contractor may be entitled to reimbursement from the City.

If dissatisfied with any part of the subcontracted Work, the Project Manager may request in writing that the Subcontractor be removed. The Contractor shall comply with this request at once and shall not employ the Subcontractor for any further Work under the Contract.

7. Job Safety & COVID-19 Safety Requirements Compliance. The Contractor, and its subcontractors of any tier, shall comply with all Washington Dept. of Labor & Industries safety standards, as well as comply with all current and future COVID-19 proclamations, regulations, requirements and/or related guidance issued by the Office of the Governor of Washington State and Office of the Mayor of the City of Anacortes as it may relate to City of Anacortes projects.

8. Taxes. The City will pay sales and use taxes imposed on goods or services acquired hereunder as required by law. The Contractor must pay all other taxes including, but not limited to: Business and Occupation Tax, taxes based on the Contractor's gross or net income, or personal property to which the City does not hold title. The City is exempt from Federal Excise Tax. Where applicable the City shall furnish a Federal Excise Tax Exemption certificate.

9. Invoicing. All invoices shall at a minimum include: Company Name, Invoice Date, Due Date (30 days), Invoice Number, **Agreement Number**, and Price. The Contractor must allow 30 calendar days from receipt of the invoice for payment. **If requested by the City the Contractor shall provide a cost breakdown of charges.** Invoices may be sent by US mail to City of Anacortes, Accounts Payable, PO Box 547, Anacortes, WA 98221, or by email to accountspayable@cityofanacortes.org. Contractors may complete a City furnished ACH/EFT form to receive electronic payments directly to their financial institution. The City shall notify the Contractor within fifteen (15) calendar days from

receipt of invoice if there are any objections or disputes with the invoice. The Contractor shall then resubmit a new invoice less the disputed amount and payment shall be made within 30 calendar days. Any disputed amounts may be submitted under the Disputes clause contained herein.

10. Withholding Payment. In the event the City determines that the Contractor has failed to perform any obligation under this Contract within the times set forth in this Contract, then the City may withhold from amounts otherwise due and payable to Contractor the amount determined by the City as necessary to cure the default, until the Contracting Officer determines that such failure to perform has been cured. Withholding under this clause shall not be deemed a breach entitling Contractor to terminate or damages, provided that the City promptly gives notice in writing to the Contractor of the nature of the default or failure to perform, and in no case more than 8 days after it determines to withhold amounts otherwise due. A determination of the City Attorney set forth in such notice to the Contractor of the action required and/or the amount required to cure any alleged failure to perform shall be deemed conclusive, except to the extent that the Contractor acts within the times and in strict accord with the provisions of the Disputes clause of this Contract. The City may act in accordance with any determination of the City Attorney which has become conclusive under this clause, without prejudice to any other remedy under the Contract, to take all or any of the following actions: (1) cure any failure or default, (2) to pay any amount so required to be paid and to charge the same to the account of the Contractor, (3) to set off any amount so paid or incurred from amounts due to become due the Contractor. In the event the Contractor obtains relief upon a claim under the Disputes clause, no penalty or damages shall accrue to Contractor by reason of good faith withholding by the City under this clause.

11. Final Payment: Waiver of Claim. The contractor's acceptance of final payment (excluding withheld retainage) shall constitute a waiver of claims, except those previously and properly made and identified by the contractor as unsettled at the time request for final payment is made.

12. Inspection.

A. Of the Work: All materials furnished and work done shall be subject to inspection. The City Project Manager administering the Contract shall at all times have access to the work wherever it is in progress or being performed, and the Contractor shall provide proper facilities for such access and inspection. Such inspection shall not relieve the Contractor of the responsibility of performing the work correctly, utilizing the best labor and materials in strict accordance with the Specifications of the Contract. All material or work approved and later found to be defective shall be replaced without cost to the City.

B. Project Manager's Authority: The Project Manager shall have power to reject materials or workmanship which do not fulfill the requirements of these Specifications, but in case of dispute the Contractor may appeal to the City Attorney whose decision shall be final. The Contract shall be carried out under the general control of the representative of the City administering the Contract, who may exercise such control over the conduct of the work as may be necessary, in their opinion, to safeguard the interest of the City. The Contractor shall comply with any and all orders and instructions given by the representative of the particular Department administering the Contract in accordance with the terms of the Contract. Nothing herein contained, however, shall be taken to relieve the Contractor of their obligations or responsibilities under the Contract.

13. New and Unused. All units, equipment, parts and material shall be new, unused, manufacturer's current model year and in current production and shall meet any current applicable regulations and/or codes. All materials shall have physical and chemical properties to withstand the intended purpose. Equipment design shall have sufficient excess capacity for durability and safety.

14. Warranty. The Contractor shall return to the project and repair or replace all defects in workmanship and material discovered within one year after Final Acceptance of the Work, including any necessary labor and materials. The Contractor shall start work to remedy any such defects within 7 calendar days of receiving City's written notice of a defect, and shall complete such work within the time stated in the City's notice. In case of an emergency, where damage may result from delay or where loss of services may result, such corrections may be made by the City's own forces or another contractor, in which case the cost of corrections shall be paid by the Contractor. In the event the Contractor does not accomplish corrections within the time specified, the work will be otherwise accomplished and the cost of same shall be paid by the Contractor. For one year after acceptance of any corrections by the City the Contractor shall be responsible for correcting all defects in workmanship and materials in the corrected work. In addition, the Contractor shall obtain and submit to the City any necessary documentation to secure any extended manufacturer's warranty and warranty terms. This guarantee is supplemental to and does not limit or affect the requirements that the Contractor's work comply with the requirements of the Contract or impact any other legal rights or remedies of the City.

15. Indemnification / Hold Harmless. The Contractor shall defend, indemnify and hold the City, its officers, officials, employees and volunteers harmless from any and all claims, injuries, damages, losses or suits including attorney fees, arising out of or in connection with the performance of this Agreement, except for injuries and damages caused by the sole negligence of the City. However, should a court of competent jurisdiction determine that this Agreement is subject to RCW 4.24.115, then, in the event of liability for damages arising out of bodily injury to persons or damages to property caused by or resulting from the concurrent negligence of the Contractor and the City, its officers, officials, employees, and volunteers, the Contractor's liability hereunder shall be only to the extent of the Contractor's negligence. It is further specifically and expressly understood that the indemnification provided herein constitutes the Contractor's waiver of immunity under Industrial Insurance, Title 51 RCW, solely for the purposes of this indemnification. This waiver has been

mutually negotiated by the parties. The provisions of this section shall survive the expiration or termination of this Agreement.

16. Insurance.

A. Insurance Term: The Contractor shall procure and maintain insurance, as required in this Section, without interruption from commencement of the Contractor's work through the term of the contract and for thirty (30) days after the Physical Completion date, unless otherwise indicated herein.

B. No Limitation: The Contractor's maintenance of insurance, its scope of coverage and limits as required herein shall not be construed to limit the liability of the Contractor to the coverage provided by such insurance, or otherwise limit the City's recourse to any remedy available at law or in equity.

C. Minimum Scope of Insurance: The Contractor's required insurance shall be of the types and coverage as stated below:

1. Automobile Liability insurance covering all owned, non-owned, hired and leased vehicles. Coverage shall be at least as broad as Insurance Services Office (ISO) form CA 00 01.
2. Commercial General Liability insurance shall be as least as broad as ISO occurrence form CG 00 01 and shall cover liability arising from premises, operations, independent contractors, products-completed operations, stop gap liability, personal injury and advertising injury, and liability assumed under an insured contract. The Commercial General Liability insurance shall be endorsed to provide a per project general aggregate limit using ISO form CG 25 03 05 09 or an equivalent endorsement. There shall be no exclusion for liability arising from explosion, collapse or underground property damage. **The City of Anacortes and its officers, elected officials, employees, agents, and volunteers shall be named as an additional insured** under the Contractor's Commercial General Liability insurance policy with respect to the work performed for the City using ISO Additional Insured endorsement CG 20 10 10 01 and Additional Insured-Completed Operations endorsement CG 20 37 10 01 or substitute endorsements providing at least as broad coverage.
3. Worker's Compensation coverage as required by the Industrial Insurance laws of the State of Washington.

D. Minimum Amounts of Insurance: The Contractor shall maintain the following insurance limits:

1. Automobile Liability insurance with a minimum combined single limit for bodily injury and property damage of \$1,000,000 per accident.
2. Commercial General Liability insurance shall be written with limits no less than \$2,000,000 each occurrence, \$2,000,000 general aggregate and \$2,000,000 products-completed operations aggregate limit.

E. City Full Availability of Contractor Limits: If the Contractor maintains higher insurance limits than the minimums shown above, the City shall be insured for the full available limits of Commercial General and Excess or Umbrella liability maintained by the Contractor, irrespective of whether such limits maintained by the Contractor are greater than those required by this contract or whether any certificate of insurance furnished to the City evidences limits of liability lower than those maintained by the Contractor.

F. Other Insurance Provision: The Contractor's Automobile Liability and Commercial General Liability insurance policies are to contain, or be endorsed to contain, that they shall be primary insurance as respect the City. Any insurance, self-insurance, or self-insured pool coverage maintained by the City shall be excess of the Contractor's insurance and shall not contribute with it.

G. Acceptability of Insurers: Insurance is to be placed with insurers with a current A.M. Best rating of not less than A:VII.

H. Verification of Coverage: The Contractor shall furnish the City with original certificates and a copy of the amendatory endorsements, including but not necessarily limited to the additional insured endorsements, evidencing the insurance requirements of the Contractor **within 10 days of contract execution and before scheduling of the work**. Upon request by the City, the Contractor shall furnish certified copies of all required insurance policies, including endorsements, required in this contract and evidence of all subcontractors' coverage. Failure of the City to demand such verification of coverage with these insurance requirements or failure of the City to identify a deficiency from the insurance documentation provided shall not be construed as a waiver of Contractor's obligation to maintain such insurance.

Verification of coverage shall include:

1. An ACORD certificate or a form determined by the City to be equivalent.
2. Copies of all endorsements naming the City as additional insured, showing the policy number. The Contractor may submit a copy of any blanket additional insured clause from its policies instead of a separate endorsement.
3. Any other amendatory endorsements to show the coverage required herein.
4. **A notation of coverage enhancements on the Certificate of Insurance shall not satisfy these requirements – actual endorsements must be submitted.**

I. Subcontractors' Insurance: The Contractor shall cause each and every Subcontractor to provide insurance coverage that complies with all applicable requirements of the Contractor-provided insurance as set forth herein, except the Contractor shall have sole responsibility for determining the limits of coverage required to be obtained by Subcontractors. The Contractor shall ensure that the City is an additional insured on each and every Subcontractor's Commercial General

liability insurance policy using an endorsement at least as broad as ISO CG 20 10 10 01 for ongoing operations and CG 20 37 10 01 for completed operations.

J. Notice of Cancellation: The Contractor shall provide the City and all Additional Insureds for this work with written notice of any policy cancellation within two (2) business days of their receipt of such notice.

K. Failure to Maintain Insurance: Failure on the part of the Contractor to maintain the insurance as required shall constitute a material breach of contract, upon which the City may, after giving five business days notice to the Contractor to correct the breach, immediately terminate the contract or, at its discretion, procure or renew such insurance and pay any and all premiums in connection therewith, with any sums so expended to be repaid to the City on demand, or at the sole discretion of the City, offset against funds due the Contractor from the City.

17. Acceptance. Contractor acknowledges and agrees that these General Provisions are incorporated in, and are a part of, each purchase order or other agreement relating to the provision of goods and/or related services by Contractor. These General Provisions supersede all conflicting or additional terms pre-printed on any purchase order, quote, invoice, or otherwise set forth on any release, acknowledgement, confirmation, requisition, work order, shipping instruction, specification and similar document or communication.

18. Registered or Licensed Contractor. The City is prohibited by RCW 39.06.010 from executing an Agreement with a Contractor who is not registered or licensed as required by the laws of the state. In addition, Anacortes Municipal Code requires that every person engaging in business within the city limits of Anacortes register their business with the state and include a City of Anacortes Endorsement. Businesses from outside city limits with a gross annual income of \$2,000 in Anacortes are also required to obtain a city endorsement. Business licenses and city endorsements can be obtained through the State of Washington Department of Revenue (DOR) Business Licensing Service (BLS) at bls.dor.wa.gov.

19. Standard Title VI / Non-Discrimination Assurances. During the performance of this contract, the Contractor, for itself, its assignees, and successors in interest agrees to the clauses in "Appendix A" and "Appendix E" of the Standard Title VI Assurances (USDOT1050.2A), which are hereby incorporated by reference and made a part hereof.

20. Contractor is an Independent Contractor. The parties intend that an independent Contractor relationship will be created by this Agreement. No agent, employee or representative of the Contractor shall be deemed to be an agent, employee or representative of the City for any purpose. Contractor shall be solely responsible for all acts of its agents, employees, representatives and Subcontractors during the performance of this Agreement.

21. No Third-Party Beneficiary Rights. This Agreement is not intended to and shall not be construed to give any Third Party any interest or rights (including, without limitation, any Third-Party beneficiary rights) with respect to or in connection with any agreement or provision contained herein or contemplated hereby, except as otherwise expressly provided for in this Agreement.

22. The City's Right to Terminate Agreement.

A. Termination for Default: If the Contractor defaults by failing to perform any of the obligations of the Agreement or becomes insolvent or is declared bankrupt or commits any act of bankruptcy or insolvency or makes an assignment for the benefit of creditors, the City may, by depositing written notice to the Contractor in the U.S. mail, postage prepaid, terminate the Agreement, and at the City's option, obtain performance of the work elsewhere. If the Agreement is terminated for default, the Contractor shall not be entitled to receive any further payments under the Agreement until the Scope of Services under this Agreement has been fully performed. Any extra cost or damage to the City resulting from such default(s) shall be deducted from any money due or coming due to the Contractor. The Contractor shall bear any extra expenses incurred by the City in completing the work, including all increased costs for completing the work, and all damage sustained, or which may be sustained by the City by reason of such default. If a notice of termination for default has been issued and it is later determined for any reason that the Contractor was not in default, the rights and obligations of the parties shall be the same as if the notice of termination had been issued pursuant to the Termination for Public Convenience paragraph hereof.

B. Termination for Public Convenience: The City may terminate the Agreement in whole or in part whenever the City determines, in its sole discretion that such termination is in the best interests of the City. Whenever the Agreement is terminated in accordance with this paragraph, the Contractor shall be entitled to payment for actual work performed at unit Agreement prices for completed items of work through the date of termination. If the City exercises its option under this Paragraph, the City shall not be responsible for payment for loss of anticipated profit on deleted or uncompleted work. Termination of this Agreement by the City at any time during the term, whether for default or convenience, shall not constitute a breach of Agreement by the City.

23. Changes/Additional Work. The City may engage Contractor to perform services in addition to those listed in this Agreement, and Contractor will be entitled to additional compensation for authorized additional services or materials. The City shall not be liable for additional compensation until and unless any and all additional work and compensation is approved in advance in writing and signed by both parties to this Agreement. If conditions are encountered which are not anticipated in the Scope of Services, the City understands that a revision to the Scope of Services and fees may be required. Provided, however, that nothing in this paragraph shall be interpreted to obligate the Contractor to render or the

City to pay for services rendered in excess of the Scope of Services unless or until a modification to this Agreement is approved in writing by both parties.

24. Non-waiver. Waiver by the City of any provision of this Agreement or any time limitation provided for in this Agreement shall not constitute a waiver of any other provision.

25. Covenant Against Contingent Fees. The Contractor warrants that they have not employed or retained any company or person, other than a bona fide employee working solely for the Contractor, to solicit or secure this Agreement, and that they have not paid or agreed to pay any company or person, other than a bona fide employee working solely for the Contractor, any fee, commission, percentage, brokerage fee, gifts, or any other consideration contingent upon or resulting from the award of making of this Agreement. For breach or violation of this warranty, the City shall have the right to annul this Agreement without liability or, in its discretion to deduct from the Agreement price or consideration, or otherwise recover, the full amount of such fee, commission, percentage, brokerage fee, gift, or contingent fee.

26. Disputes

A. **General:** Differences between the Contractor and the City, arising under and by virtue of this Agreement shall be brought to the attention of the City at the earliest possible time in order that such matters may be settled or other appropriate action promptly taken. The provisions of this Clause shall survive the expiration or termination of this Agreement.

B. **Notice of Potential Claims:** The Contractor shall not be entitled to additional compensation which otherwise may be payable, or to extension of time for (1) any act or failure to act by the City, or (2) the happening of any event or occurrence, unless the Contractor has given the City a written Notice of Potential Claim within 10 days of the commencement of the act, failure, or event giving rise to the claim, and before final payment by the City. The written Notice of Potential Claim shall set forth the reasons for which the Contractor believes additional compensation or extension of time is due, the nature of the cost involved, and insofar as possible, the amount of the potential claim. Contractor shall keep full and complete daily records of the Work performed, labor and all costs and additional time claimed to be additional.

C. **Detailed Claim:** The Contractor shall not be entitled to claim any such additional compensation, or extension of time, unless within 30 days of the accomplishment of the portion of the work from which the claim arose, and before final payment by the City, the Contractor has given the City a detailed written statement of each element of cost or other compensation requested and of all elements of additional time required, and copies of any supporting documents evidencing the amount or the extension of time claimed to be due.

D. **Dispute Resolution:** In the event of a dispute between the City and the Contractor arising out of this Agreement, or any obligation hereunder the dispute shall first be referred to the representatives designated by the City and the Contractor to have oversight over the administration of this Agreement. Said representatives shall meet within thirty (30) calendar days of receipt of detailed claim, and the parties shall make a good faith effort to achieve a resolution of the dispute. In the event the parties are unable to resolve the dispute under the procedure set forth above, then the parties hereby agree that the matter shall be referred to mediation. The parties shall mutually agree upon a mediator to assist them in resolving their differences. Any expenses incidental to mediation shall be borne equally by the parties. If either party is dissatisfied with the outcome of the mediation, that party may then pursue any available judicial remedies.

27. Force Majeure. Neither party shall be liable to the other or deemed in breach or default for any failure or delay in performance under this Agreement during the time and to the extent its performance is prevented by reasons of Force Majeure. For the purposes of this Agreement, Force Majeure means an occurrence that is beyond the reasonable control of and without fault or negligence of the party claiming force majeure and which, by exercise of due diligence of such party, could not have been prevented or overcome. Force Majeure shall include natural disasters, including fire, flood, earthquake, windstorm, avalanche, mudslide, and other similar events; acts of war or civil unrest when an emergency has been declared by appropriate governmental officials; acts of civil or military authority; freight embargoes; epidemics; pandemics; quarantine restrictions; labor strikes; boycotts; terrorist acts; riots; insurrections; explosions; and nuclear accidents. A party claiming suspension or termination of its obligations due to force majeure shall give the other party prompt written notice of the impediment and its effect on the ability to perform, with such notice to be provided no more than two (2) working days after the force majeure event or reasonable discovery of the event's impact on performance. Failure to provide such notice shall preclude recovery under this provision. Such delay shall cease as soon as practicable and written notification of same shall be provided. The time of completion shall be extended by Agreement modification for a period of time equal to the time that the results or effects of such delay prevented the delayed party from performing in accordance with this Agreement. Rights Reserved: The City reserves the right to cancel the Agreement and/or purchase materials, equipment or services from the best available source during the time of force majeure, and Contractor shall have no recourse against the City.

28. Governing Law. This Agreement shall be governed by and construed under the laws of the State of Washington. Any action brought under the Agreement or relating to the Project shall be brought in the Superior Court of the State of Washington in Skagit County Washington.

29. Compliance with Laws. The Contractor in the performance of this Agreement shall comply with all applicable Federal, State or local laws and ordinances, including regulations for licensing, certification and operation of facilities,

programs and accreditation, and licensing of individuals, and any other standards or criteria as described in the Agreement to assure quality of services. Contractor will follow all applicable laws and requirements for excavation and disposal of material.

30. Severability. If any term or condition of this Agreement or the application thereof to any person(s) or circumstances is held invalid, such invalidity shall not affect other terms, conditions or applications which can be given effect without the invalid term, condition or application. To this end, the terms and conditions of this Agreement are declared severable.

31. Survival of Contract Termination. The provisions of the following paragraphs, the provisions of the non collusion affidavit, and the liability of the Contractor for default during the term of the Contract shall survive, notwithstanding the termination or invalidity of this Contract for any reason: Taxes; Warranty; The City's Right to Terminate Contract; Governing Law; Indemnification / Hold Harmless; Disputes.

32. Notices. Receipt of any notice shall be deemed effective three days after deposit of written notice in the U.S. mail, with proper postage and properly addressed. Notices shall be sent to the following addresses:

CITY:

City of Anacortes
Tiffany Matson
904 6th Street
PO Box 547
Anacortes, WA 98221

CONTRACTOR:

Cannon Companies
Shane Gottbreht
406 Porter Way
Milton, WA 98354

APPENDIX A

During the performance of this contract, the contractor, for itself, its assignees, and successors in interest (hereinafter referred to as the "contractor") agrees as follows:

1. **Compliance with Regulations:** The contractor (hereinafter includes consultants) will comply with the Acts and the Regulations relative to Non-discrimination in Federally-assisted programs of the U.S. Department of Transportation, Washington State Department of Transportation, as they may be amended from time to time, which are herein incorporated by reference and made a part of this contract.
2. **Non-discrimination:** The contractor, with regard to the work performed by it during the contract, will not discriminate on the grounds of race, color, or national origin in the selection and retention of subcontractors, including procurements of materials and leases of equipment. The contractor will not participate directly or indirectly in the discrimination prohibited by the Acts and the Regulations, including employment practices when the contract covers any activity, project, or program set forth in Appendix B of 49 CFR Part 21.
3. **Solicitations for Subcontracts, Including Procurements of Materials and Equipment:** In all solicitations, either by competitive bidding, or negotiation made by the contractor for work to be performed under a subcontract, including procurements of materials, or leases of equipment, each potential subcontractor or supplier will be notified by the contractor of the contractor's obligations under this contract and the Acts and the Regulations relative to Non-discrimination on the grounds of race, color, or national origin.
4. **Information and Reports:** The contractor will provide all information and reports required by the Acts, the Regulations, and directives issued pursuant thereto and will permit access to its books, records, accounts, other sources of information, and its facilities as may be determined by the Recipient or the Washington State Department of Transportation to be pertinent to ascertain compliance with such Acts, Regulations, and instructions. Where any information required of a contractor is in the exclusive possession of another who fails or refuses to furnish the information, the contractor will so certify to the Recipient or the Washington State Department of Transportation, as appropriate, and will set forth what efforts it has made to obtain the information.
5. **Sanctions for Noncompliance:** In the event of a contractor's noncompliance with the Non-discrimination provisions of this contract, the Recipient will impose such contract sanctions as it or the Washington State Department of Transportation may determine to be appropriate, including, but not limited to:
 - a. withholding payments to the contractor under the contract until the contractor complies; and/or
 - b. cancelling, terminating, or suspending a contract, in whole or in part.
6. **Incorporation of Provisions:** The contractor will include the provisions of paragraphs one through six in every subcontract, including procurements of materials and leases of equipment,

unless exempt by the Acts, the Regulations and directives issued pursuant thereto. The contractor will take action with respect to any subcontract or procurement as the Recipient or the Washington State Department of Transportation may direct as a means of enforcing such provisions including sanctions for noncompliance. Provided, that if the contractor becomes involved in, or is threatened with litigation by a subcontractor, or supplier because of such direction, the contractor may request the Recipient to enter into any litigation to protect the interests of the Recipient. In addition, the contractor may request the United States to enter into the litigation to protect the interests of the United States.

APPENDIX E

During the performance of this contract, the contractor, for itself, its assignees, and successors in interest (hereinafter referred to as the "contractor") agrees to comply with the following non-discrimination statutes and authorities; including but not limited to:

Pertinent Non-Discrimination Authorities:

- Title VI of the Civil Rights Act of 1964 (42 U.S.C. § 2000d et seq., 78 stat. 252), (prohibits discrimination on the basis of race, color, national origin); and 49 CFR Part 21.
- The Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, (42 U.S.C. § 4601), (prohibits unfair treatment of persons displaced or whose property has been acquired because of Federal or Federal-aid programs and projects);
- Federal-Aid Highway Act of 1973, (23 U.S.C. § 324 et seq.), (prohibits discrimination on the basis of sex);
- Section 504 of the Rehabilitation Act of 1973, (29 U.S.C. § 794 et seq.), as amended, (prohibits discrimination on the basis of disability); and 49 CFR Part 27;
- The Age Discrimination Act of 1975, as amended, (42 U.S.C. § 6101 et seq.), (prohibits discrimination on the basis of age);
- Airport and Airway Improvement Act of 1982, (49 USC § 471, Section 47123), as amended, (prohibits discrimination based on race, creed, color, national origin, or sex);
- The Civil Rights Restoration Act of 1987, (PL 100-209), (Broadened the scope, coverage and applicability of Title VI of the Civil Rights Act of 1964, The Age Discrimination Act of 1975 and Section 504 of the Rehabilitation Act of 1973, by expanding the definition of the terms "programs or activities" to include all of the programs or activities of the Federal-aid recipients, sub-recipients and contractors, whether such programs or activities are Federally funded or not);
- Titles II and III of the Americans with Disabilities Act, which prohibit discrimination on the basis of disability in the operation of public entities, public and private transportation systems, places of public accommodation, and certain testing entities (42 U.S.C. §§ 12131-12189) as implemented by Department of Transportation regulations at 49 C.F.R. parts 37 and 38;
- The Federal Aviation Administration's Non-discrimination statute (49 U.S.C. § 47123) (prohibits discrimination on the basis of race, color, national origin, and sex);
- Executive Order 12898, Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations, which ensures Non-discrimination against minority populations by discouraging programs, policies, and activities with disproportionately high and adverse human health or environmental effects on minority and low-income populations;
- Executive Order 13166, Improving Access to Services for Persons with Limited English Proficiency, and resulting agency guidance, national origin discrimination includes discrimination because of Limited English proficiency (LEP). To ensure compliance with Title VI, you must take reasonable steps to ensure that LEP persons have meaningful access to your programs (70 Fed. Reg. at 74087 to 74100);
- Title IX of the Education Amendments of 1972, as amended, which prohibits you from discriminating because of sex in education programs or activities (20 U.S.C. 1681 et seq).

SMALL WORKS ROSTER BID TABULATION
Guemes View Aerial Fiber Construction #23-127-FBR-001

Contractor:	Cannon Companies	Pacific Cable	Veca Electric	Bonner Electrical	Wirenuts Electric LLC
Base Bid:	\$100,895.10	\$105,698.53	\$138,000.00	No bid	No bid
8.8% Sales Tax:	\$8,878.77	\$9,301.47	\$12,144.00		
Total Bid:	\$109,773.87	\$115,000.00	\$150,144.00		



City Council Agenda Bill

Meeting Date: April 3,
2023

Agenda Item: 6.a.

Agenda Item Title: Ordinance 4047: Amending the 2023-2028 Capital Facilities Plan

Staff Contact(s): STEVE HOGLUND, JONN LUNSFORD

<u>Approved for Submittal to Council by</u>	<u>Action Type</u>
GREG FRANCIOCH	Public Hearing
STEVE HOGLUND	
DARCY SWETNAM	

Item Summary: The City is planning to proceed with the Depot Pavilion Project to provide a covering for the Anacortes Farmer's Market and a venue for other community events. City staff are applying for state, county and LTAC funds to build an enclosed structure on the Depot Plaza approximately covering 6000 square feet. Architectural conceptual drawings are currently being created to better demonstrate design options. In order to be considered for certain grant funds, the Pavilion Project needs to be added to the CFP before April 28, 2023. Anacortes Municipal Code 19.16.030(C) requires a 2 week written and oral comment period, therefore the public hearing is intended to span 2 council meetings to accommodate that requirement. The amending ordinance will be presented for consideration at the April 17th council meeting.

Budget Impact:

The current cost estimate is \$800,000.

Previous Action: This will be the first meeting at the City Council level for discussion.

Recommended Motion: The Public Hearing will need to appear on the agenda for two Council meetings prior to consideration. Staff recommends acceptance of the Ordinance at that time.

Alternative Actions: Postpone approval.

Attachments (listed in order presented):

1. Ordinance 4047 Amending 2023-2028 CFP

2. Public Hearing Ord 4047 ii

ORDINANCE NO. 4047
AN ORDINANCE AMENDING ORDINANCE NO. 4033 ENTITLED "AN ORDINANCE ADOPTING THE CAPITAL
FACILITIES PLAN (CFP) FOR THE 6-YEAR PERIOD 2023-2028

WHEREAS, RCW 36.70A.070(3) requires jurisdictions operating under the Growth Management Act to include a capital facilities element in their comprehensive plan, which the City of Anacortes is, and does, so therefore needs to amend the Capital Facilities Plan (CFP) in conjunction with the City Budget, and

WHEREAS, in advocating the City's business an opportunity for resources that would support a Parks Construction project emerged that requires inclusion the City's Capital Facilities Plan, and

WHEREAS, the referenced project is in the Parks Department related to capital improvements at the Depot.

NOW, Therefore be it ordained by the City Council of the City of Anacortes, Washington:

Ordinance No. 4033 dated December 5, 2022 adopting the Capital Facilities Plan for the six year period 2023 – 2028 is hereby amended to reflect the following revisions to expenditures and revenues in the Parks Department:

- Parks is amended to add the Depot Pavilion to budget year 2023 of the CFP at an estimated cost of 800,000.

This Ordinance shall take effect from and after five (5) days after its passage and publication, as required by law.

PASSED AND APPROVED this 17th day of April, 2023
CITY OF ANACORTES, WASHINGTON

BY:

Matt Miller, Mayor

ATTEST:

Steven D. Hoglund, City Clerk

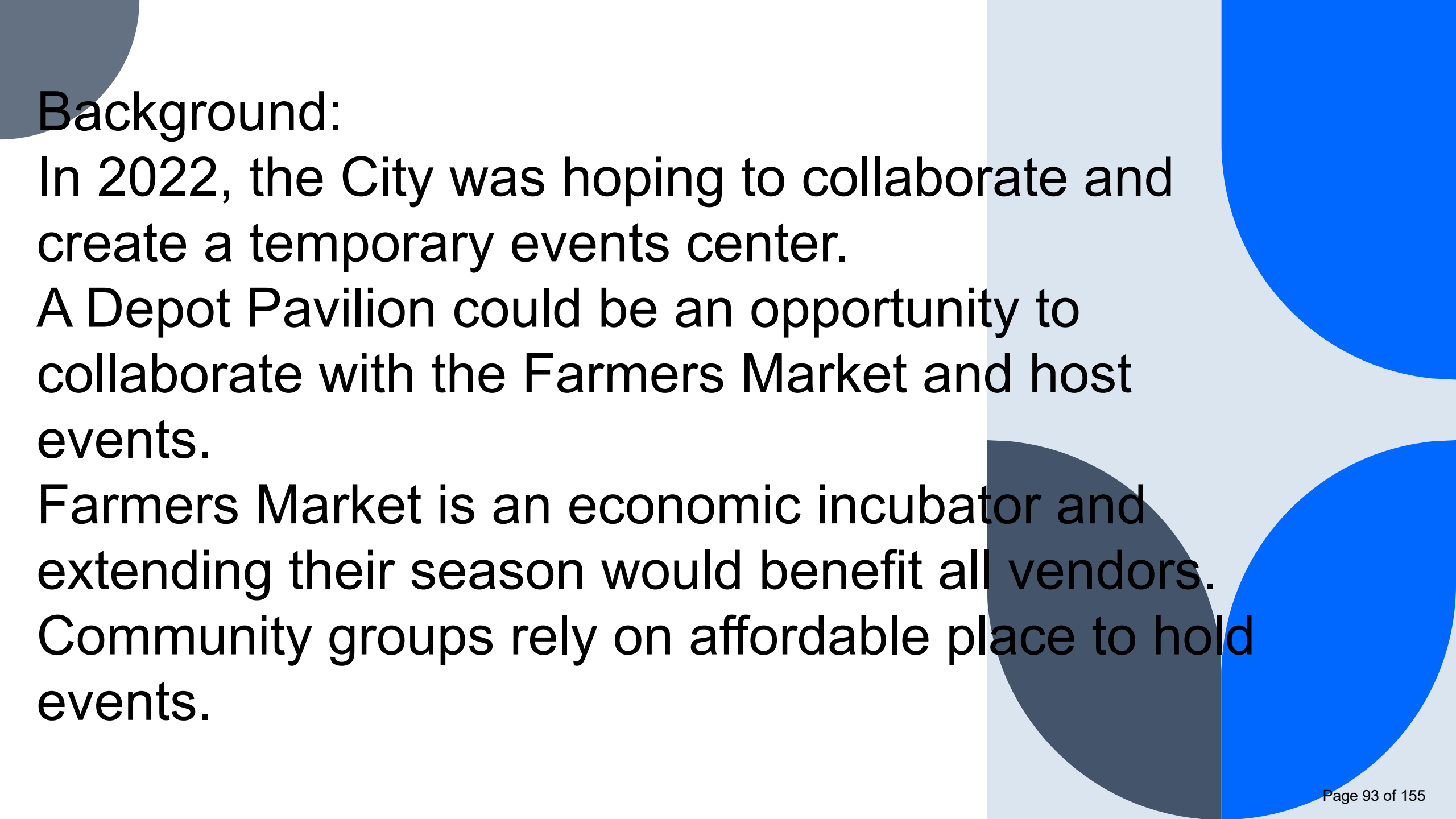
APPROVED AS TO FORM:

Darcy J. Swetnam, WSBA # 40530
City Attorney

Public Hearing: Ordinance 4047

Depot Pavilion Project



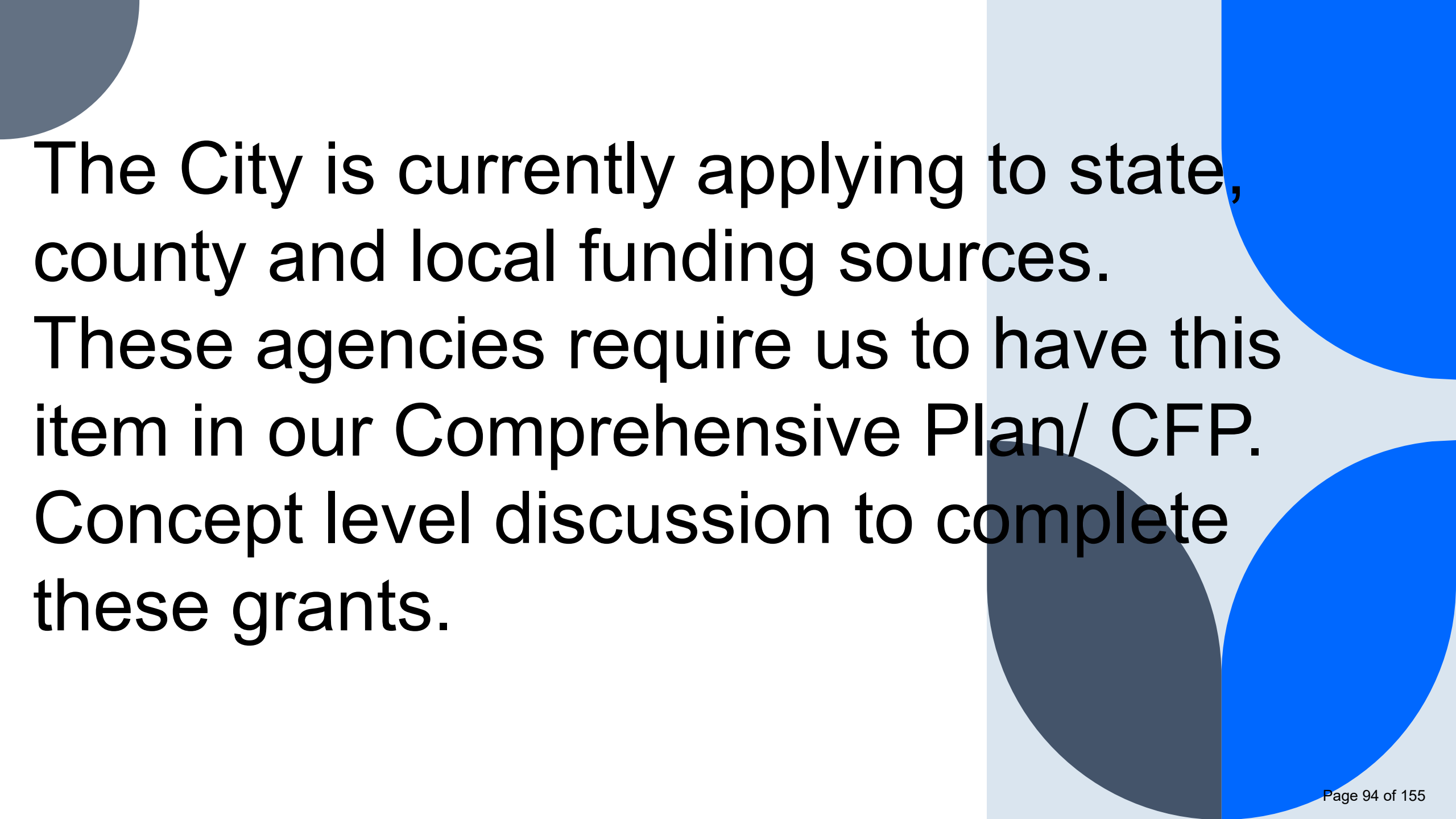


Background:

In 2022, the City was hoping to collaborate and create a temporary events center.

A Depot Pavilion could be an opportunity to collaborate with the Farmers Market and host events.

Farmers Market is an economic incubator and extending their season would benefit all vendors. Community groups rely on affordable place to hold events.



The City is currently applying to state, county and local funding sources. These agencies require us to have this item in our Comprehensive Plan/ CFP. Concept level discussion to complete these grants.

Depot Plaza Aerial View

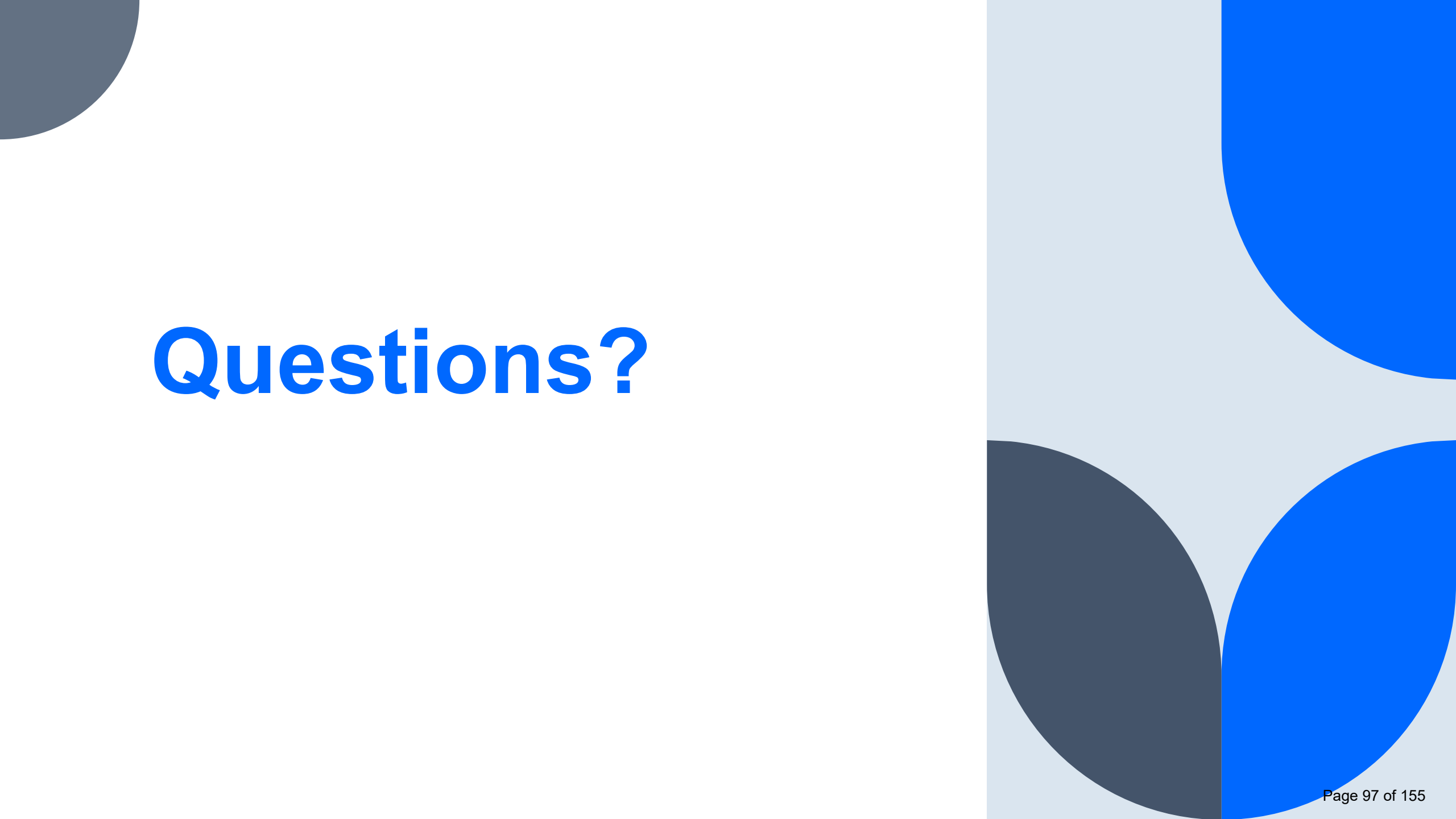


Possible Building Concept: Post and Pole construction/6000
SF

Depot

Closeable garage style doors
\$800,000 in grant requests
Respect historic nature of the





Questions?



City Council Agenda Bill

Meeting Date: April 3,
2023

Agenda Item: 7.a.

Agenda Item Title: Community Action of Skagit County Quarterly Update

Staff Contact(s): Emily Schuh

<u>Approved for Submittal to Council by</u>	<u>Action Type</u>
Emily Schuh	Staff Report

Item Summary: Community Action of Skagit County will provide a status update on the opening of the Anacortes Resource Center. The City of Anacortes is providing funding for one Community Action staff member and the Anacortes Housing Authority is providing office space for the Anacortes Resource Center.

Budget Impact:

Previous Action:

Recommended Motion:

Alternative Actions:

Attachments (listed in order presented):

1. Community Action of Skagit County Quarterly Update- Presentation



Anacortes City Council

April 3, 2023

The heart of Community Action is creating a spirit of hope by helping people help themselves and each other.



Purpose

Community Action is proud to partner with the City of Anacortes to expand services in Anacortes. The \$60,000 in annual support from the City will contribute to a full-time staff person in Anacortes and some associated technology costs.

The purpose of having a Services Center in Anacortes is to:

- Provide more comprehensive, wrap-around services for customers we already serve in Anacortes
- Provide better access and information to individuals and families who are eligible, but have not yet benefited from our resources & services
- Work more closely with other local service providers to ensure we can fill in gaps in service



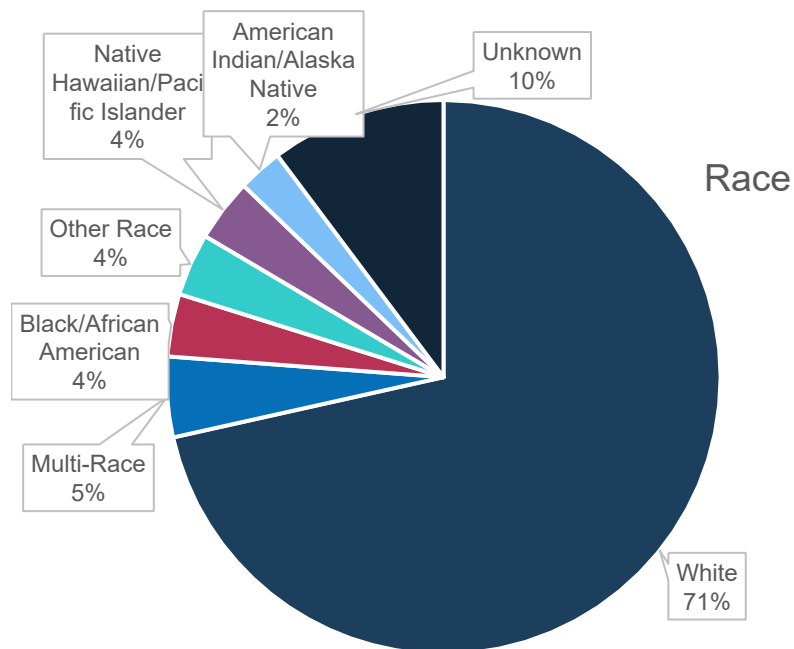
Progress, Challenges, Solutions

- Office space secured in AHA building at 216 Commercial Ave, but cannot move infrastructure and people in until current tenant has moved to its new location. Projected move date: late May.
- A Care Specialist Lead was hired and started March 1 as planned, but is on medical leave and is expected to return around June 5.
- Anacortes@CommunityActionSkagit.org email has been live and staffed since March 1.
- Interim plan executed. Anacortes Family Center providing temporary space for two Community Action staff members. Office hours begin tomorrow and will be Tue, Wed, Thu from 9am – 3pm.
- Temporary signage will be placed to identify Community Action.
- Staff continue to plan for rotating schedule of other programs & services, including WIC, supportive employment, senior and disabled services, & energy assistance

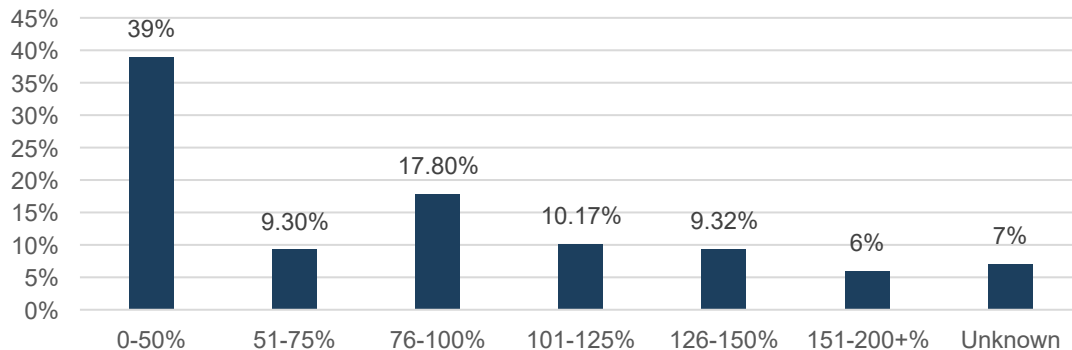


Demographics Q1: Jan 1 - Mar 24

- 196 unduplicated Anacortes residents were served (+ ~165 unduplicated WIC).
- 41% disabled
- 8% were Latino/Hispanic (and ~22% of WIC clients)
- 25% were seniors (60+)
- 42% self-reported as unhoused



Federal Poverty Level





Services Q1: Jan1 - Mar 24

Of the 300+ unduplicated individuals who received services:

- **NEW:** 12 received “Care Coordination” services
- **NEW:** 23 were served by the Street Outreach Program
- **NEW:** 4 were served by the Recovery Navigator Program
- **165** received nutrition education with WIC
- **79** received Energy Assistance
- **27** received assistance from the MV Resource Center
- **15** received senior or disabled volunteer services
- **46** individuals (23 HHs) were enrolled in the Housing Interest Pool through Coordinated Entry
- **3** were served by the Veteran’s Assistance Fund



Data

Commitment to data accuracy, integrity, and transparency:

- We use a client service database “EmpowOR,” and have a Data & Assessment Manager to carry out training, review data quality, and lead quarterly data analyses.
- Staff collect demographics from all customers, collected either via paper or electronically (outreach & care specialists carry devices).
- We can report on unduplicated households or individuals – by program, service, or location.
- If you have questions about our data collection or reports, please ask.



Notable Outcomes FY2022



Housing

- 545 households avoided eviction.
- 27 households obtained safe, affordable housing.
- 16 households were homeless and obtained temporary shelter.



Food

- 8,511,264 pounds of food distributed by the Skagit Food Distribution Center
- 20,978 Average individuals per month benefiting from food distribution.
- 2,162 Food boxes delivered



Senior & Disabled

- 748 individuals were senior or disabled and maintained an independent living situation due to services received.



Basic Needs

- 1,197 individuals received a basic need (clothing, hygiene, vouchers).



Energy & Utility Assistance

- 1,619 households improved their energy efficiency and/or reduced their energy burden.



Transportation

- 1,496 transportation services provided, including bus passes and gas vouchers.



Education & Employment

- 43 individuals made measurable gains in language, employment, and financial skills.
- 55 individuals participated in English or citizenship classes.



Basic Food

- 702 screenings made for SNAP (food stamp) eligibility.



How to Help: Help Us Get the Word Out!

You can:

- Tell friends and family about our presence and help spread the word. For services: Anacortes@CommunityActionSkagit.org
- Donate to Community Action with a designation that it is to support services in Anacortes.
- Invite someone from Community Action to talk at a service club or event.
- Volunteer to be a driver or do yard work or in-home care for seniors and those with disabilities.

www.CommunityActionSkagit.org

(360) 416-7585, SandiP@CommunityActionSkagit.org



Questions?

www.CommunityActionSkagit.org

(360) 416-7585

SandiY@CommunityActionSkagit.org



City Council Agenda Bill

Meeting Date: April 3,
2023

Agenda Item: 7.b.

Agenda Item Title: Contract Award: Microsoft Enterprise Agreement - Office 365
Renewal #23-122-ITS-001

Staff Contact(s): Jose Cervantes, Emily Schuh

Approved for Submittal to Council by **Action Type**
TIFFANY MATSON Contract Award

Item Summary: City staff seeks City Council consent to award a contract in the amount of \$111,300.22 to SHI International Corp. for the Microsoft Enterprise Agreement - Office 365 Renewal. The contract piggybacks on Omnia Partners Contract 2018011-02.

Background:

1. History: Microsoft Office Apps are used by all City staff on a daily basis for content creation, collaboration and communication. This purchase renews our licenses from 5/1/2023-4/30/2024.

2. Key Terms:

- Total contract price of \$111,300.22 which includes \$9,002.22 in sales tax.

3. Competitive Bidding: The City has an interlocal cooperative purchasing agreement with Omnia Partners and is procuring this purchase through Contract [2018011-02](#)

Budget Impact:

Vendor	SHI International Corp.
Contract Amount	\$111,300.22
Earmarked Funds	\$115,222.00
BARS #	001.220.518.80.41
Budget Amendment Required?	No

Previous Action: N/A

Recommended Motion: I move that City Council authorize the Mayor to sign contract 23-122-ITS-001 with SHI International Corp. in the amount of \$111,300.22 for the Microsoft Enterprise Agreement - Office 365 Renewal.

Alternative Actions: Not approve the contract.

Attachments (listed in order presented):

1. 23-122-ITS-001
2. Microsoft Enterprise Update Statement



City of Anacortes
Accounts Payable
PO Box 547
Anacortes, WA 98221

PURCHASE ORDER 23-122-ITS-001

VENDOR: SHI International Corp
Matthew Moore
290 Davidson Ave
Somerset, NJ 08879
Phone: 732-652-0332
Email: matthew_moore@shi.com

Date: April 3, 2023
Contact: Jose Cervantes
Department: Information Systems Department
(360) 299-1981
cervantesj@cityofanacortes.org

DESCRIPTION	U/M	Unit Price	Amount
Subscription licenses for Microsoft M365 Suite as listed in Exhibit A This Work is subject to: - Quote 23183288, incorporated as Exhibit A, - Special Provisions, incorporated as Exhibit B, - Omnia Partners Contract 2018011-02 and related Amendments, incorporated as Exhibit C. The aforementioned Exhibits A, B, and C are hereby incorporated by reference and made a part hereof.	EA	\$102,298.00	\$102,298.00
Sum Total			\$102,298.00
Sales Tax @ 8.8%			\$9,002.22
Total Price			\$111,300.22

The parties acknowledge that there has been an opportunity to negotiate the terms and conditions of this Agreement and agree to each bind itself, its partners, successors, assigns, and legal representatives to the other party hereto, in respect of all covenants, agreements, and obligations contained in the Contract Documents. Each of the persons signing below on behalf of any party hereby represents and warrants that they are signing with full and complete authority to bind the party on whose behalf of whom they are signing, to each and every term of this Agreement.

SHI INTERNATIONAL CORP.

CITY OF ANACORTES

Matt Miller, Mayor

Date

Date



Pricing Proposal
Quotation #: 23183288
Created On: 3/7/2023
Valid Until: 3/31/2023

WA-City Of Anacortes

Jose Cervantes

904 6th Street
P.O. Box 410
Anacortes, WA 0
United States
Phone: (360) 299-1981
Fax:
Email: cervantesj@cityofanacortes.org

Inside Account Executive

Matthew Moore

290 Davidson Ave
Somerset, NJ 08873
Phone: 732-652-0332
Fax:
Email: matthew_moore@shi.com

All Prices are in US Dollar (USD)

	Product	Qty	Your Price	Total
1	Teams AC with Dial Out US/CA GCC Sub Add-on Microsoft - Part#: NYH-00001 Contract Name: Omnia Partners - IT Solutions Contract #: 2018011-02 Coverage Term: 5/1/2023 – 4/30/2024	271	\$0.00	\$0.00
2	M365 G3 Unified FUSL GCC Sub Per User Microsoft - Part#: AAD-34704 Contract Name: Omnia Partners - IT Solutions Contract #: 2018011-02 Coverage Term: 5/1/2023 – 4/30/2024	220	\$404.43	\$88,974.60
3	O365 G1 GCC Sub Per User Microsoft - Part#: U4S-00002 Contract Name: Omnia Partners - IT Solutions Contract #: 2018011-02 Coverage Term: 5/1/2023 – 4/30/2024	25	\$97.66	\$2,441.50
4	O365 G3 GCC Sub Per User Microsoft - Part#: AAA-11894 Contract Name: Omnia Partners - IT Solutions Contract #: 2018011-02 Coverage Term: 5/1/2023 – 4/30/2024	25	\$258.38	\$6,459.50
5	Azure Active Directory Premium P1 GCC Sub Per User Microsoft - Part#: MQM-00001 Contract Name: Omnia Partners - IT Solutions Contract #: 2018011-02 Coverage Term: 5/1/2023 – 4/30/2024	50	\$57.32	\$2,866.00
6	O365 F3 GCC Sub Per User Microsoft - Part#: 3KS-00001 Contract Name: Omnia Partners - IT Solutions Contract #: 2018011-02 Coverage Term: 5/1/2023 – 4/30/2024	1	\$38.17	\$38.17

7	Project P3 GCC Sub Per User Microsoft - Part#: 7MS-00001 Contract Name: Omnia Partners - IT Solutions Contract #: 2018011-02 Coverage Term: 5/1/2023 – 4/30/2024	2	\$286.47	\$572.94
8	Visio P2 GCC Sub Per User Microsoft - Part#: P3U-00001 Contract Name: Omnia Partners - IT Solutions Contract #: 2018011-02 Coverage Term: 5/1/2023 – 4/30/2024	6	\$143.23	\$859.38
9	AzureActiveDrctryPremP2GCC ShrdSvr ALNG SubsVL MVL PerUsr Microsoft - Part#: MQN-00001 Contract Name: Omnia Partners - IT Solutions Contract #: 2018011-02 Coverage Term: 5/1/2023 – 4/30/2024	1	\$85.91	\$85.91
10	Win OLS Activation User GCC Sub Per User Microsoft - Part#: VRM-00001 Contract Name: Omnia Partners - IT Solutions Contract #: 2018011-02 Coverage Term: 5/1/2023 – 4/30/2024	220	\$0.00	\$0.00
			Total	\$102,298.00

Additional Comments

Hardware items on this quote may be updated to reflect changes due to industry wide constraints and fluctuations.

The products offered under this proposal are resold in accordance with the terms and conditions of the Contract referenced under that applicable line item.



**PURCHASE ORDER # 23-122-ITS-001
SPECIAL PROVISIONS
EXHIBIT B**

1. **OMNIA Partners City of Mesa, AZ Contract #2018011-02.** The work on this project shall be accomplished in accordance with the Omnia Partners contract #2018011-02 between the City of Mesa, AZ and SHI International Corp. All references in contract #2018011-02 to "City of Mesa" shall be revised to read "City of Anacortes". All references to the "State of Arizona" shall be revised to read the "State of Washington".

2. **Order of Precedence.** In the event of a conflict between the terms and conditions of contract #2018011-02 and these Special Provisions, the order of precedence shall be (a) Special Provisions identified as Exhibit B to Purchase Order #23-122-ITS-001, (b) contract #2018011-02 between the City of Mesa, AZ and SHI International Corp.

3. **Taxes.** The City will pay sales and use taxes imposed on goods or services acquired hereunder as required by law. The Supplier must pay all other taxes including, but not limited to: Business and Occupation Tax, taxes based on the Supplier's gross or net income, or personal property to which the City does not hold title. The City is exempt from Federal Excise Tax. Where applicable the City shall furnish a Federal Excise Tax Exemption certificate.

4. **Invoicing.** All invoices shall include: Company Name, Invoice Date, Due Date (30 days), Invoice Number, PO Number and Price, or Amended Price. Supplier shall allow 30 days for payment. Invoices may be sent by US mail to City of Anacortes, Accounts Payable, PO Box 547, Anacortes, WA 98221, or by email to accountspayable@cityofanacortes.org. Suppliers may complete a City furnished ACH/EFT form to receive electronic payments directly to their financial institution.

The City shall notify the Supplier within fifteen (15) calendar days from receipt of invoice if there are any objections or disputes with the invoice. The Supplier shall then resubmit a new invoice less the disputed amount and payment shall be made within 30 calendar days. Any disputed amounts may be submitted under the Disputes clause contained herein.

5. **Withholding Payment.** In the event the City determines that the Supplier has failed to perform any obligation under this PO within the times set forth in this PO, then the City may withhold from amounts otherwise due and payable to Supplier the amount determined by the City as necessary to cure the default, until the City Attorney determines that such failure to perform has been cured. Withholding under this clause shall not be deemed a breach entitling Supplier to terminate or damages, provided that the City promptly gives notice in writing to the Supplier of the nature of the default or failure to perform, and in no case more than 8 days after it determines to withhold amounts otherwise due. A determination of the City Attorney set forth in such notice to the Supplier of the action required and/or the amount required to cure any alleged failure to perform shall be deemed conclusive, except to the extent that the Supplier acts within the times and in strict accord with the provisions of the Disputes clause of this PO. The City may act in accordance with any determination of the City Attorney which has become conclusive under this clause, without prejudice to any other remedy under the PO, to take all or any of the following actions: (1) cure any failure or default, (2) to pay any amount so required to be paid and to charge the same to the account of the Supplier, (3) to set off any amount so paid or incurred from amounts due to become due the Supplier. In the event the Supplier obtains relief upon a claim under the Disputes clause, no penalty or damages shall accrue to Supplier by reason of good faith withholding by the City under this clause.

6. **Final Payment: Waiver of Claim** the Supplier's acceptance of final payment shall constitute a waiver of claims, except those previously and properly made and identified by the Supplier as unsettled at the time request for final payment is made.

7. **Inspection.**

A. Of the Work

All materials furnished and work done shall be subject to inspection. The City Project Manager administering the PO shall at all times have access to the work wherever it is in progress or being performed, and the Supplier shall provide proper facilities for such access and inspection. Such inspection shall not relieve the Supplier of the responsibility of performing the work correctly, utilizing the best labor and materials in strict accordance with the Specifications of the PO. All material or work approved and later found to be defective shall be replaced without cost to the City.

B. Project Manager's Authority

The Project Manager shall have power to reject materials or workmanship which do not fulfill the requirements of these Specifications, but in case of dispute the Supplier may appeal to the City Attorney whose decision shall be final. The PO shall be carried out under the general control of the representative of the City administering the PO, who may exercise such control over the conduct of the work as may be necessary, in his or her opinion, to safeguard the interest of the City. The Supplier shall comply with any and all orders and instructions given by the

representative of the particular Department administering the PO in accordance with the terms of the PO. Nothing herein contained, however, shall be taken to relieve the Supplier of their obligations or responsibilities under the PO.

8. **Defense and Indemnity Agreement.** The Supplier shall defend, indemnify and hold the City, its officers, officials, employees and volunteers harmless from any and all claims, injuries, damages, losses or suits including attorney fees, arising out of or in connection with the performance of this Agreement, except for injuries and damages caused by the sole negligence of the City.

9. **Insurance Requirements**

A. Insurance Term: The Supplier shall procure and maintain for the duration of the Agreement, insurance against claims for injuries to persons or damage to property which may arise from or in connection with products and materials supplied to the City.

B. No Limitation: The Supplier's maintenance of insurance as required by the Agreement shall not be construed to limit the liability of the Supplier to the coverage provided by such insurance, or otherwise limit the City's recourse to any remedy available at law or in equity.

C. Minimum Scope of Insurance: The Supplier shall obtain insurance of the type and coverage described below:

Commercial General Liability insurance shall be at least as broad as Insurance Services Office (ISO) occurrence form CG 00 01 and shall cover products liability. **The City of Anacortes shall be named as an additional insured** under the Supplier's Commercial General Liability insurance policy using ISO Additional Insured-Vendors Endorsement CG 20 15 04 13 or a substitute endorsement providing at least as broad coverage.

D. Minimum Amounts of Insurance: The Supplier shall maintain the following insurance limits:

Commercial General Liability insurance shall be written with limits no less than \$2,000,000 each occurrence, \$2,000,000 general aggregate and a \$2,000,000 products liability aggregate limit.

E. Other Insurance Provision: The Supplier's Commercial General Liability insurance policy or policies are to contain, or be endorsed to contain that they shall be primary insurance as respect the City. Any insurance, self-insurance, or self-insured pool coverage maintained by the City shall be excess of the Supplier's insurance and shall not contribute with it.

F. Acceptability of Insurers: Insurance is to be placed with insurers with a current A.M. Best rating of not less than A: VII.

G. Verification of Coverage: The Supplier shall furnish the City with original certificates and a copy of the amendatory endorsements, including but not necessarily limited to the additional insured endorsement, evidencing the insurance requirements of the Supplier before goods, materials or supplies will be accepted by the City.

H. Notice of Cancellation: The Supplier shall provide the City with written notice of any policy cancellation, within two business days of their receipt of such notice.

I. Failure to Maintain Insurance: Failure on the part of the Supplier to maintain the insurance as required shall constitute a material breach of contract, upon which the City may, after giving five business days notice to the Supplier to correct the breach, immediately terminate the contract or, at its discretion, procure or renew such insurance and pay any and all premiums in connection therewith, with any sums so expended to be repaid to the City on demand, or at the sole discretion of the City, offset against funds due the Supplier from the City.

J. City Full Availability of Supplier Limits: If the Supplier maintains higher insurance limits than the minimums shown above, the City shall be insured for the full available limits of Commercial General and Excess or Umbrella liability maintained by the Supplier, irrespective of whether such limits maintained by the Supplier are greater than those required by this contract or whether any certificate of insurance furnished to the City evidences limits of liability lower than those maintained by the Supplier.

10. **Standard Title VI / Non-Discrimination Assurances.** During the performance of this contract, the Consultant, for itself, its assignees, and successors in interest agrees to the clauses in "Appendix A" and "Appendix E" of the Standard Title VI Assurances (USDOT1050.2A), which are hereby incorporated by reference and made a part hereof.

11. **Supplier is an Independent Contractor.** The parties intend that an independent contractor relationship will be created by this PO. No agent, employee or representative of the Supplier shall be deemed to be an agent, employee or representative of the City for any purpose. Supplier shall be solely responsible for all acts of its agents, employees, representatives and Sub-Suppliers during the performance of this PO.

12. **Assistance Regarding Patent and Copyright Infringement.** In the event of any claim or suit against City on account of any alleged patent or copyright infringement arising out of the performance of this PO or out of the use of any material furnished or work or services performed hereunder, Supplier shall defend City against any such

suit or claim and hold City harmless from any and all expenses, court costs, and attorney's fees in connection with such claim or suit.

13. The City's Right to Terminate PO.

A. Termination for Default: If the Supplier defaults by failing to perform any of the obligations of the PO or becomes insolvent or is declared bankrupt or commits any act of bankruptcy or insolvency or makes an assignment for the benefit of creditors, the City may, by depositing written notice to the Supplier in the U.S. mail, postage prepaid, terminate the PO, and at the City's option, obtain performance of the work elsewhere. If the PO is terminated for default, the Supplier shall not be entitled to receive any further payments under the PO until the Scope of Services under this PO has been fully performed. Any extra cost or damage to the City resulting from such default(s) shall be deducted from any money due or coming due to the Supplier. The Supplier shall bear any extra expenses incurred by the City in completing the work, including all increased costs for completing the work, and all damage sustained, or which may be sustained by the City by reason of such default. If a notice of termination for default has been issued and it is later determined for any reason that the Supplier was not in default, the rights and obligations of the parties shall be the same as if the notice of termination had been issued pursuant to the Termination for Public Convenience paragraph hereof.

B. Termination for Public Convenience: The City may terminate the PO in whole or in part whenever the City determines, in its sole discretion that such termination is in the best interests of the City. Whenever the PO is terminated in accordance with this paragraph, the Supplier shall be entitled to payment for actual work performed at unit PO prices for completed items of work through the date of termination. An equitable adjustment in the PO price for partially completed items of work will be made, but such adjustment shall not include provision for loss of anticipated profit on deleted or uncompleted work. Termination of this PO by the City at any time during the term, whether for default or convenience, shall not constitute a breach of PO by the City.

14. Changes/Additional Work. The City may engage Supplier to perform services in addition to those listed in this PO, and Supplier will be entitled to additional compensation for authorized additional services or materials. The City shall not be liable for additional compensation until and unless any and all additional work and compensation is approved in advance in writing and signed by both parties to this PO. If conditions are encountered which are not anticipated in the Scope of Services, the City understands that a revision to the Scope of Services and fees may be required. Provided, however, that nothing in this paragraph shall be interpreted to obligate the Supplier to render or the City to pay for services rendered in excess of the Scope of Services unless or until a modification to this PO is approved in writing by both parties.

15. Non-waiver. Waiver by the City of any provision of this PO or any time limitation provided for in this PO shall not constitute a waiver of any other provision.

16. Covenant Against Contingent Fees. The Supplier warrants that they have not employed or retained any company or person, other than a bona fide employee working solely for the Supplier, to solicit or secure this PO, and that they have not paid or agreed to pay any company or person, other than a bona fide employee working solely for the Supplier, any fee, commission, percentage, brokerage fee, gifts, or any other consideration contingent upon or resulting from the award of making of this PO. For breach or violation of this warranty, the City shall have the right to annul this PO without liability or, in its discretion to deduct from the PO price or consideration, or otherwise recover, the full amount of such fee, commission, percentage, brokerage fee, gift, or contingent fee.

17. Disputes

A. General: Differences between the Supplier and the City, arising under and by virtue of this PO shall be brought to the attention of the City at the earliest possible time in order that such matters may be settled or other appropriate action promptly taken. The provisions of this Clause shall survive the expiration or termination of this PO.

B. Notice of Potential Claims: The Supplier shall not be entitled to additional compensation which otherwise may be payable, or to extension of time for (1) any act or failure to act by the City, or (2) the happening of any event or occurrence, unless the Supplier has given the City a written Notice of Potential Claim within 10 days of the commencement of the act, failure, or event giving rise to the claim, and before final payment by the City. The written Notice of Potential Claim shall set forth the reasons for which the Supplier believes additional compensation or extension of time is due, the nature of the cost involved, and insofar as possible, the amount of the potential claim. Supplier shall keep full and complete daily records of the Work performed, labor and all costs and additional time claimed to be additional.

B. Detailed Claim: The Supplier shall not be entitled to claim any such additional compensation, or extension of time, unless within 30 days of the accomplishment of the portion of the work from which the claim arose, and before final payment by the City, the Supplier has given the City a detailed written statement of each element of cost or other compensation requested and of all elements of additional time required, and copies of any supporting documents evidencing the amount or the extension of time claimed to be due.

D. Dispute Resolution: In the event of a dispute between the City and the Supplier arising out of this PO, or any obligation hereunder the dispute shall first be referred to the representatives designated by the City and the

Supplier to have oversight over the administration of this PO. Said representatives shall meet within thirty (30) calendar days of receipt of detailed claim, and the parties shall make a good faith effort to achieve a resolution of the dispute. In the event the parties are unable to resolve the dispute under the procedure set forth above, then the parties hereby agree that the matter shall be referred to mediation. The parties shall mutually agree upon a mediator to assist them in resolving their differences. Any expenses incidental to mediation shall be borne equally by the parties. If either party is dissatisfied with the outcome of the mediation, that party may then pursue any available judicial remedies.

18. **Force Majeure.** Neither party shall be liable to the other or deemed in breach or default for any failure or delay in performance under this Agreement during the time and to the extent its performance is prevented by reasons of Force Majeure. For the purposes of this Agreement, Force Majeure means an occurrence that is beyond the reasonable control of and without fault or negligence of the party claiming force majeure and which, by exercise of due diligence of such party, could not have been prevented or overcome. Force Majeure shall include natural disasters, including fire, flood, earthquake, windstorm, avalanche, mudslide, and other similar events; acts of war or civil unrest when an emergency has been declared by appropriate governmental officials; acts of civil or military authority; freight embargoes; epidemics; pandemics; quarantine restrictions; labor strikes; boycotts; terrorist acts; riots; insurrections; explosions; and nuclear accidents. A party claiming suspension or termination of its obligations due to force majeure shall give the other party prompt written notice of the impediment and its effect on the ability to perform, with such notice to be provided no more than two (2) working days after the force majeure event or reasonable discovery of the event's impact on performance. Failure to provide such notice shall preclude recovery under this provision. Such delay shall cease as soon as practicable and written notification of same shall be provided. The time of completion shall be extended by Agreement modification for a period of time equal to the time that the results or effects of such delay prevented the delayed party from performing in accordance with this Agreement. Rights Reserved: The City reserves the right to cancel the Agreement and/or purchase materials, equipment or services from the best available source during the time of force majeure, and Supplier shall have no recourse against the City.

19. **Governing Law.** This PO shall be governed by and construed under the laws of the State of Washington. Any action brought under the PO or relating to the Project shall be brought in the Superior Court of the State of Washington in Skagit County Washington.

20. **Compliance with Laws.** The Supplier in the performance of this PO shall comply with all applicable Federal, State or local laws and ordinances, including regulations for licensing, certification and operation of facilities, programs and accreditation, and licensing of individuals, and any other standards or criteria as described in the PO to assure quality of services.

21. **Severability.** If any term or condition of this PO or the application thereof to any person(s) or circumstances is held invalid, such invalidity shall not affect other terms, conditions or applications which can be given effect without the invalid term, condition or application. To this end, the terms and conditions of this PO are declared severable.

22. **Survival of PO Termination.** The provisions of the following paragraphs and the liability of the Supplier for default during the term of the PO shall survive, notwithstanding the termination or invalidity of this PO for any reason: The City's Right to Terminate PO; Governing Law; Disputes; Defense & Indemnity.

23. **Notices.** Receipt of any notice shall be deemed effective three days after deposit of written notice in the U.S. mail, with proper postage and properly addressed. Notices shall be sent to the following addresses:

CITY:

City of Anacortes
Tiffany Matson
904 6th Street
PO Box 547
Anacortes, WA 98221

SUPPLIER:

SHI International Corp
Matthew Moore
290 Davidson Ave
Somerset, NJ 08879

APPENDIX A

During the performance of this contract, the contractor, for itself, its assignees, and successors in interest (hereinafter referred to as the "contractor") agrees as follows:

1. **Compliance with Regulations:** The contractor (hereinafter includes consultants) will comply with the Acts and the Regulations relative to Non-discrimination in Federally-assisted programs of the U.S. Department of Transportation, Washington State Department of Transportation, as they may be amended from time to time, which are herein incorporated by reference and made a part of this contract.
2. **Non-discrimination:** The contractor, with regard to the work performed by it during the contract, will not discriminate on the grounds of race, color, or national origin in the selection and retention of subcontractors, including procurements of materials and leases of equipment. The contractor will not participate directly or indirectly in the discrimination prohibited by the Acts and the Regulations, including employment practices when the contract covers any activity, project, or program set forth in Appendix B of 49 CFR Part 21.
3. **Solicitations for Subcontracts, Including Procurements of Materials and Equipment:** In all solicitations, either by competitive bidding, or negotiation made by the contractor for work to be performed under a subcontract, including procurements of materials, or leases of equipment, each potential subcontractor or supplier will be notified by the contractor of the contractor's obligations under this contract and the Acts and the Regulations relative to Non-discrimination on the grounds of race, color, or national origin.
4. **Information and Reports:** The contractor will provide all information and reports required by the Acts, the Regulations, and directives issued pursuant thereto and will permit access to its books, records, accounts, other sources of information, and its facilities as may be determined by the Recipient or the Washington State Department of Transportation to be pertinent to ascertain compliance with such Acts, Regulations, and instructions. Where any information required of a contractor is in the exclusive possession of another who fails or refuses to furnish the information, the contractor will so certify to the Recipient or the Washington State Department of Transportation, as appropriate, and will set forth what efforts it has made to obtain the information.
5. **Sanctions for Noncompliance:** In the event of a contractor's noncompliance with the Non-discrimination provisions of this contract, the Recipient will impose such contract sanctions as it or the Washington State Department of Transportation may determine to be appropriate, including, but not limited to:
 - a. withholding payments to the contractor under the contract until the contractor complies; and/or
 - b. cancelling, terminating, or suspending a contract, in whole or in part.
6. **Incorporation of Provisions:** The contractor will include the provisions of paragraphs one through six in every subcontract, including procurements of materials and leases of equipment,

unless exempt by the Acts, the Regulations and directives issued pursuant thereto. The contractor will take action with respect to any subcontract or procurement as the Recipient or the Washington State Department of Transportation may direct as a means of enforcing such provisions including sanctions for noncompliance. Provided, that if the contractor becomes involved in, or is threatened with litigation by a subcontractor, or supplier because of such direction, the contractor may request the Recipient to enter into any litigation to protect the interests of the Recipient. In addition, the contractor may request the United States to enter into the litigation to protect the interests of the United States.

APPENDIX E

During the performance of this contract, the contractor, for itself, its assignees, and successors in interest (hereinafter referred to as the "contractor") agrees to comply with the following non-discrimination statutes and authorities; including but not limited to:

Pertinent Non-Discrimination Authorities:

- Title VI of the Civil Rights Act of 1964 (42 U.S.C. § 2000d et seq., 78 stat. 252), (prohibits discrimination on the basis of race, color, national origin); and 49 CFR Part 21.
- The Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, (42 U.S.C. § 4601), (prohibits unfair treatment of persons displaced or whose property has been acquired because of Federal or Federal-aid programs and projects);
- Federal-Aid Highway Act of 1973, (23 U.S.C. § 324 et seq.), (prohibits discrimination on the basis of sex);
- Section 504 of the Rehabilitation Act of 1973, (29 U.S.C. § 794 et seq.), as amended, (prohibits discrimination on the basis of disability); and 49 CFR Part 27;
- The Age Discrimination Act of 1975, as amended, (42 U.S.C. § 6101 et seq.), (prohibits discrimination on the basis of age);
- Airport and Airway Improvement Act of 1982, (49 USC § 471, Section 47123), as amended, (prohibits discrimination based on race, creed, color, national origin, or sex);
- The Civil Rights Restoration Act of 1987, (PL 100-209), (Broadened the scope, coverage and applicability of Title VI of the Civil Rights Act of 1964, The Age Discrimination Act of 1975 and Section 504 of the Rehabilitation Act of 1973, by expanding the definition of the terms "programs or activities" to include all of the programs or activities of the Federal-aid recipients, sub-recipients and contractors, whether such programs or activities are Federally funded or not);
- Titles II and III of the Americans with Disabilities Act, which prohibit discrimination on the basis of disability in the operation of public entities, public and private transportation systems, places of public accommodation, and certain testing entities (42 U.S.C. §§ 12131-12189) as implemented by Department of Transportation regulations at 49 C.F.R. parts 37 and 38;
- The Federal Aviation Administration's Non-discrimination statute (49 U.S.C. § 47123) (prohibits discrimination on the basis of race, color, national origin, and sex);
- Executive Order 12898, Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations, which ensures Non-discrimination against minority populations by discouraging programs, policies, and activities with disproportionately high and adverse human health or environmental effects on minority and low-income populations;
- Executive Order 13166, Improving Access to Services for Persons with Limited English Proficiency, and resulting agency guidance, national origin discrimination includes discrimination because of Limited English proficiency (LEP). To ensure compliance with Title VI, you must take reasonable steps to ensure that LEP persons have meaningful access to your programs (70 Fed. Reg. at 74087 to 74100);
- Title IX of the Education Amendments of 1972, as amended, which prohibits you from discriminating because of sex in education programs or activities (20 U.S.C. 1681 et seq).

CITY OF ANACORTES PO #23-122-ITS-001
EXHIBIT C

City of Mesa, AZ

Contract # 2018011-02

for

Information Technology Solutions and Services

with

SHI International Corp.

Effective: March 1, 2018

The following documents comprise the executed contract between the City of Meza, AZ and SHI International Corp, effective March 1, 2018:

- I. Executed Contract
- II. Mayor and Council Approval
- III. Supplier Response
- IV. Original RFP



AGREEMENT PURSUANT TO SOLICITATION

**CITY OF MESA AGREEMENT NUMBER 2018011
INFORMATION TECHNOLOGY SOLUTIONS & SERVICES**

CITY OF MESA, Arizona ("City")

Department Name	City of Mesa – Purchasing Division
Mailing Address	P.O. Box 1466 Mesa, AZ 85211-1466
Delivery Address	20 East Main St, Suite 400 Mesa, AZ 85201
Attention	Sharon Brause, CPPO, CPPB, CPCP Senior Procurement Officer
E-Mail	Sharon.Brause@MesaAZ.gov
Phone	(480) 644-2815
Fax	(480) 644-2655

AND

SHI INTERNATIONAL CORP., ("Contractor")

Mailing Address	290 Davidson Ave Somerset, NJ 08873
Remit Address	PO Box 952121 Dallas, TX 75395-2121
Attention	Meghan Flisakowski, Public Program Manager
E-Mail	Meghan.Flisakowski@shi.com
Phone	512-517-4088
Fax	732-652-6599
Website	www.publicsector.shidirect.com/

CITY OF MESA AGREEMENT PURSUANT TO SOLICITATION

This Agreement pursuant to solicitation ("Agreement") is entered into this 27th day of February, 2018, by and between the City of Mesa, Arizona, an Arizona municipal corporation ("City"), and **SHI INTERNATIONAL CORP**, a New Jersey corporation ("Contractor"). The City and Contractor are each a "Party" to the Agreement or together are "Parties" to the Agreement.

RECITALS

- A. The City issued solicitation number 2018011 ("Solicitation") for **INFORMATION TECHNOLOGY SOLUTIONS & SERVICES**, to which Contractor provided a response ("Response"); and
- B. The City Selected Contractor's Response as being in the best interest of the City and wishes to engage Contractor in providing the Services/Products described in the Solicitation and Response.
- C. "Services" means the resale services provided by Contractor under this Agreement; i.e. sourcing and fulfilling the Product and/or providing deliverables identified in an Order.
- D. "Products" means collectively third-party software, computer peripherals, computer hardware, and associated IT services provided by third parties or Contractor, as the case may be.
- E. "Order" means the form of purchase order or other document used for the purpose of ordering Product and/or deliverables pursuant to this Agreement. Order shall also include a phone order or on-line order placed by the City employee to Contractor utilizing the City's corporate procurement card or the City's written or electronic form of purchase requisition.

In consideration of the reciprocal promises contained in the Agreement, and for other valuable and good consideration, which the Parties acknowledge the receipt and sufficiency of, the Parties agree to the following Terms & Conditions.

TERMS & CONDITIONS

- 1. **Term.** This Agreement is for a term beginning on **March 1, 2018** and ending on **February 28, 2023**. The use of the word "Term" in the Agreement includes the aforementioned period as well as any applicable extensions or renewals in accordance with this Section 1.
 - 1.1 **Renewals.** On the mutual written agreement of the Parties, the Term may be renewed up to a maximum of **two (2), one (1) year** periods. Any renewal(s) will be a continuation of the same terms and conditions as in effect immediately prior to the expiration of the then-current term.
 - 1.2 **Extension for Procurement Processes.** Upon the expiration of the Term of this Agreement, including any renewals permitted herein, at the City's sole discretion this Agreement may be extended on a month-to-month basis for a maximum of six (6) months to allow for the City's procurement processes in the selection of a Contractor to provide the Services/Products provided under this Agreement. The City will notify the Contractor in writing of its intent to extend the Agreement at least thirty (30) calendar days prior to the expiration of the Term. Any extension under this Subsection 1.2 will be a continuation of the same terms and conditions as in effect immediately prior to the expiration of the then-current term.
 - 1.3 **Delivery.** Delivery shall be made to the location(s) contained in the Scope of Work within thirty (30) days after receipt of an Order. Contractor agrees to deliver all Products to the desktop of the ordering customer be delivered F.O.B. destination, freight pre-paid and allowed to various locations throughout the City. The City of Mesa shall be responsible for extra incurred fees for expedited shipping or other special delivery requirements. In

many cases within the City, the Contractor may be asked to deliver all goods to the front counter within a given department; this is a City requirement and other participating agencies who utilize this Agreement as a cooperative contract (see Exhibit C, Mesa Standard Terms & Conditions) may have other delivery requirements.

2. **Scope of Work.** The Contractor will provide the necessary staff, Services and associated resources to provide the City with the Services, Products, and obligations attached to this Agreement as **Exhibit A** ("**Scope of Work**") Contractor will be responsible for all costs and expenses incurred by Contractor that are incident to the performance of the Scope of Work unless otherwise stated in **Exhibit A**. Contractor will supply all equipment and instrumentalities necessary to perform the Scope of Work. If set forth in **Exhibit A**, the City will provide Contractor's personnel with adequate workspace and such other related facilities as may be required by Contractor to carry out the Scope of Work.

The Agreement is based on the Solicitation and Response which are hereby incorporated by reference into the Agreement as if written out and included herein. In addition to the requirements specifically set forth in the Scope of Work, the Parties acknowledge and agree that the Contractor shall perform in accordance with all terms, conditions, specifications and other requirements set forth within the Solicitation and Response unless modified herein.

3. **Orders.** Orders must be placed with the Contractor by either a: (i) Purchase Order when for a one-time purchase; (ii) notice to proceed, or (iii) Delivery Order off a Master Agreement for a requirements contract where multiple as-needed orders will be placed with the Contractor. The City may use the Internet to communicate with Contractor and to place Orders as permitted under this Agreement. The terms and conditions on any order form, quote, or similar document provided by Contractor to the City will not take precedence over the language set forth in this Agreement or any of the documents outlined in Section 4 below.
4. **Document Order of Precedence.** In the event of any inconsistency between the terms of the body of the Agreement, Exhibits, Solicitation, and Response, the language of the documents will control in the following order.
 - a. Amendments to the Agreement
 - b. Agreement
 - c. Exhibits
 1. Mesa Standard Terms & Conditions (Exhibit C)
 2. Pricing (Exhibit B)
 3. Scope of Work (Exhibit A)
 4. Other Exhibits not listed above
 - d. Solicitation including any addenda
 - e. Contractor's Response
5. **Payment.** Subject to the provisions of the Agreement, the City will pay Contractor the sum(s) described in **Exhibit B** ("**Pricing**") in consideration of Contractor's performance of the Scope of Work during the Term.
6. **Pricing.** Contractor's pricing shall be in the format of a minimum percentage discount off a verifiable price index. Contractor may submit discounts for various manufacturers. At the time of purchase, Contractor may offer deeper discounts beyond the discounted price list, based on volume or other factors, as applicable. Minimum discounts will remain firm during the entirety of the Term of the Agreement, unless the Contractor requests to increase its discount percentage, and will include all charges that may be incurred in fulfilling requirement(s). In addition to decreasing prices for the balance of the Term due to a change in market conditions, a Contractor may conduct sales promotions involving price reductions for a specified lesser period. In the event a Product is discontinued, Contractor will provide a Product of the same or greater functionality, utilizing the discount structure.

It is the Contractor's responsibility to provide the City with an up-to-date price list for the duration of the Agreement.

- 6.1 **Prices.** All pricing discounts shall be firm for the Term and all extensions or renewals of the Term except where otherwise provided in this Agreement, and will include all costs of the Contractor providing the Products/Service including transportation and insurance costs. No fuel surcharges will be accepted unless allowed in this Agreement. The City shall not be invoiced at prices higher than those stated in the Agreement.

The Contractor further agrees that any reductions in the price of the Products or Services covered by this Agreement will apply to the undelivered balance. The Contractor shall promptly notify the City of such price reductions.

No price modifications will be accepted without proper request by the Contractor and response by the City's Purchasing Division.

- 6.2 **Price Adjustment.** Any requests for reasonable price adjustments must be submitted in accordance with this section. Requests for adjustment in cost of labor and/or Products must be supported by appropriate documentation. There is no guarantee the City will accept a price adjustment therefore Contractor should be prepared for the Pricing to be firm over the Term of the Agreement. The City is only willing to entertain price adjustments based on an increase to Contractor's actual expenses or other reasonable adjustment in providing the Services/Products under the Agreement. If the City agrees to the adjusted price terms, the City shall issue written approval of the change.

During the sixty (60) day period prior to expiration date of the then-current term of the Agreement, the Contractor may submit a written request to the City to allow an increase to the prices in an amount not to exceed the twelve (12) month change in the ***Consumer Price Index for All Urban Consumers*** (CPI-U), US City Average, All Items, Not Seasonally Adjusted as published by the U.S. Department of Labor, Bureau of Labor Statistics (<http://www.bls.gov/cpi/home.htm>). The City shall review the request for adjustment and respond in writing; such response and approval shall not be unreasonably withheld.

- 6.3 **Renewal and Extension Pricing.** Any extension of the Agreement will be at the same pricing as the initial term. If the Agreement is renewed in accordance with Section 1, pricing may be adjusted for amounts other than inflation that represent actual costs to the Contractor based on the mutual agreement of the Parties. Contractor may submit a request for a price adjustment along with appropriate supporting documentation demonstrating the cost to the Contractor. Renewal prices shall be firm for the term of the renewal period and may be adjusted thereafter as outlined in Subsection 6.2. There is no guarantee the City will accept a price adjustment.

- 6.4 **Invoices.** Payment will be made to Contractor following the City's receipt of a properly completed invoice. Any issues regarding billing or invoicing must be directed to the City Department/Division requesting the Service or Product from the Contractor. A properly completed invoice should contain, at a minimum, all of the following:

- a. Contractor name, address, and contact information;
- b. City billing information;
- c. City contract number as listed on the first page of the Agreement;
- d. Invoice number and date;
- e. Payment terms;
- f. Date of Service or delivery of Product;
- g. Description of Products or Services provided;
- h. If Products provided, the quantity delivered and pricing of each unit;

- i. Applicable taxes; and
- j. Total amount due.

6.5 **Payment of Funds.** Contractor acknowledges the City may, at its option and where available use a Procurement Card/e-Payables to make payment for orders under the Agreement; otherwise, payment will be through a traditional method of a check or Electronic Funds Transfer (EFT) as available.

6.6 **Disallowed Costs, Overpayment.** If at any time the City determines that a cost for which payment was made to Contractor is a disallowed cost, such as an overpayment or a charge for Products/Service not in accordance with the Agreement, the City will notify Contractor in writing of the disallowance; such notice will state the means of correction which may be, but is not limited to, adjustment of any future claim/invoice submitted by Contractor in the amount of the disallowance, or to require repayment of the disallowed amount by Contractor. Contractor will be provided with the opportunity to respond to the notice.

7. **Insurance.**

7.1 Contractor must obtain and maintain at its expense throughout the Term of the Agreement, at a minimum, the types and amounts of insurance set forth in this Section 7 from insurance companies authorized to do business in the State of Arizona; the insurance must cover the Products/Service to be provided by Contractor under the Agreement. For any insurance required under the Agreement, Contractor will name the City of Mesa, its agents, representatives, officials, volunteers, officers, elected officials, and employees as additional insured, as evidenced by providing either an additional insured endorsement or proper insurance policy excerpts.

Nothing in this Section 7 limits Contractor's responsibility to the City. The insurance requirements herein are minimum requirements for the Agreement and in no way limit any indemnity promise(s) contained in the Agreement.

7.2 The City does not warrant the minimum limits contained herein are sufficient to protect Contractor and subcontractor(s) from liabilities that might arise out of performance under the Agreement by Contractor, its agents, representatives, employees, or subcontractor(s). Contractor is encouraged to purchase additional insurance as Contractor determines may be necessary.

7.3 Each insurance policy required under the Agreement must be in effect at or prior to the execution of the Agreement and remain in effect for the Term of the Agreement.

7.4 Prior to the execution of the Agreement, Contractor will provide the City with a Certificate of Insurance (using an appropriate "ACORD" or equivalent certificate) signed by the issuer with applicable endorsements. The City reserves the right to request additional copies of any or all of the policies, endorsements, or notices relating thereto required under the Agreement.

7.5 When the City requires a Certificate of Insurance to be furnished, Contractor's insurance is primary of all other sources available. When the City is a certificate holder and/or an additional insured, Contractor agrees no policy will expire, be canceled, or be materially changed to affect the coverage available without advance written notice to the City.

7.6 The policies required by the Agreement must contain a waiver of transfer rights of recovery (waiver of subrogation) against the City, its agents, representatives, officials, volunteers, officers, elected officials, and employees for any claims arising out of the work of Contractor where permitted by law.

- 7.7 All insurance certificates and applicable endorsements are subject to review and approval by the City's Risk Management Division.
- 7.8 **Types and Amounts of Insurance.** Contractor must obtain and retain throughout the term of the Agreement, at a minimum, the following:
- 7.8.1 Worker's compensation insurance in accordance with the provisions of Arizona law. If Contractor operates with no employees, Contractor must provide the City with written proof Contractor has no employees. If employees are hired during the course of this Agreement, Contractor must procure worker's compensations in accordance with Arizona law.
 - 7.8.2 The Contractor shall maintain at all times during the term of this contract, a minimum amount of \$1 million per occurrence/\$2 million aggregate Commercial General Liability insurance, including Contractual Liability. For Commercial General Liability insurance, the City of Mesa, their agents, officials, volunteers, officers, elected officials or employees shall be named as additional insured, as evidenced by providing an additional insured endorsement.
 - 7.8.3 Automobile liability, bodily injury and property damage with a limit of \$1 million per occurrence including owned, hired and non-owned autos.
8. **Requirements Contract.** Contractor acknowledges and agrees the Agreement is a requirements contract; the Agreement does not guarantee any purchases will be made (minimum or maximum). Orders will only be placed when the City identifies a need and issues a purchase order or a written notice to proceed. The City reserves the right to cancel purchase orders or a notice to proceed within a reasonable period of time of issuance; any such cancellation will be in writing. Should a purchase order or notice to proceed be canceled, the City agrees to reimburse Contractor for any actual and documented costs incurred by Contractor. If the City cancels a purchase order following shipment of the Products but prior to delivery, the City shall pay all freight and handling charges for shipment and return shipment of such Products to Contractor. All returns shall be made in accordance with Contractor's Return Policy found at www.shi.com/returnpolicy and this Agreement, with the terms of this Agreement controlling. The City will not reimburse Contractor for any avoidable costs incurred after receipt of cancellation including, but not limited to, lost profits, shipment of Product, or performance of Services. The City reserves the right to purchase contracted items through other sources if determined in the best interests of the City to do so.
9. **Notices.** All notices to be given pursuant to the Agreement will be delivered to the Contractor at the address listed on Page 1 of this Agreement. Notice will be delivered pursuant to the requirements set forth the Mesa Standard Terms and Conditions that are attached to the Agreement as Exhibit C.
10. **WARRANTY.** Contractor warrants that the Services and Products will conform to the requirements of the Agreement. Additionally, Contractor warrants that all Services will be performed in a good, workman-like and professional manner. The City's acceptance of Services or Products provided by Contractor will not relieve Contractor from its obligations under this warranty. If any Products or Services are of a substandard or unsatisfactory manner as determined by the City, Contractor, at no additional charge to the City, will provide Products or redo such Services until in accordance with this Agreement and to the City's reasonable satisfaction.
11. **OEM PRODUCT WARRANTY.** Contractor is a value-added reseller ("**VAR**") of Products, not the Original Equipment Manufacturer ("**OEM**") or licensor, and, except as provided herein, Contractor disclaims any warranty responsibility regarding warranties provided by the OEM for the Products provided under this Agreement ("**OEM Product Warranty**"). Contractor shall forward the OEM Product Warranties to the City which are provided to Contractor from the OEM of the Product and, to the extent granted by the OEM, the City shall be the beneficiary of the OEM's Product Warranties

with respect to the Product. Contractor is not a party to any such terms of the OEM Product Warranty between the City and OEM and the City agrees to look to the OEM for satisfaction of any and all OEM Product Warranty claims related to that OEM's Product.

EXCEPT AS OTHERWISE PROVIDED IN THIS AGREEMENT, CONTRACTOR HEREBY DISCLAIMS ALL OTHER WARRANTIES, EITHER EXPRESS OR IMPLIED, INCLUDING, BUT NOT LIMITED TO, ANY WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE, WARRANTY OF NONINFRINGEMENT, OR ANY WARRANTY RELATING TO THIRD PARTY SERVICES OR PRODUCTS. THE DISCLAIMER CONTAINED IN THIS PARAGRAPH DOES NOT AFFECT THE TERMS OF ANY OEM PRODUCT WARRANTY.

12. **Representations of Contractor.** To the best of Contractor's knowledge, Contractor agrees that:
- a. Contractor has no obligations, legal or otherwise, inconsistent with the terms of the Agreement or with Contractor's undertaking of the relationship with the City;
 - b. Performance of the Services called for by the Agreement do not and will not violate any applicable law, rule, regulation, or any proprietary or other right of any third party;
 - c. Contractor will not use in the performance of Contractor's responsibilities under the Agreement any proprietary information or trade secret of a former employer of its employees (other than City, if applicable); and
 - d. Contractor has not entered into and will not enter into any agreement, whether oral or written, in conflict with the Agreement.
13. **Mesa Standard Terms and Conditions.** Exhibit C to the Agreement is the Mesa Standard Terms and Conditions as modified by the Parties, which are incorporated by reference into the Agreement as though fully set forth herein. In the event of any inconsistency between the terms of the Agreement and the Mesa Standard Terms and Conditions, the language of the Agreement will control. The Parties or a Party are referred to as a "party" or "parties" in the Mesa Standard Terms and Conditions. The Term is referred to as the "term" in the Mesa Standard Terms and Conditions.
14. **Counterparts and Facsimile or Electronic Signatures.** This Agreement may be executed in two (2) or more counterparts, each of which will be deemed an original and all of which, taken together, will constitute one agreement. A facsimile or other electronically delivered signature to the Agreement will be deemed an original and binding upon the Party against whom enforcement is sought.
15. **Incorporation of Recitals and Exhibits.** All Recitals and Exhibits to the Agreement are hereby incorporated by reference into the Agreement as if written out and included herein. In the event of any inconsistency between the terms of the body of the Agreement and the Exhibits, the language of the Agreement will control.
- Exhibits to this Agreement are the following:
- (A) Scope of Work / Technical Specifications
 - (B) Pricing
 - (C) Mesa Standard Terms and Conditions
16. **Attorneys' Fees.** The prevailing Party in any litigation arising out of the Agreement will be entitled to the recovery of its reasonable attorney's fees, court costs, and other litigation related costs and fees from the other Party.
17. **Title, Risk of Loss, Returns.** Contractor shall transfer to the City good and merchantable title to the Product, free from all liens, encumbrances and claims of others, upon delivery of the Product to and its receipt by the City, at which time title and risk of loss shall vest fully in the City, unless

notice of rejection is provided to Contractor's authorized representative within three (3) business days after such delivery. All returns of Product shall be made in accordance with this Agreement and Contractor's Return Policy found at www.shi.com/returnpolicy, with the terms of the Agreement controlling.

18. **Additional Acts.** The Parties agree to execute promptly such other documents and to perform such other acts as may be reasonably necessary to carry out the purpose and intent of the Agreement.
19. **Headings.** The headings of the Agreement are for reference only and will not limit or define the meaning of any provision of the Agreement.

By executing below, each Party acknowledges that it understands, approves, and accepts all of the terms of the Agreement and the attached exhibits.

IN WITNESS WHEREOF, the parties have executed this Agreement as of the date first above written.

CITY OF MESA, ARIZONA

By: _____

Edward Quedens

Printed Name

Title

Date

Business Services Director

2-27-18

SHI INTERNATIONAL CORP.

By: _____

Cassie Skelton

Printed Name

Contracts Manager

Title

2/27/18

Date

REVIEWED BY:

By: _____

S. Brause

EXHIBIT A

SCOPE OF WORK

1. **MINIMUM REQUIREMENTS.** Contractor must meet the following minimum qualifications:
 - a. A full range of information technology solution Products and Services to meet varying requirements of governmental agencies.
 - b. Have a strong national presence as a computer solutions provider.
 - c. Have a distribution model capable of delivering Products, free of charge, in a timely manner on a nationwide basis.
 - d. Have a demonstrated sales presence.
 - e. Ability to provide a toll-free telephone and state of the art electronic facsimile and internet ordering and billing capabilities.
 - f. Be able to meet the minimum requirements of the cooperative purchasing program detailed herein.
2. **ORDERING.** Although the City is open to alternate ordering methods, the primary methods for customers placing orders with the Contractor is through the following:
 - a. Online
 - b. Telephone
 - c. Fax
 - d. Email
3. **SCOPE OF PRODUCTS.** Contractor will provide the ability to purchase a comprehensive, wide variety of Information Technology Solution Products including but not limited to the following categories:
 - a. **Personal Computer Systems:** National brand name desktop PCs, notebooks and laptops from Enterprise Tier and Middle Tier Contractors that are business related computers, manufactured by companies, such as, Apple, COMPAQ, Dell, Gateway, Hewlett Packard, IBM / Lenovo and Toshiba.
 - b. **Standard Business Workstation:** These will be used for typical tasks, which will include word processing, spreadsheet analysis, database management, business graphics, statistical analysis, internet, and other office automation activities. Product will include the operating system license, software media and documentation in the hardware shipment.
 - c. **High End Workstation:** These will be used by application developers using GIS, CASE or other high-level language development tools, Computer Aided Design and Drafting professional, Internet Application developers or other sophisticated application work. Product will include the operating system license, software media and documentation in the hardware shipment.
 - d. **Laptop Computer or Notebook:** These will be used by traveling or remote access users for typical office automation and business productivity use. With a port replicator or docking station, it may also be used as a standard desktop. Product will include the operating system license, software media and documentation in the hardware shipment.
 - e. **Network Equipment:** This includes equipment primarily used for communications over an IP network. This includes layer 2 and layer 3 switches, routers, area wireless access points, point-to-point wireless access, optics, media interfaces (i.e. serial, T1, T3, OC3) and fiber channel. Class of equipment should include home office, small and medium business, and enterprise. Contractors may include, but not limited to, Cisco Systems, Dell,

Juniper Networks, HP, Extreme Networks, Enterasys Networks, D-Link, Netgear, and Brocade Communications Systems.

- f. **Monitors:** These will include plug and play compatible monitors that are manufactured for the above systems and/or any other brand that may be specifically called for by the ordering entity and which meet the most current UL and OSHA requirements.
- g. **Computer and Network Products and Peripherals:** Complete availability of major manufacturers Product lines on items such as, but not limited to RAM, graphic accelerator cards, network interface cards, cables, printers, scanners, keyboards, drives, memory cards, cables, batteries, etc.
- h. **Services:** Services such as cloud computing, consulting, technical support, leasing/financing, trade-ins, repair, design, analysis, configuration, implementation, installation, training, and maintenance, etc. In addition, Services which are related to the design, use or operation of the Products being purchased such as system configurations, testing, hardware/software installation, upgrades, imaging, etc.

Note: All hardware must come fully assembled. For example, if extra memory, additional drives or peripherals are ordered, the Contractor must install them unless the Participating Agency request they not be installed. Contractor shall provide these assembly and installation services as stated in the applicable Order; any additional terms and costs that may apply will be identified in the quote.

In cases of custom configuration (e.g.: imaging, etching, kitting, build to order machines, rack and stack servers) and large roll outs, there may be an additional cost associated with assembly. Any additional costs will be noted at the time of quoting.

Installation/deployment projects typically are governed by a scope of work specific to the project which may require an additional cost. If installation is requested the Contractor will review options and provide the scope of work as well as any associated costs at the time of quoting.

- i. **Comprehensive Product Offering:** Contractor's complete catalog and Services set forth in Exhibit B shall be available. The City reserves the right to accept or reject any or all items offered.
 - j. **Financing:** Options available such as lease programs and conditional sales contracts.
4. **LICENSES.** Participating Agencies may be required to sign a separate agreement, rider or End User Licensing Agreement ("EULA") as required by manufacturers.
5. **DEFECTIVE PRODUCT.** All defective Products shall be replaced and exchanged by the Contractor at no cost to the City in accordance with this Agreement and Contractor's Return Policy found at www.shi.com/returnpolicy, with the terms of this Agreement controlling. Contractor will order a replacement unit within one (1) business day of notice of damage, defect or DOA from the City. The cost of transportation, unpacking, inspection, re-packing, re-shipping or other like expenses shall be paid by the Contractor. All replacement Products must be received by the City within seven (7) days of initial notification.

EXHIBIT B
PRICING

Item #	Product	Product / Group	Discount	Manufacturer Name
1)	Group 1 - Systems	1) Desktops	4.50%	SHI's Full Catalog of Systems
		2) Notebooks	4.50%	SHI's Full Catalog of Systems
		3) Tablets	4.50%	SHI's Full Catalog of Systems
		4) Servers (1 Processor, 2 Processor, 4+ Processor, Blade, Tower, Unix, Handhelds, etc)	4.50%	SHI's Full Catalog of Systems
2)	Group 2 - Input Devices	5) Keyboards	5.00%	SHI's Full Catalog of Input Devices
		6) Mice	5.00%	SHI's Full Catalog of Input Devices
		7) Imaging Scanners	4.00%	SHI's Full Catalog of Input Devices
		8) POS Scanners	4.00%	SHI's Full Catalog of Input Devices
		9) Pointing Devices	4.00%	SHI's Full Catalog of Input Devices
		10) Bar Code Readers	4.00%	SHI's Full Catalog of Input Devices
		11) Audio Input	4.00%	SHI's Full Catalog of Input Devices
		12) Input Adapters	4.00%	SHI's Full Catalog of Input Devices
		13) PC and Network Cameras	4.00%	SHI's Full Catalog of Input Devices
		14) Input Cables	4.00%	SHI's Full Catalog of Input Devices
		15) Input Accessories	4.00%	SHI's Full Catalog of Input Devices
3)	Group 3 - Output Devices	16) Displays	4.50%	SHI's Full Catalog of Output Devices
		17) Printers	4.50%	SHI's Full Catalog of Output Devices

		18) Inkjet Printers	4.50%	SHI's Full Catalog of Output Devices
		19) Inkjet Photo Printers	4.50%	SHI's Full Catalog of Output Devices
		20) Laser Printers	4.50%	SHI's Full Catalog of Output Devices
		21) Label Printers	4.50%	SHI's Full Catalog of Output Devices
		22) Dot Matrix Printers	4.50%	SHI's Full Catalog of Output Devices
		23) Multi-Function Printers	4.50%	SHI's Full Catalog of Output Devices
		24) Wide Format Printers	4.50%	SHI's Full Catalog of Output Devices
		25) Multi-Function Inkjet Printers	4.50%	SHI's Full Catalog of Output Devices
		26) Wide Format Printers	4.50%	SHI's Full Catalog of Output Devices
		27) Fax Machine Printers	4.50%	SHI's Full Catalog of Output Devices
		28) Printer Accessories	4.50%	SHI's Full Catalog of Output Devices
		29) Projectors	4.50%	SHI's Full Catalog of Output Devices
		30) Projector Accessories	4.50%	SHI's Full Catalog of Output Devices
		31) Audio Input	4.50%	SHI's Full Catalog of Output Devices
		32) Video Cards	4.50%	SHI's Full Catalog of Output Devices
		33) Sound Cards	4.50%	SHI's Full Catalog of Output Devices
		34) Output Accessories	4.50%	SHI's Full Catalog of Output Devices
		35) Printer Consumables	4.50%	SHI's Full Catalog of Output Devices
4)	Group 4 - Memory	36) Desktop	4.50%	SHI's Full Catalog of Memory
		37) Flash	4.50%	SHI's Full Catalog of Memory

		38) Networking	4.50%	SHI's Full Catalog of Memory
		39) Notebook	4.50%	SHI's Full Catalog of Memory
		40) Printer / Fax	4.50%	SHI's Full Catalog of Memory
		41) Server	4.50%	SHI's Full Catalog of Memory
5)	Group 5 - Storage Devices	42) Adapters Fiber Channel	4.00%	SHI's Full Catalog of Storage Devices
		43) Adapters FireWire / USB	4.00%	SHI's Full Catalog of Storage Devices
		44) Adapters IDE/ATA/SATA	4.00%	SHI's Full Catalog of Storage Devices
		45) Adapters RAID	4.00%	SHI's Full Catalog of Storage Devices
		46) Adapters SCSI	4.00%	SHI's Full Catalog of Storage Devices
		47) Bridges & Routers	4.00%	SHI's Full Catalog of Storage Devices
		48) Disk Arrays	4.00%	SHI's Full Catalog of Storage Devices
		49) Disk Arrays JBOD	4.00%	SHI's Full Catalog of Storage Devices
		50) Drives Magneto-Optical	4.00%	SHI's Full Catalog of Storage Devices
		51) Drives Removable Disks	4.00%	SHI's Full Catalog of Storage Devices
		52) Fiber Channel Switches	4.00%	SHI's Full Catalog of Storage Devices
		53) Hard Disks - External	4.00%	SHI's Full Catalog of Storage Devices
		54) Hard Disks - Fiber Channel	4.00%	SHI's Full Catalog of Storage Devices
		55) Hard Disks - IDE/ATA/S	4.00%	SHI's Full Catalog of Storage Devices
		56) Hard Disks - Notebook	4.00%	SHI's Full Catalog of Storage Devices
		57) Hard Disks - SCSI	4.00%	SHI's Full Catalog of Storage Devices

		58) Networking Accessories	4.00%	SHI's Full Catalog of Storage Devices
		59) Optical Drives - CD-ROM	4.00%	SHI's Full Catalog of Storage Devices
		60) Optical Drives - CD-RW	4.00%	SHI's Full Catalog of Storage Devices
		61) Optical Drives - DVD-CD	4.00%	SHI's Full Catalog of Storage Devices
		62) Optical Drives - DVD-RW	4.00%	SHI's Full Catalog of Storage Devices
		63) Storage Accessories	4.00%	SHI's Full Catalog of Storage Devices
		64) Storage - NAS	4.00%	SHI's Full Catalog of Storage Devices
		65) Storage - SAN	4.00%	SHI's Full Catalog of Storage Devices
		66) Tape Autoloaders -AIT	4.00%	SHI's Full Catalog of Storage Devices
		67) Tape Autoloaders - DAT	4.00%	SHI's Full Catalog of Storage Devices
		68) Tape Autoloaders - DLT	4.00%	SHI's Full Catalog of Storage Devices
		69) Tape Autoloaders - LTO	4.00%	SHI's Full Catalog of Storage Devices
		70) Tape Drives - 4mm	4.00%	SHI's Full Catalog of Storage Devices
		71) Tape Drives - 8mm/VXA	4.00%	SHI's Full Catalog of Storage Devices
		72) Tape Drives - AIT	4.00%	SHI's Full Catalog of Storage Devices
		73) Tape Drives - DAT	4.00%	SHI's Full Catalog of Storage Devices
		74) Tape Drives - DLT	4.00%	SHI's Full Catalog of Storage Devices
		75) Tape Drives - LTO/Ultrium	4.00%	SHI's Full Catalog of Storage Devices
		76) Tape Drives SDLT	4.00%	SHI's Full Catalog of Storage Devices
		77) Tape Drives - Travan	4.00%	SHI's Full Catalog of Storage Devices

6)	Group 6 - Network Equipment	78) 10/100 Hubs & Switches	5.00%	SHI's Full Catalog of Network Equipment
		79) Bridges & Routers	5.00%	SHI's Full Catalog of Network Equipment
		80) Gigabit Hubs & Switches	5.00%	SHI's Full Catalog of Network Equipment
		81) Concentrators & Multiplexers	5.00%	SHI's Full Catalog of Network Equipment
		82) Hardware Firewalls	5.00%	SHI's Full Catalog of Network Equipment
		83) Intrusion Detection	5.00%	SHI's Full Catalog of Network Equipment
		84) KVM	5.00%	SHI's Full Catalog of Network Equipment
		85) Modems	5.00%	SHI's Full Catalog of Network Equipment
		86) Network Test Equipment	5.00%	SHI's Full Catalog of Network Equipment
		87) Network Adapters	5.00%	SHI's Full Catalog of Network Equipment
		88) Network Cables	5.00%	SHI's Full Catalog of Network Equipment
		89) Network Accessories	5.00%	SHI's Full Catalog of Network Equipment
		90) Repeaters & Transceivers	5.00%	SHI's Full Catalog of Network Equipment
		91) Wireless LAN Accessories	5.00%	SHI's Full Catalog of Network Equipment
		92) Token Authentication	5.00%	SHI's Full Catalog of Network Equipment
		93) 10G Fiber Optic Transceivers	5.00%	SHI's Full Catalog of Network Equipment
		94) 1G Fiber Optic Transceivers	5.00%	SHI's Full Catalog of Network Equipment
7)	Group 7 - Software	95) Licensing Packages (e.g. Microsoft)	4.50%	SHI's Full Catalog of Software
		96) Licensing Backup	4.50%	SHI's Full Catalog of Software
		97) Licensing Barcode/OC	4.50%	SHI's Full Catalog of Software

		98) Licensing Business Application	4.50%	SHI's Full Catalog of Software
		99) Licensing CAD/CAM	4.50%	SHI's Full Catalog of Software
		100) Licensing - Cloning	4.50%	SHI's Full Catalog of Software
		101) Licensing - Computer Services	4.50%	SHI's Full Catalog of Software
		102) Licensing - Database	4.50%	SHI's Full Catalog of Software
		103) Licensing - Development	4.50%	SHI's Full Catalog of Software
		104) Licensing - Entertainment	4.50%	SHI's Full Catalog of Software
		105) Licensing - Financial	4.50%	SHI's Full Catalog of Software
		106) Licensing - Flow Chart	4.50%	SHI's Full Catalog of Software
		107) Licensing - Graphic Design	4.50%	SHI's Full Catalog of Software
		108) Licensing - Handheld	4.50%	SHI's Full Catalog of Software
		109) Licensing - Network OS	4.50%	SHI's Full Catalog of Software
		110) Licensing - OS	4.50%	SHI's Full Catalog of Software
		111) Licensing - Personal Organization	4.50%	SHI's Full Catalog of Software
		112) Licensing - Presentation	4.50%	SHI's Full Catalog of Software
		113) Licensing - Reference	4.50%	SHI's Full Catalog of Software
		114) Licensing - Report Analysis	4.50%	SHI's Full Catalog of Software
		115) Licensing - Spreadsheet	4.50%	SHI's Full Catalog of Software
		116) Licensing - Utilities	4.50%	SHI's Full Catalog of Software
		117) Licensing - Warranties	4.50%	SHI's Full Catalog of Software

		118) Licensing - Web Development	4.50%	SHI's Full Catalog of Software
		119) Licensing - Word Processing	4.50%	SHI's Full Catalog of Software
		120) Software - Backup	4.50%	SHI's Full Catalog of Software
		121) Software - Barcode / OCR	4.50%	SHI's Full Catalog of Software
		122) Software - Business Application	4.50%	SHI's Full Catalog of Software
		123) Software - CAD/CAM	4.50%	SHI's Full Catalog of Software
		124) Software - Cloning	4.50%	SHI's Full Catalog of Software
		125) Software - Computer Services	4.50%	SHI's Full Catalog of Software
		126) Software - Database	4.50%	SHI's Full Catalog of Software
		127) Software - Development	4.50%	SHI's Full Catalog of Software
		128) Software - Entertainment	4.50%	SHI's Full Catalog of Software
		129) Software - Financial	4.50%	SHI's Full Catalog of Software
		130) Software - Flow Chart	4.50%	SHI's Full Catalog of Software
		131) Software - Graphic Design	4.50%	SHI's Full Catalog of Software
		132) Software - Handheld	4.50%	SHI's Full Catalog of Software
		133) Software - OS	4.50%	SHI's Full Catalog of Software
		134) Software - Personal Organization	4.50%	SHI's Full Catalog of Software
		135) Software - Presentation	4.50%	SHI's Full Catalog of Software
		136) Software - Reference	4.50%	SHI's Full Catalog of Software
		137) Software - Report Analysis	4.50%	SHI's Full Catalog of Software

		138) Software - Spreadsheet	4.50%	SHI's Full Catalog of Software
		139) Software - Utilities	4.50%	SHI's Full Catalog of Software
		140) Software - Warranties	4.50%	SHI's Full Catalog of Software
		141) Software - Web Development	4.50%	SHI's Full Catalog of Software
		142) Software - Word Processing	4.50%	SHI's Full Catalog of Software
8)	Group 8 - Media Supplies	143) Media - 4mm tape	4.00%	SHI's Full Catalog of Media Supplies
		144) Media - AIT tape	4.00%	SHI's Full Catalog of Media Supplies
		145) Media - DAT tape	4.00%	SHI's Full Catalog of Media Supplies
		146) Media - DLT tape	4.00%	SHI's Full Catalog of Media Supplies
		147) Media LTO / Ultrium tape drive	4.00%	SHI's Full Catalog of Media Supplies
		148) Media - Magneto - Optical	4.00%	SHI's Full Catalog of Media Supplies
		149) Media - Optical	4.00%	SHI's Full Catalog of Media Supplies
		150) Media - SLR tape	4.00%	SHI's Full Catalog of Media Supplies
		151) Media - Travan tape	4.00%	SHI's Full Catalog of Media Supplies
		152) Media - VXA tape	4.00%	SHI's Full Catalog of Media Supplies
		153) Media - zip	4.00%	SHI's Full Catalog of Media Supplies
9)	Group 9 - Collaboration & IP Telephony	154) IP phones	4.00%	SHI's Full Catalog of Collaboration and IP Telephony
		155) Video conferencing products	4.00%	SHI's Full Catalog of Collaboration and IP Telephony
		156) Voice gateways / servers	4.00%	SHI's Full Catalog of Collaboration and IP Telephony

		157) Headsets	4.00%	SHI's Full Catalog of Collaboration and IP Telephony
		158) Audio conferencing products	4.00%	SHI's Full Catalog of Collaboration and IP Telephony
		159) Analog phones	4.00%	SHI's Full Catalog of Collaboration and IP Telephony
		160) Accessories	4.00%	SHI's Full Catalog of Collaboration and IP Telephony
10)	Group 10 - Other	161) Advanced Integration	4.00%	SHI's Full Catalog of Other
		162) Asset Disposal	4.00%	SHI's Full Catalog of Other
		163) Asset Management	4.00%	SHI's Full Catalog of Other
		164) Cables	4.00%	SHI's Full Catalog of Other
		165) Cables - custom	4.00%	SHI's Full Catalog of Other
		166) Cables - printer	4.00%	SHI's Full Catalog of Other
		167) Complex warranties	4.00%	SHI's Full Catalog of Other
		168) Desktop Accessories	4.00%	SHI's Full Catalog of Other
		169) Display Accessories	4.00%	SHI's Full Catalog of Other
		170) Electronic Services	4.00%	SHI's Full Catalog of Other
		171) Handheld Accessories	4.00%	SHI's Full Catalog of Other
		172) Imaging Accessories	4.00%	SHI's Full Catalog of Other
		173) Imaging - Camcorders	4.00%	SHI's Full Catalog of Other
		174) Imaging - Digital Cameras	4.00%	SHI's Full Catalog of Other

		175) Internal Lab Service	4.00%	SHI's Full Catalog of Other
		176) Lab fees	4.00%	SHI's Full Catalog of Other
		177) Managed Services	4.00%	SHI's Full Catalog of Other
		178) Miscellaneous solutions	4.00%	SHI's Full Catalog of Other
		179) Mounting hardware for vehicles	4.00%	SHI's Full Catalog of Other
		180) Networking Warranties	4.00%	SHI's Full Catalog of Other
		181) Notebook Accessories	4.00%	SHI's Full Catalog of Other
		182) Notebook Batteries	4.00%	SHI's Full Catalog of Other
		183) PC Lab order services	4.00%	SHI's Full Catalog of Other
		184) POS Accessories	4.00%	SHI's Full Catalog of Other
		185) POS Displays	4.00%	SHI's Full Catalog of Other
		186) Power Accessories	4.00%	SHI's Full Catalog of Other
		187) Power Surge Protection	4.00%	SHI's Full Catalog of Other
		188) Power UPS	4.00%	SHI's Full Catalog of Other
		189) Server Accessories	4.00%	SHI's Full Catalog of Other
		190) Service Charge	4.00%	SHI's Full Catalog of Other
		191) System Components	4.00%	SHI's Full Catalog of Other
		192) Training Courses	4.00%	SHI's Full Catalog of Other
		193) Training Reference Manuals	4.00%	SHI's Full Catalog of Other
		194) Warranties - Electronic	4.00%	SHI's Full Catalog of Other

		195) iPad / Tablet Stylus	4.00%	SHI's Full Catalog of Other
		196) Mouse / Wrist Pads	4.00%	SHI's Full Catalog of Other
		197) Security Locks and Hardware	4.00%	SHI's Full Catalog of Other
		198) Tools	4.00%	SHI's Full Catalog of Other
		199) Document Scanner Accessories	4.00%	SHI's Full Catalog of Other
		200) Flatbed Scanners	4.00%	SHI's Full Catalog of Other
		201) Mobile Scanners	4.00%	SHI's Full Catalog of Other
		202) Network Scanners	4.00%	SHI's Full Catalog of Other
		203) Sheet fed Scanners	4.00%	SHI's Full Catalog of Other
		204) Wide Format Scanners	4.00%	SHI's Full Catalog of Other
		205) Workgroup / Department Scanner	4.00%	SHI's Full Catalog of Other
		206) Build to Order Desktops	4.00%	SHI's Full Catalog of Other
		207) Nettop	4.00%	SHI's Full Catalog of Other
		208) Point of Sale	4.00%	SHI's Full Catalog of Other
		209) Ultra Small Form Factor	4.00%	SHI's Full Catalog of Other
		210) Apple / Mac Memory Upgrades	4.00%	SHI's Full Catalog of Other
		211) Chips / SIMMs/SIPPs / ROMs	4.00%	SHI's Full Catalog of Other
		212) Computer Cases	4.00%	SHI's Full Catalog of Other
		213) CPUs / Fans	4.00%	SHI's Full Catalog of Other
		214) Memory Accessories	4.00%	SHI's Full Catalog of Other

		215) Motherboards / Chassis	4.00%	SHI's Full Catalog of Other
		216) 1 - 2 port Serial Boards	4.00%	SHI's Full Catalog of Other
		217) 3+ port Serial Boards	4.00%	SHI's Full Catalog of Other
		218) Console Server	4.00%	SHI's Full Catalog of Other
		219) Device Server	4.00%	SHI's Full Catalog of Other
		220) Terminal Server	4.00%	SHI's Full Catalog of Other
		221) Content Management	4.00%	SHI's Full Catalog of Other
		222) Firewall / VPN Appliances	4.00%	SHI's Full Catalog of Other
		223) Multifunction Security Appliances	4.00%	SHI's Full Catalog of Other
		224) Network Camera Accessories	4.00%	SHI's Full Catalog of Other
		225) Network Cameras	4.00%	SHI's Full Catalog of Other
		226) Physical/Environmental Security	4.00%	SHI's Full Catalog of Other
		227) Security Appliance Accessories	4.00%	SHI's Full Catalog of Other
		228) Security Tokens	4.00%	SHI's Full Catalog of Other
		229) Unified Threat Management	4.00%	SHI's Full Catalog of Other
		230) 2-way Radios / Walkie Talkies	4.00%	SHI's Full Catalog of Other
		231) Apple Notebooks	4.00%	SHI's Full Catalog of Other
		232) Convertible PCs / Slate PCs / iPad	4.00%	SHI's Full Catalog of Other
		233) iPad	4.00%	SHI's Full Catalog of Other
		234) Slate Tablet Computers	4.00%	SHI's Full Catalog of Other

		235) GPS / PDA	4.00%	SHI's Full Catalog of Other
		236) Wireless Communication Devices	4.00%	SHI's Full Catalog of Other
		237) Batteries	4.00%	SHI's Full Catalog of Other
		238) Power Supplies / Adapters	4.00%	SHI's Full Catalog of Other
		239) Rackmount Equipment	4.00%	SHI's Full Catalog of Other
		240) Remote Power Management	4.00%	SHI's Full Catalog of Other
		241) Surge Suppressors	4.00%	SHI's Full Catalog of Other
		242) UPS / Battery Backup	4.00%	SHI's Full Catalog of Other
		243) 14" & smaller LCD Display	4.00%	SHI's Full Catalog of Other
		244) 15-19" LCD Display	4.00%	SHI's Full Catalog of Other
		245) 15-19" Wide LCD Display	4.00%	SHI's Full Catalog of Other
		246) 15-19" Wide LED Display	4.00%	SHI's Full Catalog of Other
		247) 20-30" LCD Display	4.00%	SHI's Full Catalog of Other
		248) 20-30" Wide LCD Display	4.00%	SHI's Full Catalog of Other
		249) 20-30" Wide LED Display	4.00%	SHI's Full Catalog of Other
		250) PCoIP and Zero Client Displays	4.00%	SHI's Full Catalog of Other
		251) Arm Mounts	4.00%	SHI's Full Catalog of Other
		252) Ceiling Mounts	4.00%	SHI's Full Catalog of Other
		253) Combo Mounts	4.00%	SHI's Full Catalog of Other
		254) Desktop Stands / Risers	4.00%	SHI's Full Catalog of Other

		255) Flat Wall Mounts	4.00%	SHI's Full Catalog of Other
		256) Mount Accessories	4.00%	SHI's Full Catalog of Other
		257) Pole Display	4.00%	SHI's Full Catalog of Other
		258) Stands / Carts / Feet	4.00%	SHI's Full Catalog of Other
		259) Tilt Wall Mounts	4.00%	SHI's Full Catalog of Other
		260) C-Cure Products	4.00%	SHI's Full Catalog of Other
		261) Istar Products	4.00%	SHI's Full Catalog of Other
11)	Group 11 - Services	SERVICE	STANDARD HOURLY RATE	DISCOUNT FROM STANDARD RATE
		Design and Analysis	\$ 125.00	4%
		Configuration	\$ 165.00	4%
		Implementation	\$ 185.00	4%
		Installation	\$ 185.00	4%
		Training	\$ 99.00	4%
		Maintenance & Support	\$ 99.00	4%
		All other Current and Future Products not specifically identified here will be offered at a 4% discount off SHI Advertised List price. Please see description below for more information on SHI's discount model for this contract.		

All discounts articulated here represent the minimum discounts off SHI Advertised List Price; actual discounts may be significantly higher.

The comprehensive SHI offering for National IPA consists of all hardware, software, and services available to our customers in the public sector marketplace. The discount structure offered to National IPA is based on our Advertised Price List which can be located on www.shi.com. In many cases, SHI Advertised List Price already reflects a substantial discount off of Manufacturer Published List prices. Given the breadth of manufacturers and products that SHI offers, there will be many opportunities for SHI to secure additional discounts for eligible contract users. We work to provide your contract users with the most advantageous pricing available, above and beyond the minimum discounts offered, whenever possible.

SHI prides ourselves on being honest and transparent with our customers especially when it comes to pricing. We base our discount structure on SHI Advertised Price as this is a verifiable source. We do not inflate this Advertised Price for RFPs in order to make our discounts appear larger. Other vendors may use MSRP or Publisher List price, which can be unreliable as a pricelist may not exist for every product, a pricelist can change from day to day, and a pricelist can be inconsistent depending on where you source the information from. When a vendor manipulates contract language in this manner or uses a loose definition of cost, it results in an increase in profit for them and higher prices for customers.

SHI is willing to provide complete transparency over the life of the contract as it relates to our costs and what we charge National IPA customers.

EXHIBIT C
MESA STANDARD TERMS AND CONDITIONS

1. **INDEPENDENT CONTRACTOR.** It is expressly understood that the relationship of Contractor to the City will be that of an independent contractor. Contractor and all persons employed by Contractor, either directly or indirectly, are Contractor's employees, not City employees. Accordingly, Contractor and Contractor's employees are not entitled to any benefits provided to City employees including, but not limited to, health benefits, enrollment in a retirement system, paid time off or other rights afforded City employees. Contractor employees will not be regarded as City employees or agents for any purpose, including the payment of unemployment or workers' compensation. If any Contractor employees or subcontractors assert a claim for wages or other employment benefits against the City, Contractor will defend, indemnify and hold harmless the City from all such claims.
2. **SUBCONTRACTING.** Contractor may not subcontract work under this Agreement without the express written permission of the City. If Contractor has received authorization to subcontract work, it is agreed that all subcontractors performing work under the Agreement must comply with its provisions. Further, all agreements between Contractor and its subcontractors must provide that the terms and conditions of this Agreement be incorporated therein.
3. **ASSIGNMENT.** This Agreement may not be assigned either in whole or in part without first receiving the other Party's written consent. Any attempted assignment, either in whole or in part, without such consent will be null and void and in such event the other Party will have the right at its option to terminate the Agreement. No granting of consent to any assignment will relieve either Party from any of its obligations and liabilities under the Agreement. Notwithstanding the foregoing, either Party may assign this Agreement and its rights, interests, liabilities and obligations thereunder to a successor pursuant to a merger, consolidation or sale of all or substantially all its assets following sixty (60) days written notice.
4. **SUCCESSORS AND ASSIGNS, BINDING EFFECT.** This Agreement will be binding upon and inure to the benefit of the parties and their respective permitted successors and assigns.
5. **NO THIRD-PARTY BENEFICIARIES.** This Agreement is intended for the exclusive benefit of the parties. Nothing set forth in this Agreement is intended to create, or will create, any benefits, rights, or responsibilities in any third parties.
6. **NON- EXCLUSIVITY.** The City, in its sole discretion, reserves the right to request the Products or Services set forth herein from other sources when deemed necessary and appropriate. No exclusive rights are encompassed through this Agreement.
7. **AMENDMENTS.** There will be no oral changes to this Agreement. This Agreement can only be modified in a writing signed by both parties. No charge for extra work or Product will be allowed unless approved in writing, in advance, by the City and Contractor.
8. **TIME OF THE ESSENCE.** Time is of the essence to the performance of the parties' obligations under this Agreement.
9. **COMPLIANCE WITH APPLICABLE LAWS.**
 - a. **General.** Contractor must procure all permits and licenses, and pay all charges and fees necessary and incidental to the lawful conduct of business. Contractor must stay fully informed of existing and future federal, state, and local laws, ordinances, and regulations that in any manner affect the fulfillment of this Agreement and must comply with the same at its own expense. Contractor bears full responsibility for training, safety, and providing necessary equipment for all Contractor personnel to achieve throughout the term of the Agreement. Upon request, Contractor will demonstrate to the City's satisfaction any programs, procedures, and other activities used to ensure compliance.

- b. **Drug-Free Workplace.** Contractor is hereby advised that the City has adopted a policy establishing a drug-free workplace for itself and those doing business with the City to ensure the safety and health of all persons working on City contracts and projects. Contractor will require a drug-free workplace for all Contractor personnel working under this Agreement. Specifically, all Contractor personnel who are working under this Agreement must be notified in writing by Contractor that they are prohibited from the manufacture, distribution, dispensation, possession, or unlawful use of a controlled substance in the workplace. Contractor agrees to prohibit the use of intoxicating substances by all Contractor personnel, and will ensure that Contractor personnel do not use or possess illegal drugs while in the course of performing their duties.
- c. **Federal and State Immigration Laws.** Contractor agrees to comply with the Immigration Reform and Control Act of 1986 (IRCA) in performance under this Agreement and to permit the City and its agents to inspect applicable personnel records to verify such compliance as permitted by law. Contractor will ensure and keep appropriate records to demonstrate that all Contractor personnel have a legal right to live and work in the United States.
 - i. As applicable to Contractor, under the provisions of A.R.S. § 41-4401, Contractor hereby warrants to the City that Contractor and each of its subcontractors will comply with, and are contractually obligated to comply with, all federal immigration laws and regulations that relate to their employees and A.R.S. § 23-214(A) (hereinafter "Contractor Immigration Warranty").
 - ii. A breach of the Contractor Immigration Warranty will constitute as a material breach of this Agreement and will subject Contractor to penalties up to and including termination of this Agreement at the sole discretion of the City.
 - iii. The City retains the legal right to inspect the papers of all Contractor personnel who provide services under this Agreement to ensure that Contractor or its subcontractors are complying with the Contractor Immigration Warranty. Contractor agrees to assist the City in regard to any such inspections.
 - iv. The City may, at its sole discretion, conduct random verification of the employment records of Contractor and any subcontractor to ensure compliance with the Contractor Immigration Warranty. Contractor agrees to assist the City in regard to any random verification performed.
 - v. Neither Contractor nor any subcontractor will be deemed to have materially breached the Contractor Immigration Warranty if Contractor or subcontractor establishes that it has complied with the employment verification provisions prescribed by Sections 274A and 274B of the Federal Immigration and Nationality Act and the E-Verify requirements prescribed by A.R.S. § 23-214 (A).
- d. **Nondiscrimination.** Contractor represents and warrants that it does not discriminate against any employee or applicant for employment or person to whom it provides services because of race, color, religion, sex, national origin, or disability, and represents and warrants that it complies with all applicable federal, state, and local laws and executive orders regarding employment. Contractor and Contractor's personnel will comply with applicable provisions of Title VII of the U.S. Civil Rights Act of 1964, as amended, Section 504 of the Federal Rehabilitation Act, the Americans with Disabilities Act (42 U.S.C. § 12101 et seq.), and applicable rules in performance under this Agreement.
- e. **State Sponsors of Terrorism Prohibition.** Per A.R.S. § 35-392, Contractor must not be in violation of section 6(j) of the Federal Export Administration Act and subsequently prohibited by the State of Arizona from selling goods or services to the City.

10. **SALES/USE TAX, OTHER TAXES.**

- a. Contractor is responsible for the payment of all taxes including federal, state, and local taxes related to or arising out of Contractor's Services under this Agreement, including by way of illustration but not limitation, federal and state income tax, Social Security tax,

unemployment insurance taxes, and any other taxes or business license fees as required. If any taxing authority should deem Contractor or Contractor employees an employee of the City, or should otherwise claim the City is liable for the payment of taxes that are Contractor's responsibility under this Agreement, Contractor will indemnify the City for any tax liability, interest, and penalties imposed upon the City.

- b. The City is exempt from paying certain federal excise taxes and will furnish an exemption certificate upon request. The City is not exempt from state and local sales/use taxes.
11. **AMOUNTS DUE THE CITY.** Contractor must be current and remain current in all obligations due to the City during the performance of Services under the Agreement. Payments to Contractor may be offset by any delinquent amounts due the City or fees and charges owed to the City.
12. **PUBLIC RECORDS.** Contractor acknowledges that the City is a public entity, subject to Arizona's public records laws (A.R.S. § 39-121 et. seq.) and that any documents related to this Agreement may be subject to disclosure pursuant to state law in response to a public records request or to subpoena or other judicial process.
 - 12.1. If Contractor believes document related to the Agreement contains trade secrets or other proprietary data, Contractor must notify the City and include with the notification a statement that explains and supports Contractor's claim. Contractor also must specifically identify the trade secrets or other proprietary data that Contractor believes should remain confidential.
 - 12.2. In the event the City determines it is legally required to disclose pursuant to law any documents or information Contractor deems confidential trade secrets or proprietary data, the City, to the extent possible, will provide Contractor with prompt written notice by certified mail, fax, email or other method that tracks delivery status of the requirement to disclose the information so Contractor may seek a protective order from a court having jurisdiction over the matter or obtain other appropriate remedies. The notice will include a time period for Contractor to seek court ordered protection or other legal remedies as deemed appropriate by Contractor. If Contractor does not obtain such court ordered protection by the expiration of said time period, the City may release the information without further notice to Contractor.
13. **AUDITS AND RECORDS.** Contractor must preserve the records related to this Agreement for six (6) years after completion of the Agreement. The City or its authorized agent reserves the right to inspect any records related to the performance of work specified herein. In addition, the City may inspect any and all payroll, billing or other relevant records kept by Contractor in relation to the Agreement. Contractor will permit such inspections and audits during normal business hours and upon reasonable notice by the City. The audit of records may occur at Contractor's place of business or at City offices, as determined by the City.
14. **BACKGROUND CHECK.** The City may conduct criminal, driver history, and all other requested background checks of Contractor personnel who would perform Services under the Agreement or who will have access to the City's information, data, or facilities in accordance with the City's current background check policies. Any officer, employee, or agent that fails the background check must be replaced immediately for any reasonable cause not prohibited by law.
15. **SECURITY CLEARANCE AND REMOVAL OF CONTRACTOR PERSONNEL.** The City will have final authority, based on security reasons: (i) to determine when security clearance of Contractor personnel is required; (ii) to determine the nature of the security clearance, up to and including fingerprinting Contractor personnel; and (iii) to determine whether or not any individual or entity may provide Services under this Agreement. If the City objects to any Contractor personnel for any reasonable cause not prohibited by law, then Contractor will, upon notice from the City, remove any such individual from performance of Services under this Agreement.
16. **DEFAULT.**
 - a. A party will be in default if that party:

- i. Is or becomes insolvent or is a party to any voluntary bankruptcy or receivership proceeding, makes an assignment for a creditor, or there is any similar action that affects Contractor's capability to perform under the Agreement;
 - ii. Is the subject of a petition for involuntary bankruptcy not removed within sixty (60) calendar days;
 - iii. Conducts business in an unethical manner as set forth in the City Procurement Rules Article 7 or in an illegal manner; or
 - iv. Fails to carry out any term, promise, or condition of the Agreement.
 - b. Contractor will be in default of this Agreement if Contractor is debarred from participating in City procurements and solicitations in accordance with Article 6 of the City's Procurement Rules.
 - c. **Notice and Opportunity to Cure.** In the event a party is in default then the other party may, at its option and at any time, provide written notice to the defaulting party of the default. The defaulting party will have thirty (30) days from receipt of the notice to cure the default; the thirty (30) day cure period may be extended by mutual agreement of the parties, but no cure period may exceed ninety (90) days. A default notice will be deemed to be sufficient if it is reasonably calculated to provide notice of the nature and extent of such default. Failure of the non-defaulting party to provide notice of the default does not waive any rights under the Agreement.
 - d. **Anticipatory Repudiation.** Whenever the City in good faith has reason to question Contractor's intent or ability to perform, the City may demand that Contractor give a written assurance of its intent and ability to perform. In the event that the demand is made and no written assurance is given within five (5) calendar days, the City may treat this failure as an anticipatory repudiation of the Agreement.
17. **REMEDIES.** The remedies set forth in this Agreement are not exclusive. Election of one remedy will not preclude the use of other remedies. In the event of default:
- a. The non-defaulting party may terminate the Agreement, and the termination will be effective immediately or at such other date as specified by the terminating party.
 - b. The City may purchase the Services required under the Agreement from the open market, complete required work itself, or have it completed at the expense of Contractor. If the cost of obtaining substitute Services exceeds the contract price, the City may recover the excess cost by: (i) requiring immediate reimbursement to the City; (ii) deduction from an unpaid balance due to Contractor; (iii) collection against the proposal and/or performance security, if any; (iv) collection against liquidated damages (if applicable); or (v) a combination of the aforementioned remedies or other remedies as provided by law. Costs includes any and all, fees, and expenses incurred in obtaining substitute Services and expended in obtaining reimbursement, including, but not limited to, administrative expenses, attorneys' fees, and costs.
 - c. The non-defaulting party will have all other rights granted under this Agreement and all rights at law or in equity that may be available to it.
 - d. Neither party will be liable for incidental, indirect, special, or consequential damages.
18. **CONTINUATION DURING DISPUTES.** Contractor agrees that during any dispute between the parties, Contractor will continue to perform its obligations until the dispute is settled, instructed to cease performance by the City, enjoined or prohibited by judicial action, or otherwise required or obligated to cease performance by other provisions in this Agreement.
19. **TERMINATION FOR CONVENIENCE.** The City reserves the right to terminate this Agreement in part or in whole upon thirty (30) calendar days' written notice.

20. **TERMINATION FOR CONFLICT OF INTEREST (A.R.S. § 38-511).** Pursuant to A.R.S. § 38-511, the City may cancel this Agreement within three (3) years after its execution, without penalty or further obligation, if any person significantly involved in initiating, securing, drafting, or creating the Agreement for the City becomes an employee or agent of Contractor.
21. **TERMINATION FOR NON-APPROPRIATION AND MODIFICATION FOR BUDGETARY CONSTRAINT.** The City is a governmental agency which relies upon the appropriation of funds by its governing body to satisfy its obligations. If the City reasonably determines that it does not have funds to meet its obligations under this Agreement, the City will have the right to terminate the Agreement without penalty on the last day of the fiscal period for which funds were legally available. In the event of such termination, the City agrees to provide written notice of its intent to terminate thirty (30) calendar days prior to the stated termination date.
22. **PAYMENT TO CONTRACTOR UPON TERMINATION.** Upon termination of this Agreement, Contractor will be entitled only to payment for those Services performed up to the date of termination, and any authorized expenses already incurred up to such date of termination. The City will make final payment within thirty (30) calendar days after the City has both completed its appraisal of the Products and Services provided and received Contractor's properly prepared final invoice.
- Termination of this Agreement shall not affect the obligations of the City or Contractor under any existing Order issued under this Agreement, and such Order shall continue in effect as though this Agreement has not been terminated, and was still in effect with respect to such Order.
23. **NON-WAIVER OF RIGHTS.** There will be no waiver of any provision of this agreement unless approved in writing and signed by the waiving party. Failure or delay to exercise any rights or remedies provided herein or by law or in equity, or the acceptance of, or payment for, any Services hereunder, will not release the other party of any of the warranties or other obligations of the Agreement and will not be deemed a waiver of any such rights or remedies.
24. **INDEMNIFICATION/LIABILITY.**
- a. To the fullest extent permitted by law, Contractor agrees to defend, indemnify, and hold the City, its officers, agents, and employees, harmless from and against any and all liabilities, demands, claims, suits, losses, damages, causes of action, fines or judgments, including costs, attorneys', witnesses', and expert witnesses' fees, and expenses incident thereto, relating to, arising out of, or resulting from: (i) misconduct by Contractor personnel under this Agreement; (ii) any negligent acts, errors, mistakes or omissions by Contractor or Contractor personnel; and (iii) Contractor or Contractor personnel's failure to comply with this Agreement.
 - b. Contractor will update the City during the course of the litigation to timely notify the City of any issues that may involve the independent negligence of the City that is not covered by this indemnification.
 - c. The City assumes no liability for actions of Contractor and will not indemnify or hold Contractor or any third party harmless for claims based on this Agreement or use of Contractor-provided supplies or Services.
 - d. IN THE EVENT OF ANY LIABILITY INCURRED BY CONTRACTOR OR ANY OF ITS AFFILIATES HEREUNDER, INCLUDING INDEMNIFICATION OF CITY BY CONTRACTOR, THE ENTIRE LIABILITY OF CONTRACTOR AND ITS AFFILIATES FOR DAMAGES FROM ANY CAUSE WHATSOEVER WILL NOT EXCEED \$5,000,000.00 OVER THE ENTIRE TERM OF THE AGREEMENT.
25. **(RESERVED)**
26. **THE CITY'S RIGHT TO RECOVER AGAINST THIRD PARTIES.** Contractor will do nothing to prejudice the City's right to recover against third parties for any loss, destruction, or damage to City property, and will at the City's request and expense, furnish to the City reasonable assistance and

cooperation, including assistance in the prosecution or defense of suit and the execution of instruments of assignment in favor of the City in obtaining recovery.

27. **NO GUARANTEE OF WORK.** Contractor acknowledges and agrees that it is not entitled to deliver any specific amount of Products or Services or any Products or Services at all under this Agreement and acknowledges and agrees that the Products or Services will be requested by the City on an as needed basis at the sole discretion of the City. Any document referencing quantities or performance frequencies represent the City's best estimate of current requirements, but will not bind the City to purchase, accept, or pay for Products or Services which exceed its actual needs.
28. **OWNERSHIP.** All deliverables, Services, and information provided by Contractor or the City pursuant to this Agreement (whether electronically or manually generated) including without limitation, reports, test plans, and survey results, graphics, and technical tables, originally prepared in the performance of this Agreement, are the property of the City and will not be used or released by Contractor or any other person except with prior written permission by the City. Notwithstanding the foregoing, Contractor shall retain ownership rights to (1) all of its previously existing intellectual property, including any systems, derivatives, modifications and enhancements thereto, (2) confidential information of contractor, and (3) any tools or scripting applications used, developed or created by Contractor or its third-party licensors during the performance of this Agreement.
29. **USE OF NAME.** Contractor will not use the name of the City of Mesa in any advertising or publicity without obtaining the prior written consent of the City.
30. **PROHIBITED ACTS.** Pursuant to A.R.S. § 38-504, a current or former public officer or employee within the last twelve (12) months shall not represent another organization before the City on any matter for which the officer or employee was directly concerned and personally participated in during their service or employment or over which they had a substantial or material administrative discretion. Further, while employed by the City and for two (2) years thereafter, public officers or employees are prohibited from disclosing or using, without appropriate authorization, any confidential information acquired by such personnel in the course of his or her official duties at the City.
31. **FOB DESTINATION FREIGHT PREPAID AND ALLOWED.** All deliveries will be FOB destination freight prepaid and allowed unless otherwise agreed.
32. **RISK OF LOSS.** Contractor agrees to bear all risks of loss, injury, or destruction of goods or equipment incidental to providing these Services and such loss, injury, or destruction will not release Contractor from any obligation hereunder.
33. **SAFEGUARDING CITY PROPERTY.** Contractor will be responsible for any damage to City real property or damage or loss of City personal property when such property is the responsibility of or in the custody of Contractor or its employees.
34. **WARRANTY OF RIGHTS.** Contractor warrants it has title to, or the right to allow the City to use, the Products and Services being provided and that the City may use same without suit, trouble or hindrance from Contractor or third parties.
35. **PROPRIETARY RIGHTS INDEMNIFICATION.** Without limiting the foregoing, Contractor will without limitation, at its expense defend the City against all claims asserted by any person that anything provided by Contractor infringes a patent, copyright, trade secret or other intellectual property right and must, without limitation, pay the costs, damages and attorneys' fees awarded against the City in any such action, or pay any settlement of such action or claim. Each party agrees to notify the other promptly of any matters to which this provision may apply and to cooperate with each other in connection with such defense or settlement. If a preliminary or final judgment is obtained against the City's use or operation of the items provided by Contractor hereunder or any part thereof by reason of any alleged infringement, Contractor will, at its expense and without limitation, either: (a) modify the item so that it becomes non-infringing; (b) procure for the City the right to continue to use the item; (c) substitute for the infringing item other item(s) having at least equivalent capability; or (d) refund to the City an amount equal to the price paid, less reasonable usage, from the time of installation acceptance through cessation of use, which amount will be

calculated on a useful life not less than five (5) years, plus any additional costs the City may incur to acquire substitute Products or Services.

36. **CONTRACT ADMINISTRATION.** The contract will be administered by the Purchasing Administrator and/or an authorized representative from the using department. All questions regarding the contract will be referred to the administrator for resolution. Supplements may be written to the contract for the addition or deletion of Services. Payment will be negotiated and determined by the contract administrator(s).
37. **FORCE MAJEURE.** Failure by either party to perform its duties and obligations will be excused by unforeseeable circumstances beyond its reasonable control, including acts of nature, acts of the public enemy, riots, fire, explosion, legislation, and governmental regulation. The party whose performance is so affected will within five (5) calendar days of the unforeseeable circumstance notify the other party of all pertinent facts and identify the force majeure event. The party whose performance is so affected must also take all reasonable steps, promptly and diligently, to prevent such causes if it is feasible to do so, or to minimize or eliminate the effect thereof. The delivery or performance date will be extended for a period equal to the time lost by reason of delay, plus such additional time as may be reasonably necessary to overcome the effect of the delay, provided however, under no circumstances will delays caused by a force majeure extend beyond one hundred-twenty (120) calendar days from the scheduled delivery or completion date of a task unless agreed upon by the parties.
38. **COOPERATIVE USE OF CONTRACT.** This contract is available through National IPA to agencies nationwide. The City has also entered into various cooperative purchasing agreements with other Arizona government agencies, including the Strategic Alliance for Volume Expenditures (SAVE) cooperative. Under the SAVE Cooperative Purchasing Agreement, any contract may be extended for use by other municipalities, school districts and government agencies through National IPA or SAVE in the State of Arizona with the approval of Contractor. Any such usage by other entities must be in accordance with the statutes, codes, ordinances, charter and/or procurement rules and regulations of the respective government agency.

A contractor, subcontractor or vendor or any employee of a contractor, subcontractor or vendor who is contracted to provide Services on a regular basis at an individual school shall obtain a valid fingerprint clearance card pursuant to title 41, chapter 12, article 3.1. A school district governing board shall adopt policies to exempt a person from the requirements of this subsection if the person's normal job duties are not likely to result in independent access to or unsupervised contact with pupils. A school district, its governing board members, its school council members and its employees are exempt from civil liability for the consequences of adoption and implementation of policies and procedures pursuant to this subsection unless the school district, its governing board members, its school council members or its employees are guilty of gross negligence or intentional misconduct.

Additionally, Contractor will comply with the governing body's fingerprinting policy of each individual school district and public entity. Contractor, subcontractors, vendors and their employees will not provide Services on school district properties until authorized by the school district.

Orders placed by other agencies and payment thereof will be the sole responsibility of that agency. The City is not responsible for any disputes arising out of transactions made by others. The City is not a party to any agreements between the Contractor and National IPA, National IPA and other agencies, the Contractor and other agencies, or any third-party contracts in any way related to this Agreement or the cooperative use of this Agreement.

39. **FUEL CHARGES AND PRICE INCREASES.** No fuel surcharges will be accepted. No price increases will be accepted without proper request by Contractor and response by the City's Purchasing Division.
40. **NOTICES.** All notices to be given pursuant to this Agreement must be delivered to the parties at their respective addresses. Notices may be (i) personally delivered; (ii) sent via certified or registered mail, postage prepaid; (iii) sent via overnight courier; or (iv) sent via email or facsimile.

If provided by personal delivery, receipt will be deemed effective upon delivery. If sent via certified or registered mail, receipt will be deemed effective three (3) calendar days after being deposited in the United States mail. If sent via overnight courier, email or facsimile, receipt will be deemed effective two (2) calendar days after the sending thereof.

41. **GOVERNING LAW, FORUM.** This Agreement is governed by the laws of the State of Arizona. The exclusive forum selected for any proceeding or suit in law or equity arising from or incident to this Agreement will be Maricopa County, Arizona.
42. **INTEGRATION CLAUSE.** This Agreement, including all attachments and exhibits hereto, supersede all prior oral or written agreements, if any, between the parties and constitutes the entire agreement between the parties with respect to the work to be performed.
43. **PROVISIONS REQUIRED BY LAW.** Any provision required by law to be in this Agreement is a part of this Agreement as if fully stated in it.
44. **SEVERABILITY.** If any provision of this Agreement is declared void or unenforceable, such provision will be severed from this Agreement, which will otherwise remain in full force and effect. The parties will negotiate diligently in good faith for such amendment(s) of this Agreement as may be necessary to achieve the original intent of this Agreement, notwithstanding such invalidity or unenforceability.
45. **SURVIVING PROVISIONS.** Notwithstanding any completion, termination, or other expiration of this Agreement, all provisions which, by the terms of reasonable interpretation thereof, set forth rights and obligations that extend beyond completion, termination, or other expiration of this Agreement, will survive and remain in full force and effect. Except as specifically provided in this Agreement, completion, termination, or other expiration of this Agreement will not release any party from any liability or obligation arising prior to the date of termination.
46. **A.R.S. SECTIONS 1-501 and 1-502.** Pursuant to Arizona Revised Statutes Sections 1-501 and 1-502, any person who applies to the City for a local public benefit (the definition of which includes a grant, contract or loan) must demonstrate his or her lawful presence in the United States. As the Agreement is deemed a local public benefit, if Contractor is an individual (natural) person or sole proprietorship, Contractor agrees to sign and submit the necessary documentation to prove compliance with the statutes as applicable.

Enterprise Update Statement

Enterprise Agreement Number 6564327

Enrollment Number 67713821

Company Name City of Anacortes

In accordance with the terms of entity's Enterprise Agreement and Enrollment, a true-up order must be submitted for each Enrollment's anniversary (including at Enrollment expiration and prior to any renewal) to account for License quantity increases for:

- a. Qualified Desktops/Devices or Qualified Users
- b. Online Services (where permitted)
- c. Previously ordered Additional Products
- d. Products included in the Server and Cloud Enrollment or Enrollment for Core Infrastructure
- e. Products included in the Enrollment for Application Platform. Products selected with the three year true-up option must place the true-up order only upon enrollment expiration and prior to renewal.

If entity has ordered any additional quantities since its last Enrollment anniversary, this annual true-up order is still required. Entity must submit an Enterprise Update Statement for each anniversary when there has been no increase in required License quantities as described above.

- ☒ In checking this box, entity confirms that under the above referenced Enrollment, there has been no increase in the number of required Licenses not already ordered in a prior placed True Up Orders. Entity understands that it is the responsibility of the entity to ensure that all licenses installed are used according to the Enterprise Agreement and Enrollment referenced above.

Select applicable year for this Update statement: 2

Customer/Government Partner (as applicable)	
Name of Entity*	City of Anacortes
Signature*	
Printed Name*	
Printed Title*	
Signature Date*	

* indicates required fields