



**CITY COUNCIL MEETING AGENDA
TUESDAY, APRIL 18, 2023
HELD REMOTELY & IN PERSON AT CITY HALL
124 S. LEFEVRE ST.**

- Sign up to provide Public Comment at the meeting via calling in
- Submit Written Public Comment Before 4 pm on (April 18, 2023) - *SEE NOTE*
- Join the Zoom Meeting –
<https://us06web.zoom.us/j/83359305076?pwd=VDBRTEVlb2lrVjJORY9BeCt1Zk5xUT09>

Meeting ID: 833 5930 5076

Passcode: 317222

One tap mobile

+12532050468,,83359305076#,,,,*317222# US

+12532158782,,83359305076#,,,,*317222# US (Tacoma)

Find your local number: <https://us06web.zoom.us/j/kuB3CVR66>

WRITTEN PUBLIC COMMENTS

If you wish to provide written public comments for the council meeting, please email your comments to sweathers@medical-lake.org by 4:00 p.m. the day of the council meeting and include all the following information with your comments:

1. The Meeting Date
2. Your First and Last Name
3. If you are a Medical Lake resident
4. The Agenda Item(s) which you are speaking about

*Note – If providing written comments, the comments received will be acknowledged during the public meeting, but not read. All written comments received by 4:00 p.m. will be provided to the mayor and city council members in advance of the meeting.

Questions or Need Assistance? Please contact City Hall at 509-565-5000

REGULAR SESSION – 6:30 PM

1. **CALL TO ORDER, PLEDGE OF ALLEGIANCE, ROLL CALL**
2. **AGENDA APPROVAL**
3. **INTERESTED CITIZENS: AUDIENCE REQUESTS AND COMMENTS**
4. **ANNOUNCEMENTS / PROCLAMATIONS / SPECIAL PRESENTATIONS**
5. **REPORTS**
 - A. Public Safety
 - B. Council Comments
 - C. Mayor
 - D. City Administrator & City Staff
 - i. STA's Connect 2035 Plan
6. **WORKSHOP DISCUSSION**
 - A. Application LU 2022-004 TA Shipping Containers
7. **ACTION ITEMS**
 - A. Consent Agenda
 - i. Approve **April 4, 2023**, minutes.
 - ii. Approve **April 18, 2023**, Payroll Claim Warrants **50027** through **50034** and Payroll Payable Warrants **20197** through **20203** in the amount of **\$134,779.79** and Claim Warrants **50035** through **50075** in the amount of **\$120,515.24**.
 - B. Support for Joint Statement Addressing Homelessness Regionally
8. **RESOLUTIONS**
 - A. 23-583 Broadline Agreement
 - B. 23-584 Managed IT Services Agreement with Executech
 - C. 23-585 Criminal Histories MOU (Spokane County)
 - D. 23-586 Energy Savings Contract with Apollo
9. **PUBLIC HEARING** – No items listed.
10. **ORDINANCES**
 - A. Second Read Ordinance 1109 Complete Streets
11. **EXECUTIVE SESSION** – None scheduled.
12. **EMERGENCY ORDINANCES** – No items listed.
13. **UPCOMING AGENDA ITEMS**
14. **INTERESTED CITIZENS**
15. **CONCLUSION**

To: Medical Lake City Council
From: Karl Otterstrom, AICP, Chief Planning & Development Officer
Date: April 10, 2023
Subject: **STA's *Connect 2035* Strategic Plan**

Over the past year, STA has been engaged in developing Phase 1 of its next 10-year strategic plan, [Connect 2035](#). *Connect 2035* articulates Spokane Transit Authority's strategic roadmap for bus, paratransit, and rideshare service through 2035, with a clear vision supported by goals and strategies. It builds on the successes of their previous strategic plan, [STA Moving Forward](#), to address emerging needs and continued investment in equity, sustainability, and community growth. This first phase of the strategic plan included reviewing regional and national conditions and trends, completing an agency mission and vision refresh, conducting scenario planning, and developing goals, strategies, and performance measures, supported by a comprehensive and robust outreach and engagement campaign across the region. Phase 2 of the *Connect 2035* Strategic Planning effort will kick-off this summer and focus on identifying, evaluating, prioritizing, and programing services, projects, policies, and actions for implementation in the 10-year horizon. STA staff will review Phase 1 with the City Council and engage them in a brief discussion about opportunities for the City and STA to engage and collaborate as they begin Phase 2 of this effort.



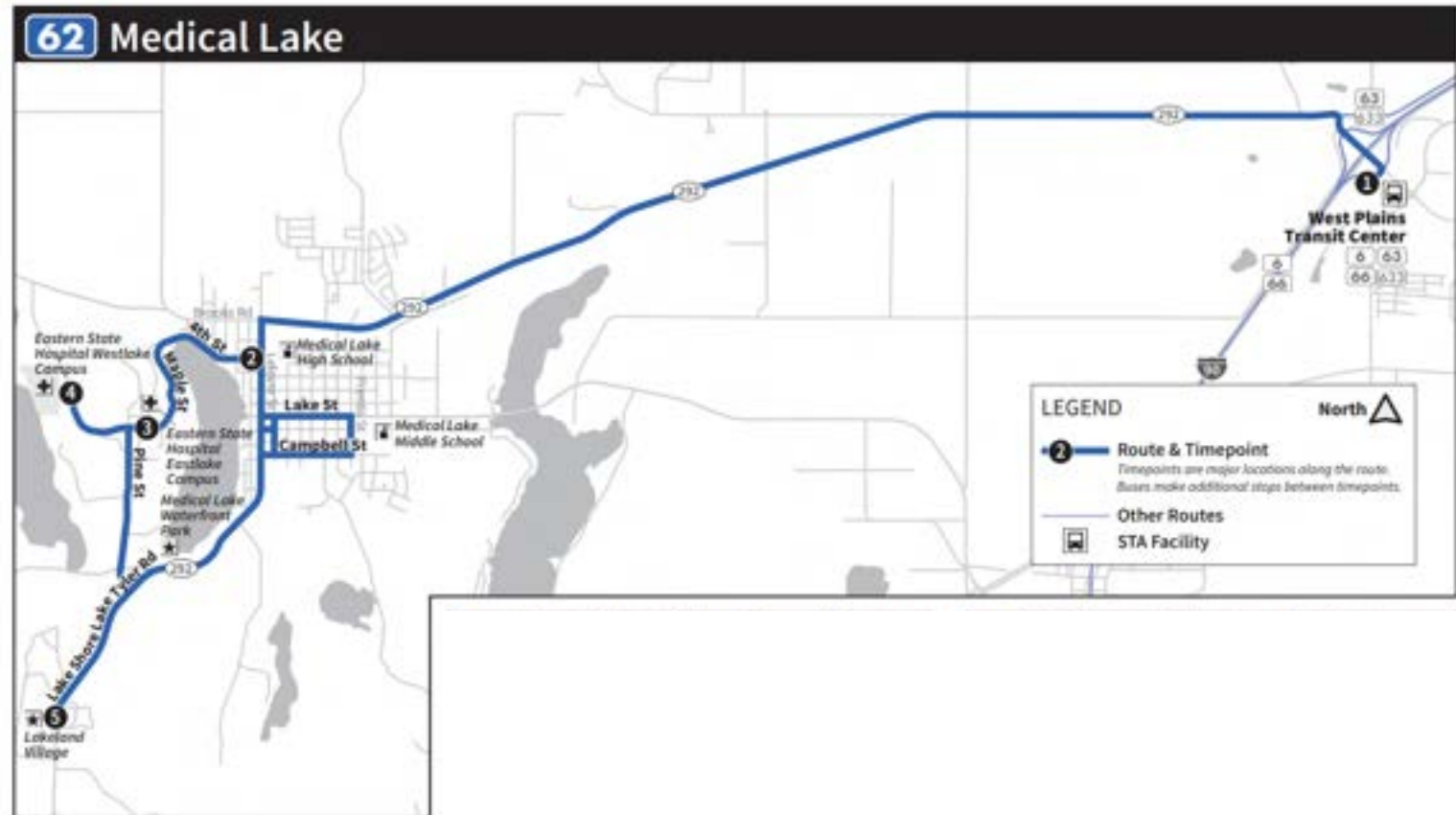
STA Connect 2035 Strategic Plan

E Susan Meyer
Chief Executive Officer

Karl Otterstrom, AICP
Chief Planning & Development Officer

Spokane Transit: Medical Lake's Public Transportation System

- Service provided:
 - Route 62
 - Paratransit
 - Rideshare
- Current plans include:
 - Stop improvements on SR 902





Spokane Transit Authority
**Phase 1 Strategic
Foundation**



What is *Connect 2035*

- Completed in 2022
- Community engagement
- Revised agency mission and vision
- Goals, strategies, and headline performance measures

- Officially kick-off in July
- Identify, evaluate, prioritize, and program initiatives, and actions
- Extensive community engagement



Phase 1 Engagement and Outreach



- Interviewed STA Board Members & 27 community leaders
- Online survey - 849 participants
- Held 6 listening sessions
- Prioritization activity at 3 summer events
- 4 STA Board of Director workshops
- STA employee engagement



What we heard people want for the future



Buses that come often is the #1 priority for the future of transit



Service to more places is the #2 priority for the future of transit



People want STA to prioritize expanded hours all week



People see the opportunity for STA to be a leader in sustainability and climate change



Vision

Connecting everyone to opportunity

Mission

We provide safe, inclusive, convenient, and efficient public transportation services to Spokane area communities.

We are leaders in transportation and a valued partner in the region's social fabric, economic infrastructure, and quality of life

Plan Goals

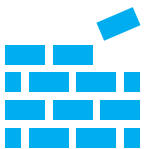
- Each goal in phase 1 plan is supported by strategies, possible actions, and headline performance measures



Goal 1 – Elevate the customer experience



Goal 2 – Lead and collaborate with community partners to enhance the quality of life in our region



Goal 3 – Strengthen our capacity to anticipate and respond to the demands of the region

Goal 1 – Elevate the customer experience



Strategy 1.1 – Expand and adapt mobility options to attract and serve more people

Strategy 1.2 – Advance frequent, easy to use, fast, and reliable service

Strategy 1.3 – Deliver an outstanding door-to-door experience

Strategy 1.4 – Create a welcoming, comfortable, and secure environment for all customers



Rendering of bus rapid transit service along Division Street near B.A. Clark Park



Goal 2 – Lead and collaborate with community partners to enhance the quality of life in our region

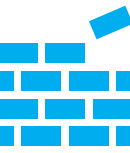
Strategy 2.1 – Collaborate to enhance access to transit

Strategy 2.2 – Support community partners to amplify community benefits

Strategy 2.3 – Proactively initiate partnerships to promote and help employers, service providers, and residential development to locate near high-frequency transit.



Page from *Division Connects Visual Sourcebook*



Goal 3 – Strengthen our capacity to anticipate and respond to the demands of the region

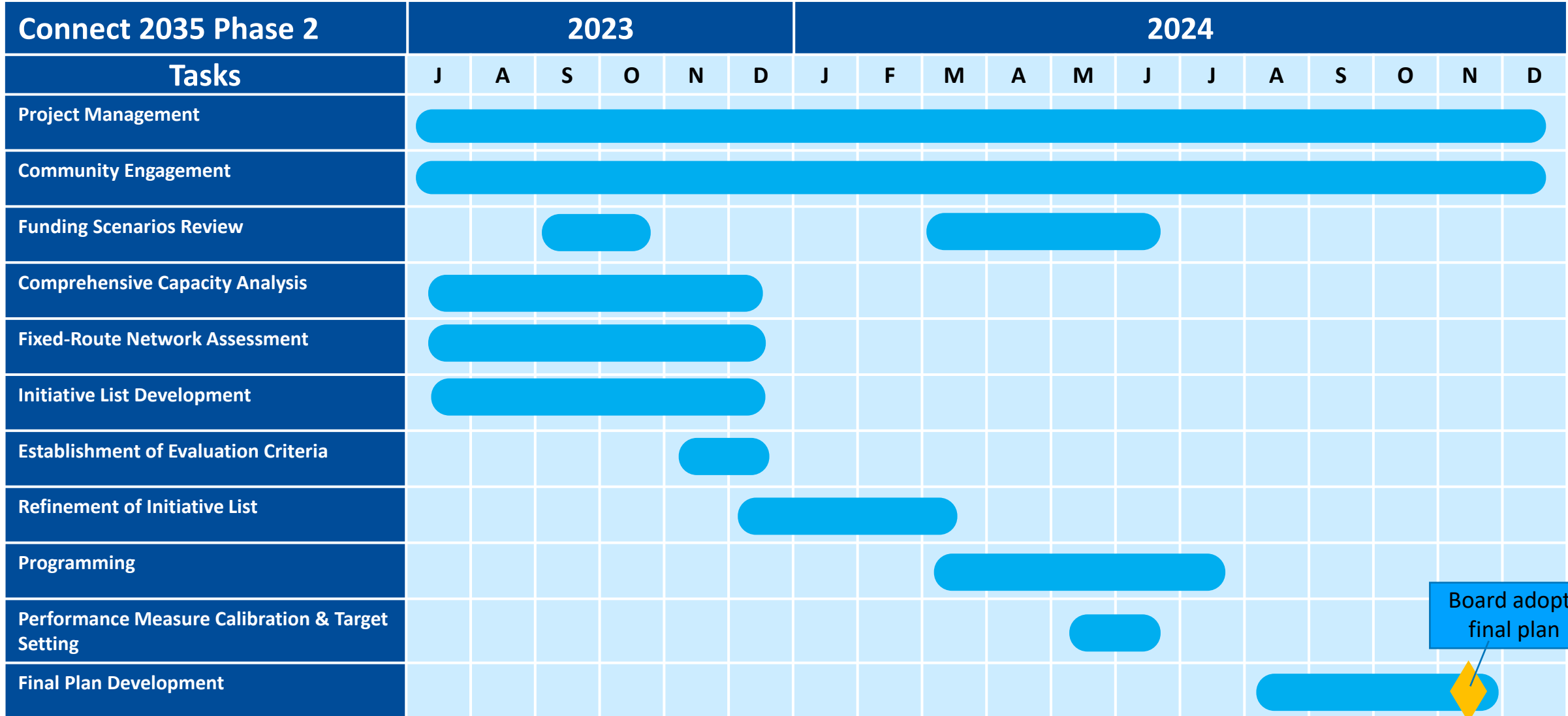
Strategy 3.1 – Develop, prepare, and empower our team members

Strategy 3.2 – Engage in proactive assessment and planning, and deliver strategic long-term investments most beneficial to our communities

Strategy 3.3 – Exemplify financial stewardship to maintain public trust and organizational sustainability



Connect 2035 Phase 2 – Draft Timeline



Board adopts final plan

Adjustments to scope item scheduling expected when consultant team is on-boarded

Questions for you

- How do you see these goals and strategies aligning with the City's priorities for the next 10 years?
- What opportunities do you see for the City and STA to collaborate in the next 10 years?
- How would you like to participate in the Phase 2 of the *Connect 2035*?
- What public engagement strategies have worked well with your citizens?



City of Medical Lake Planning Department
124 S. Lefevre St.
Medical Lake, WA 99022
509-565-5000
www.medical-lake.org

STAFF REPORT TO THE CITY COUNCIL

File: LU 2022-004 TA (Text Amendment)

Date of Staff Report: April 11, 2023

Date of Hearing: May 2, 2023

Staff Planner: Elisa Rodriguez 509-565-5019 or erodriguez@medical-lake.org

SEPA: A Mitigated Determination of Non-Significance was issued on March 8, 2023

Procedure: This request requires a legislative review, therefore, the Planning Commission has held a public hearing, and made a recommendation of denial to the City Council. The City Council will hold a public hearing and then make the final decision.

Applicant: Larry Stoker, Monark Self Storage, 711 Highway 902, Medical Lake, WA 99022

Proposal Summary: The applicant proposes to amend section 17.42.030 – Shipping containers as storage buildings prohibited, of the Medical Lake Municipal Code to allow shipping containers in the C-1 zone as long as they meet certain requirements.

RELEVANT APPROVAL CRITERIA

In order to be approved, this proposal must comply with the criteria of Chapter 17 of the Medical Lake Municipal Code (MLMC). Amendments to development regulations can be approved if the review body finds that the criteria of MLMC Chapter 17.56.100 have been met.

PROCEDURAL HISTORY

October 26, 2022 – Application Submitted
November 22, 2022 – Application Deemed Complete
January 26, 2023 – Workshop at Planning Commission
February 23, 2023 – Workshop at Planning Commission
March 8, 2023 – SEPA Determination of Non-Significance Issued

March 8, 2023 – Notice of Application Distributed

March 9, 2023 – Notice of Public Hearing Published in Cheney Free Press

March 23, 2023 – Public Hearing at Planning Commission

March 23, 2023 – Planning Commission Decision

PROPOSAL

The applicant proposes to change section 17.42.030 – Shipping containers as storage buildings prohibited, from

(current text)

Unless otherwise permitted by this title, no person shall place or cause to be placed, or use or permit the use of any shipping container as an accessory building, storage building, living unit or any other such primary or accessory building upon any property within the city limits of Medical Lake; provided, that licensed and bonded contractors may utilize said containers for temporary housing of equipment and/or materials during construction as authorized by a city building permit. For the purposes of this chapter, "shipping container" is defined as any container or other device used or designed for use in the transportation industry.

To

(proposed text)

- A. Unless otherwise permitted by this title, no person shall place or cause to be placed, or use or permit the use of any shipping container as an accessory building, storage building, or living units within the city limits of Medical Lake except in the [C-1] zones.
1. Shipping containers are permitted to be placed within the [C-1] zones as accessory buildings or storage units, provided that the containers are no more than 40 feet in length, maintained and in good shape (i.e., painted, not rusted out), and are located in the rear/back of property or enclosed in a fence and visually obscured from public sight ROW on Hwy 902. Containers may be placed as authorized by a city building permit.
- B. Licensed and bonded contractors may utilize shipping containers for temporary housing of equipment and/or materials during construction as authorized by a city building permit. For purposes of this chapter "shipping container" is defined as any container or other device used or designed for use in the transportation industry

PLANNING COMMISSION REVIEW

The Planning Commission must use the stated criteria in MLMC section 17.56.100 to evaluate the amendment and in making a recommendation to the City Council. The criteria along with the findings can be found in the Staff Report to Planning Commission dated September 15, 2022 (Exhibit).

The applicant, Larry Stoker, received a citation for violating the Medical Lake Municipal Code (MLMC) on August 24, 2022. The citation included an aerial photo that showed 37 shipping containers. MLMC Section 17.42.030 – Shipping containers as storage buildings prohibited, has prohibited all shipping containers except at

active construction sites since 1999. In response to the violation, Mr. Stoker applied for a text amendment to amend the MLMC to allow shipping containers in the Commercial Zone C-1.

Individuals have the right to request amendments to the Municipal Code, but the City has an obligation to fully analyze the issue. A text amendment does not affect only the applicants property, but would be applicable throughout Medical Lake. The Planning Commission held a workshop to examine and discuss various issues related to shipping containers. The applicant spoke, explaining that he had brought in the containers because the cost of construction materials is so high. The primary issue when considering allowing shipping containers is how they aesthetically fit into the community. A presentation on this topic was presented by the city planner. The size and quality of the containers along with the notions of color and screening were discussed. The commissioners also considered the zones and/or uses that are most compatible with shipping containers. After expressing concerns regarding the industrial like nature of shipping containers and the possible lack of code enforcement over the long term, the Planning Commission directed the city planner to write findings for a denial.

A notice of application was sent to state and local agencies on March 9, 2023. The only response was from the Spokane Regional Health District, which stated a shipping container cannot be placed on a septic tank or drain field.

On March 23, 2023, the Planning Commission held a public hearing. The city planner presented the approval criteria and related findings. Representatives for the applicant also provided a presentation. During the public comment period, three people spoke. Darin Teichmer, owner of Tommy-G's, said he has had a small shipping container at his business for around two years, has never received a violation, and hopes to keep it. Nolan Davis, a Medical Lake realtor, expressed his support for the text amendment. Jennifer Speirs, a Medical Lake resident, expressed opposition to the text amendment, citing how the applicant acted without checking the regulations first and now wants accommodation to help the "bottom line" of his business.

The commissioners expressed many concerns. The two primary concerns were the industrial look of the container which they did not believe matched the preferred look of Medical Lake and the potential lack of enforcement in keeping nice looking, rust free containers. The appearance of the community is a consistent theme throughout the Comprehensive Plan. Goal #1 of the Comprehensive Plan states, "Maintain an attractive and balanced mix of land uses, ensuring the future character of the community." Goal #25 states, "Manage the city's overall image and enhance its overall appearance to convey pride and ownership in the community." Taking these goals into consideration, the Planning Commission unanimously voted to recommend denial of the application to amend the Municipal Code.

RECOMMENDATION

The Planning Commission recommends denial of application LU 2022-004 TA, a text amendment to allow shipping containers under certain circumstances.

EXHIBITS

- A. Proposed Code Language
 - 1. MLMC Section 17.42.030 language proposed by applicant
- B. Public Notifications
 - 1. Notice of Application, March 8, 2023
 - 2. Legal Notice, Published in Cheney Free Press on March 9, 2023
- C. Meeting Minutes
 - 1. Planning Commission, December 15, 2022 (attached)
 - 2. Planning Commission, January 26, 2023 (attached)
 - 3. Planning Commission, February 23, 2023 (attached)
 - 4. Planning Commission, March 23, 2023 (draft) (attached)
- D. Written Public Comment (none)
- E. SEPA
 - 1. SEPA Checklist with City Response, March 2, 2023
 - 2. SEPA MDNS, March 8, 2023
- F. Agency Responses
 - 1. Spokane Regional Health District, March 9, 2023 (attached)
- G. Intent to Adopt (none)
- H. Staff Report
 - 1. Staff Report to Planning Commission, March 8, 2023 (attached)
- I. Maps
 - 1. Zoning Map

Medical Lake code Amendment

Amendment. Section 17.42.030 entitled “Shipping containers as storage buildings prohibited” is hereby amended to read as follows:

- A. Unless otherwise permitted by this title, no person shall place or cause to be placed, or use or permit the use of any shipping container as an accessory building, storage building, or living units within the city limits of Medical Lake except in the C-2 zones.
 - 1. Shipping containers are permitted to be placed within the C-2 zones as accessory buildings or storage units, provided that the containers are no more than 40 feet in length, maintained and in good shape (i.e., painted, not rusted out), and are located in the rear/back of property or enclosed in a fence and visually obscured from public sight ROW on Hwy 902. Containers may be placed as authorized by a city building permit.

- B. Licensed and bonded contractors may utilize shipping containers for temporary housing of equipment and/or materials during construction as authorized by a city building permit. For purposes of this chapter “shipping container” is defined as any container or other device used or designed for use in the transportation industry



LU 2022-004 TA

NOTICE OF APPLICATION

The City of Medical Lake invites you to comment on this application!

Date of Application:

October 26, 2022

Date Application was

Determined Complete:

November 22, 2022

Date of this Notice:

March 8, 2023

Comment Due Date:

March 23, 2023, 2:00pm

Public Hearing:

March 23, 2023, 5:00pm

Environmental Review:

The City of Medical Lake has reviewed the proposal for probable adverse environmental impacts and is issuing a mitigated determination of non-significance (MDNS) for this project. The optional DNS process in WAC 197-11-350 (4) is being used. This may be your only opportunity to comment on the environmental impacts of the proposed project.

Date of MDNS:

March 8, 2023

Direct Comments to:

Elisa Rodriguez

City Planner

erodriguez@medical-lake.org

Planning Department

124 S Lefevre Street

Medical Lake, WA 99022

509-565-5019

PROPOSAL DESCRIPTION: The applicant is requesting the City of Medical Lake to consider a text amendment to section 17.42.030 of the Municipal Code to allow shipping containers under certain circumstances.

The complete file may be reviewed in the Planning Department during the hours of 8 a.m. to 4 p.m. Monday through Friday.

PROPOSAL APPLICANT: Larry Stoker, owner of Monark Self Storage

REQUIRED REVIEWS/PERMITS: This request requires a legislative review, therefore, the Planning Commission will hold a public hearing, then make a recommendation to the City Council. The City Council will make the final decision.

Environmental Review (SEPA).

PUBLIC HEARING: The Medical Lake Planning Commission will hold a public hearing on Thursday, March 23rd, 2023 at 5:00 p.m. in person at the Medical Lake City Hall and virtually via Zoom to consider application LU 2022-04 TA (Text Amendment). A web link to the Zoom Meeting will be posted on the City's website www.medical-lake.org with the meeting agenda. The public is encouraged to attend.

PUBLIC COMMENT: The public may submit comments in writing to the City Planner from the time of this notice until 2:00 p.m. on March 23, 2023. In addition, the public may speak and/or submit written comments at the Public Hearing.

Individuals planning to attend the meeting who require special assistance to accommodate physical, hearing, or other impairments, please contact City Hall at (509) 565-5000 as soon as possible so that arrangements may be made. Without advance notice, it may not be possible to provide the required accommodation(s).

PROPOSED TEXT:

Amendment. Section 17.42.030 entitled "Shipping containers as storage buildings prohibited" is hereby amended to read as follows:

- A. Unless otherwise permitted by this title, no person shall place or cause to be placed, or use or permit the use of any shipping container as an accessory building, storage building, or living units within the city limits of Medical Lake except in the C-2 zones.
 1. Shipping containers are permitted to be placed within the C-2 zones as accessory buildings or storage units, provided that the containers are no more than 40 feet in length, maintained and in good shape (i.e., painted, not rusted out), and are located in the rear/back of property or enclosed in a fence and visually obscured from public sight ROW on Hwy 902. Containers may be placed as authorized by a city building permit.
- B. Licensed and bonded contractors may utilize shipping containers for temporary housing of equipment and/or materials during construction as authorized by a city building permit. For purposes of this chapter "shipping container" is defined as any container or other device used or designed for use in the transportation industry.



City of Medical Lake

124 S. Lefevre St.

P.O. Box 369

Medical Lake, WA 99022-0369

PUBLIC NOTICE

The Medical Lake Planning Commission will hold a public hearing on Thursday, March 23rd, 2023 at 5:00 p.m. in person at the Medical Lake City Hall and virtually via Zoom to consider application LU 2022-04 TA (Text Amendment). A web link to the Zoom Meeting will be posted on the City's website www.medical-lake.org with the meeting agenda. The public is encouraged to attend.

The applicant, Larry Stoker, owner of Monark Self Storage, proposes to amend the Medical Lake Municipal Code, Section 17.42.030 to allow shipping containers under certain circumstances. The SEPA environmental checklist has been reviewed and the City expects to issue a mitigated determination of non-significance.

The public comment period (written comments) is open through 2:00 p.m. on March 23rd, 2023. Direct comments to Elisa Rodriguez, Planning Department, City of Medical Lake, 124 S Lefevre St, Medical Lake, WA. Phone: 509-565-5019. E-mail: erodriguez@medical-lake.org

For more information or to receive copies of the application, proposed language, and/or any reports, please contact the person above.

Individuals planning to attend the meeting who require special assistance to accommodate physical, hearing, or other impairments, please contact City Hall at (509) 565-5000 as soon as possible so that arrangements may be made. Without advance notice, it may not be possible to provide the required accommodation(s).

City of Medical Lake
124 S. Lefevre Street – City Council Chambers
Planning Commission Meeting and Public Workshop
December 15, 2022, Minutes

NOTE: This is not a verbatim transcript. Minutes contain only a summary of the discussion. A recording of the meeting is on file and available from City Hall.

1) CALL TO ORDER, PLEDGE OF ALLEGIANCE, AND ROLL CALL

- a) Commissioner Hudson called the meeting to order at 5:02 pm, led the Pledge of Allegiance, and conducted roll call. All present.

2) INTERESTED CITIZENS: AUDIENCE REQUESTS AND COMMENTS

- a) Tammy Roberson 424 W Brooks – Ms. Roberson shared concerns about policies and procedures of the Planning Commission and Robert's Rules of Order and concerns regarding CAO.
- i) Requested additional time to speak. Motion to allow additional three to six minutes of speaking time made by commissioner Jorgenson, seconded by commissioner Mayulianos, motion carried 3-1-1 with commissioner Mark voting nay and commissioner Munson abstaining. Continued commentary.
- ii) Motion for additional three minutes made by commissioner Mayulianos, seconded by commissioner Munson, motion carried 3-2, with commissioners Hudson and Mark voting nay. See attached detailed commentary provided by Ms. Roberson.
- b) Scott Holbrook 424 W Brooks – shared that today is Bill of Rights Day and gave commentary on setbacks, buffers, and wetland areas.

3) APPROVAL OF MINUTES

- a) **November 17, 2022, Regular Meeting and Public Hearing**
- i) Commissioner Mayulianos suggested making a correction to Section 2 a) i) to state "motion carried 3-0-2 with commissioners Mark and Munson abstaining". After further discussion, it was decided to change the wording to "motion carried 3-2 with commissioners Mark and Munson abstaining". Per legal counsel, this will allow the format of minutes to be consistent to those from City Council meetings. Motion to make correction was made by commissioner Mark, seconded by commissioner Mayulianos, motion carried 5-0.
- ii) Commissioner Mayulianos suggested changing the wording in section 8 c) to "neutral wetlands specialist". Motion to change wording made by commissioner Mayulianos, seconded by commissioner Munson, carried 5-0.
- iii) Motion to approve minutes as amended made by commissioner Mayulianos, seconded by commissioner Munson, motion carried 5-0.

4) STAFF REPORTS

- a) Elisa Rodriguez, City Planner
- i) Mrs. Rodriguez thanked the commissioners for their work on meeting procedures. Shared that she will be out of the office until January 3, 2023. Introduced Sonny Weathers, new City Administrator.
- ii) Mr. Weathers thanked the commission for their critical work and shared a little about himself.

5) SCHEDULED ITEMS

- a) Critical Areas Ordinance
- i) Commissioner Munson suggested that they go through Ms. Roberson's handout titled CAO Summary Handout. Commissioner Hudson suggested they go through the form using the CAO section numbers. Commissioner Munson asked Mrs. Rodriguez for her input. Mrs. Rodriguez shared that she has responded to these prior and it is up to the commission to determine whether to make the suggested changes. Mrs. Rodriguez shared that she reviewed the file on the Stanley St. Apartments project and that she understands that many of the citizen concerns are regarding the desire to prevent that from ever happening again.
- ii) Proposed change #1 re: section 17.10.020 (H) – Commissioner Mayulianos made a motion to add language "the planning official must provide a single report that meets the requirements laid out in 17.10.020 H". After additional discussion, commissioner Mayulianos withdrew her motion.

- iii) Proposed change #2 re: section 17.10.030 (B) – Mrs. Rodriguez addressed and after further discussion amongst the commission, no motions were made to make the change to the CAO draft.
- iv) Proposed change #4 re: section 17.10.040 (A) (15) – commissioner Munson shared his commentary and asked for Mrs. Rodriguez’s opinion. Mrs. Rodriguez shared input and after further discussion amongst the commission, no motions were made to make the change to the CAO draft.
- v) Proposed change #5 re: section 17.10.050(E) – motion to remove the words “or less” made by commissioner Mayulianos, seconded by commissioner Jorgenson. After further discussion, commissioner Mayulianos withdrew her motion.
- vi) Proposed change #6 re: section 17.10.050 (F) (1) – Commissioner Mayulianos asked Ms. Roberson for clarification. Mrs. Rodriguez also gave an explanation.
 - (1) Motion by commissioner Mark to modify section 17.10.050 to add a new subsection (f) which would state “surface and subsurface hydrological conditions unless hydrological conditions are irrelevant to the subject critical area”, seconded by commissioner Mayulianos, motion carried 5-0.
- vii) Proposed change #7 re: section 17.10.090 (F) (1) (a) – Mrs. Rodriguez made a statement regarding the commentary and offered clarification to Ms. Roberson’s concerns. Commissioner Mayulianos made a motion to remove the entire paragraph on the bottom of page 19 of the CAO draft, section 17.10.090 (F) (1) (a) (i), seconded by commissioner Jorgenson and additional discussion was had. Motion failed to carry (2-3) with commissioners Hudson, Munson, and Mark voting nay.
- viii) Proposed change #8 re: section 17.10.090 (f) (2) - proposed to add subsection (j) which would add language to include an additional 15-foot buffer. Commissioner Munson asked Mrs. Rodriguez to elaborate on setback vs buffer. Mrs. Rodriguez gave an explanation and her thoughts. Further discussion was held.
 - (1) Commissioner Mayulianos motioned to add to paragraph 17.10.090 (f) (2) subsection (j) which would state “Buffer Setback. A minimum building setback of fifteen (15) feet is required from the edge of a wetland buffer. The City Planner may allow intrusions into this setback on a case-by-case basis if it can be demonstrated by clear and convincing evidence that impacts will be satisfactorily mitigated. This building setback from the buffer shall be identified on the site plan.” Seconded by commissioner Jorgenson, and additional discussion held. Motion failed to carry (2-3) with commissioners Mark, Hudson, and Munson voting nay.
- ix) Proposed change #9 re: section 17.10.110 – Mrs. Rodriguez clarified request from Ms. Roberson. Commissioner Mayulianos motioned to add subsection (H) to section 17.10.020 – General Provisions which would read “*Exceptions*. Where the applicant seeks an exception to any requirement imposed by this code or believes said requirement denies all reasonable economic use of the subject property, justification in support of an exception must be clear and convincing. Grant of an exception, on the other hand, must not be unreasonably withheld.” Seconded by commissioner Munson, motion carried 5-0.
- x) Motion to approve and send the CAO draft, staff report, and all exhibits to City Council with the request for council to examine section 17.10.040 (A) (15) regarding ability to appeal made by commissioner Mark, seconded by commissioner Mayulianos, motion carried 5-0.
 - (1) Point of order by commissioner Hudson clarifying that the CAO draft will go to council with suggested amendments made tonight.

6) PUBLIC WORKSHOP

- a) Application LU 2022-004 TA, Proposal to amend MLMC Section 17.42.030 to allow shipping containers under certain circumstances
 - i) Mrs. Rodriguez started presentation on the requested amendment. Explained that she is not presenting the application but rather opening discussion and clarification. Commissioner Mark requested that Mrs. Rodriguez not go through the presentation due to the late hour. Mrs. Rodriguez agreed and asked petitioner Larry Stoker to say a few words.
 - ii) Mr. Stoker explained his situation and shared his reasons for proposal. Discussion was held.
 - iii) Discussion will continue at next meeting

7) COMMISSION MEMBERS' COMMENTS OR CONCERNS

- a) Commissioner Mayulianos requested to add the changes of procedure to the next agenda

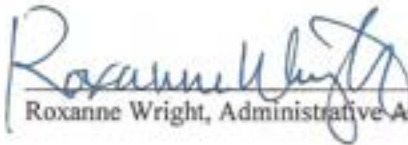
8) INTERESTED CITIZENS: AUDIENCE REQUESTS AND COMMENTS

- a) Tammy Roberson – shared her disappointment and frustration about the CAO decisions made tonight in particular commissioner Munson’s previous suggestions he later voted against.

9) **CONCLUSION**

- a) Commissioner Hudson motioned to conclude the meeting, seconded by commissioner Mark, carried 5-0 and meeting concluded at 7:39 pm.

Date: 2/9/23


Roxanne Wright, Administrative Assistant

City of Medical Lake
124 S. Lefevre Street – City Council Chambers
Planning Commission Meeting and Public Workshop
January 26, 2023, Minutes

NOTE: This is not a verbatim transcript. Minutes contain only a summary of the discussion. A recording of the meeting is on file and available from City Hall.

1) CALL TO ORDER, PLEDGE OF ALLEGIANCE, AND ROLL CALL

- a) Approval of agenda. Motion to approve agenda made by commissioner Mark, seconded by commissioner Munson, motion carried 4-0.
- b) Commissioner Mayulianos is acting as Chair in the absence of commissioner Hudson. Commissioner Mayulianos called the meeting to order at 5 pm, led the Pledge of Allegiance, and conducted roll call.
- c) Commissioner Hudson submitted a request for an excused absence from tonight's meeting. All other commissioners were present.
 - i) Motion to approve commissioner Hudson's absence made by commissioner Munson, seconded by commissioner Jorgenson, carried 4-0.

2) INTERESTED CITIZENS: AUDIENCE REQUESTS AND COMMENTS

- a) Tammy Roberson 424 W Brooks Rd – Requested correction to the December 15, 2022, minutes; paragraph 8a delete the words "that she felt".

3) APPROVAL OF MINUTES

- a) **December 15, 2022, Regular Meeting and Public Workshop minutes**
 - i) Section 2. a.i, correct vote count to 3-1-1. Motion to correct made by commissioner Mayulianos, seconded by commissioner Munson, carried 4-0.
 - ii) Section 6.a. correct to 17.42.030, not 7.42.020. Motion to correct made by commissioner Mark, seconded by commissioner Munson, carried 4-0.
 - iii) Motion to include Ms. Roberson's attachments that were inadvertently not included in the packet made by commissioner Mayulianos, no second. Motion failed.
 - iv) Commissioner Mayulianos motioned to change Section 3.a.i from 3-0 to 3-0-2, seconded by Commissioner Munson, carried 4-0. Note: Section 3.a.i is a discussion of the November minutes, and the language correctly reflects the conversation at the December meeting. Therefore, this change will not be made to the minutes.
 - v) Section 8.a. strike the words "that she felt". Motion to correct made by commissioner Mark, seconded by commissioner Mayulianos, carried 4-0.
 - vi) Motion to approve minutes as amended made by commissioner Munson, seconded by commissioner Mark, carried 4-0.

4) STAFF REPORTS

- a) Elisa Rodriguez, City Planner
 - i) Shared update on the CAO presentation to City Council at the January 3, 2023, council meeting.
 - ii) Provided clarification on what gets attached to Planning Commission minutes.

5) SCHEDULED ITEMS

- a) Planning Commission Rules of Procedure
 - i) Commissioner Mayulianos opened discussion on the current Rules of Procedure (Rules). She brought to the commission's attention that several changes had been made to the Rules, however, these were invalid due to the procedure used. She suggested that the commission review the newest version from 2015, write down any changes and come back at the next meeting.
 - ii) Legal Counsel, Sean Boutz, offered guidance on the procedure for initiating changes to the Rules of Procedure. Specifically, that before any final changes can be made, they must first be introduced and voted on at a previous meeting.
 - iii) Discussed proposed changes in sections 4.1.2, 4.1.3, 4.1.6 under Order of Business.

iv) Commissioner Mayulianos motioned to introduce proposed changes to Section 4.1, Order of Business, as follows:

1. Call to Order, Pledge of Allegiance and Roll Call
 - A. Additions to the Agenda
 - B. Excused Absences
2. Interested Citizens: Audience Requests and Comments
3. Approval of Minutes
4. Staff Reports
5. Scheduled Items
6. Public Workshops
7. Commission Members' Comments or Concerns
8. Interested Citizens: Audience Requests and Comments
9. Conclusion

Seconded by commissioner Munson, carried 4-0.

- v) Commissioner Mark motioned to introduce a potential change to section 1.3, Attendance, Excused Absences, to add the words "or designee" after Planning Director, seconded by commissioner Mayulianos, carried 4-0.
- vi) Commissioner Mayulianos suggested leaving Section 5.4, Motions to Reconsider, as is, even though the commission had previously passed a motion to change it. Commissioner Mark motioned let Section 5.4 to remain as is, seconded by commissioner Munson, carried 4-0.
- vii) Commissioner Mayulianos motioned to introduce a potential change to Section 2.1, Commission Meetings, to change the commission meeting days to the 4th Thursday of the month, seconded by commissioner Mark, carried 4-0.
- viii) Commissioner Munson motioned to introduce potential changes to pages 7 and 8 to appropriate Medical Lake city contact info, seconded by commissioner Mark, carried 4-0.

6) **PUBLIC WORKSHOP** – Continued from December 15, 2022, Meeting

- a) Application LU 2022-004 TA, Proposal to amend MLMC Section 17.42.030 to allow shipping containers under certain circumstances.
 - i) City Planner, Elisa Rodriguez, explained the application received from Mr. Stoker of Monark Storage. Due to receiving a citation for the illegal placement of shipping containers within the city limits, Mr. Stoker, has opted to request a change to the municipal code to allow shipping containers in commercial zones. Mrs. Rodriguez followed the explanation with a presentation of all the aspects the Planning Commission should think about regulating when considering new code language.
 - ii) Commissioners discussed the proposed change of code. Expressed concerns regarding the aesthetics of shipping containers and their degradation of appearance over time.
 - iii) City Administrator, Sonny Weathers, offered clarification on the process thus far; Mr. Stoker illegally brought in the shipping containers, code enforcement issued citation, Mr. Stoker submitted the application to amend the municipal code thus pausing the code enforcement action.
 - iv) Motion to table discussion to next meeting made by commissioner Mayulianos, seconded by commissioner Mark, carried 3-1 with commissioner Jorgenson voting nay.

7) **COMMISSION MEMBERS' COMMENTS OR CONCERNS**

- a) Commissioner Mayulianos asked about the city's website. Mr. Weathers addressed and explained that the new website is in progress and will hopefully be up and running soon.

8) **INTERESTED CITIZENS: AUDIENCE REQUESTS AND COMMENTS**

- a) Tammy Roberson 424 W Brooks Rd – asked for clarification on the failed motion to include her attachments from paragraph 2 of the December 15, 2022, minutes. Mrs. Rodriguez explained that anything handed out at a meeting will become part of the official minutes. Ms. Roberson also asked about unexcused absences for the agenda. Commissioner Munson referred to agenda section 1.3 and clarified that it will be documented in minutes whether the absence is excused or unexcused.

9) CONCLUSION

- a) Commissioner Munson motioned to conclude the meeting, seconded by commissioner Mark. Motion carried 4-0 and the meeting concluded at 7:02 pm.

Date: Feb. 28, 2023



Roxanne Wright, Administrative Assistant

City of Medical Lake
124 S. Lefevre Street – City Council Chambers
Planning Commission Meeting and Public Workshop
February 23, 2023, Minutes

NOTE: This is not a verbatim transcript. Minutes contain only a summary of the discussion. A recording of the meeting is on file and available from City Hall.

1) CALL TO ORDER, PLEDGE OF ALLEGIANCE, AND ROLL CALL

- a) Commissioner Hudson called the meeting to order at 5:02 pm, led the pledge of allegiance and conducted roll call. All members present.
- b) Approval of or Additions to Agenda
 - i) Motion to approve agenda made by commissioner Munson, seconded by commissioner Mayulianos, carried 5-0.
- c) Excused Absences - none

2) INTERESTED CITIZENS: AUDIENCE REQUESTS AND COMMENTS

- a) Tammy Roberson – commented and thanked commissioner Mayulianos for how she ran the last meeting. Shared commentary on goals and mission of a Planning Commission. See attached.

3) APPROVAL OF MINUTES

- a) **January 26, 2023**, Regular Meeting and Public Workshop minutes
 - i) Commissioner Munson suggested correction to Section 7(a), changing Mayo to Mayulianos.
 - ii) Commissioner Mark suggested change to Section 6(a)(iii), strike “our” and replace with “municipal code”.
 - iii) Motion to approve minutes as amended made by commissioner Munson, seconded by commissioner Mayulianos, carried 5-0.

4) STAFF REPORTS

- a) Elisa Rodriguez, City Planner
 - i) Shared regarding the first read of the Critical Areas Ordinance 1108 at the City Council meeting on February 21, 2023. City Council voted to approve the first read with minor punctuation and grammatical corrections.

5) SCHEDULED ITEMS

- a) Planning Commission Rules of Procedure
 - i) The following are suggested amendments that will be presented for a vote at the next Commission meeting:
 - (1) At this point in the meeting, a Zoom participant reported that there was no sound. The meeting was paused, and recording was stopped in order to restart the system and correct the issue. Once corrected, the meeting and recording resumed.
 - ii) Discussion was held and changes suggested by commission members. Legal counsel, Sean King, made the comment that at the previous meeting, each proposed amendment was introduced and voted on individually. He suggested to keep consistency, that the commission continue with the same process.
- b) Commissioner Mark motioned to introduce under section 1.3, change “excused members” to “member”. Seconded by commissioner Munson, carried 5-0.
- c) Commissioner Mark motioned to introduce under section 3.2, second line, change “his” to “his/her”. Seconded by commissioner Mayulianos, carried 5-0.
- d) Commissioner Mark motioned to introduce on page 7, Public Participation: Tips for Talking with the Commission, sixth bullet point, spell out the number then follow with number in parentheses i.e. “three (3)”. This keeps consistency with section 7.2, second paragraph, fourth and fifth lines which is addressing the same topic. Seconded by commissioner Jorgenson, carried 5-0.
- e) Commissioner Mark motioned to introduce on page 7, Public Participation: Tips for Talking with the Commission, second bullet point, sixth line, revise to add “Medical Lake” into address. Seconded by commissioner Mayulianos, carried 5-0.
- f) Commissioner Mayulianos motioned to introduce in section 2.1, changing time of meeting to 6 pm rather than 5 pm, seconded by commissioner Munson, carried 5-0.

- g) Commissioner Mayulianos motioned to introduce in section 6.2 change to allow for commission members to vote to recuse a member with a possible conflict of interest (they present to the commission and they vote), rather than the commission member making that decision solely. Legal counsel determined that this subject needs to be reviewed and reported on at the next meeting, therefore no vote was taken.
 - h) Commissioner Mayulianos motioned to introduce in section 7.2 removing the requirement of community members to state their address and instead only provide whether or not they are residents of the city. Seconded by commissioner Mark, carried 5-0.
 - i) Commissioner Mayulianos motioned to introduce in section 7.2 (citizen comments) changing the speaking time limit from 3 to 5 minutes. Commissioner Munson asked Commissioner Mayulianos for her reason behind the additional minutes. She responded that she thought it was necessary to get the speakers point across. Seconded by commissioner Mark, carried 5-0.
 - j) Commissioner Mayulianos motioned to introduce in section 7.2 an addition to reflect that educational presentations are given fifteen minutes. Seconded by commissioner Jorgenson, carried 5-0.
 - k) Commissioner Mayulianos motioned to introduce in section 7.5 addition of language to include that any written communications must be submitted by 2pm the day of the meeting. Seconded by commissioner Mark, carried 5-0.
 - l) Commissioner Mayulianos motioned to introduce in section 8, making the last paragraph "Amendment of These Rules" subsection 8.2. Seconded by commissioner Mark, carried 5-0.
 - m) Commissioner Hudson motioned to introduce in section 4.1 a change to agenda format making Line 2 Additions to Agenda and moving the remaining line items down. Seconded by commissioner Mayulianos, carried 5-0.
 - n) Commissioner Hudson motioned to introduce in section 5.4 changing motions to reconsider to bring into line with Robert's Rules of Order, seconded by commissioner Mark, carried 5-0.
 - o) Commissioner Mayulianos motioned to introduce in section 1.3 change to require members to attend in person when at all possible, with exception of illness or travel. Seconded by commissioner Jorgenson. Commission then discussed adding catch-all term "or good cause" for exceptions. Motion carried 5-0.
 - p) Commissioner Mayulianos motioned to postpone a vote on last month's proposed changes and instead combine them with tonight's. This will allow members to vote on all proposed changes at next month's meeting. Seconded by commissioner Mark, carried 5-0.
- 6) **PUBLIC WORKSHOP** – Continued from December 15, 2022, and January 25, 2023, Meetings
- a) Application LU 2022-004 TA, Proposal to amend MLMC Section 17.42.030 to allow shipping containers under certain circumstances.
 - b) City Planner, Elisa Rodriguez gave a recap of discussion from last meeting and procedure thus far, explained purpose of the workshop. Explained the role of commission is to provide direction as how to proceed with the application process. Reminded commissioners any change to the ordinance will affect all businesses/citizens city-wide and the decision must be non-biased. All consensus building must be done within Planning Commission meetings. Gave examples of the types of decisions that could be made. Explained that this is not the final decision tonight, only providing guidance for prepping the staff report.
 - c) Mr. Stoker shared comments on why he is requesting the text amendment.
 - d) Brent Lucas, Senior Planner with the City of Cheney shared a presentation regarding shipping containers and how they have been allowed in Cheney.
 - i) Discussion held and commission members asked questions.
 - e) Mr. Stoker discussed other businesses that currently have shipping containers as well. Shared that they are much more cost-effective and enables them to not raise rates.
 - f) Commissioners discussed and shared their thoughts.
 - g) Commissioner Hudson asked the Commission how they would like to proceed. Commissioner Munson shared his experience appraising properties with shipping containers. He concluded by stating he does not consider them attractive and does not support changing the Municipal Code to allow them. Commissioner Mayulianos agreed. Commissioner Mark stated that she had visited the shipping container locations in town. She used the container at 1005 E Barker as an example of how a shipping container can be made to be attractive. She sympathizes with those who have used containers as an economical alternative for storage. However, she is in agreement with commissioners Munson and Mayulianos, and does not support changing the municipal code.
 - h) Commissioner Mayulianos motioned to direct the City Planner to deny the request to change the MLMC. Seconded by commissioner Jorgenson, carried 5-0.
 - i) Public Hearing will be held at the next meeting.

7) **COMMISSION MEMBERS' COMMENTS OR CONCERNS**

- a) Commissioner Mayulianos asked if the commission has a mission statement. Would like to develop an education packet for new commission members (to include a mission statement).
- i) Commissioner Mayulianos motioned to add to the next agenda a discussion about developing a welcome packet, list of goals, and mission statement. Seconded by commissioner Jorgenson. Commissioner Mark shared that she and commissioner Munson both received a welcome packet, so there already is one. Commissioners Mayulianos and Jorgenson both indicated that they never received a packet. Motion carried 4-1, with commissioner Mark abstaining.
- b) Mrs. Rodriguez suggested that the commissioners look at the City of Medical Lake's Comprehensive Plan which includes a vision statement and the MLMC section on the Planning Commission before the next meeting to help with this discussion.

8) INTERESTED CITIZENS: AUDIENCE REQUESTS AND COMMENTS

- a) Tammy Roberson – asked for clarification on the proposed change to the “motion to reconsider” section of the Planning Commission Rules of Procedure (see section 5(n) above). Commissioner Hudson offered an explanation for the proposed change.

9) CONCLUSION

- a) Motion to conclude the meeting made by commissioner Mayulianos, seconded by commissioner Mark. Motion carried 5-0 and meeting concluded at 7:16 pm.

Date: February 23, 2023

Roxanne Wright
Roxanne Wright, Administrative Assistant

City of Medical Lake
124 S. Lefevre Street – City Council Chambers
Planning Commission Meeting and Public Hearing
March 23, 2023, Minutes

NOTE: This is not a verbatim transcript. Minutes contain only a summary of the discussion. A recording of the meeting is on file and available from City Hall.

1) CALL TO ORDER, PLEDGE OF ALLEGIANCE, AND ROLL CALL

- a) Commissioner Hudson called the meeting to order at 5 pm, led the pledge of allegiance and conducted roll call. Commissioners were all present except for commissioner Mayulianos. She had notified commissioner Hudson that she was running late.
- b) Approval of or Additions to Agenda
 - i) Commissioner Hudson made a motion to move the Public Hearing right after the EWU presentation (section 5a), seconded by commissioner Jorgenson, carried 4-0.
 - ii) Motion to approve agenda as amended made by commissioner Munson, seconded by commissioner Jorgenson, carried 4-0.
- c) Excused Absences – Motion made by commissioner Hudson to temporarily excuse commissioner Mayulianos, seconded by commissioner Munson, carried 4-0.
 - i) Commissioner Mayulianos arrived at 5:10 pm.

2) INTERESTED CITIZENS: AUDIENCE REQUESTS AND COMMENTS

- a) Tammy Roberson Medical Lake resident – shared comments regarding the recent passing of the Critical Areas Ordinance (CAO) by City Council. See attached.

3) APPROVAL OF MINUTES

- a) **February 23, 2023**, Regular Meeting minutes
 - i) Motion to approve made by commissioner Jorgenson, seconded by commissioner Munson, carried 4-0.

4) STAFF REPORTS

- a) Sonny Weathers, City Administrator – gave an update on the Critical Areas Ordinance process. Addressed some of the comments/concerns brought forth by resident Tammy Roberson. See attached.
- b) Elisa Rodriguez, City Planner - shared with the commission that she will be attending a conference and will be unable to attend the April 27, 2023, meeting. Asked if the commission would like to move the meeting date or cancel. The commission decided to keep the meeting on the 27th and just conduct it without Mrs. Rodriguez.

5) SCHEDULED ITEMS

- a) EWU Planning Presentation – Master of Urban and Regional Planning (MURP) students gave a presentation on the Medical Lake Parks and Trails study they recently completed.
 - i) Questions and discussion held.

6) PUBLIC HEARING – Application LU 2022-004 TA, Proposal to amend MLMC Section 17.42.030 to allow shipping containers under certain circumstances.

- a) Commissioner Hudson called the public hearing to order at 5:47 pm.
- b) Appearance of Fairness doctrine discussion – Commissioners Mayulianos and Jorgenson have units at Monark Storage, the applicant's business, but felt they could be objective.
- c) Staff Report – Elisa Rodriguez gave a presentation and staff report on the proposed amendment.
- d) Presentation by applicants' representatives (Nolan Davis, Medical Lake Realtor and Brett Lucas, Senior Planner with the City of Cheney)
 - i) Questions and discussion from commission.
- e) Public Testimony –

- (1) Darin Teichmer, owner of Tommy G's – shared that he has a shipping container for storage at his place of business and never received a complaint. Stated he was unaware there was a problem with it and asked for clarification on what the issue is. Mrs. Rodriguez explained why this issue has come forward; there was a complaint made about the shipping containers located at Monark storage, Medical Lake Code Enforcement went out to inspect that location and others around the city then sent letters to all property owners where containers were located. Mr. Teichmer reported that he never received a letter and he's had the container for two years and hopes to keep it.
- (2) Nolan Davis (Medical Lake Realtor) – shared personal thoughts on the topic in favor of the amendment.
- (3) Jennifer Speirs Medical Lake resident – shared comments and dissenting opinion on the proposed amendment.
- f) Commissioner Mayulianos commented that she agrees with Mrs. Speirs that businesses should check code first before bringing in containers. Stated that it creates a trust issue.
 - i) Nolan Davis offered a rebuttal to commissioner Mayulianos' statement.
- g) Commissioner Hudson closed the public comments at 6:21 pm.
- h) Commissioners discussed the options before them. Dissenting opinions were shared by commissioners Mayulianos, Jorgenson, and Munson. Clarification given that the Medical Lake School District does fall under city code requirements and is responsible for the shipping containers on their property.
- i) Motion made by commissioner Mark to recommend full denial of the proposal, seconded by commissioner Mayulianos, carried 5-0.

SECTION 5 SCHEDULED ITEMS CONTINUED

- b) Education Packet for New Commission Members - Motion to table until next meeting made by commissioner Hudson, seconded by commissioner Jorgenson, carried 5-0.
- c) Planning Commission Rules of Procedure - Motion to table until next meeting made by commissioner Hudson, seconded by commissioner Mark, carried 5-0.

7) COMMISSION MEMBERS' COMMENTS OR CONCERNS

- a) Commissioner Mayulianos apologized for being late. Asked legal counsel Sean King (present on Zoom) to address the two questions from the last meeting. Mr. King stated there is no statutory requirement for interested citizens to state their address. He also stated that if there is a conflict of interest, the best practice is to recuse yourself from a decision, rather than asking the other commissioners decide if you should participate. Mr. King had also responded with these answers to the City Administrator via email. See attached.
- b) Carl Munson submitted a memo regarding "Medical Lake Makeover" to add to the next meeting agenda. See attached.

8) INTERESTED CITIZENS: AUDIENCE REQUESTS AND COMMENTS

- a) Tammy Roberson Medical Lake resident – addressed Mr. Weathers' presentation on the CAO process from earlier in the meeting. Discussion was held. See attached.
- b) Motion to extend Ms. Roberson and additional 5 minutes of speaking time made by commissioner Mayulianos, seconded by commissioner Jorgenson, discussion held, commissioner Mayulianos amended her motion to give an additional 3 minutes, seconded by commissioner Munson, carried 5-0.

9) CONCLUSION

- a) Motion to conclude made by commissioner Munson, seconded by commissioner Mayulianos. Motion carried 5-0 and meeting concluded at 6:40 pm.

Date: _____

Roxanne Wright, Administrative Assistant

SEPA ENVIRONMENTAL CHECKLIST

A. Background

1. Name of proposed project, if applicable:

Applicant Response: Text Amendment to Medical Lake City Code Section 17.42.020 to allow Shipping containers in Medical Lake C-2 Commercial Zone

City Response: Application LU 2022-004 TA (Text Amendment)

2. Name of applicant:

Applicant Response: Larry Stoker owner of Monark Self Storage

3. Address and phone number of applicant and contact person:

Applicant Response: 19317 E. Augusta Lane, Spokane Valley, WA 99016. 208-964-5009

4. Date checklist prepared:

Applicant Response: 10/16/2022

City Response: 03/02/2023

5. Agency requesting checklist:

Applicant Response: City of Medical Lake

6. Proposed timing or schedule (including phasing, if applicable):

Applicant Response: Immediately after approval by city of amendment and appropriate building permit. Next 6 months.

City Response: A public hearing will be held at the Planning Commission on March 23, 2023. A decision by the City Council will likely be within 3 months of that date.

7. Do you have any plans for future additions, expansion, or further activity related to or connected with this proposal? If yes, explain.

Applicant Response: Addition of Shipping containers

City Response: If approved, shipping containers within the City of Medical Lake that were placed without permit will be required to comply with the new code.

8. List any environmental information you know about that has been prepared, or will be prepared, directly related to this proposal.

Applicant Response: None

9. Do you know whether applications are pending for governmental approvals of other proposals directly affecting the property covered by your proposal? If yes, explain.

Applicant Response: Yes request is being made to modify city code of Medical Lake to allow placement of shipping containers on C-2 Commercial property

10. List any government approvals or permits that will be needed for your proposal, if known.

Applicant Response: building permit

City Response: The proposal is for a text amendment, no development is being proposed at this time.

11. Give brief, complete description of your proposal, including the proposed uses and the size of the project and site. There are several questions later in this checklist that ask you to describe certain aspects of your proposal. You do not need to repeat those answers on this page. (Lead agencies may modify this form to include additional specific information on project description.)

Applicant Response: Placement of new shipping containers in C-2 Zone in Medical Lake

City Response: The applicant is proposing new language for MLMC section 17.42.030 (See Exhibit A). Currently, the MLMC prohibits shipping containers under all circumstances except as temporary storage for active construction sites. The proposed language would allow storage containers in a commercial zone as long as they met certain requirements.

12. Location of the proposal. Give sufficient information for a person to understand the precise location of your proposed project, including a street address, if any, and section, township, and range, if known. If a proposal would occur over a range of area, provide the range or boundaries of the site(s). Provide a legal description, site plan, vicinity map, and topographic map, if reasonably available. While you should submit any plans required by the agency, you are not required to duplicate maps or detailed plans submitted with any permit applications related to this checklist.

Applicant Response: Amendment only applies to C-2 zoning adjacent to Wa-902 area. (See Exhibit B)

City Response: The proposed language would allow shipping containers in the C-1 (commercial) zone. Currently, there is C-1 zoning along Highway 902 and in the Central Business District.

C. Signature The above answers are true and complete to the best of my knowledge. I understand that the lead agency is relying on them to make its decision.

Signature: _____

Name of signee __Larry Stoker__

Position Owner Monark Self Storage LLC Date Submitted: _____

D. Supplemental sheet for nonproject actions

1. How would the proposal be likely to increase discharge to water; emissions to air; production, storage, or release of toxic or hazardous substances; or production of noise?

Applicant Response: Amendment wil not increase toxic discharge of any kind or produce significant noice increase.

City Response: Shipping containers do not inherently discharge emit, or release toxic or hazardous substances. If a storage container is to be used to store hazardous substances, it will be regulated by the International Fire Code.

2. How would the proposal be likely to affect plants, animals, fish, or marine life?

Applicant Response: None Site surface is already graveled surface

City Response: Storage containers are not likely to affect plants, animals, fish, or marine life any more or less than other structures already allowed in the city. If there is a request to place a container in an environmentally sensitive area, a critical area review would be required.

3. How would the proposal be likely to deplete energy or natural resources?

Applicant Response: It will reduce the amount of resources required to add commercial storage in C-2 Zones

City Response: Shipping containers, nor their placement are likely to deplete energy or natural resources.

4. How would the proposal be likely to use or affect environmentally sensitive areas or areas designated (or eligible or under study) for governmental protection; such as parks, wilderness, wild and scenic rivers, threatened or endangered species habitat, historic or cultural sites, wetlands, floodplains, or prime farmlands?

Applicant Response: Not Applicable

City Response: The proposal is to allow shipping containers in the commercial zone C-1. If an applicant requests to place a shipping container in an environmentally sensitive area, a critical area review would be required.

5. How would the proposal be likely to affect land and shoreline use, including whether it would allow or encourage land or shoreline uses incompatible with existing plans?

Applicant Response: Not Applicable

City Response: The proposal is to allow shipping containers in the commercial zone C-1. Placement of a shipping container will still be subject to the Shoreline Management Plan. Shipping containers, being manufactured for transportation have a distinct aesthetic that is not compatible with the built environment. The first goal in the City of Medical Lake Comprehensive Plan is to "Maintain an attractive and balance mix of land uses ensuring the character of the community." To meet this goal, the proposed text amendment allowing shipping containers must have additional standards to mitigate for the for the original aesthetic of the container. Standards to be addressed are the location of the container on a property, screening of the container from adjacent properties and rights-of-way, use of the container, number of containers, and color, size and condition of the container.

6. How would the proposal be likely to increase demands on transportation or public services and utilities?

Applicant Response: None

City Response: The placement of shipping containers is unlikely to increase the demands on transportation or public services and utilities.

7. Identify, if possible, whether the proposal may conflict with local, state, or federal laws or requirements for the protection of the environment.

Applicant Response: No conflict

City Response: There is no known conflict with local, state or federal laws.



City of Medical Lake

124 S. Lefevre St.
P.O. Box 369
Medical Lake, WA 99022-0369

Notice of Public Hearing and
Mitigated Determination of Non-Significance (MDNS)

Date of Issuance: March 8, 2023

Description of Proposal: Notice of Hearing is issued for a text amendment, LU 2022-004 TA. The proposed non-project legislative action is to amend section 17.42.030 – Shipping containers as storage buildings prohibited, of the Medical Lake Municipal Code. The current code prohibits the placement of storage containers in the City of Medical Lake except for storage on active construction sites. The proposed text amendment would allow shipping containers in the commercial zone C-1 under certain circumstances.

Proponent: Larry Stoker, Monark Self Storage, 711 Highway 902, Medical Lake, WA 99022

Location of Proposal: Properties within the corporate boundaries of the City of Medical Lake

Lead Agency: City of Medical Lake, Planning Department

Threshold Determination: The lead agency has determined that this non-project action proposal does not have a probable significant adverse impact on the environment. An environmental impact statement (EIS) is not required under RCW 43.21C.030(2)(c). This decision was made after review of a completed environmental checklist and other information on file with the lead agency. This MDNS is issued under WAC 197-11-340(2); the City of Medical Lake will not act on this proposal for 14 days from the date of this notice.

Written Comments: Written comments on this threshold determination must be submitted on or before 2:00 p.m., March 23, 2023 to the project contact listed below.

Mitigation: To address topic D.5 of the SEPA Checklist, "How would the proposal be likely to affect land and shoreline use, including whether it would allow or encourage land or shoreline uses incompatible with existing plans," the following mitigation is required:

1. The proposed text amendment allowing shipping containers must have additional standards to mitigate for the for the original aesthetic of the container. Standards to be addressed are the location of the container on a property, screening of the container from adjacent properties and rights-of-way, use of the container, number of containers, and color, size and condition of the container.

Public Hearing: A public hearing is scheduled before the Planning Commission on **Thursday, March 23, 2023 at 5 p.m.**

Appeals: Appeals of this environmental determination may be made per the procedures outlined in MLMC 16.10.420.

Documents: Documents associated with this proposal can be viewed on the City of Medical Lake website, at: www.medical-lake.org, under Planning Commission Agendas, March 23, 2023 or may be reviewed at the City of Medical Planning Department, 124 S Lefevre Street, Medical Lake, WA 99022

Contact Person: Please direct any comments concerning this threshold determination to: Elisa Rodriguez, City Planner P.O. Box 369, Medical Lake, WA 99022; 509-565-5019; erodriguez@medical-lake.org.

SEPA Responsible Official: Sonny Weathers, City Administrator

Signature



Exhibits:

- A. SEPA Checklist with Applicant and City Response
- B. Zoning Map

Distribution List:

State Agencies:

Department of Archeology and Historic Preservation: sepa@dahp.wa.gov

Department of Commerce: Reviewteam@commerce.wa.gov

Department of Ecology: JSIK461@ECY.WA.GOV

Department of Fish and Wildlife: teamspokane@dfw.wa.gov

Department of Health: dorthy.tibbetts@doh.wa.gov

Department of Natural Resources: sepacenter@dnr.wa.gov

Department of Social and Health Services: hubenbj@dshs.wa.gov

Department of Transportation: figgg@wsdot.wa.gov

Washington State Parks: randy.kline@parks.wa.gov

Local Agencies:

Eastern State Hospital: dean.davis@dshs.wa.gov

Medical Lake School District: cmoss@mlsd.org

Spokane Clean Air: jsouthwell@spokanecleanair.org

Spokane County Building and Planning Department: tmjones@spokanecounty.org

Spokane County Fire District 3: abollar@scfd3.org

Spokane County Sheriff: mkittilstved@spokanesheriff.org

Spokane Regional Health District: emeyer@srhd.org

Spokane Regional Transportation Council: rstewart@srtc.org

Spokane Transit: kkotterstrom@spokanetransit.com

Utilities:

Avista: Eric.Grainger@avistacorp.com

Century Link: Robert.goede@centurylink.com

Davis Communications: timothygainer@netscape.net

Other:

Cheney Free Press: jmac@cheneyfreepress.com

Greater Spokane: skey@greaterspokane.org

West Plains Chamber of Commerce: mark@westplainschamber.org

Elisa Rodriguez

From: Mike LaScuola <mlascuola@srhd.org>
Sent: Thursday, March 9, 2023 11:15 AM
To: Elisa Rodriguez
Cc: Steve Main
Subject: LU 2022-004 TA Shipping Containers

Ms. Rodriguez,

RE: Notice of Application and SEPA MDNS for LU 2022-004 TA Shipping Containers.

Please be advised that these containers should not be placed over any On-site Septic System (OSS) (septic tank or drain-field) in accordance with Washington Administrative Code (WAC) 246-272A-0210 Location; sections (5)(i)(ii)(iv):

- (5) Persons shall design and/or install a soil dispersal component only if:*
- (a) The slope is less than forty-five percent (twenty-four degrees);*
 - (b) The area is not subject to:*
 - (i) Encroachment by buildings or construction such as placement of power poles and underground utilities;*
 - (ii) Cover by impervious material;*
 - (iii) Vehicular traffic; or*
 - (iv) Other activities adversely affecting the soil or the performance of the OSS.*

Placing a shipping container over the septic system drain field will compact the soils and interfere with evapotranspiration, so it is recommended that any placement of the shipping containers be at least ten feet from the edge of the drain field and 5 feet from the edge of the septic tank. <https://app.leg.wa.gov/WAC/default.aspx?cite=246-272A-0210>

Please feel free to contact me if you have further questions or concerns.

Michael F. LaScuola REHS/RS | Technical Advisor Environmental Resources | Environmental Public Health
509-324-1574 | 509-324-3603 fax | mlascuola@srhd.org
Spokane Regional Health District | www.srhd.org
1101 W. College Ave. Spokane, WA 99201

Always working for a safer and healthier community



Always working for a safer and healthier community





City of Medical Lake Planning Department
124 S. Lefevre St.
Medical Lake, WA 99022
509-565-5000
www.medical-lake.org

STAFF REPORT TO THE PLANNING COMMISSION

File: LU 2022-004 TA (Text Amendment)

Date of Staff Report: March 8, 2023

Date of Hearing: March 23, 2023

Staff Planner: Elisa Rodriguez 509-565-5019 or erodriguez@medical-lake.org

SEPA: A SEPA review is required.

Procedure: This request requires a legislative review, therefore, the Planning Commission will hold a public hearing, then make a recommendation to the City Council. The City Council will make the final decision.

Applicant: Larry Stoker, Monark Self Storage, 711 Highway 902, Medical Lake, WA 99022

Proposal Summary: The applicant proposes to amend section 17.42.030 – Shipping containers as storage buildings prohibited, of the Medical Lake Municipal Code to allow shipping containers in the C-1 zone as long as they meet certain requirements.

PROPOSAL

The applicant proposes to change section 17.42.030 – Shipping containers as storage buildings prohibited, from

(current text)

Unless otherwise permitted by this title, no person shall place or cause to be placed, or use or permit the use of any shipping container as an accessory building, storage building, living unit or any other such primary or accessory building upon any property within the city limits of Medical Lake; provided, that licensed and bonded contractors may utilize said containers for temporary housing of equipment and/or materials during construction as authorized by a city building permit. For the purposes of this chapter, "shipping container" is defined as any container or other device used or designed for use in the transportation industry.

To

(proposed text)

- A. Unless otherwise permitted by this title, no person shall place or cause to be placed, or use or permit the use of any shipping container as an accessory building, storage building, or living units within the city limits of Medical Lake except in the [C-1] zones.
1. Shipping containers are permitted to be placed within the [C-1] zones as accessory buildings or storage units, provided that the containers are no more than 40 feet in length, maintained and in good shape (i.e., painted, not rusted out), and are located in the rear/back of property or enclosed in a fence and visually obscured from public sight ROW on Hwy 902. Containers may be placed as authorized by a city building permit.
- B. Licensed and bonded contractors may utilize shipping containers for temporary housing of equipment and/or materials during construction as authorized by a city building permit. For purposes of this chapter "shipping container" is defined as any container or other device used or designed for use in the transportation industry

RELEVANT APPROVAL CRITERIA

In order to be approved, this proposal must comply with the criteria of Chapter 17 of the Medical Lake Municipal Code (MLMC). Amendments to development regulations can be approved if the review body finds that the criteria of MLMC Chapter 17.56.100 have been met.

PROCEDURAL HISTORY

October 26, 2022 – Application Submitted

November 22, 2022 – Application Deemed Complete

January 26, 2023 – Workshop at Planning Commission

February 23, 2023 – Workshop at Planning Commission

March 8, 2023 – Notice of Application Distributed

March 9, 2023 – Notice of Public Hearing Published in Cheney Free Press

ANALYSIS

The current text of section 17.42.030 – Shipping containers as storage buildings prohibited, was adopted in 1999. No copy of this ordinance or its supporting documents has been found. The current text prohibits shipping containers in every situation except for active construction sites where they are allowed for storage. The applicant, after receiving a letter of violation for placing numerous shipping containers on his mini-storage site, applied for this text amendment in hopes of remedying the situation. The proposed text would allow shipping containers in the commercial zone C-1. Properties with this zoning designation are along Hwy 902 and in the Central Business District. The proposed text provides some standards for the location on the site, size, condition of the container, and screening from other properties. The proposed text does not limit the number of shipping containers per site.

ZONING CODE APPROVAL CRITERIA

17.56.020 - Purpose.

This section shall apply to initial adoption of the comprehensive plan and subsequent adoption of amendments or additional elements to the comprehensive plan. The purpose of this chapter is to establish a procedure pursuant to the requirements of RCW 36.70A of the Growth Management Act for the amendment or revision of the city comprehensive plan and development regulations.

17.56.100 – Criteria for Regulation of Plan Amendments.

Recognizing that the comprehensive plan was developed and adopted after significant study and public participation, the principles, goals, objectives and policies contained therein shall be granted substantial weight when considering any proposed amendment. Therefore, the burden of proof for justifying a proposed amendment rests with the applicant. The approval, modification or denial of an amendment application by the planning commission shall be evaluated on the following criteria:

1. The amendment is necessary to resolve inconsistencies between the comprehensive plan and implementing ordinances, or inconsistencies between the plan or ordinances and local, state or federal mandates.

Findings: The proposed text amendment does not intend to resolve any inconsistencies between local, state, or federal plans or regulations. Therefore, **this criterion is not applicable.**

2. The amendment of the plan and/or the development regulations will further the implementation of the comprehensive plan and resolve inconsistency between the two in a manner that will not adversely impact the general public health, safety, and/or welfare.

Findings: The Medical Lake Comprehensive Plan does not specifically address the placement of shipping containers within the City Limits. The current Medical Lake Municipal Code states that shipping containers are prohibited except when used for storage at active construction sites. The proposed text amendment is to allow shipping containers in the commercial zone C-1.

The applicant has stated in his response to the criteria that the “skyrocketing” cost of building supplies has led him and other business owners to prefer shipping containers for storage due to their lower cost. According to the Association of Builders and Contractors, building materials have increased by approximately 40% since the beginning of the pandemic.

The Comprehensive Plan does not have a goal that specifically pertains to existing businesses. Goals mention an adequate supply of land for new development, the widening of employment opportunities, and attracting more recreation and tourism businesses. The chapter pertaining to economic development states that an issue for Medical Lake is, “maintaining and enhancing economic vitality.” However, this is not expanded upon.

The appearance of the community is a consistent theme throughout the Comprehensive Plan. Goal #1 of the Comprehensive Plan states, “Maintain an attractive and balanced mix of land uses, ensuring the future character of the community.” Goal #25 states, “Manage the city’s overall image and enhance its overall appearance to convey pride and ownership in the community.”

Shipping containers, having been built for durability in transportation, have a very unique look that is difficult to disguise. This aesthetic is considerably different from those businesses and residences in the community. Allowing shipping containers with no limitation in number, even if only in the Commercial C-1 Zone, has the potential of causing a significant and negative change to the overall appearance of Medical Lake. Hence, this proposal is not further implementing the comprehensive plan and **this criterion is not met**.

3. Conditions have changed so much since the adoption of the comprehensive plan on factors such as, but not limited to population, employment, housing, transportation, capital facilities, or economic conditions that the existing goals, policies, objectives and/or map classifications of the comprehensive plan or development regulations are inappropriate.

Findings: The Medical Lake Comprehensive Plan was updated in 2019. Since that time, Medical Lake, like the rest of the world, has experienced the repercussions of the COVID-19 pandemic. The Comprehensive Plan does not address many of the results from the pandemic. One of these is the economic conditions for construction. The price of materials, delays in supply chains, and labor shortages have led to an increased cost in construction. According to the applicant, “Since 2019 the costs on new buildings and materials has skyrocketed. Lumber up 400%, metal up 250%. Fuel & shipping up 250%. Allowing newer shipping containers for commercial storage purposes help us and small businesses in Medical Lake obtain strong, quality storage units at under half of the cost of new construction.” Considering the Comprehensive Plan and Municipal Code were written in better economic times, it is reasonable to look at shipping containers as a cheaper alternative to storage buildings.

However, despite the economic struggles of local businesses to provide storage space at a reasonable price, that does not change the goals in the Comprehensive Plan that speak to appearance of the community. As stated in the findings of criterion #2, there is a running theme in the Comprehensive Plan that demonstrates the importance of attractive appearance to the community. Conditions have not

changed in such a way that Medical Lake is willing to forsake its character for the benefit of storage. For these reasons, **the criterion is not met.**

4. Substantial conditions exist where the available supply of forecasted lands for residential, commercial, industrial, recreation or agriculture have been absorbed and there is insufficient land available for a twenty-year supply.

Findings: The proposed text amendment is not asking to change any zoning designations or increase the amount of land within the city. Hence, there is no change to the 20-year land supply. For this reason, **this criterion is met.**

5. If the comprehensive plan amendment proposal involves extension of water and/or sewer services outside of the urban growth boundary, the following additional criteria must be met:
 - a. The proposal must be in response to an immediate threat to public health or safety;
 - b. The proposal is necessary for the protection of the aquifer(s) designated pursuant to RCW 36.70.A170; and
 - c. The proposal is necessary to maintain existing levels of service in existing urban or suburban developments.

Findings: The proposed text amendment does not involve the extension of water and/or sewer services outside of the urban growth boundary, therefore, **this criterion is not applicable.**

6. The proposed amendment is consistent with the overall intent of the goals of the comprehensive plan.

Findings: The Comprehensive Plan does not have a goal that specifically pertains to existing businesses. Goals mention an adequate supply of land for new development, the widening of employment opportunities, and attracting more recreation and tourism businesses. The chapter pertaining to economic development states that an issue for Medical Lake is, "maintaining and enhancing economic vitality." However, this is not expanded upon.

The appearance of the community is a consistent theme throughout the Comprehensive Plan. Goal #1 of the Comprehensive Plan states, "Maintain an attractive and balanced mix of land uses, ensuring the future character of the community." Goal #25 states, "Manage the city's overall image and enhance its overall appearance to convey pride and ownership in the community."

Shipping containers, having been built for durability in transportation, have a very unique look that is difficult to disguise. This aesthetic is considerably different from those businesses and residences in the community. Allowing shipping containers with no limitation in number, even if only in the Commercial C-1 Zone, has the potential of causing a significant and negative change to the overall appearance of Medical Lake. Hence, this proposal is not further implementing the comprehensive plan and **this criterion is not met.**

7. The proposed amendment is consistent with RCW 36.70A, the Growth Management Act, the county-wide planning policies and applicable multicounty planning policies.

Findings: Neither the Growth Management Act nor the Spokane County Countywide Planning Policies speak directly to the subject of shipping containers. The planning goals of the Growth Management Act states we should, “promote the retention and expansion of existing businesses.” The statement of principals in the Countywide Planning Policies speaks to both the unique character of each community and the need to maintain the economic vitality of those communities. The proposed text amendment does not create any inconsistencies with the Growth Management Act or the Spokane County Countywide Planning Policies, therefore, **this criterion is met.**

8. Where an amendment to the comprehensive plan map is proposed, the proposed designation is adjacent to property having a similar and compatible designation.

Findings: The proposal does not include amendments to the comprehensive plan map, therefore, **this criterion is not applicable.**

9. Public facilities, infrastructure and transportation systems are present to serve the intended amendment or provisions have been made in accordance with the comprehensive plan to provide the necessary facilities.

Findings: The proposed text amendment to allow shipping containers in the C-1 zone is only applicable on sites that are already developed. The text specifies that the shipping container is an accessory structure, therefore not the primary building on the site. Being accessory in nature, the placement of shipping containers is unlikely to have a significant impact on the public facilities, infrastructure, and transportation system. For these reasons, **this criterion is met.**

10. The proposed amendment is complimentary and compatible with adjacent land uses and the surrounding environment.

Findings: The proposed text amendment is to allow shipping containers in the commercial zone C-1. Shipping containers have a unique design as a result of their use in the transportation industry. This steel box aesthetic is difficult to disguise in a community of mainly wood construction. The C-1 Zone is located along Highway 902 from the east city limit to the railroad track just west of N Stanley Street and in the 12 blocks designated as the Central Business District (CBD). The Municipal Code has many standards for the CBD to create an aesthetically pleasing and pedestrian friendly environment. A shipping container, which is industrial in nature, is not complimentary or compatible with the CBD. In addition, being a small community, any shipping container is likely to be adjacent to or viewed from residential areas. Allowing shipping containers without the benefit of limits in number, screening, or color will create incompatibility with neighboring residential areas. For these reasons, **this criterion is not met.**

11. The proposed amendment does not adversely affect lands designated as agricultural and/or resource lands of long term commercial significance or critical areas.

Findings: The proposed text amendment is to allow shipping containers in the commercial zone C-1. The land within the City of Medical Lake that is zoned C-1 does not contain agricultural and/or resource lands of long-term commercial significance. Properties that are zoned C-1 and have critical areas will be

subject to chapter 17.10 – Critical Areas of the Medical Lake Municipal Code. Hence, the proposal does not adversely affect these resources and, therefore, **this criterion is met.**

CONCLUSION

The proposed text amendment to allow shipping containers in the C-1 Zone under certain circumstances is the applicant's response to increased building material costs. The City recognizes the Comprehensive Plan and the Municipal Code do not take into account changes in the economy due to the COVID-19 pandemic. While sympathizing with local businesses, shipping containers have a distinct industrial look that is not compatible with development in Medical Lake. To allow shipping containers would be in contradiction to the Comprehensive Plan mandate of maintaining an attractive community. For this reason, this application cannot be approved.

RECOMMENDATION

The approval criteria set out in MLMC 17.56.100 have been reviewed and completed. Therefore, the planning official recommends that the Planning Commission deny the proposed text amendment to Section 17.42.030 of the Municipal Code.

The Planning Commission may choose to do one of the following:

Recommend denial of the proposed text amendment as presented in the staff report.

Recommend approval of the proposed text amendment, as written, with a statement of how the approval criteria are met.

Recommend approval of the proposed text amendment, with changes and a statement of how these changes allow the approval criteria to be met.

EXHIBITS

- A. Application Materials
 - 1. Letter from Applicant (attached)
 - 2. Proposed Language
 - 3. SEPA Checklist
 - 4. Response to Approval Criteria (attached)
 - 5. Zoning Map
- B. Public Notifications
 - 1. Notice of Application
 - 2. Legal Notice, Published in Cheney Free Press on March 9, 2023
- C. SEPA
 - 1. SEPA Checklist with City Response
 - 2. Mitigated Determination of Non-Significance

From Monark Self Storage

The modification to section 17.42.020 is patterned after the recent change made by Cheney City to their code which is included allowing use of shipping containers in Commercial zones.

We have sponsored this requested amendment to help Medical Lake businesses succeed and reflect today's changing economic conditions for our business and to benefit our customers. Since 2019 the costs on new buildings and materials has skyrocketed. Lumber up 300%, metal up 300%, Fuel & shipping up 250%. Allowing newer shipping containers for commercial storage purposes help us and small businesses in Medical Lake obtain strong, quality storage units at under half of the cost of new construction. We will be able to pass on lower rent costs to our customers.

The amendment will let Monark place new shipping containers in our 55 ft wide rear driveways which were originally designed for RV storage but are now used for enclosed storage only. The 8 ft wide shipping containers are narrow enough to fit in those rear driveways to provide lower cost, quality storage space, Thus helping us to provide more economical storage options for customers. All units are new and will be appropriated approved thru building permit and appropriately screen from view to SR 902 by tall buildings and commercial fence.

Sincerely,
Larry Stoker
Owner Monark Self Storage

Response to 17.56.100 - Criteria for evaluation of plan amendments.

The justification for the proposed amendment to Section 17.42.030 entitled Shipping Containers as storage buildings.

(1) The amendment is necessary to resolve inconsistencies between the comprehensive plan and implementing ordinances, or inconsistencies between the plan or ordinances and local, state or federal mandates.

The amendment is not intended to resolve any inconsistencies between local, state or federal ordinances.

(2) The amendment of the plan and/or the development regulations will further the implementation of the comprehensive plan and resolve inconsistency between the two in a manner that will not adversely impact the general public health, safety, and/or welfare.

This amendment allows Medical Lake to cooperate with local private business and support changing economic conditions ie: skyrocketing (building materials, fuel and transportation) affecting small businesses like Monark Self Storage. It allows use of new shipping containers properly shielded from view of SR-902 that provides lower cost storage in the C-2 Commercial zone adjacent to SR-902. While requiring appropriate visually shielding from SR-902 by buildings or fence to meet beautification enhancement goals along SR 902

This is an opportunity to cooperate with private development interests. By being responsive to the current business climate Medical Lake is encouraging existing and new business to succeed in the commercial corridor. Business that can provide affordable services to the community. The nearby city of Cheney is adopting a similar ordinance change about shipping containers. This amendment is patterned after the one recently adopted by the Cheney City Council.

(3) Conditions have changed so much since the adoption of the comprehensive plan on factors such as, but not limited to population, employment, housing, transportation, capital facilities, or economic conditions that the existing goals, policies, objectives and/or map classifications of the comprehensive plan or development regulations are inappropriate.

Since 2019 the costs on new buildings and materials has skyrocketed. Lumber up 400%, metal up 250% Fuel & shipping up 250%. Allowing newer shipping containers for commercial storage purposes help us and small businesses in Medical Lake obtain strong, quality storage units at under half of the cost of new construction.

(4) Substantial conditions exist where the available supply of forecasted lands for residential, commercial, industrial, recreation or agriculture have been absorbed and there is insufficient land available for a twenty-year supply.

This amendment does not change zoning acreage in city.

(5) If the comprehensive plan amendment proposal involves extension of water and/or sewer services outside of the urban growth boundary, the following additional criteria must be met:

- (A) The proposal must be in response to an immediate threat to public health or safety;
- (B) The proposal is necessary for the protection of the aquifer(s) designated pursuant to RCW 36.70.A170;
- (C) The proposal is necessary to maintain existing levels of service in existing developments.

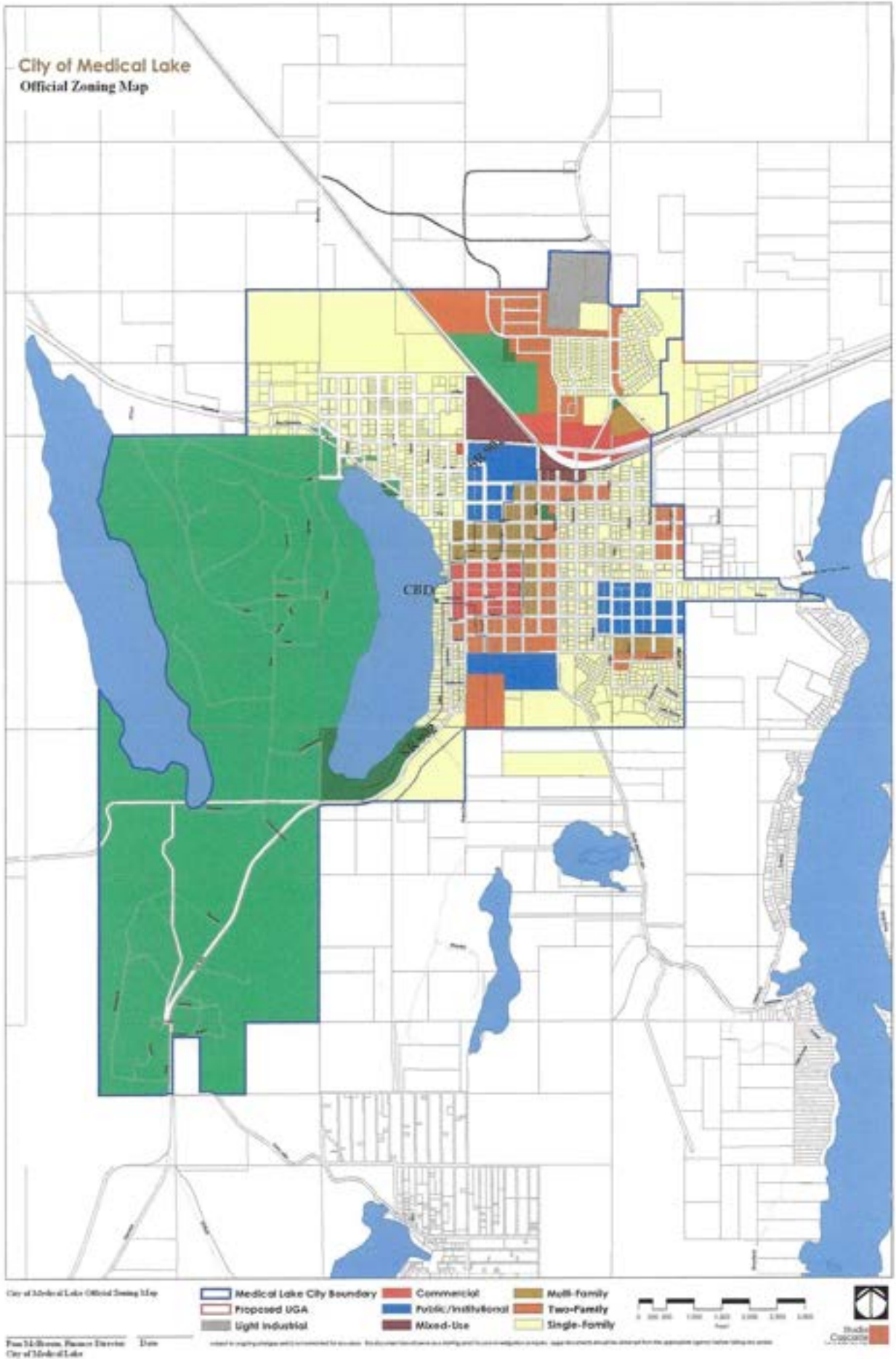
Not Applicable to this amendment.

(6) The proposed amendment is consistent with the overall intent of the goals of the comprehensive plan.

Yes the amendment is consistent with plan goals. It addresses supporting local businesses in a changing economic environment while containing provisions to maintain quality and visual appearance along the SR 902 corridor. This amendment only affect C-2 commercial corridor adjacent to SR 902. It does not change the prohibited use of shipping containers in residential zoning

(7) The proposed amendment is consistent with RCW 36.70A, the Growth Management Act, the county-wide planning policies and applicable multicounty planning policies.

Yes This amendment does not change other county planning or city planning. All other policies remain intact.



CITY OF MEDICAL LAKE
City Council Regular Meeting

6:30 PM
April 04, 2023

MINUTES

Council Chambers
124 S. Lefevre Street

NOTE: This is not a verbatim transcript. Minutes contain only a summary of the discussion. A recording of the meeting is on file and available from City Hall.

COUNCIL AND ADMINISTRATIVE PERSONNEL PRESENT

Councilmembers

Don Kennedy
Heather Starr
Art Kulibert (via Zoom)
Bob Maxwell
Ted Olson
Tony Harbolt

Administration/Staff

Terri Cooper, Mayor
Sonny Weathers, City Administrator
Roxanne Wright, Admin. Assistant
Sean King, City Attorney (via Zoom)
Scott Duncan, Public Works Director
Steve Cooper, WWTP Director

1. CALL TO ORDER, PLEDGE OF ALLEGIANCE, ROLL CALL

- A. Mayor Cooper called the meeting to order at 6:30 pm, led the Pledge of Allegiance, and conducted roll call. Councilmember Kulibert was present via Zoom, councilmembers Starr, Kennedy, Maxwell, Olson, and Harbolt were present in person. Councilmember Pritchard submitted a request for absence which was approved.

2. AGENDA APPROVAL

- A. Amendments to Agenda
 - i. Strike the Support for Joint Statement Addressing Homelessness Regionally from 7B. Move to the April 18, 2023, meeting.
- B. Additions to Agenda
 - i. Add item D to section 6 – workshop discussion regarding city employees doing community service during regular working hours.
 - ii. Add EVCO Sound Agreement to item B in section 7.
 - iii. Add item C to section 7 - Refund request for permit issued to Medical Lake Food Bank
 - iv. Motion to approve agenda as amended made by councilmember Olson, seconded by councilmember Maxwell, carried 6-0.

3. INTERESTED CITIZENS: AUDIENCE REQUESTS AND COMMENTS

- A. Judy Mayulianos, Medical Lake resident – asked for an update on senior yoga that she had inquired about at the previous meeting. Mayor Cooper responded that the city is reaching out to the instructor and hopes to have it resolved soon.

4. ANNOUNCEMENTS / PROCLAMATIONS / SPECIAL PRESENTATIONS

- A. Mayor Cooper asked Councilmember Olson if he is willing to serve on the Public Safety Committee. He agreed. Motion to accept the appointment made by councilmember Kennedy, seconded by councilmember Harbolt, carried 6-0.
- B. National Child Abuse Prevention Month Proclamation
 - i. Mayor Cooper shared statistics and information regarding child abuse in the region and read the proclamation.
- C. Mayor Cooper introduced Medical Lake High School's Lilac Queen, Josephine Ortega. Miss Ortega shared the process of being selected. Thanked the city of Medical Lake and Medical Lake High School for their support.

5. REPORTS

- A. Council Comments
 - i. Councilmember Starr – apologized for being absent at the last meeting. Motion to excuse the absence made by councilmember Harbolt, seconded by councilmember Kennedy, carried 5-1 with councilmember Starr abstaining. Shared that the Finance Committee met and discussed the refund request that is on the agenda tonight, the stormwater drain repair, and claims.
 - ii. Councilmember Kennedy – no report
 - iii. Councilmember Maxwell – no report
 - iv. Councilmember Olson – thanked the Mayor and council for the appointment to the Public Safety Committee.
 - v. Councilmember Harbolt – gave a Parks and Recreation Committee update. Youth sports registration is now closed. Flag football and soccer practices start on April 17th with the first games scheduled for April 22nd. Shared that Ms. Lomas attended the Healthy Worksite Summit and provided the committee with feedback from her time there.
 - vi. Councilmember Kulibert – no report
- B. Mayor – nothing additional
- C. City Administrator & City Staff – no report

6. WORKSHOP DISCUSSION

- A. Broadlinc Spokane County
 - i. Ariane Schmidt from Spokane Regional Broadband Public Development Authority gave a presentation.
 - ii. Sonny Weathers, City Administrator, shared his thoughts on the proposal. Discussion held. The council is favorable to move forward therefore a Resolution will be presented at the next meeting.

- B. ARPA Distribution of Funds
 - i. Mr. Weathers shared information regarding the distribution of remaining ARPA funds. Explained that the city would like to open the application process to include small businesses. Mayor Cooper explained the process for applications and distribution. Councilmember Kulibert offered alternative suggestions for distributing the funds. Mayor Cooper addressed the suggestions. No changes made to the current proposal for distribution of the funds.
- C. Managed IT Services Agreement with Executech
 - i. Mr. Weathers shared the current agreement with Executech. The larger umbrella covering the city’s technology support includes IT services for the system we have, cyber security of that system, and upgrading equipment to meet the city’s needs. The city is spending on average, \$2300 per month for IT services currently. The proposed new agreement will provide more services for less cost.
- D. Staff community service during work time – Mayor Cooper shared thoughts behind staff doing community service during regular work time. Staff would put it on their timesheet. Discussed that they could wear shirts/vests that would identify them as City staff, possibly with the catch phrase “Here to Serve” or something similar. Discussed other options of promoting volunteerism. Mayor Cooper asked legal counsel to research whether this would violate any use of public funds law.

7. ACTION ITEMS

- A. Consent Agenda
 - i. Approve **March 21, 2023**, minutes.
 - 1. Motion to approve made by councilmember Kennedy, seconded by councilmember Maxwell, carried 6-0.
 - ii. Approve **April 4, 2023**, Claim Warrants **50000** through **50026** in the amount of **\$52,974.71**.
 - 1. Finance Committee reviewed. Motion to approve made by councilmember Starr, seconded by councilmember Olson, carried 6-0.
- B. Medical Lake Food Bank Association permit refund request.
 - i. Councilmember Starr stated that the Finance Committee reviewed the request and recommends approval of refund, less the costs already incurred by the city which are approximately \$100.00. Motion to approve refund request made by councilmember Kennedy, seconded by councilmember Maxwell, carried 6-0.
- C. EVCO Proposal for New Mixer in Council Chambers
 - i. Motion to approve made by councilmember Maxwell, seconded by councilmember Kennedy, carried 6-0.

8. RESOLUTIONS

- A. 23-581 Remaining ARPA Fund Allocation
 - i. Motion to approve made by councilmember Kennedy, seconded by councilmember Harbolt, carried 6-0.

9. PUBLIC HEARING / APPEALS – No items listed.

10. ORDINANCES

- A. First Read Ordinance 1109 Complete Streets

- i. Tom Haggerty, City Engineer explained the Complete Streets Ordinance and process. Encourages cities to consider all modes of transportation. Explained that this can include beautification and other improvements that the TIB projects cannot do. Discussion held. Councilmember Kennedy shared his concerns about being required to install sidewalks everywhere once the agreement is signed. Mr. Weathers addressed that the ordinance is written to accommodate the needs of our city. The city will define the standards that fit best for Medical Lake.
- ii. Legal counsel read the ordinance title.
- iii. Motion to approve first read made by councilmember Starr, seconded by councilmember Harbolt, carried 5-1 with councilmember Kennedy voting nay.

11. EXECUTIVE SESSION – None scheduled.

12. EMERGENCY ORDINANCES – No items listed.

13. UPCOMING AGENDA ITEMS - None

14. INTERESTED CITIZENS: AUDIENCE REQUESTS AND COMMENTS - None

15. CONCLUSION

- A. Motion to conclude meeting made by councilmember Kennedy, seconded by councilmember Harbolt. Motion carried 6-0 and meeting concluded at 7:53 pm.

Terri Cooper, Mayor

Koss Ronholt, Finance Director/City Clerk



JOINT STATEMENT

March 3, 2023

Collaborating for our Community

Spokane regional elected leadership announces a 90-day due diligence period to evaluate options for a regional and collaborative model to improve our collective efforts to address homelessness and its impacts on our community.

Our region's greatest strength is our ability to build community vitality through regional partnerships and collaboration, and now is the time to utilize that strength to more effectively and collaboratively address homelessness in our community. The Spokane region has a history of achieving big things when responsibility and successful outcomes are shared.

Homelessness affects communities across the country, and Eastern Washington is no exception. One of the biggest challenges communities face in addressing homelessness, is that much of the homeless response system relies on many people and organizations working effectively across jurisdictions and with a regional focus. Together, we can better coordinate our resources invested in housing and human services, to successfully and efficiently address this crisis.

As elected leaders, we know this isn't a political issue, it is a people issue, and it affects all of us in the Spokane region. We believe that working beyond political and jurisdictional boundaries may give us the best chance to build and deliver strategic and impactful solutions for our entire community for years to come.

About our Collaborative Effort

Developing an integrated strategy with shared responsibility is best achieved when all local elected officials work collaboratively.

One initiative we will be assessing, modeled after successful campaigns in Houston and Atlanta, is an effort to establish an independent authority tasked with making strategic, coordinated decisions and investments, to achieve the best outcomes. The Spokane region is ready to work to establish our own model, one that best fits our community's needs and desires.

We recognize that our many providers and other professionals throughout the homeless response system have worked diligently for many years, but often without the regional planning and support they've needed to achieve greater success. Such a collaborative effort could more effectively address

these needs by properly aligning the region around strategies, funding, and many other resources, including the areas of health and services, housing, and public safety.

Three community leaders, Gavin Cooley, Rick Romero, and Theresa Sanders have volunteered to help organize and guide this effort. Each has a variety of business and public sector experience, and together have worked on numerous successful regional collaborations.

The Next 90 Days

The first step towards developing a regional collaborative authority, is a 90-day due diligence period. During this time, community leaders and many stakeholder groups will work together as quickly as possible to identify how a regional and collaborative system could be created – a system that could be built on shared vision, finances, data, and other resources to optimize the address of homelessness and its impacts on our community. The due diligence period will focus on:

1. Reviewing **potential legal structures** for a regional effort, including pro/con evaluations, e.g. Public Development Authority (PDA), nonprofit, and others
2. Review and discussion of **initial funding, costs and other financial information** in support of a regional effort
3. Review and discussion of **data collection and use** in support of a regional effort
4. Reviewing **potential governance models** and best practices, including roles of jurisdictions, elected leaders and community stakeholders in coordination and support of a regional effort
5. Review and discussion of **initial staffing** in support of a regional effort
6. Review and discussion of how the **success of a regional effort** can be regularly quantified and evaluated

Gathering comprehensive regional stakeholder input will be key to our success. Many different stakeholder groups, providers throughout the homeless response system, people with lived experience, our local Continuum of Care Board, local, state, and federal government agencies their staff and advisory boards, as well as businesses, and residents, will be encouraged to actively participate in this process.

Throughout the due diligence period, there will be many avenues for community members to share their input and perspectives with elected and other leaders, including public forums and a website.

Following the due diligence period, legislative bodies will evaluate the information developed and the likelihood of success for a regional collaborative authority model, and give consideration as to whether and to what degree to participate in the regional authority or other envisioned regional homelessness efforts.

Together we can build a bright future for the Spokane region.

Signed,

JOINT STATEMENT

March 3, 2023

Collaborating for our Community

Spokane County



Mary Kuney
Commission
Chair

Josh Kerns
Commission
Vice Chair

Al French
Commissioner



Amber Waldref
Commissioner



Chris Jordan
Commissioner

City of Spokane



Nadine Woodward
Mayor



Breean Beggs
Council President



Jonathan Bingle
Councilmember



Michael Cathcart
Councilmember



Betsy Wilkerson
Councilmember



Lori Kinnear
Councilmember

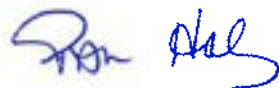


Zack Zappone
Councilmember



Karen Stratton
Councilmember

City of Spokane Valley



Pam Haley
Mayor
On Behalf of the City Council

**CITY OF MEDICAL LAKE
SPOKANE COUNTY, WASHINGTON
RESOLUTION NO. 23-583**

**A RESOLUTION OF THE CITY OF MEDICAL LAKE APPROVING AN
INTERLOCAL AGREEMENT BETWEEN THE CITY OF MEDICAL LAKE
AND SPOKANE REGIONAL BROADBAND DEVELOPMENT AUTHORITY**

WHEREAS, on December 13, 2022, the Spokane County, Washington Board of County Commissioners approved Resolution 2022-0845 creating the Spokane Regional Broadband Development Authority; and

WHEREAS, the Spokane Regional Broadband Development Authority (“Broadline”) was created to provide, among other things, a) oversight of the acquisition of broadband assets/infrastructure on behalf of member cities and towns in Spokane County, b) administer broadband assets/infrastructure for shared use and benefit with the participating cities, towns, and areas, and c) insure necessary broadband infrastructure and services delivery enhancements; and

WHEREAS, pursuant to RCW 39.34, local governmental entities may jointly cooperate with each other to perform functions which each may individually perform; and

WHEREAS, the parties are desirous of entering into an Interlocal Agreement regarding necessary open access broadband infrastructure, services delivery enhancements and digital equity solutions (“Agreement”); and

WHEREAS, the Agreement contains the specific terms and conditions agreed upon by the parties.

NOW THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF MEDICAL LAKE, WASHINGTON, as follows:

Section 1. Approval. The City Council hereby approves of the Agreement between the City of Medical Lake and Broadline as set forth in the attached Exhibit A, which is incorporated herein.

Section 2. Severability. If any section, sentence, clause, or phrase of this resolution should be held to be invalid or unconstitutional by a court of competent jurisdiction, such invalidity or unconstitutionality shall not affect the validity or constitutionality of any other section, sentence, clause or phrase of this resolution.

Section 3. Effective Date. This Resolution shall be effective immediately upon passage by the City of Medical Lake City Council.

ADOPTED this _____ day of April, 2023.

Terri Cooper, Mayor

Attest:

Approved as to Form:

Koss Ronholt, City Clerk

Sean P. Boutz, City Attorney

**AN INTERLOCAL AGREEMENT BETWEEN THE CITY OF MEDICAL LAKE AND
THE SPOKANE REGIONAL BROADBAND DEVELOPMENT AUTHORITY
REGARDING NECESSARY OPEN ACCESS BROADBAND INFRASTRUCTURE,
SERVICES DELIVERY ENHANCEMENTS AND DIGITAL EQUITY SOLUTIONS**

THIS INTERLOCAL AGREEMENT (this “Agreement”) is entered into this ____ day of _____, 2023 (the “Effective Date”) by and between the **CITY OF MEDICAL LAKE**, a Washington State municipal corporation, having offices for the transaction of business at 124 South Lefevre St, Medical Lake, WA 99022 (as the “CITY”), and the **SPOKANE REGIONAL BROADBAND DEVELOPMENT AUTHORITY**, a quasi-municipal corporation created pursuant to RCW 35.21.730 - .755, having offices for the transaction of business at 1026 W Broadway Ave, Spokane, WA 99201 (as “BROADLINC”), who are hereinafter referred to as the “PARTIES.”

WITNESSETH:

WHEREAS, the CITY OF MEDICAL LAKE is a State of Washington code CITY organized and existing under the Constitution and laws of the State of Washington; and

WHEREAS, Spokane County, acting through the Board of County Commissioners, approved Resolution 2022-0845 on December 13, 2022, which is attached hereto as **Exhibit A** and incorporated herein by this reference, which created the Spokane Regional Broadband Development Authority to (i) oversee the acquisition of broadband assets/infrastructure, as lead or co-applicant (where most appropriate), on behalf of member cities and towns of Spokane County, (ii) administer broadband assets/infrastructure for shared use and benefit with the participating cities, towns and areas, and (iii) insure necessary broadband infrastructure and services delivery enhancements; and

WHEREAS, Resolution 2022-0845 also adopted BROADLINC’s charter (the “Charter”), which is attached hereto as **Exhibit B** and incorporated herein by this reference, authorized the creation of corporate bylaws, and established a Board of Directors to govern its affairs; and

WHEREAS, the PARTIES recognize the need to promote digital equity and inclusion that aims to ensure all people and communities have skills, technology and capacity needed to reap the full benefits of our digital economy; and

WHEREAS, Resolution 2022-0845 and the Charter anticipate that various cities and towns will enter into interlocal agreements with BROADLINC for the sole purpose of planning, creating and maintaining regional broadband infrastructure capacity and service delivery expansion to such entities; and

WHEREAS, Chapter 39.34 RCW (the “Interlocal Cooperation Act”) permits local governmental units to make the most efficient use of their powers by enabling them to cooperate on the basis of mutual advantage; and

WHEREAS, it is the desire of the CITY to enter into this Agreement with BROADLINC to assist the CITY in the administration, coordination, implementation, and deployment of broadband infrastructure and access. The purpose of such actions is to encourage, foster, develop, and improve affordable, quality broadband accessibility for underserved, and unserved communities and populations including those where there is demonstrated digital equity needs; as set forth in this Agreement; and

WHEREAS, the PARTIES have entered into this Agreement in consideration of the mutual benefits to be derived and to coordinate their efforts through the structure provided by the Interlocal Cooperation Act.

NOW, THEREFORE, the PARTIES hereby agree as follows:

SECTION NO. 1: **PURPOSE**

The purpose of this Agreement is to allow BROADLINC to coordinate with the CITY in the development of strategies and plans that encourage, foster, develop, and improve affordable, quality broadband accessibility for underserved, and unserved communities and populations in Spokane County.

SECTION 2: **RESPONSIBILITIES OF THE PARTIES**

2.1 **CITY’s Responsibilities:** The CITY’s obligations under this Agreement are to: (1) designate a primary point of contact for BROADLINC Executive Director; (2) coordinate the selection for the board position on the BROADLINC board from towns/cities having recorded populations under 50,000, as determined by the most recent US Census, which board membership shall be otherwise governed by BROADLINC’s Charter and bylaws; and (3) inform BROADLINC of broadband and digital equity related activities, including private internet service providers communicating with the City/Town in conjunction with the broadband efforts. The CITY, within its sole discretion, shall determine the appropriate legislative or administrative action to effectuate the foregoing commitments.

2.2 **BROADLINC’s Responsibilities:** BROADLINC’s obligations are based on the responsibilities enumerated in the Resolution 2022-0845, Charter and its bylaws, and include the following:

- a) Oversee assets of BROADLINC. Additionally, and upon mutual agreement by the PARTIES, the CITY may convey, lease, and/or allow joint use of CITY owned broadband infrastructure to BROADLINC.
- b) Oversee and administer any grant awards in conjunction with other joint applicants and/or subrecipients.

- c) Oversee the Operating Entity for service delivery of Dark Fiber owned by BROADLINC.
- d) Oversee BROADLINC's budget and ensure Third Party Entities timely receive appropriate revenues.
- e) Pursue ongoing applicable funding, grants, and loans and other customary businesses opportunities for enhanced broadband service delivery in infrastructure enhancement and assurance of Digital Equity and Inclusion.
- f) Oversee the expansion of BROADLINC though the inclusion of additional participating municipal corporations, public entities, or municipalities (i.e. cities, towns, municipal corporations, public utility districts, quasi-municipal corporations, and special purpose districts) via Interlocal Cooperation Agreement(s).
- g) Lead strategic direction for broadband delivery, infrastructure and enhancing for the region, with the State Broadband Office, Federal units, and private sector integrations.
- h) Participate, as appropriate, in public – private partnerships discussion, such as franchise agreements related to the broadband industry within Spokane County.
- i) BROADLINC shall submit a yearly budget, annual report of actuals and revenue proforma to CITY.

SECTION NO. 3: DURATION

This Agreement shall take effect on the Effective Date and shall continue unless one or all of the PARTIES give notice of termination as provided for in Section 9 of this Agreement, or unless BROADLINC terminates pursuant to Resolution 2022-0845, its Charter or State law

SECTION NO. 4: COMPENSATION

There shall be no direct compensation to or from either party.

SECTION NO. 5: RELATIONSHIP OF THE PARTIES

The PARTIES' relationship is set forth in the Recitals of Spokane County Resolution 2022-0845, which is attached hereto as **Exhibit A**.

SECTION NO. 6: LIABILITY

6.1 BROADLINC hereby agrees to indemnify and hold harmless the CITY, its officers, and employees from any and all claims, actions, causes of action, judgments, or liens occasioned by or arising out of BROADLINC's negligence or BROADLINC's failure to comply with applicable laws in BROADLINC's performance of this Agreement (except for any willful

misconduct or negligence of the CITY and except for matters for which the CITY has agreed to indemnify BROADLINC hereunder) and to defend for and on behalf of the CITY, its officers and employees, at its own expense, any such claim or cause of action, and, in the event of recovery thereon, to pay any judgment or lien arising therefrom, including any and all costs as a part thereof.

6.2 The CITY hereby agrees to indemnify and hold harmless BROADLINC, its officers and employees from any and all claims, actions, causes of action, judgments or liens occasioned by or arising out of the CITY's negligence or the CITY's failure to comply with applicable laws in the CITY's performance of this Agreement (except for any willful misconduct or negligence of the CITY and except for matters for which BROADLINC has agreed to indemnify the CITY hereunder), and to defend for and on behalf of BROADLINC, its officers and employees, at its own expense, any such claim or cause of action, and, in the event of recovery thereon, to pay any judgment or lien arising therefrom, including any and all costs as a part thereof.

6.3 As BROADLINC's activities, operations, and assets change, the BROADLINC agrees to acquire and maintain appropriate insurance, including but not limited to public liability insurance and errors and omissions insurance, in an amount as specified by the CITY and approved by the appropriate CITY department sufficient to cover potential claims that may arise from or be related to BROADLINC's projects or activities. BROADLINC agrees to name the CITY as an additional insured on such insurance policies.

6.4 Pursuant to state law, the PARTIES expressly understand and agree that any obligation or liability arising out of and/or incurred by either party by reason of this Agreement, or the carrying out of any activity in connection therewith, shall be satisfied exclusively from the assets and credit of the party incurring such liability or obligation, and no creditor or any other person or entity shall have any recourse to any of the assets, credit, or services of the CITY or Spokane County on account of any debts, obligations, or liabilities of BROADLINC. No member of the Board, other officer, employee or agent of BROADLINC shall be individually and personally liable on any obligation assumed by BROADLINC by this Agreement, nor shall any Board member, other officer, employee or agent be individually and personally liable on any obligation assumed by the CITY by this Agreement.

SECTION NO. 7: NOTICES

All notices shall be in writing and served on the other party either personally or by certified mail, return receipt requested. Notices sent by certified mail shall be deemed served when deposited in the United States mail, postage prepaid.

CITY: Mayor or designee
CITY OF MEDICAL LAKE
124 South Lefevre St,
Medical Lake, WA 99022

BROADLINC: Executive Director

BROADLINC Public Development
1116 West Broadway Ave
Spokane, WA 99260

SECTION NO. 8: ANTI-KICKBACK

No officer or employee of either party hereto, having the power or duty to perform an official act or action related to this Agreement, shall have or acquire any interest in the Agreement, or have solicited, accepted or granted a present or future gift, favor, service or other thing of value from or to any person involved in the Agreement.

SECTION NO. 9: TERMINATION

Except as otherwise contemplated by Section 3 above, there shall be no specific termination date applicable to this Agreement. However, either party may, solely within its own discretion, terminate this Agreement with one hundred and eighty days' notice to the non-terminating party.

SECTION NO. 10: MISCELLANEOUS

- A. **NON-WAIVER:** No waiver by either party of any of the terms of this Agreement shall be construed as a waiver of the same or other rights of that party in the future.
- B. **HEADINGS:** Headings are inserted for convenience of reference only and are not to be deemed part of or to be used in construing this Agreement.
- C. **ENTIRE AGREEMENT:** This Agreement contains the entire understanding of the PARTIES. No representation, promises, or agreements not expressed herein have been made to induce either party to sign this Agreement.
- D. **MODIFICATION:** No modification or amendment to this Agreement shall be valid until put in writing and signed with the same formalities as this Agreement.
- E. **ASSIGNMENT:** This Agreement shall be binding upon the PARTIES, their successors and assigns. Neither party may assign, transfer, or subcontract its interest in this Agreement without the written approval of the other party.
- F. **SEVERABILITY:** In the event any portion of this Agreement should become invalid or unenforceable, the rest of the Agreement shall remain in full force and effect.
- G. **COMPLIANCE WITH LAWS:** The PARTIES shall observe all federal, state and local laws, ordinances and regulations, to the extent that they may be applicable to the terms of this Agreement.
- H. **NON-DISCRIMINATION:** No individual shall be excluded from participation in, denied the benefit of, subjected to discrimination under, or denied employment in the administration of or in connection with this Agreement because of age, sex, race, color,

religion, creed, marital status, familial status, sexual orientation, national origin, the presence of any sensory, mental or physical disability, or use of a service animal by a disabled person.

- I. **VENUE:** This Agreement shall be under the laws of Washington State. Any action at law, suit in equity or judicial proceeding regarding this Agreement, or any provision hereto, shall be instituted only in courts of competent jurisdiction within Spokane County, Washington.
- J. **COUNTERPARTS:** This Agreement may be executed in any number of counterparts, each of which, when so executed and delivered, shall be an original, but such counterparts shall together constitute but one and the same.
- H. **UNDEFINED OR CONFLICTING TERMS:** Any capitalized terms that are otherwise undefined herein shall take the meaning assigned in the attached Resolution 2022-0845 or Charter. In the event of a conflict between the terms of this Agreement and Resolution 2022-0845 or the Charter; Resolution 2022-0845 shall control, the Charter shall be second in priority followed by this Agreement.

SECTION NO. 11: RCW 39.34 REQUIRED CLAUSES

- A. **PURPOSE:** See Section No. 1 above.
- B. **DURATION:** See Section No. 3 above.
- C. **ORGANIZATION OF SEPARATE ENTITY AND ITS POWERS:** No new or separate legal or administrative entity will be created to administer the provisions of this Agreement.
- D. **RESPONSIBILITIES OF THE PARTIES:** See Section No. 2 above.
- E. **AGREEMENT TO BE FILED:** The CITY shall file this Agreement with its CITY Clerk or place it on its web site or other electronically retrievable public source.
- F. **FINANCING:** To the extent applicable, each party shall be responsible for the financing of its contractual obligations under its normal budgetary process.
- G. **TERMINATION:** See Section No. 9 above.
- H. **PROPERTY UPON TERMINATION:** Title to all property acquired by BROADLINC under this Agreement shall remain with BROADLINC, unless otherwise provided for in Ordinance No. 2022-0845 or as otherwise agreed to by the PARTIES.

IN WITNESS WHEREOF, the PARTIES have caused this Agreement to be executed as of the Effective Date first written above.

CITY OF MEDICAL LAKE

By: _____
Its: _____

Attest:

Approved as to form:

CITY Clerk

CITY Attorney

BROADLINC

By: _____
Its: _____

EXHIBIT A

(Resolution 2022-0845)

EXHIBIT B

(PDA Charter)

RESOLUTION NO. 22 - 0845

A RESOLUTION CREATING SPOKANE REGIONAL BROADBAND DEVELOPMENT AUTHORITY (BROADLINC); APPROVING A CHARTER THEREFOR; ESTABLISHING A BOARD TO GOVERN THE AFFAIRS OF BROADLINC; PROVIDING HOW BROADLINC SHALL CONDUCT ITS AFFAIRS; AND OTHER MATTERS RELATING THERETO.

WHEREAS, pursuant to the Constitution and laws of the State of Washington, Spokane County, Washington is a class A county duly organized and existing (“Spokane County”); and

WHEREAS, pursuant to the provisions of the Revised Code of Washington (“RCW”) 36.01.030, the powers of Spokane County can only be exercised through the Board of County Commissioners of Spokane County, Washington (“Board of County Commissioners”); and

WHEREAS, pursuant to the provisions of RCW 36.32.120(6), Spokane County, acting through the Board of County Commissioners has the care of county property and the management of county funds and business; and

WHEREAS, pursuant to the provisions RCW 43.330.530 through RCW43.330.538, Spokane County may coordinate with local governments, tribes, public and private entities, nonprofit organizations, and consumer-owned and investor-owned utilities to develop strategies and plans promoting deployment of broadband infrastructure and greater broadband access, while protecting proprietary information. The purpose of such actions being to encourage, foster, develop, and improve affordable, quality broadband accessibility for underserved, and unserved communities and populations in Spokane County; and

WHEREAS, the Spokane County recognizes that Digital Equity Act provides \$2.75 billion to establish three grant programs that promote digital equity and inclusion which aim to ensure that all people and communities have the skills, technology, and capacity needed to reap

the full benefits of our digital economy. The Act is a necessary component of broadband access for constituents within incorporated and unincorporated areas of the Spokane County; and

WHEREAS, Spokane County, acting through the Board of County Commissioners, desires to create a public development authority that will (i) oversee acquisition of broadband assets/infrastructure, as lead or co-applicant (where most appropriate), on behalf of member cities and towns of Spokane County, (ii) administer broadband assets/infrastructure for shared use and benefit with the participating cities, towns and areas, and (iii) insure necessary broadband infrastructure and services delivery enhancements are available; and

WHEREAS, Spokane County anticipates that various cities and towns will enter into interlocal cooperation act agreements with the Public Development Authority created by this document for the sole purpose of regional broadband infrastructure capacity and services delivery expansion to such entities; and

WHEREAS, the Board of County Commissioners of Spokane County, Washington, is desirous of considering the creation of a public development authority as authorized under RCW 35.21.730 through RCW 35.31.759 for the hereinabove purposes and finds the adoption of this Resolution will further the general public health, safety, welfare and economic development opportunity.

NOW, THEREFORE, BE IT ORDERED AND RESOLVED BY THE BOARD OF COUNTY COMMISSIONERS OF SPOKANE COUNTY, STATE OF WASHINGTON, PURSUANT TO THE PROVISIONS OF RCW 35.21.730 THROUGH RCW 35.21.759 AS FOLLOWS:

A new chapter hereby added to the Spokane County Code to read as follows:

SPOKANE REGIONAL BROADBAND PUBLIC DEVELOPMENT AUTHORITY

SECTION NO. 1: Purpose.

As authorized by RCW 35.21.730 through RCW 35.21.759, a public authority, to be known as "SPOKANE REGIONAL BROADBAND DEVELOPMENT AUTHORITY (hereinafter (BROADLINC)", is hereby created exclusively to undertake, assist with, and otherwise facilitate the public function of providing broadband infrastructure and services delivery enhancements, including but not limited to, terrestrial middle-mile and last-mile access, wireless relay points, satellite connection and other associated known and future technologies, as well as performing any other public function relating to providing such infrastructure services, delivery enhancements, including but not limited to:

1. Own, contract for the operation and management of and oversee assets of BROADLINC.
2. Oversee and administer any grant awards in conjunction with other joint applicants and/or subrecipients.
3. Contract with and oversee the Operating Entity for service delivery of Dark Fiber owned by BROADLINC.
4. Enter into agreements under the ILA with Member Entities to provide broadband infrastructure and services within the jurisdictional boundaries of such entities.
5. Oversee BROADLINC's budget and ensure Member Entities timely receive appropriate revenues.
6. Pursue ongoing applicable funding, grants, and loans and other customary business opportunities for enhanced broadband service delivery in infrastructure enhancement and assurance of Digital Equity and Inclusion.
7. Oversee the expansion of BROADLINC through the inclusion of additional participating municipal corporations, public entities, or municipalities (*i.e.* cities, towns, municipal

corporations, public utility districts, quasi-municipal corporations, and special purpose districts).

8. Lead strategic direction for broadband delivery, infrastructure and enhancing for the region, with the State Broadband Office, Federal units and private sector integrations.
9. Participate, as appropriate, in public – private partnerships discussion, such as franchise agreements related to the broadband industry within Spokane County.

For the purpose of receiving the same immunities or exemptions from taxation as that of the County, BROADLINC constitutes a public agency and a creation of the County (within the meaning of Article VII, § I of the Constitution of the state of Washington and within the meaning of those terms in regulations of the United States Treasury and rulings of the Internal Revenue Service prescribed pursuant to Section 103 of the Internal Revenue Code of 1986, as amended).

SECTION NO. 2: Definitions.

Unless the context clearly requires otherwise, the definitions in this section apply throughout this chapter.

- (1) "BROADLINC Governing Board" or "Board" means the governing body of BROADLINC.
- (2) "Bylaws" means the rules adopted for the regulation or management of the affairs of BROADLINC and all subsequent amendments thereto.
- (3) "Operating Entity" means the entity performing the operational services to maintain broadband assets and services including the use of Dark Fiber strands.
- (4) "ISP" means private sector Internet Services Provider that provides the ability for a user to send information to and receive information from the internet for business and personal use.
- (5) "Middle-Mile" means the segment of internet connectivity that connects the global internet

network to the last mile. It is often delivered via high-speed fiber. Middle-mile networks service as a backbone for a specific region.

(6) "Digital Equity and Inclusion" means the Broadband Equity, Access, and Deployment ("BEAD") program as part of the Infrastructure Investment and Jobs Act ("IIJA").

(7) "Charter" means the charter as the governing document of BROADLINC adopted by this chapter and all subsequent amendments thereto.

(8) "County" means Spokane County.

(9) "Clerk" means the clerk of the Board of County Commissioners or a person authorized to act on such officer's behalf.

(10) "Final action" of the BROADLINC Board means a collective positive or negative decision or an actual vote by a vote of a majority of voting members of the BROADLINC Board.

(11) "Property" shall have the same meaning as in Article VII, § 1 of the Washington State Constitution, and includes real and personal property, equipment and furnishings, cash, accounts receivable, and anything tangible or intangible that is capable of being owned or controlled to produce value or generate cash flow.

(12) "Public authority" or "authority" means the authority created under this chapter.

(13) "Public agency" means any agency, political subdivision, or unit of local government of the State including, but not limited to, municipal corporations, quasi municipal corporations, special purpose districts, and local service districts; any agency of the State government; any agency of the United States; any Indian tribe recognized as such by the federal government.

(14) "Resolution" means a final action of a quorum of the Board, evidenced by a written instrument signed by the chair of the Board.

(15) "State" (when used as a noun) shall mean the State of Washington.

(16) “Dark Fiber” means fiber optical cable that is not provisioned with lit services for fiber optic communication.

(17) “Monthly Reoccurring Charge” or “MRC” means the monthly fee charged to access BROADLINC dark fiber by a telecommunications provider.

(18) “Interlocal Cooperation Act” or “ILA” means chapter 39.34 RCW, as it may be amended from time to time.

(19) “Net Operating Revenue” means the excess funds BROADLINC has remaining for allocation back to eligible Member Entities after (i) paying the Operating Entity, (ii) paying for BROADLINC operating expenses, and (iii) paying for capital uses and establishment of a capital reserve or as otherwise determined appropriate by the BROADLINC Board.

(20) “Member Entities” means special purpose district, municipal corporation, political subdivisions, or other public or private entities or organizations, with an executed ILA with BROADLINC.

(21) “Broadband Action Team” or “BAT” means the unique group established for Spokane County with the Washington State University Extension and Washington State Broadband Office for community engagement to discuss broadband challenges and opportunities, which lead to local capacity building through increased broadband awareness, access and adoption need and highest demand.

SECTION NO. 3: General powers.

Except as limited by the Constitution of the State, laws, regulations, charter, or this chapter, BROADLINC shall have and may exercise all lawful powers necessary or convenient to affect the purposes for which BROADLINC is organized, including the powers listed in this section.

(1) Acquire, construct, own, sell, lease, exchange, encumber, improve, use, transfer, or

grant security interest in real, personal and intellectual property.

(2) Contract with public and private entities.

(3) Employ and terminate (with or without cause) an Executive Director and personnel and contract for personnel and services with public and private entities.

(4) Accept transfers, gifts, or loans of funds or property.

(5) Sue and be sued.

(6) Incur indebtedness and issue bonds and other instruments evidencing indebtedness with prior approval of the County.

(7) Transfer funds, property, property interests, or services.

(8) Exercise any other powers that are consistent with the purpose for which BROADLINC is organized, and are within the express, or implied authority granted by the County subject to the limitation in Section 5 hereinafter including but not limited to:

(a) creation of a strategic plan from which all operational activities flow,

(b) determining how allocated revenues, if any, from the Board of County Commissioners, as well as other revenues collected and/or administered by BROADLINC are expended,

(c) approval of operational and capital budgets for broadband infrastructure and service delivery, and other services provided by BROADLINC paid for in whole or part by revenue sources collected and/or administered by BROADLINC, and

(d) establish a Dark Fiber lease rate and other related assessments or Monthly Reoccurring charge (MRC), and

(9) Make direct operational decisions with respect to the assets owned and service contracts to operate and utilize such assets.

SECTION NO. 4: Liability.

BROADLINC is an independent legal entity exclusively responsible for its own debts, obligations and liabilities. All liabilities incurred by BROADLINC shall be satisfied exclusively from the assets and property of BROADLINC. No creditor or other person shall have any recourse to the assets, credit, or property of the County or other entity on account of any debts, obligations, liabilities, acts, or omissions of BROADLINC, unless otherwise expressly agreed to in writing by the County or other entity.

SECTION NO. 5: Limitation of powers.

In all activities and transactions, BROADLINC shall be limited as provided in this section.

(1) BROADLINC shall have no power of eminent domain or any power to levy taxes or special assessments.

(2) BROADLINC shall have no power to incur or create any liability that permits recourse by any party or member of the public to any assets, services, resources, or credit of the County or any parties under contract with BROADLINC. All liabilities incurred by BROADLINC shall be satisfied exclusively from the assets and property of BROADLINC, and no creditor or other person shall have any recourse to the assets, credit, or property of the County or any party under contract with BROADLINC on account of any debts, obligations, liabilities, acts or omissions of BROADLINC, unless expressly agreed to in writing by the County or party. The powers, authorities, or rights expressly or impliedly granted to BROADLINC shall not be less than and shall be subject to the County's expressed or implied powers.

(3) BROADLINC is subject to all general laws regulating the County and its officers and officials, including, but not limited to:

- (a) Audits by the State Auditor and accounting requirements in chapter 43.09 RCW;
- (b) Open public record requirements in chapter 42.56 RCW;

- (c) Open public meetings and other public process laws in chapter 42.30 RCW;
- (d) Preservation and destruction of public records in chapter 40.14 RCW;
- (e) Public works requirements in chapter 39.04 RCW;
- (f) Competitive bidding and prevailing wage laws in chapter 39.04 RCW;
- (g) Local government whistleblower laws in chapter 42.41 RCW;
- (h) The prohibition on using public facilities for campaign purposes in chapter 42.17A RCW;
- (i) The Code of Ethics for Municipal Officers-Contract Interests in chapter 42.23 RCW;
- (j) Payments and Advancements in chapter 42.24 RCW;
- (k) The provisions of chapter 4.96 RCW for actions against BROADLINC and its Board, officers, employees, and volunteers; and
- (l) Sale or encumbrance of any real property transferred by the County to the BROADLINC in RCW 35.21.747.

SECTION NO. 6: Charter.

The Charter of BROADLINC is attached hereto as Exhibit A. The Charter shall be issued in duplicate originals, each bearing the signatures of a majority of the members of the Board of County Commissioners and attested by the Clerk. One original shall be filed with the Clerk with this resolution; a duplicate original shall be provided to BROADLINC.

SECTION NO. 7: Effect of issuance of Charter.

BROADLINC shall commence its existence effective upon issuance of its Charter. Except as against the State or the County in a proceeding to cancel or revoke the Charter, delivery of a duplicate original Charter shall conclusively establish that BROADLINC has been established in compliance with the procedures of this chapter. A copy of the Charter, and any amendments

thereto, shall be provided to the State Auditor.

SECTION NO. 8: BROADLINC Governing Board / Subcommittees.

All corporate powers of BROADLINC shall be exercised by or under the authority of the BROADLINC Governing Board (the "Board"); and the business, property and affairs of BROADLINC shall be managed under the supervision of the Board, except as may be otherwise provided by law, this chapter, or the Charter.

(1) The members of the Board shall be as provided in the Charter. The Board shall be composed as follows:

- a) One (1) Spokane County Commissioner
- b) Spokane County Chief Executive Officer
- c) Spokane County Public Works Director
- d) One (1) Elected Representative appointed jointly from the towns and/or cities having recorded populations under 50,000, as determined by the most recent US Census, and having executed an Interlocal Cooperation Act Agreement with BROADLINC for services
- e) One (1) Elected Representative appointed jointly from the cities having a recorded population over 50,000, as determined by the most recent US Census, and having executed an Interlocal Cooperation Act Agreement with BROADLINC for services

All Board members shall serve without compensation from BROADLINC.

(2) The following two (2) Working Subcommittees shall be established by the Board which shall have the following corresponding membership, responsibilities and voting principles where identified:

Working Subcommittee	Membership on Working Subcommittee	Duties of Working Subcommittee
Broadband Action Team	• BROADLINC Executive Director	Monthly Meetings

(BAT)	<ul style="list-style-type: none"> Members listed in the BAT Team 	<ul style="list-style-type: none"> Community and Stakeholder Engagement Community and Stakeholder Communication and Feedback Work with other Washington State BAT Teams
Finance Committee	<ul style="list-style-type: none"> BROADLINC Executive Director Spokane County Senior Director, Finance and Administration (or representative) BROADLINC Board Member appointed by the Board 	<ul style="list-style-type: none"> Yearly Budget Grant Scope and Budget Responses Dark Fiber Lease and/or MRC Recommendation Update on services contracts

SECTION NO. 9: Quorum.

At all meetings of the Board, a majority of voting members of the Board shall constitute a quorum.

SECTION NO. 10: Meetings of the Board.

The Board shall meet as provided in the Charter, but not less than quarterly. Notice of meetings shall be provided as required by chapter 42.30 RCW. Minutes shall be kept in accordance with chapter 42.30 RCW. Members of the Board may participate in a regular or special meeting through the use of any means of remote participation as authorized by law. Any Board member participating in a meeting by such means is deemed to be present in person at the meeting for all purposes including, but not limited to, establishing a quorum.

SECTION NO. 11: Bylaws.

Within thirty (30) days after issuance of the Charter, the Board shall hold an organizational meeting, appoint a chair and vice chair, and adopt Bylaws. The Bylaws shall be consistent with the Charter. In the event of a conflict between the Bylaws, this resolution, and the Charter, this resolution shall control, the Charter shall be second in priority, followed by the Bylaws. The power to alter, amend, or repeal the Bylaws or adopt new ones shall be vested in the Board except as otherwise provided in the Charter.

SECTION NO. 12: Board review and approval of required items.

- (1) At least quarterly, the Board shall review monthly statements of income and

expenses which compare budgeted expenditures to actual expenditures. The Board shall review all such information at regular meetings, the minutes of which shall specifically note such reviews and include such information.

(2) Review and approval of the Board by resolution shall be necessary for any of the following transactions:

- (a) Transfer or conveyance of an interest in real estate other than release of a lien or satisfaction of a mortgage after payment has been received and execution of a lease.
- (b) Contracting of debts, issuance of notes, debentures or bonds, and mortgaging or pledging of BROADLINC assets or credit to secure the same.
- (c) Donation of money, property, or other assets belonging to BROADLINC.
- (d) Action by BROADLINC as a surety or guarantor.
- (e) Adoption of an annual budget and a separate capital budget, and amendments thereto.
- (f) Certification of annual reports and statements by the state auditor, as required under chapter 43.09 RCW, to be filed with the clerk as true and correct in the opinion of the Board and of its members except as noted.
- (g) Adopting and amending the Bylaws.
- (h) Consistent with chapter 4.96 RCW, adoption of policies and procedures for managing actions against BROADLINC, the Board, officers, employees, and volunteers.
- (i) Instituting legal proceedings in BROADLINC's name.
- (j) Dissolution of BROADLINC, upon approval by two thirds of the entire Board.

(k) Amending Dark Fiber Lease and/or Monthly Reoccurring Charge (MRC).

(l) Recommending amendments to the Charter.

SECTION NO. 13: Charter amendments.

(1) Proceedings Preliminary to Recommending Amendments to the Charter. Any Board member may propose a Charter amendment(s) (subject to prior approval by the Board as provided in this section) to the County. Final action by resolution of the Board is necessary to consider recommending proposed amendment(s) to the Charter. If the Board approves consideration of a proposed amendment(s) to the Charter, information about the proposed Charter amendment(s), including a copy of the proposed amendment(s) in a format that strikes over material to be deleted and underlines new material and a statement of the amendment's purpose and effect, shall be provided to each member of the Board at least thirty (30) days prior to the meeting at which a vote will be taken on a resolution recommending to the County amending the Charter.

(2) Action Amending the Charter. After the preliminary proceedings described in subsection (1) of this section have occurred, final action upon approval by two thirds of the entire Board may be taken recommending to the County amending the Charter. If the amendment(s) differs materially from the original proposed amendment(s) considered during preliminary proceedings, then the preliminary proceedings described in subsection (1) of this section shall be repeated. After final action recommending amending the Charter, the amended Charter recommendation shall be forwarded to the County for action. The County shall consider any recommendation of the Board received under this Section and either approve, disapprove or modify the recommendation as the County deems appropriate. Any amendment to the Charter shall be issued in duplicate originals, each bearing the signature of

the Chair of the Board of County Commissioners. One original shall be filed with the clerk and a duplicate original shall be forwarded to and retained by BROADLINC. PROVIDED, however this Section shall not in any way limit the ability of the County to amend or modify the Charter at any time without processing an amendment with the Board.

SECTION NO. 14: Treasurer.

The Board shall appoint the Spokane County Treasurer to administer a special fund designated "Operating fund of BROADLINC." The appointed treasurer shall be responsible for handling BROADLINC's accounts and finances. The Board shall file a fidelity bond in an amount determined by the Board to be adequate and appropriate covering the actions and omissions of the Treasurer.

SECTION NO. 15: Funding.

Funding of BROADLINC operations and activities shall come substantially from: (1) grants, and (2) Dark Fiber Lease and/or Monthly Reoccurring Charge (MRC). BROADLINC shall use all revenues solely as provided for in the Section No. 1 of this Resolution.

SECTION NO. 16: Audits, inspections, and reports.

Local government accounting laws, and RCW 43.09.200 through 43.09.2855, shall apply to BROADLINC, and copies of all reports filed with the State Auditor shall be filed contemporaneously with the Clerk. At any reasonable time and as often as the County or State Auditor deem necessary, BROADLINC shall make available for inspection, examination, auditing, and copying all of its records, including but not limited to contracts, invoices, payrolls, personnel records, inventories, and financial records and other relevant records. Consistent with RCW 35.21.745(1), the County shall retain the right to control and oversee BROADLINC's operations and funds in order to correct any deficiency and to assure that its purpose is being

accomplished. This responsibility shall not create any liability for the County. BROADLINC shall honor any request by the County in conjunction with its meeting this statutory responsibility.

SECTION NO. 17: Insurance.

BROADLINC shall maintain in full force and effect public liability insurance in an amount sufficient to cover potential claims for bodily injury, death, or disability and for property damage, which may arise in connection with the acts or omissions of BROADLINC naming the County as an additional insured (or equivalent under the terms of the policy/policies).

SECTION NO. 18: Trusteeship.

The County may, after a public hearing with notice to BROADLINC, petition the superior court to impose a trusteeship over BROADLINC. Any trustee appointed by the superior court shall take such actions as necessary during the trusteeship to achieve the object thereof as reasonable, including suspend and/or remove BROADLINC officials, manage the assets and affairs of BROADLINC, exercise any and all BROADLINC powers as necessary or appropriate to fulfill outstanding obligations, restore the capability of BROADLINC, and, if so authorized by the superior court, to oversee its dissolution in accordance with RCW 35.21.750.

SECTION NO. 19: Dissolution.

(1) The Board may propose to the County that BROADLINC be dissolved. Such proposal must be made by resolution adopted by two-thirds of the entire Board at a regular or special meeting of which thirty (30) days advance written notice was given to each Board member, the Clerk and every Member Entity receiving services by BROADLINC at the time. Information about the proposed dissolution, including the grounds for dissolution and distribution of BROADLINC property, shall be provided to each member of the Board, the

Clerk and every Member Entity of BROADLINC at the time at least fourteen (14) days prior to the meeting at which a vote will be taken on the resolution. Within thirty days of adoption of a resolution approving dissolution of BROADLINC, a copy of the resolution shall be delivered to the Clerk. The County may, after a public hearing, dissolve BROADLINC. Upon dissolution, all BROADLINC property, net of all outstanding liabilities, shall be distributed as set forth in an agreed plan of distribution adopted by a two-thirds of the entire Board.

(2) Upon the action taken under Section 19 (1), the County may, after a public hearing with notice to BROADLINC, petition the superior court to dissolve BROADLINC in accordance with RCW 35.21.750. Upon dissolution of BROADLINC and the winding of its affairs, and as determined by order of the Court, any remaining rights, assets, and property may be transferred to a qualified public entity or entities which will fulfill the purposes for which BROADLINC was chartered. Otherwise, all remaining rights, assets, and property shall vest in the County. Upon completion of dissolution proceedings, the Clerk shall indicate such dissolution by inscription of "charter cancelled" on the Charter of BROADLINC, and the existence of BROADLINC shall cease. The Clerk shall give notice thereof to the State Auditor and to other persons as provided in the dissolution statement.

(3) In the event of the insolvency or dissolution of BROADLINC, the superior court of the county in which BROADLINC is or was operating shall have jurisdiction and authority to appoint trustees or receivers of corporate property and assets and supervise such trusteeship or receivership: Provided, that all liabilities incurred by BROADLINC shall be satisfied exclusively from the assets and properties of BROADLINC and no creditor or other person shall have any right of action against the County on account of any debts, obligations, or liabilities of such public corporation, commission, or authority.

SECTION NO. 20: Construction and order of precedence.

This chapter shall be liberally construed so as to effectuate its purposes and the purposes of RCW 35.21.730 through RCW 35.21.759. In the event of an inconsistency between the Charter and this chapter, the inconsistency shall be resolved by giving precedence to this chapter.

SECTION NO. 21: Severability.

If any provision of this resolution or its application to any person or circumstance is held invalid or unconstitutional, the remainder of the resolution or its application to other persons or circumstances shall not be affected.

SECTION NO. 22: Effective Date.

This resolution shall be effective upon adoption and passage by the Board of County Commissioners.

PASSED AND ADOPTED this 13th day of Dec., 2022.



BOARD OF COUNTY COMMISSIONERS
OF SPOKANE COUNTY, WASHINGTON

ABSENT
Mary L. Kuney, Chair

Al French
Al French, Vice-chair

ATTEST:

Ginna Vasquez
Ginna Vasquez
Clerk of the Board

Josh Kerns
Josh Kerns, Commissioner

EXHIBIT A

CHARTER OF THE SPOKANE REGIONAL BROADBAND DEVELOPMENT AUTHORITY

ARTICLE I: NAME

The name of the Authority shall be SPOKANE REGIONAL BROADBAND DEVELOPMENT AUTHORITY, also known as BROADLINC.

ARTICLE II: AUTHORITY AND LIMIT ON LIABILITY

Section II.01. Authority. BROADLINC is a public corporation organized pursuant to RCW 35.21.730 through 35.21.759, and Resolution No. 22-_____ (hereinafter "Resolution") of Spokane County, Washington (the "County").

Section II.02. Limit on Liability. All liabilities incurred by BROADLINC shall be satisfied exclusively from the assets and properties of BROADLINC, and no other creditor or other person shall have any right of action against or recourse to the County or any of the parties under contract with BROADLINC, their assets, credit or property on account of any debts, obligations, liabilities or acts or omissions of BROADLINC, unless expressly agreed to in writing by the County or party.

The following disclaimer shall be printed or stamped on all contracts and other documents that evidence any debt by BROADLINC. Failure to display, print or stamp the statement required by this section shall not be taken as creating any liability for any entity other than BROADLINC.

The Spokane Regional Broadband Development Authority ("BROADBAND") is organized pursuant to Resolution No. 22-___ of the Board of County Commissioners of Spokane County, Washington (the "County"), as existing or as hereinafter amended, and RCW 35.21.730 through 35.21.755. All liabilities incurred by BROADLINC shall be satisfied exclusively from the assets and properties of BROADLINC and no creditor or other person shall have any right of action against the County or any other entity on account of any debts, obligations, or liabilities of BROADLINC unless expressly agreed to in writing by the County or entity.

RCW 35.21.750 provides as follows: "[A]ll liabilities incurred by such public corporation, commission, or authority shall be satisfied exclusively from the assets and properties of such public corporation, commission, or authority and no creditor or other person shall have any right of action against the city, town, or county creating such corporation, commission, or authority on account of any debts, obligations or liabilities of such public corporation, commission, or authority."

ARTICLE III: DEFINITIONS

The words and phrases in this Charter shall have the same meanings as defined in the Resolution.

ARTICLE IV: DURATION

The duration of BROADLINC shall be perpetual except as provided in the Resolution.

ARTICLE V: PURPOSE

As authorized by RCW 35.21.730 through RCW 35.21.759, BROADLINC is established exclusively to undertake, assist with, and otherwise facilitate the public function of providing broadband infrastructure and services delivery enhancements, including but not limited to, terrestrial middle-mile and last-mile access, wireless relay points, satellite connection and other associated known and future technologies, as well as performing any other public function relating to providing such infrastructure services, delivery enhancements, including but not limited to:

1. Own, contract for the operation and management of and oversee the assets of BROADLINC.
2. Oversee and administer any grant awards in conjunction with other joint applicants and/or subrecipients.
3. Contract with and oversee the Operating Entity for service delivery of Dark Fiber Access owned by BROADLINC by ISPs.
4. Enter into agreements under the ILA with Member Entities to provide broadband infrastructure and services within the jurisdictional boundaries of such entities.
5. Oversee BROADLINC's budget and ensure Member Entities timely receive appropriate revenues.
6. Pursue ongoing applicable funding, grants, and loans and other customary businesses opportunities for enhanced broadband service delivery in infrastructure enhancement and assurance of Digital Equity, also called DDI.
7. Oversee the expansion of BROADLINC through the inclusion of additional participating municipal corporations, public entities, or municipalities (i.e. cities, towns, municipal corporations, public utility districts, quasi-municipal corporations, and special purpose districts).
8. Lead strategic direction for broadband delivery, infrastructure and enhancing for the region, with the State Broadband Office, Federal units and private sector integrations.
9. Participate, as appropriate, in public – private partnerships discussion, such as franchise agreements related to the broadband industry within Spokane County.

For the purpose of receiving the same immunities or exemptions from taxation as that of the Spokane County, BROADLINC constitutes a public agency and a creation of Spokane County (within the meaning of Article VII, § 1 of the Constitution of the state of Washington and within the meaning of those terms in regulations of the United States Treasury and rulings of the Internal Revenue Service prescribed pursuant to Section 103 of the Internal Revenue Code of 1986, as amended).

ARTICLE VI: POWERS AND RESPONSIBILITIES

Section VI.01. Powers. BROADLINC shall have and may exercise all lawful powers conferred by State laws, the Resolution, this Charter and its Bylaws. BROADLINC in all of its activities and transactions shall be subject to the powers, procedures subject to the limitations contained in the Resolution.

Section VI.02. Provision of Services. BROADLINC shall provide broadband infrastructure and

services to Member Entities desiring the same pursuant to one or more agreements under the ILA. Member Entities receiving such services shall pay a Dark Fiber Lease and/or MRC as established by the BROADLINC Governing Board ("Board").

Section VI.03. Actions against BROADLINC, the Board, Officers, Employees and Volunteers. The provisions of chapter 4.96 RCW shall apply to actions against BROADLINC, its directors, officers, employees and volunteers.

ARTICLE VII: GOVERNING BOARD

Section VII.01. Authority and Responsibilities of the Board. The Board shall have the authority and responsibilities to provide policy oversight and legislative direction for BROADLINC and its administration and assure the purposes described in the Resolution and this Charter are reasonably accomplished.

Section VII.02. Board Composition. The Board shall consist of _____ () persons as follow:

1. One (1) Spokanc County Commissioner
2. Spokane County Chief Executive Officer
3. Spokane County Public Works Director
4. One (1) Elected Representative appointed jointly from the towns and/or cities having recorded populations under 50,000, as determined by the most recent US Census, and having executed an Interlocal Cooperation Act Agreement with BROADLINC for services
5. One (1) Elected Representative appointed jointly from the cities having a recorded population over 50,000, as determined by the most recent US Census, and having executed an Interlocal Cooperation Act Agreement with BROADLINC for services

Section VII.03. Conditions. A member of the Board may only serve for such a time that he or she is the duly appointed and acting in the capacity they represent. All members of the Board serve without compensation from BROADLINC.

Section VII.04. Quorum. At all meetings of the Board, a majority of voting members shall constitute a quorum.

Section VII.05. Committees. The Board may have Working Subcommittees as provided for in the Resolution.

Section VII.06. Voting. The Board shall strive to operate by consensus. Each individual member of the Board shall be a voting member. Any resolution or motion authorizing or approving an action shall require an affirmative vote of a majority of the Board members voting on the issue, unless otherwise provided for in the Resolution or this Charter. Proxy voting shall not be allowed.

Section VII.07. Officers. The Board shall have two officers, a Chair and Vice-Chair. Appointment, removal and term of office shall be established in the Bylaws.

Section VII.08. Actions Requiring Approval by Resolution of the Board. Review and approval of Board by resolution shall be necessary for any of the following actions:

1. Transfer or conveyance of an interest in real estate other than release of a lien or

satisfaction of a mortgage after payment has been received and execution of a lease.

2. Contracting of debts, issuance of notes, debentures or bonds, and mortgaging or pledging of BROADLINC assets or credit to secure the same.
3. Donation of money, property, or other assets belonging to BROADLINC.
4. Action by BROADLINC as a surety or guarantor.
5. Adoption of an annual budget and a separate capital budget, and amendments thereto.
6. Certification of annual reports and statements by the state auditor, as required under chapter 43.09 RCW, to be filed with the Clerk as true and correct in the opinion of the Board and of its members except as noted.
7. Adopting and amending the Bylaws.
8. Consistent with chapter 4.96 RCW, adoption of policies and procedures for managing actions against BROADLINC, the Board, officers, employees, and volunteers.
9. Instituting legal proceedings in BROADLINC's name.
10. Dissolution of BROADLINC, upon approval by two-thirds of the entire Board.
11. Amending Dark Fiber Lease and/or Monthly Reoccurring Charge (MRC).
12. Recommending amendments to this Charter.

ARTICLE VIII: MEETINGS

Section VIII.01. Frequency of Meetings. The Board shall meet as established in the Bylaws, but not less than quarterly. Special meetings of the Board may be called as provided in the Bylaws.

Section VIII.02. Open Public Meetings. The Open Public Meetings Act, chapter 42.30 RCW, shall apply to all meetings of the Board or any committee or working committee thereof when the committee acts on behalf of the Board, conducts hearings or takes testimony or public comment. Members of the Board may participate in a regular or special meeting through the use of any means of remote participation as authorized by law. Any Board member participating in a meeting by such means is deemed to be present in person at the meeting for all purposes including, but not limited to, establishing a quorum.

Section VIII.03. Parliamentary Authority. The most current version of Robert's Rules of Order Newly Revised shall guide meetings where they are consistent with this Charter or Bylaws.

Section VIII.04. Minutes. The Board shall cause minutes to be kept of all regular and special meetings of the Board. Minutes shall include a record of individual votes on all matters requiring approval of the Board. Minutes shall be kept in accordance with chapter 42.32 RCW.

ARTICLE IX: BYLAWS

The Board shall review, approve and amend Bylaws for all matters related to the governance of BROADLINC. The Bylaws provide rules governing BROADLINC and its activities consistent with the laws of the State, the Resolution and this Charter. In the event of a conflict between the Bylaws, the

Resolution, and this Charter, the Resolution shall control, this Charter shall be second in priority, followed by the Bylaws. Any amendments to the Bylaws (which may consist of an entirely new set of Bylaws) shall be approved by resolution of the Board.

ARTICLE X: AMENDMENTS OF CHARTER AND BYLAWS

Amendments to this Charter shall be as provided in the Resolution. Amendments to the Bylaws shall be as provided in Article IX of this Charter and be amended by majority vote of the BROADLINC Governing Board.

ARTICLE XI: ADOPTION OF FISCAL YEAR AND BUDGET

Section XI.01. Fiscal Year. The fiscal year shall coincide with the calendar year.

Section XI.02. Funding. Funding for BROADLINC operations and activities include but are not limited to funds distributed to BROADLINC from grants and Dark Fiber Lease and/or Monthly Reoccurring Charge (MRC). The Board shall determine any Dark Fiber Lease and/or Monthly Reoccurring Charge (MRC).

Section XI.03. Budget Process. Within the timelines prescribed in the Bylaws, the Director shall provide to the Board a preliminary budget approved by the Finance Committee for the ensuing fiscal year.

Section XI.04. Budget Adoption. Within the timelines prescribed in the Bylaws, the Director shall provide to the Board for review and approval of a final budget for the ensuing fiscal year. This budget shall include: proposed service levels, baseline operations budget, any proposed enhancements, recommended capital equipment/facility acquisition and proposed financing methodologies. No increase or decrease to the final budget shall occur without the approval of the Board.

Section XI.05. Accounting, Budgeting and Reporting. BROADLINC shall be subject to the Budgeting Accounting & Reporting System (BARS) applicable local government and shall comply with local government accounting laws, including but not limited to chapter 43.09 RCW.

ARTICLE XII: DIRECTOR AND OPERATIONS

The Board may appoint, designate, employ, contract for and remove a Director of BROADLINC and such other personnel as determined to be necessary for its operations. The Director and other personnel shall be responsible to the Board for the administration of the affairs of BROADLINC as may be authorized from time to time by resolution of the Board. The Director may be authorized or delegated by BROADLINC to: (i) supervise and be responsible for the effective management of the administrative affairs of BROADLINC; (ii) sign documents and contracts on behalf of BROADLINC; and (iii) perform such other duties as delegated or assigned by the Board.

ARTICLE XIII: REGISTERED AGENT, CLAIMS AND SERVICES

Section XIII.01. Registered Agent. The registered agent for BROADLINC is its Director. The identity of the agent and the address where he/she may be reached during normal business hours must be recorded with the County Auditor. A statement of the registered agent designation, executed by the Chair of the Board shall be filed with the Secretary of State.

Section XIII.02. Claims. Claims made for the damages made under chapter 4.96 RCW shall be

filed with the Director. The identity of the agent and the address where he/she may be reached during normal business hours must be recorded with the County Auditor.

Section XIII.03. Service of Process. Service of process under RCW 4.28.080 shall be by delivering a copy of the summons and complaint to the Director. The identity of the agent and the address where he/she may be reached during normal business hours must be recorded with the County Auditor.

Section XIII.04. Filing. Within thirty (30) days of receipt of the filings described in this Article XIII, BROADLINC shall file copies with the Clerk.

ARTICLE XIV: MISCELLANEOUS

Geographic Limitation.

BROADLINC may conduct activities outside of the County, subject, however, to the applicable limitations set forth in RCW 35.21.740.

Nonexclusive Charter.

This Charter is nonexclusive and does not preclude the granting by the County of other charters to establish additional public corporations pursuant to action of the Board of County Commissioners.

ARTICLE XV: COMMENCEMENT

BROADLINC shall commence its existence effective upon the issuance of its Charter, as sealed and attested by the Clerk.

ARTICLE XVI: DISSOLUTION

Dissolution of BROADLINC shall be in the form and manner required by State law and the Resolution.

ARTICLE XVII: ORDER OF PRECEDENCE

In the event of an inconsistency between the Charter and the Resolution, the inconsistency shall be resolved by giving precedence to the Resolution.

ARTICLE XVIII: APPROVAL OF CHARTER

This Charter was APPROVED by Resolution No. 22 0845 adopted by the Board of County Commissioners of Spokane County, Washington of the 13th day of Dec. 2022.

BOARD OF COUNTY COMMISSIONERS
OF SPOKANE COUNTY, WASHINGTON

ABSENT

MARY L. KUNEY, Chair



ATTEST: ^c

Ginna Vasquez

Ginna Vasquez
Clerk of the Board

AL FRENCH, Vice- chair

Josh Kerns

JOSH KERNS, Commissioner



**CITY OF MEDICAL LAKE
SPOKANE COUNTY, WASHINGTON
RESOLUTION NO. 23-584**

**A RESOLUTION OF THE CITY OF MEDICAL LAKE APPROVING
THE CONTRACT BETWEEN THE CITY OF MEDICAL LAKE AND
EXECUTECH UTAH, LLC**

WHEREAS, the City of Medical Lake requires the services of a third-party vendor to manage IT Services in support of City services and staff; and

WHEREAS, the City has identified Executech Utah, LLC as a vendor that can provide such management and support for the City; and

WHEREAS, the parties are desirous of entering into a Managed Services Agreement (“Agreement”) for such services work as contained therein; and

WHEREAS, the Agreement contains the specific terms and conditions agreed upon by the parties.

NOW THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF MEDICAL LAKE, WASHINGTON, as follows:

Section 1. Approval. The City Council hereby approves of the Agreement between the City of Medical Lake and Executech Utah, LLC as set forth in the attached Exhibit A, which is incorporated herein.

Section 2. Severability. If any section, sentence, clause, or phrase of this resolution should be held to be invalid or unconstitutional by a court of competent jurisdiction, such invalidity or unconstitutionality shall not affect the validity or constitutionality of any other section, sentence, clause or phrase of this resolution.

Section 3. Effective Date. This Resolution shall be effective immediately upon passage by the City of Medical Lake City Council.

ADOPTED this _____ day of April, 2023.

Terri Cooper, Mayor

Attest:

Approved as to Form:

Koss Ronholt, City Clerk

Sean P. Boutz, City Attorney



Prepared for Executech

To Bert Baker
Email bert@executech.com

Prepared by Client Success

Executech
Phone 800.400.7554 Website <http://www.executech.com>

Quote number 1005280 Date March 24, 2023 Valid until May 22, 2023 at 9:00 AM

City of Medical Lake - Executech Managed IT Services (6 Hours - 2023)

What it means to be an Executech client

People First. That's our number one motto, value, and catchphrase. We're bringing a more human approach to IT that will make technology the least of your worries. Being People First means:

- We are down-to-earth and friendly regular people — just like the rest of your team.
- No tech jargon, no pushy upgrades, just approachable IT service.
- Clients work with a dedicated team — not a revolving door of strangers.
- We follow up and communicate regularly to keep you informed and educated.
- We develop an intimate knowledge of your business, network, and technology needs.

You can count on our team of over 200 IT experts that support over 1,000 business networks across the West.

Don't believe we're this good? Read about us: ★★★★★

Client Testimonials: <https://www.executech.com/testimonials/>

Clutch Reviews: <https://clutch.co/profile/executech>

 [Executech -Letters of Recommendation](#)

Managed IT Services

Executech's Managed IT Services Agreement (MITS) is designed to provide the necessary end user and IT infrastructure support your business needs to run optimally.

As part of this service offering, Executech provides unlimited remote Service Desk Support to take care of your day-to-day end-user needs. In addition, this package includes up to 6 hours each month of Senior Engineering / other on-site support at no additional premium.

This package also includes anti-virus, spam filtering, ransomware protection, periodic QA reviews, and remote monitoring management (RMM) tool. RMM creates an environment that is easy to maintain. RMM provides system management of computers and servers, a ticketing system, and in-depth reporting. Monitors updates, backup, and antivirus. Performs automatic updates, patch management, inventory management, and network health reporting. Allows control over what software is allowed on the network. Automates system management and repairs. Enables remote access, allowing our team to work without disrupting employees.

Covers up to 25 workstations and 4 servers. Each additional workstation or server will increase the monthly fee by \$60/month.

Sr. Engineering includes escalated support tickets, server troubleshooting, server-side/O365 reconfigurations of account or software settings, etc. Unused hours do not roll over from month to month. Any hours that exceed the monthly amount will be billed at \$175/hr.

Projects, hardware, email, backup, and other products and services are to be charged separately.

2,080.00
x 1
2,080.00
per month
(for 12 months)

Total excluding tax

\$2,080.00
per month
(for 12 months)

Executech Managed Services Agreement Terms & Conditions

1. Applicability

The accompanying Statement of Work (“SOW”) is an agreement by the client listed in this quote (“Client”) for the purchase of the services provided by EXECUTECH UTAH, LLC (“Service Provider”) in accordance with and subject to these terms and conditions (these “Terms” together with the SOW, this “Agreement”).

This Agreement, together with any documents incorporated herein by reference, constitutes the sole and entire agreement of the parties and supersedes all prior or contemporaneous understandings, agreements, negotiations, representations and warranties, and communications, both written and oral. In the event of any conflict between these Terms and the SOW, the SOW shall govern. These Terms prevail over any terms and conditions contained in any other documentation and expressly exclude any of the Service Provider’s general terms and conditions or any other document issued by the Service Provider in connection with this Agreement.

2. Services

Service Provider shall provide the services to Client as described in the SOW (the “SOW”) in accordance with these Terms.

3. Payment Terms

(a) Due. Unless otherwise stated, Service Provider offers Net 30 terms to the Client. Invoices are past due if they are not paid in full within thirty (30) days from the invoice date.

(b) Late Fees. If Client fails to pay within the terms provided, interest on the unpaid balance will begin to accrue at the lesser of the maximum rate permitted under applicable law or one and one-half percent (1.5%) per month from the date due.

(c) Open Balances. Clients with open balances more than ninety (90) days from the invoice date will be evaluated for suspension of any and all Services and will be evaluated to have the open balance submitted to a collection agency. The client agrees to pay for any and all collection costs and/or attorney’s fees.

(d) Credit Card Fees. All payments made with a credit card are subject to a three percent (3%) convenience fee, per transaction.

(e) Service Fees. As outlined in the SOW, service fees shall increase each year on the anniversary date of this agreement by the greater of 5% or the increase in the U.S. consumer price index, with a such increase not to exceed 10% per annum.

4. Confidentiality

(a) Client Confidential Information. Client acknowledges Service Provider may acquire information of Client, or Client’s customers, that Service Provider knows Client considers to be confidential and proprietary (“Client Confidential Information”). Examples may include, without limitation, customer lists, pricing, purchase records, financial records, tax records, medical records, and legal records. Service Provider will use commercially reasonable efforts to maintain the confidentiality of Client Confidential Information and will not use it for Service Provider’s own benefit or disclose it to third parties without the prior written consent of Client, except as expressly permitted herein. Service Provider may disclose Client Confidential Information to its employees, consultants, or others to perform Services for Client. This provision will not extend to information that (i) the Service Provider already knew, (ii) the Service Provider learns independently of Client, (iii) becomes generally available through no fault of the Service Provider, or (iv) the Service Provider is legally obligated to disclose. Notwithstanding the foregoing, Client Confidential Information may be disclosed to the officers, directors, employees, agents, or representatives of the Service Provider on a “need to know” basis for the purposes of performing its respective obligations pursuant to this Agreement.

(b) Provider Confidential Information. Client acknowledges that it may acquire Service Provider’s proprietary checklists and installation/configuration procedures, and other information of a proprietary or confidential nature, which Service Provider considers confidential information (“Service Provider Confidential Information”). The client will use commercially reasonable efforts to maintain the confidentiality of the Service Provider’s Confidential Information and will not disclose Service Provider’s Confidential Information to third parties without the prior written consent of the Service Provider.

(c) Advertising and Publicity. Except for materials already made public, neither party will distribute any news releases, articles, brochures, speeches, or advertisements concerning this Agreement, nor use the other party’s name or trademarks (or any variation thereof), without the other party’s prior written consent, which will not be unreasonably conditioned, withheld, or delayed.

5. Non-Solicitation

(a) Term. Client hereby expressly recognizes the expertise of Service Provider’s employees and covenants to not solicit or encourage, directly or indirectly, any of Service Provider’s employees for work not contemplated in the SOW, including without limitation (i) private use of the Service Provider employee by Client or its affiliate; (ii) making offers to the Service Provider employee in an attempt to lead the Service Provider employee from Service Provider and to Client; (iii) requesting any information regarding Service Provider or its employees that is not contemplated by the SOW and/or has not been authorized by Service Provider; (iv) attempting to engage the Service Provider employee in “side work” or “moonlighting prospects” in which the Service

Provider employee would do work for Client, or one of its affiliates, outside of the scope of the SOW regardless of whether the Service Provider employee would or would not receive additional compensation not expressly stated in the SOW; (v) any and all attempts to disenfranchise the Service Provider employee from his/her employment relationship with Service Provider; and (vi) making any attempt whatsoever, in any degree, to solicit work from the Service Provider employee, either on a contractual basis, as party to a competitor of the company, or through full-time employment.

(b) Penalty. If written approval is not provided by the CEO of the Service Provider and Client violates the provisions of this Section 5, Client will pay Service Provider liquidated damages in an amount equal to the total compensation, including salary, wages, bonuses, commissions, equity, employee benefits, cost of training, etc., that the applicable Service Provider employee received during the prior twelve (12) months of employment or \$100,000.00, whichever is greater. Because of the Service Provider's unique offering and the difficulty of determining actual damages associated with losing trained Service Provider Employees, the parties acknowledge that the measure of liquidated damages set forth in this Section 5 is reasonable. This provision for damages will not limit remedies against Client for any other breach of this Section 5 or from asserting any cause of action independent of it.

6. Responsibilities

(a) Shared Responsibility. The client is responsible for: (i) cooperating with the Service Provider in the provision of the Services; (ii) providing the timely and effective performance of its responsibilities, decisions, and approvals; (iii) procuring and paying for any equipment, supplies, or software necessary to support its information technology system as well as to support the delivery of the Services; and (iv) providing any applicable system and IT infrastructure documentation as requested.

If the Service Provider arrives at the scheduled service time and determines Client has failed to comply with this Section 6(a), Services may be denied, and a cancellation charge will be assessed on a time-and-materials basis.

(b) Access. The Service Provider may install software to access the Client's equipment and check the status of antivirus/patches as well as to make repairs. If Client wishes to decline this software installation and subsequent access, Client must notify Service Provider in writing. The client will also provide the Service Provider access to user workstation areas and the name, phone number, email address, and title of each authorized user. Every user must be listed as an authorized help desk caller.

(c) Information and Technology. The client will provide accurate information to Service Provider in connection with the Services. The client will maintain the current software, hardware, and operating systems necessary for the provision of the Services. All servers and computers must be running an operating system that is no closer than one (1) year from being the end of life, and currently under a manufacturer's warranty. All software must be genuine, licensed, and vendor-supported. The client understands the Services and system are subject to external factors not within Service Provider's control. The client will ensure that its internet connection is secure. The client will obtain all necessary software licenses, hardware warranties, data file storage, backups, and other support necessary for Service Provider to provide the Services. All systems must use Service Provider's designated anti-virus and anti-malware software. The network must have Service Provider approved firewalls, access points, and managed switches that are currently licensed, up-to-date, and vendor-supported.

(d) EULAs. Portions of the Services may require Client to accept the terms of one or more third-party end user license agreements ("EULAs"). If the acceptance of a EULA is required to provide the Services to Client, Client hereby grants Service Provider authority to accept such EULA on Client's behalf. EULAs may contain service levels, warranties, and liability limitations that differ from those contained in this Agreement. Client agrees to be bound by the terms of such EULAs and will look only to the applicable third-party provider for any claim pursuant to such EULAs.

(e) Data Backup. Client agrees to back up all data, files, and information prior to the performance of any Services and hereby assumes sole responsibility for any lost or altered data, files, or information.

(f) Reliance on Representations. Service Provider will be entitled to rely on the representations of the Client's management and staff.

(g) Reliance on Data. In order to keep the costs of the project to a minimum, Client staff may be utilized to supply basic data and documents. Service Provider will be entitled to rely on any data obtained from Client personnel will be accurate. This data will be analyzed to determine the existing hardware/software architecture.

(h) Environment, Network, Equipment, or System Changes. Client agrees to notify and consult Service Provider before initiating changes to its IT environment, before moving, modifying, altering, or adding any equipment to the operating network or system, or before implementing third-party vendor changes. Service Provider will review the proposed changes and inform Client of any potential impacts to the Services as well as Client's business operations. Modifications to the environment, network, equipment or system without prior consent of Service Provider may result in the nullification of warranties and service agreements applicable to

such equipment and related Services, and Client, therefore, releases Service Provider from any obligations to maintain such modified environment, network, equipment or system. If Client chooses to implement changes that negatively impact the Services, Client will hold Service Provider harmless for any resulting issues.

(i) Risk of Loss. Client will bear the risk of any loss, damage, or destruction of Client's assets, equipment, or property provided or maintained by Service Provider from: fire, water damage, theft, or other casualties. Client will be solely responsible for insuring Client's property and filing insurance claims for losses associated therewith.

(j) Property Destruction. If Client or any employees or contractors of Client damage any Service Provider Property (as hereinafter defined), including Service Provider's network systems, Client will be responsible for Service Provider's remediation of such damage. This may include, without limitation, time spent investigating the problem, correcting the problem, and replacing any technical hardware, or cabling. All such remediation work will be billed to Client at Service Provider's then-current time-and-materials rates.

(k) Data Loss. Under no circumstances will Service Provider be responsible for any data lost, corrupted, or rendered unreadable due to (i) communication and/or transmissions errors or related failures, (ii) equipment failures (including but not limited to silent hardware corruption-related issues), or (iii) Service Provider's failure to backup or secure data from portions of the system not expressly designated in this Agreement as requiring backup or recovery services. Service Provider does not warrant that any maintained storage device or functionality, data backup device or functionality, or load balancing functionality will operate in an error-free manner.

(l) Intellectual Property Rights. Service Provider will have and retain full and exclusive ownership of all intellectual property rights associated with any design, data, specification, know-how, software, device, technique, algorithm, method, discovery or invention, whether or not reduced to practice, relating to any (i) Services, including any Service Provider work product, (ii) result of any Services, (iii) joint development, and (iv) enhancement or improvement to or derivative of any of the foregoing (collectively, "Service Provider Property"). Client receives no right, title, or interest in or license to use any Service Provider Property. However, Service Provider hereby grants Client a non-exclusive, non-transferable, non-sublicensable, and terminable license to use the Service Provider Property necessary for Client to exercise its rights hereunder. Client will not provide access to Service Provider Property, including without limitation, software and systems, to anyone other than Client's employees and contractors who (x) are bound by law or written agreement to comply with Client's duties under this Agreement, and (y) require such access to assist Client in its permitted use of the Service Provider Property. Client will not directly or indirectly reverse engineer, decompile, disassemble, or copy any Service Provider Property. Client will return all Service Provider Property to Service Provider upon termination or expiration of this Agreement. Client will cooperate to take such actions reasonably requested to vest ownership of Service Provider Property in Service Provider.

(m) Third-Party Services. Portions of the Services may be acquired from, or rely upon the services of, third-party manufacturers or service providers, such as data hosting services, domain registration services, and data backup/recovery services ("Third-Party Service"). Service Provider reserves the right to utilize the services of any third-party provider or to change third-party providers in its sole discretion as long as the change does not materially diminish the Services to be provided to Client. Service Provider will not be responsible, and will be held harmless by Client, for the failure of any third-party provider or manufacturer to provide Third-Party Services to Service Provider or to Client.

7. Limitation of Liability

(a) Liability Limits. The Services may contain bugs, errors, problems or other limitations. Service Provider has no liability whatsoever for Client's use of the Services, inability to use the Services or Client's reliance on or use of information from the Services or through the Services that results from mistakes, omissions, interruptions, deletions of files, errors, defects, delays in operation or any failure of performance. IN NO EVENT SHALL SERVICE PROVIDER BE LIABLE TO CLIENT OR TO ANY THIRD PARTY FOR ANY LOSS OF USE, REVENUE OR PROFIT OR LOSS OF DATA OR DIMINUTION IN VALUE, OR FOR ANY CONSEQUENTIAL, INCIDENTAL, INDIRECT, EXEMPLARY, SPECIAL, OR PUNITIVE DAMAGES WHETHER ARISING OUT OF BREACH OF CONTRACT, TORT (INCLUDING NEGLIGENCE), OR OTHERWISE, REGARDLESS OF WHETHER SUCH DAMAGES WERE FORESEEABLE AND WHETHER OR NOT SERVICE PROVIDER HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES, AND NOTWITHSTANDING THE FAILURE OF ANY AGREED OR OTHER REMEDY OF ITS ESSENTIAL PURPOSE. The negation of damages set forth above is a fundamental element of the basis of the bargain between Service Provider and Client. The Services would not be provided without such limitations.

(b) Indemnification. Client agrees to indemnify, defend, compensate, reimburse, and hold harmless, Service Provider, its subsidiaries, affiliates, officers, directors, employees, agents, licensors, consultants, suppliers, and any third-party website provider involved in the provision of Services, from and against all claims, demands, actions, liabilities, losses, expenses, damages, judgments and costs, including attorneys' fees, related to or arising from Client's breach of this Agreement or violation

of any applicable law or regulation. Service Provider reserves the right, at its own expense, to assume the exclusive defense and control of any matter otherwise subject to indemnification by Client. Client must not, in any event, accept a settlement of any dispute relating to this Agreement without the prior written consent of Service Provider.

(c) Non-Disparagement. Client will not directly or indirectly make, publish, or communicate to any person or entity any defamatory or disparaging remarks, comments, or statements concerning Service Provider or its employees either during or after the Agreement's termination or expiration.

(d) Insurance Limits. Service Provider will maintain business insurance greater than \$1M on both General Liability and Errors and Omissions Liability. Service Provider will provide, within five (5) business days, proof of insurance upon customer request. Client acknowledges that Service Provider has strongly advised it to obtain a cybersecurity insurance policy.

(e) Warranty. Service Provider warrants that all Services will be performed in a professional and workman-like manner in accordance with general industry standards. Client must report any deficiencies in Services to Service Provider in writing within ten (10) business days of performance of such Services in order to receive warranty remedies.

THIS WARRANTY IS GIVEN IN LIEU OF ALL OTHER EXPRESSED OR IMPLIED WARRANTIES. NO OTHER WARRANTIES APPLY, INCLUDING, BUT NOT LIMITED TO, ANY IMPLIED WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE. ALL SERVICES ARE PROVIDED "AS IS" AND "WHERE IS" AND EACH PARTY DISCLAIMS ALL WARRANTIES, WHETHER WRITTEN OR ORAL, EXPRESS OR IMPLIED OR STATUTORY, INCLUDING, BUT NOT LIMITED TO, WARRANTIES OF MERCHANTABILITY, TITLE, OR FITNESS FOR A PARTICULAR PURPOSE. SERVICE PROVIDER DOES NOT WARRANT THAT THE SERVICES, SERVICE DELIVERABLES, OR ANY THIRD-PARTY PRODUCTS ARE ERROR-FREE, OR WILL OPERATE IN AN UNINTERRUPTED MANNER OR IN COMBINATION WITH OTHER SOFTWARE PRODUCTS. THERE IS NO WARRANTY FOR THIRD PARTY SOFTWARE OR THIRD-PARTY HARDWARE PROVIDED BY SERVICE PROVIDER AND EACH SUCH THIRD-PARTY SOFTWARE OR THIRD-PARTY HARDWARE SHALL BE GOVERNED BY THE WARRANTIES OFFERED BY THE APPLICABLE THIRD PARTY UNDER THE TERMS OF THE AGREEMENT BETWEEN CLIENT AND SUCH THIRD PARTY. IN ADDITION, AND WITHOUT LIMITATION, SERVICE PROVIDER DOES NOT WARRANT OR REPRESENT THAT ANY THIRD-PARTY SOFTWARE OR THIRD-PARTY HARDWARE AS DELIVERED WILL MEET ALL OF CLIENT'S BUSINESS REQUIREMENTS WITHOUT THE NEED FOR CONFIGURATION OR ENHANCEMENTS OR ENCOMPASS ALL THE FUNCTIONALITY DESIRED BY CLIENT OR AVAILABLE IN CLIENT'S SOFTWARE PRODUCT.

(f) Remedy.

(i) FOR ANY BREACH OF THE WARRANTY, CLIENT'S EXCLUSIVE REMEDY, AND SERVICE PROVIDER'S ENTIRE LIABILITY, SHALL BE LIMITED TO THE RE-PERFORMANCE OF THE SERVICES. IF SERVICE PROVIDER IS UNABLE TO RE-PERFORM THE SERVICES AS WARRANTED, CLIENT SHALL BE ENTITLED TO RECOVER THE FEES PAID TO SERVICE PROVIDER FOR THE DEFICIENT SERVICES, PROVIDED THAT SUCH RECOVERY SHALL NOT EXCEED TOTAL FEES PAID TO SERVICE PROVIDER IN THE IMMEDIATELY PRECEDING THREE (3) MONTH PERIOD.

(ii) The limitation of liability set forth in Section 7(f)(i) above shall not apply to (A) liability resulting from Service Provider's gross negligence or willful misconduct and (B) death or bodily injury resulting from Service Provider's negligent acts or omissions.

8. Miscellaneous

(a) Governing Law. This Agreement shall be governed by and construed in accordance with the laws of the State of Utah, United States of America, without regard to its conflicts of law provisions. Client consents to the personal jurisdiction of the federal and state courts having jurisdiction for Salt Lake City, Utah with respect to all disputes arising out of this Agreement, Client's use of the Services or otherwise between Client and Service Provider.

(b) Amendments to Agreement. This Agreement may only be amended, modified, waived, or supplemented by an agreement in writing signed by the parties. No waiver by either party of any of the provisions of this Agreement will be effective unless in writing and signed by the party granting the waiver. No failure to exercise, or delay in exercising, any right, remedy, power, or privilege arising from this Agreement will operate or be construed as a waiver thereof; nor will any single or partial exercise of any right, remedy, power, or privilege arising under this Agreement preclude any other or further exercise thereof or the exercise of any other right, remedy, power, or privilege.

(c) Termination. This Agreement may be terminated by Service Provider with immediate effect upon prior written notice to Client if Client:

(i) fails to pay any amount when due under this Agreement;

(ii) has not otherwise performed or complied with any of the terms of this Agreement, in whole or in part; or

(iii) becomes insolvent, files a petition for bankruptcy or commences or has commenced against it proceedings relating to bankruptcy, receivership, reorganization, or assignment for the benefit of creditors.

(d) Dispute Resolution.

(i) Jury Waiver. EACH PARTY IRREVOCABLY AND UNCONDITIONALLY WAIVES, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, ANY RIGHT IT MAY HAVE TO A TRIAL BY JURY IN ANY LEGAL ACTION, PROCEEDING, CAUSE OF ACTION OR COUNTERCLAIM ARISING OUT OF OR RELATING TO THIS AGREEMENT, INCLUDING ANY EXHIBITS, SCHEDULES, AND APPENDICES ATTACHED TO THIS AGREEMENT, OR THE TRANSACTIONS CONTEMPLATED HEREBY.

(i) Cost of Enforcement. In the event that either party asserts any claim against the other party in an action at law or in equity, including without limitation any counterclaim or cross claim, to enforce or protect that party's rights under this Agreement, the prevailing party in such action will be entitled to recover on any judgment entered therein in its favor such reasonable attorney's fees as may be allowed by the court, together with such court costs and damages as provided by law and in accordance with this Agreement.

(e) Severability. If any provision of this Agreement is held to be unenforceable as applied to a particular circumstance by a court of competent jurisdiction, then that provision will be construed by (i) modifying it to the minimum extent necessary to make it enforceable (if permitted by applicable law) or (ii) disregarding it (if modifying it is not permitted by applicable law); but, the rest of this Agreement will remain in effect as written and the modified provision will remain in effect as written in all other circumstances.

(f) Assignment. This Agreement will be binding on the successors and assigns of both parties. Client may not assign, delegate, or transfer Client's rights or duties in connection with the Services without the prior written consent of Service Provider. Any assignment, delegation, or transfer in violation of this Agreement will be void and unenforceable as a matter of law.

(g) Waiver. The waiver by either party of any default or breach of this Agreement shall not constitute a waiver of any other or subsequent default or breach. Except for actions for nonpayment or breach of either party's intellectual property rights, no action, regardless of form, arising out of this Agreement may be brought by either party more than one (1) year after the cause of action has accrued.

(h) No Partnership. Service Provider and Client are independent contractors. This Agreement will not create a partnership or joint venture between the parties, or make either party an agent, legal representative, employee, or servant of the other for any purpose. All services performed by Service Provider will be performed as an independent contractor. Service Provider will have sole discretion to determine the manner, method, and means of performing the Services, subject to the provisions of this Agreement. Neither party may bind the other or create any obligation on the other's behalf, except as specifically provided in this Agreement.

(i) Subcontractors. Service Provider may, in its reasonable discretion, use third party contractors inside or outside the United States to perform any of its obligations hereunder, including but not limited to migration of Client data, remote monitoring and management, network monitoring, helpdesk services, backup, and hosted infrastructure services.

(j) No-Third Party Beneficiaries. This Agreement is for the sole benefit of the parties hereto and their respective successors and permitted assigns and nothing herein, express or implied, is intended to or shall confer upon any other person or entity any legal or equitable right, benefit or remedy of any nature whatsoever under or by reason of these Terms.

(k) Survival. All terms and provisions of this Agreement which should by their nature survive the termination of this Agreement shall so survive.

(l) Force Majeure. Each party will be excused for delay in the performance of any of its obligations hereunder (other than Client's obligation to pay fees pursuant to this Agreement) when such delay is the result of acts of God, governmental authority, delays in transportation, subcontractors not being able to honor their commitment(s), war, act of terrorism, weather, manufacturer's or supplier's delays, pandemic or epidemic, etc., or any other cause beyond the party's reasonable control.

(m) Notice Requirements. All notices required hereunder will be in writing and will be mailed by first-class mail, postage prepaid, sent by electronic mail, or delivered by messenger or reputable overnight courier, and shall be addressed to the party or parties to whom directed at the address set forth below or such other place as each party may from time to time give in writing to the other party hereto. Notice shall be deemed to have occurred upon receipt by the party to whom sent.

Send to the address indicated within this proposal

**CITY OF MEDICAL LAKE
SPOKANE COUNTY, WASHINGTON
RESOLUTION NO. 23-585**

**A RESOLUTION OF THE CITY OF MEDICAL LAKE APPROVING A
MEMORANDUM OF UNDERSTANDING BETWEEN THE CITY OF MEDICAL
LAKE AND SPOKANE COUNTY SHERIFF AND SPOKANE COUNTY,
WASHINGTON**

WHEREAS, the City of Medical Lake contracted with a new attorney in 2022 to handle Prosecution Services (“Prosecutor”) concerning violations occurring within the City of Medical Lake; and

WHEREAS, as part of the Prosecution Services, Prosecutor requires access to certain criminal history records and information that the Spokane County Sheriff can provide the Prosecutor; and

WHEREAS, the parties are desirous of entering into a Memorandum of Understanding (“MOU”) detailing the requirements and training for such criminal history records and information to be disclosed to Prosecutor, including but not limited to an Information Exchange Agreement (“Agreement”); and

WHEREAS, the MOU and Agreement contains all of the specific terms and conditions agreed upon by the parties.

NOW THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF MEDICAL LAKE, WASHINGTON, as follows:

Section 1. Approval. The City Council hereby approves of the MOU and Agreement between the City of Medical Lake and Spokane County Sheriff and Spokane County, as set forth in the attached Exhibit A, which is incorporated herein.

Section 2. Severability. If any section, sentence, clause, or phrase of this resolution should be held to be invalid or unconstitutional by a court of competent jurisdiction, such invalidity or unconstitutionality shall not affect the validity or constitutionality of any other section, sentence, clause or phrase of this resolution.

Section 3. Effective Date. This Resolution shall be effective immediately upon passage by the City of Medical Lake City Council.

ADOPTED this _____ day of April, 2023.

Terri Cooper, Mayor

Attest:

Approved as to Form:

Koss Ronholt, City Clerk

Sean P. Boutz, City Attorney

**MEMORANDUM OF
UNDERSTANDING BETWEEN THE CITY OF
MEDICAL LAKE, SPOKANE COUNTY SHERIFF
AND SPOKANE COUNTY**

BACKGROUND:

The City of Medical Lake (City) began contracting with a new private attorney (Contractor) for Prosecution services in 2022 related to violations occurring within the city limits of Medical Lake. Those crimes are prosecuted by contract with the City of Cheney Municipal Court. In late 2022, the City contacted the Spokane County Sheriff's Office (SCSO), who is contracted to provide police services within the City, to request that criminal history information be provided to their new attorney related to the criminal law violations (misdemeanors) that he was prosecuting. The SCSO investigated how to go about providing these criminal history reports and has identified a path to providing training and background checks in order to stay within the requirements of the National Criminal Justice Information Systems and Washington State Patrol.

THUS,

The City will provide the name and contact information, to include the physical address of the contracted prosecutor to the SCSO.

The SCSO will contact the Contractor and that person will work with the SCSO CJIS Terminal Agency Coordinator (TAC) to obtain fingerprints, conduct the appropriate level of background check, and upon successful background check will provide the link for CJIS Security Awareness Training. The SCSO TAC will notify the Contractor when they have finished all background and training requirements and are eligible to receive NCIC Criminal Histories. The Contractor must have a facsimile machine in their locked office. Anyone who has access to the criminal histories provided by the SCSO by fax must also be fingerprinted, background

checked and complete the CJIS Security Awareness Training . The Contractor must notify the TAC of the facsimile number and immediately if there is any change to the number or location. Criminal Histories will not be emailed. Upon completion of required training, the TAC will schedule a visit to the office for a security assessment to ensure it follows WSP/CJIS rules. This will also occur in accordance with security audits that WSP or FBI will conduct for the Sheriff's Office and prior notice and arrangement with the Contractor will be made. The Contractor must follow all training and policies outlined during the CJIS training, including with regards to storage and retention of the criminal histories.

The Contractor should contact the TAC when they need a criminal history for a defendant. They need to include the date of incident, case number, name and date of birth of the defendant and crime(s) they are being charged with.

The SCSO will provide a criminal history to the Contractor as soon as possible upon receipt. The TAC will fax the criminal history to the number provided by the Contractor.

Criminal histories will only be provided for defendants that the Contractor is prosecuting in the Cheney Municipal Court that the SCSO has arrested or requested a summons for. Criminal Histories will not be provided for agencies that request charges within the City and the SCSO is not involved with. The Contractor should make the request in those circumstances to the arresting agency.

The SCSO TAC will notify the Contractor in advance of their coming expiration and necessity to recertify as needed.

The City will immediately notify the SCSO in writing upon severance of any contracted prosecuting services with the Contractor. The Contractor acknowledges that receiving criminal histories without lawful authority could be a violation of the law.

The City agrees that it will notify the SCSO TAC Officer of any violations regarding the use, storage, retention, or otherwise of the criminal histories, whether intentional or inadvertent.

The City agrees to indemnify, defend, and hold harmless SCSO and Spokane County and their principals, agents and employees from and against all liability, loss, damage, cost and expense, including all attorneys' fees, and all claims, suits and demands therefore, arising out of or resulting from City or Contractor's breach of its obligations under this Agreement or from the provision, retention, use or disclosure of criminal histories pursuant to this Agreement. The City's obligation to indemnify, defend and hold harmless includes, without limitation, any cost and expense of complying with any requirements imposed by the Washington State Patrol, the Federal Bureau of Investigation, or any other governmental or regulatory body regarding the provision of criminal histories per this Agreement, and any costs and expenses of any action necessary for the mitigation of any misuse of criminal histories provided per this Agreement.

SIGNED THIS _____ DAY OF _____ 2023

Mayor Terri Cooper

City of Medical Lake

John Nowels

Sheriff

Information Exchange Agreement Must be completed by agencies who:

A. Provide criminal justice information to contracted prosecutors.

An Information Exchange Agreement describing the Criminal Justice Information (CJI) provided and/or received by an agency must be in place between the agency providing the information and the contracted prosecutor receiving the information.

1. Security Control: Each person receiving the information will maintain the information in a physically secure location and only authorized individuals will have access to the CJI. The information will not be left in the open for unauthorized individuals to view.
2. Misuse: Each person receiving the information will use the information for criminal justice purposes only. The information received is not to be used in any civil cases or disseminated to non-criminal justice personnel.
3. Training: Each person receiving the information will be responsible for viewing the Basic Security Awareness Training once every two years. The training log will be provided by and maintained at the criminal justice agency providing the CJI for review at the audit.
4. Destruction: CJI shall be securely disposed of when no longer required and destroyed by shredding or incineration.

Services Provided: (Check all that apply):

Criminal History

Other CJI (Describe):

Parties who enter into this agreement must adhere to the regulations set forth in the ACCESS/NCIC Operating Manuals and the CJIS Security Policy. This Information Exchange Agreement must be current and approved by the CJIS Systems Agency (CSA), the Washington State Patrol (WSP), before agencies adopt the policies and procedures set forth by the agreement.

Termination of Agreement

This agreement shall remain in effect unless terminated by either party upon thirty (30) days written notice.

Agency Providing Criminal Justice Information:		
ORI:		
Agency Head Name (printed):		
Agency Head Signature:		Date:

Contracted Prosecutor Receiving Criminal Justice Information:		
Contractor Name (printed):		
Contractor Signature:		Date:

City Named in the Contract:		
Authorizing Name (printed):		
Authorizing Signature:		Date:

**CITY OF MEDICAL LAKE
SPOKANE COUNTY, WASHINGTON
RESOLUTION NO. 23-586**

**A RESOLUTION OF THE CITY OF MEDICAL LAKE APPROVING A
CONTRACT BETWEEN THE CITY OF MEDICAL LAKE AND APOLLO
SOLUTIONS GROUP**

WHEREAS, the City of Medical Lake (“City”) has received a Washington State Department of Commerce Solar Grant and TransAlta Energy Technology Grant as part of an Energy Savings Performance Contract process for the City of Medical Lake; and

WHEREAS, the City has identified a location at the City’s Wastewater Treatment Plant to develop a solar photovoltaic electricity generation system project and known as WWTP Solar Array; and

WHEREAS, the City intends to receive annual energy production cost savings and guaranteed electrical energy generation from the WWTP Solar Array; and

WHEREAS, the City is desirous of entering into an Energy Saving Performance Contract (“ESPC”) with Apollo Solutions Group to design and construct the WWTP Solar Array; and

WHEREAS, the ESPC contains all of the specific terms and conditions agreed upon by the parties.

NOW THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF MEDICAL LAKE, WASHINGTON, as follows:

Section 1. Approval. The City Council hereby approves of the ESPC between the City of Medical Lake and Apollo Solutions Group, as set forth in the attached Exhibit A, which is incorporated herein.

Section 2. Severability. If any section, sentence, clause, or phrase of this resolution should be held to be invalid or unconstitutional by a court of competent jurisdiction, such invalidity or unconstitutionality shall not affect the validity or constitutionality of any other section, sentence, clause or phrase of this resolution.

Section 3. Effective Date. This Resolution shall be effective immediately upon passage by the City of Medical Lake City Council.

ADOPTED this _____ day of April, 2023.

Terri Cooper, Mayor

Attest:

Approved as to Form:

Koss Ronholt, City Clerk

Sean P. Boutz, City Attorney

**Energy Savings
Performance
Contract**

**City of Medical Lake
WWTP Solar Array**



— MECHANICAL CONTRACTORS —
Solutions Group

DESCRIPTION – Energy Savings Performance Contract

This Energy Savings Performance Contract is for design, construction, guarantee, and follow-up measurement and verification of energy-saving projects. An Investment Grade Audit was previously completed that identified the costs and savings of each project. An Energy Services Proposal provides the basis to develop and negotiate this Energy Savings Performance Contract.

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ENERGY SAVINGS PERFORMANCE CONTRACT

This Energy Savings Performance Contract (the "Contract") is made and entered into as of this day of 4/10/2022, at Medical Lake, WA, in the County of Spokane, State of WA, by and between Apollo Solutions Group ("ESCO"), having its principal offices at Kennewick, WA, and City of Medical Lake ("Owner") having principal offices at 124 S Lefevre Street, Medical Lake, WA 99022, for the purpose of installing certain energy, water, and operating cost saving equipment, described in **Section 3 of the Energy Services Proposal (Equipment to Be Installed by ESCO)**, and providing other services designed to save energy for the Owner's property and buildings, known as WWTP Solar Array located at 207 E. Ellen Street, Medical Lake, WA 99022 (the "Project Site(s)").

RECITALS

	Recitals	Establishes rationale for project, establishes contract authority, defines procurement process leading up to the contract, etc.	
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WHEREAS, Owner owns and operates the Project Site(s), and is in need of energy, water and operating cost saving equipment and services designed to save energy and associated energy costs at said Project Sites; and

WHEREAS, Owner has been authorized to enter into a third-party financing agreement for all professional services, equipment and construction for the purchase and installation of energy, water and operating cost savings measures, collectively referred to as the "Work" (as herein after defined); and

WHEREAS, ESCO has developed or become knowledgeable about certain procedures for controlling energy and water consumption and reducing operating costs through services provided and equipment installed and maintained at project sites similar in scope and scale of Owner; and

WHEREAS, ESCO was selected after a determination that its proposal was the most advantageous to Owner pursuant to a Request for Qualifications/Proposal and contract for the Energy Services Proposal and the Energy Services Proposal (as hereinafter defined); pursuant to RCW 39.35A and,

WHEREAS, ESCO has made an assessment of the utility consumption characteristics of the Project Site(s) and existing Equipment described in Section 2 of the Energy Services Proposal, which Owner has approved; and

WHEREAS, Owner desires to retain ESCO to purchase and install certain energy, water and operating cost savings equipment and to provide other services and strategies described in the attached Schedules, for the purpose of achieving energy,

water and operating cost reductions within Project Site(s), as more fully described herein; and

WHEREAS, Owner is authorized under the Constitution and the laws of the State of Washington to enter into this Contract for the purposes set forth herein.

NOW, THEREFORE, in consideration of the mutual promises and covenants contained herein, and intending to be legally bound hereby, Owner and ESCO hereto covenant and agree that the following Appendices are attached hereto (or will be, as provided in this Contract) and are made a part of this Contract by reference.

ARTICLE 1. DEFINITIONS AND APPENDICES

Section 1.1. Definitions.

Certificate of Acceptance and Completion: The date at which the owner accepts that the project is complete, and if applicable the lien period notices begin. The certificate in the form provided in Appendix D.

Contract: This Energy Savings Performance Contract and all Appendices attached hereto.

Contract Sum: The guaranteed maximum cost of the project which including but not limiting to the sum of all materials, labor, auditing, design, engineering, project construction management fees, on-site supervision and administration, travel, general conditions, permits, overhead, profit, contingency, subcontracted services related to the project.

Energy, Demand, Water and Operating Cost Savings: The savings as provided in the Energy Services Proposal – Section 4.

Energy Savings Guarantee: The amount of energy and water in units of energy that the ESCO guarantees the Owner will achieve as a result of the installation and operation of the equipment and systems provided for in this Contract as specified in Section 4 in the Energy Services Proposal (Appendix A).

Equipment: The proposed equipment and systems that are getting furnished and installed are described in detail in Section 3 of the attached Energy Services Proposal.

Event of Default: Those events described in **Section 20 (Events of Default)** hereof.

Acceptance Date: The date the Owner accepts the project/contract being fully completed.

Notice of Substantial Completion: The date of when the construction activities are substantially complete, and the owner is receiving beneficial use of the installed equipment and systems that were installed, exclusive of punch list items identified. The owner shall have 10 working days to review the notice of substantial completion and report any deficiencies to the ESCO that would require corrective action be taken. If the owner does not respond within the 10-working day period the ESCO will consider the project substantially complete. (Appendix C).

Notice of Commencement of Energy Savings, Energy Production, or Revenue Recovery (NCES): This is the notice given to the client of when the guarantee start date is to begin which will be the first day of the month after the notice is given. This

notice is given after each phase of work, the commissioning of the equipment and systems has been performed. The owner shall have 10 working days to review the notice of commencement of energy savings and report any deficiencies to the ESCO that would require corrective action be taken. If the owner does not respond within the 10-working day period, the ESCO will consider the NCEs accepted. (Appendix B).

Construction Period: The period starting from execution of this contract (including signing of the finance agreement if needed) until Substantial Completion acceptance. Substantial Completion shall be achieved in accordance with the calendar day durations proposed in the Energy Services Proposal Project Schedule.

Guarantee Period Start Date: The Date of the Notice of Commencement of Energy Savings acceptance.

Project Site(s): The facilities of the Owner in need of the more efficient energy, demand, water and operating equipment and services designed to reduce consumption and associated costs at said Project Site(s)

Energy Service Proposal: The complete Energy Services Proposal, which has been approved and accepted by Owner as set forth in Appendix A. The proposal includes all measures agreed upon by the parties.

Work: Collectively, the Equipment, professional services and project construction related to the project.

Equipment and Workmanship Warranty Start Period: The date at which the owner has received beneficial use of the equipment and installed components.

Section 1.2. Energy Services Proposal Report.

ESCO has prepared the complete Energy Services Proposal Report of the Project Site(s) set forth in **Appendix A (Energy Services Proposal Report)** which has been approved and accepted by Owner as set forth in Appendix A. The audit includes all measures agreed upon by the parties.

Section 1.3. Energy Services Proposal, Sections, and Appendices

ESCO has prepared and Owner has approved and accepted the following Schedules, copies of which are attached hereto (or will be as provided for in the Contract), set forth in their entirety as Attachment I and made a part of this Contract by reference.

Energy Services Proposal – Section 1, 2, and 3

- Section 1 Executive Summary
- Section 2 Facility Description
- Section 3 Scope of Work per Facility Improvement Measure (FIM)

Energy Services Proposal – Section 4

Savings Guarantee

- Section 4 Savings Guarantee
- Section 4 Baseline Energy Consumption; Methodology to Adjust Baseline
- Section 4 Savings Measurement and Verification Plan; Post-Retrofit M&V Plan; Annual M&V Reporting Requirements
- Section 4 Data Collection and Reporting –by ESCO.
- Section 4 Compensation to ESCO for Annual Measurement & Verification Services

Payments and Schedule

- Section 6 Final Project Cost & Project Cash Flow Analysis
- Section 6 Financing Agreement and Payment Schedule (If needed)
- Section 6 Compensation to ESCO
- Section 6 Rebates, Incentives and Grants

Design and Construction Phase

- Section 2 Description of Project Site(s)
- Section 3 Equipment to be Installed by ESCO
- Section 5 Construction and Installation Schedule
- Section 5 Systems Start-Up and Commissioning
- Section 4 Operating Parameters of Installed Equipment
- Section 4 Standards of Comfort
- Section 5 ESCO's Training Responsibilities

Appendices

- Appendix A Energy Services Proposal
- Appendix B Notice of Commencement of Energy Savings
- Appendix C Notice of Substantial Completion
- Appendix D Notice of Project Acceptance and Completion

Section 1.4. Other Documents

This Contract incorporates herein and makes a part hereof the entire ESCO Energy Services Proposal for this Project labeled Appendix A respectively. Acceptance by the Owner of the Energy Services Proposal Report is reflected accordingly.

Notwithstanding, the provisions of this Contract and the attached Schedules shall govern in the event of any inconsistencies between the Energy Services Proposal Report and the provisions of this Contract.

ARTICLE 2. GUARANTEED MAXIMUM COSTS; GUARANTEE PERIOD START DATE AND TERMS; CONSTRUCTION PERIOD

Section 2.1. Guaranteed Maximum Cost

The agreed to Contract Sum for the Work is a Guaranteed Maximum Price of **\$476,639 (Excludes WSST, and TERO Tax)** as set forth in **Section 6 of the Energy Services Proposal (Open Book Project Cost Summary Table)**. Payment terms are described in **Section 3.3 ESCO Compensation and Fees** below.

ESCO will provide the Work and all related services identified in the Energy Services Proposal as described in **Section 3**. ESCO shall supervise and direct the Work and shall be responsible for the design, day to day construction supervision and administration, construction means, methods, techniques, sequences, and procedures and for coordinating all portions of the Work under this Contract. ESCO shall be responsible to pay for all labor, materials, equipment, tools, construction equipment and machinery, transportation and other services necessary for the proper execution and completion of the Work.

Owner shall pay ESCO the Contract Sum in accordance with monthly progress billings in accordance with the schedule of values that the ESCO will present once the construction schedule is created and a schedule of values can be determined. Retainage of 5% will be withheld from each payment to ESCO until the construction installation is completed as set forth in **Section 5 of the Energy Services Proposal**. At the ESCO's discretion a retention bond maybe procured in lieu of the 5% retention. **See section 3.3 ESCO Compensation and Fees below.**

Section 2.2. Guarantee Period Start Date

The Guarantee Period Start Date shall be the first day of the month after the Owner has accepted the Substantial Completion and Commencement of Energy Savings documents.

Notwithstanding anything to the contrary in this **Article 2** and **Article 3 (Guaranteed Maximum Cost; Guarantee Period Start Date and Terms; Construction Period)**, the Guarantee Period Start Date shall not occur, and the Owner shall not be required to accept the work under this Contract unless and until all Equipment and installation for the Project Site(s) is completed by ESCO in accordance with the terms and conditions of this Contract. Owner shall have 10 days after notification by the ESCO to inspect and accept the Equipment. Owner reserves the right to reject the Equipment if installation fails to meet reasonable standards of workmanship, does not comply with applicable building codes, or is otherwise not in compliance with this Contract. ESCO shall not be paid in full, including retainage, until after the construction is completed to Owner's satisfaction and ESCO has satisfied any and all claims for labor and materials and the Certificate of Acceptance

has been signed. The Certificate of Acceptance will not be unreasonably withheld by the Owner.

Section 2.3. Term of Contract; Construction and Measurement and Verification Period

Subject to the following sentence, the term of this Contract shall be the number of days for the construction period plus one full year starting on the first day of the month that the Notice of Commencement of Energy Savings is delivered to the Owner. This date will be referred to as the Performance Guarantee Period Start Date. Twelve (12) months from that Performance Guarantee Period Start Date will mark the end of the Measurement and Verification Period. No more than 30 days after this 12-month period will the Measurement and Verification Report be given. Contract shall be effective and binding upon the parties immediately upon its execution, and the period from Contract Execution until the Guarantee Period Start Date shall be known as the Construction Period. All savings resulting from installation of the measures during the Construction Period will be fully credited to Owner. If the owner chooses to extend the guarantee period, then they can negotiate the length of time they wish to extend the guarantee period for. Measurement and Verification services can only be accomplished by Apollo Solutions Group if the Owner chooses to extend the energy guarantee period.

ARTICLE 3. SAVINGS GUARANTEE; ANNUAL RECONCILIATION; PAYMENTS TO ESCO

Section 3.1. Energy and Cost Savings Guarantee

ESCO has formulated and, subject to the adjustments provided for in **ARTICLE 15 (Material Changes)**, has guaranteed the annual level of energy and water savings in units of energy and quantity and calculated the operating cost savings using the existing rates that the client now uses as can be reviewed in **Section 4 of the Energy Services proposal**. The energy and water savings will be achieved as a result of the installation and operation of the Equipment and Systems proposed in the Energy Services Proposal. Section 4 of the Energy Services Proposal proved the methods of savings measurement and verification. **(Savings Measurement and Verification Plan; Post-Retrofit M&V Plan; Annual M&V Reporting Requirements)**. The Energy Guarantee and its associated Cost Savings is set forth in annual increments for the term of the Contract as is specified in the Energy Services Proposal. The payment for the Measurement and Verification period will be made no later than 30 days after the Measurement and Verification Report is accepted by the city. The annual Measurement and Verification period may be extended by the Owner, upon a notice 30 days' notice in advance of the end of the measurement and verification period.

- (i) Apollo will take on going measurements and trends throughout the guarantee period of key variables that will prove out the energy savings as agreed upon in Section 4 of the Energy Services Proposal.

- The client will allow ASG Personnel to have remote access to their energy management control system.
- (ii) Upon receipt of the required information, ESCO shall use the information to verify / calculate the savings in accordance with the agreed-upon criteria set in **Section 4 of the Energy Services Proposal**.
 - (iii) Based upon paragraphs (i) and (ii) above, ESCO shall prepare and send to Owner a \$ 1517.00 invoice for the Annual Measurement and Verification Report.

Section 3.2. Annual Review and Reimbursement/Reconciliation

Energy-related cost savings shall be [verified] measured and/or calculated as specified in **Section 4 in the Energy Services Proposal (Savings Measurement and Verification Plan; Post-Retrofit M&V Plan; Annual M&V Reporting)** and **(Baseline Energy Consumption; Methodology to Adjust Baseline)** and a report provided within ninety (30) days of the end of the year for the previous year for each anniversary of the Guarantee Period Start Date.

The total savings in energy units resulting from all Facility Improvement Measures (FIMs) will be the metric that the ESCO and Owner will use to determine if the guaranteed savings were achieved. The utility rates at the time of the Investment Grade Audit will be used to determine the cost savings to the Owner.

In the event that the Owner finances the project with a loan, the Owner and ESCO mutually agree upon a Utility Rate Escalation percentage (Section 4 of the Energy Services Proposal).

In the event that the total Energy and Cost Savings achieved during such guaranteed year are less than the Guaranteed Energy and Cost Savings as defined in **Section 4 of the Energy Services Proposal (Savings Guarantee)**, the ESCO shall have an opportunity to investigate why the energy savings short fall occurred. In the event that the energy guarantee shortfall occurred as a result of material changes, actions or inactions by the owner, the ESCO will not be responsible for this short fall. In the event that the equipment and systems are operating in accordance to the agreed upon parameters and the shortfall still occurs, the ESCO will compensate the Owner in an amount equal to the energy savings deficiency.

The ESCO shall remit such payments to the Owner within 60 days of receiving the Annual Measurement and Verification (M&V) Report of such monies due. In no event shall credit for excess savings be used to satisfy saving guarantees in past or future years of the Contract

Section 3.3. ESCO Compensation and Fees

The ESCO will provide monthly progress billings to the Owner. The fixed fees include all ESCO Fees as listed in the Open Book Project Cost Summary Table. The Fixed Fees for the Investment Grade Audit and the Design will be billed Lump Sum plus applicable taxes upon execution of this Contract. The Construction Costs, Project Management, Overhead, and Profit will be billed as a percentage of the Construction Completion. The open book Construction Costs will include all site supervision, general conditions, permits, performance bond, and all subcontractor and supplier costs.

Section 3.4. Billing Information Procedure

Payments due to the ESCO after receipt of a progress invoice for construction, or delivery and acceptance of the annual M&V report shall not be greater than 30 days. If after 30 days, the payment is not received, the ESCO will notify the Owner of their delinquent payment. If no payment is made by the Owner, through no fault or negligence of the ESCO, the penalty of up to 3% monthly interest rate may be applied.

Section 3.5. Open Book Pricing

Contractor substantiation will be provided in the monthly invoices for all construction costs. ESCO will maintain cost accounting records on authorized work performed under actual costs for labor and material, or other basis requiring accounting records. Contractor will afford Owner access to these records and preserve them for a period of three (3) years after final payment.

Owner shall have the right to audit all books and records (in whatever form they may be kept, whether written, electronic or other) relating or pertaining to the open book construction costs, kept by or under the control of the ESCO, including, but not limited to those kept by the ESCO, its employees, agents, assigns, successors and subcontractors.

Section 3.6. Open Book Construction Savings:

If at the end of the project there are Construction Costs savings, a deductive change order equal to the amount of the construction savings will be executed. The difference between the Open Book Construction Cost Total and the Actual Construction Cost Total will comprise the amount of construction savings to the owner.

ARTICLE 4. FISCAL FUNDING

Section 4.1. Non-appropriation of Funds

In the event no Owner or other funds or insufficient Owner or other funds are appropriated and budgeted, and funds are otherwise unavailable by any means whatsoever in any fiscal period for which payments are due ESCO under this

Contract, then the Owner will, not less than 10 days prior to end to such applicable fiscal period, in writing, notify the ESCO of such occurrence and this Contract shall terminate immediately and any remaining cost owed to the ESCO shall be paid in full within 30 days.

Section 4.2. Non-substitution

In the event of a termination of this contract due to the non-appropriation of funds or in the event this Contract is terminated by ESCO due to a default by the Owner, the Owner agrees, to the extent permitted by state law, not to purchase, lease, rent, borrow, seek appropriations for, acquire or otherwise receive the benefits of any of the same and unique services performed by ESCO under the terms of this Contract for a period of seven hundred thirty (730) calendar days following such default by Owner, or termination of this Contract due to non-appropriations.

ARTICLE 5. ENERGY USAGE RECORDS AND DATA

Section 5.1. Data Provided by Owner

Owner has furnished and shall continue to furnish (or authorize its energy suppliers to furnish) during the Term of this Contract to ESCO or its designee, upon its request, all of its records and complete data concerning energy and water usage and related maintenance and operating costs for the Project Site(s). ESCO will need remote access to the Owner's Energy Management Control System for the purposes of extracting trend data for the energy calculations and during the Measurement and Verification Period.

Owner agrees to provide ESCO direct access to utility bill information, by automated data transfer as feasible.

Section 5.2 Data Collection and Reporting by ESCO

ESCO shall have access to collect and report project data, on behalf of Institution and with approval by Institution, as identified in **Section 4 of the Energy Services proposal**.

ARTICLE 6. LOCATION AND ACCESS

ESCO acknowledges that there exists sufficient space on the Project Site(s) for the installation and operation of the Equipment. Owner shall take reasonable steps to protect such Equipment from harm, theft and misuse after the Notice of Substantial Completion. Owner shall provide access to the Project Site(s) for ESCO to perform any function related to this Contract during regular business hours, or such other reasonable hours as may be requested by ESCO and acceptable to the Owner. ESCO shall be granted immediate access to make emergency repairs or corrections as it may, in its discretion, determine are needed. The ESCO's access to Project Site(s) to make emergency repairs or corrections as it may determine are needed shall not be

unreasonably restricted by the Owner. ESCO shall immediately notify the Owner when emergency action is taken and follow up with written notice with three (3) business days specifying the action taken, the reasons therefore, and the impact upon the Project Site(s), if any.

ARTICLE 7. PERMITS AND APPROVALS, COORDINATION

Section 7.1. Permits and Approvals

Owner shall use its best efforts to assist ESCO in obtaining all necessary permits and approvals for installation of the Equipment. In no event shall Owner, however, be responsible for payment of any permit fees, except as otherwise required. The equipment and the operation of the equipment by ESCO shall at all times conform to all federal, state and local code requirements. ESCO shall furnish copies of each permit or license which is required to perform the work to the Owner before the ESCO commences the portion of the work requiring such permit or license.

Section 7.2. Coordination during Installation

The Owner and ESCO shall coordinate the activities of ESCO's subcontractors with those of the Owner, its employees, and agents. The Owner shall provide reasonable access to the ESCO and its subcontractors. ESCO shall not commit or permit any act which will interfere with the performance of business activities conducted by the Owner or its employees without prior written approval of the Owner.

ARTICLE 8. CONSTRUCTION SCHEDULE AND EQUIPMENT INSTALLATION; APPROVAL

Section 8.1. Construction Schedule; Equipment Installation

An Overall Construction Schedule will be developed upon execution of this contract and updated at regular intervals.

Section 8.2. Systems Startup and Equipment Commissioning

The ESCO shall conduct or subcontract the commissioning of all equipment and systems installed as a part of this project. All commissioning and testing of these systems will be in accordance with the commissioning plan submitted during the submittal process. Testing and Balancing shall be designed to determine if the Equipment is functioning in accordance with both its published specifications and the Schedules to this Contract, and to determine if modified building systems, subsystems or components are functioning properly within the new integrated environment. The ESCO shall provide notice to the Owner of the scheduled test(s) and the Owner and/or its designees shall have the right to be present at any or all such tests conducted by ESCO and/or manufacturers of the Equipment. The ESCO shall be responsible for correcting and/or adjusting all deficiencies in installed systems and equipment as well as their operations that may be observed during system commissioning procedures.

ARTICLE 9. EQUIPMENT WARRANTIES

ESCO warrants that all equipment sold and installed as part of this Contract is new, will be materially free from defects in materials or workmanship, will be installed properly in a good and workmanlike manner, and will function properly for a period of one (1) year from the date of the Notice of Substantial Completion for the particular energy conservation measure if operated and maintained in accordance with the procedures established per building. Substantial Completion shall be defined as the stage in the progress of the Work where the Work is sufficiently complete in accordance with the Contract Documents so that the Owner can utilize and take beneficial use of the Work for its intended use or purpose. Substantial Completion does not occur until the Equipment or system has been commissioned, accepted, and the "Notice of Substantial Completion" form fully executed. After the Notice of Substantial Completion, the Owner will be responsible for the care and maintenance of the installed Facility Improvement Measures (FIMs) in this project

After the warranty period, ESCO shall have no responsibility for performing repairs, or making manufacturer warranty claims relating to the Equipment.

ESCO further agrees to assign to Owner all available manufacturer's warranties relating to the Equipment and to deliver such written warranties and which shall be submitted in the final O&M Manual. ESCO shall, during the warranty period, notify the Owner whenever defects in Equipment parts or performance occur which give rise to such rights and remedies and those rights and remedies are exercised by ESCO. During this period, the cost of any risk of damage or damage to the Equipment and its performance, including damage to property and equipment of the Owner or the Project Site(s), due to ESCO's failure to exercise its warranty rights shall be borne solely by ESCO.

All warranties, to the extent transferable, shall be transferable and extend to the Owner. The warranties shall specify that only new, not reconditioned, parts may be used and installed when repair is necessitated by malfunction. All extended warranties shall be addressed as the property of the owner and appropriately documented and titled.

Notwithstanding the above, nothing in this Section shall be construed to alleviate/relieve the ESCO from complying with its obligations to perform under all terms and conditions of this Contract and as set forth in all attached Schedules.

The Owner shall notify the ESCO during the Warranty Period, of any defects of the equipment or systems installed. Owner shall have 48 hours to notify the ESCO of any warranty issues, and the ESCO will have 48 hours to respond.

ARTICLE 10. STANDARDS OF COMFORT

ESCO will maintain and operate the Equipment in a manner which will provide the standards of comfort as written in the Energy Services Proposal.

ARTICLE 11. ENVIRONMENTAL REQUIREMENTS

Section 11.1. Excluded Material and Activities

Owner agrees to provide a Good Faith Survey to the ESCO during the Investment Grade Audit or at the very least, before any construction activities commence. The Owner recognizes that in connection with the installation and/or service or maintenance of Equipment at Owner's Project Site(s), ESCO may encounter, but is not responsible for, any work relating to (i) asbestos, materials containing asbestos, or the existence, use, detection, removal, containment or treatment thereof, (ii) fungus (any type of form of fungi, including mold or mildew, and myotoxins, spores, scents or by-products produced or released by fungi), (iii) incomplete or damaged work or systems or code violations that may be discovered during or prior to the work of this agreement, or (iv) pollutants, hazardous wastes, hazardous materials, contaminants other than those described in this Section below (collectively "Hazardous Materials"), or the storage, handling, use, transportation, treatment, or the disposal, discharge, leakage, detection, removal, or containment thereof. The materials and activities listed in the foregoing sentence are referred to as "Excluded Materials and Activities". Owner agrees that if performance of work involves any Excluded Materials and Activities, Owner will perform or arrange for the performance of such work and shall bear the sole risk and responsibility, therefore. In the event ESCO discovers Hazardous or Excluded Materials, ESCO shall immediately cease work, remove all ESCO personnel or subcontractors from the site, and notify the Owner. The Owner shall be responsible to handle such Materials at its expense. ESCO shall undertake no further work on the Project Site(s) except as authorized by the Owner in writing. Notwithstanding anything in this Contract to the contrary, any such event of discovery or remediation by the Owner shall not constitute a default by the Owner. In the event of such stoppage of work by ESCO, the Time for Completion of Work will be automatically extended by the amount of time of the work stoppage and any additional costs incurred by ESCO as a result will be added by Change Order.

If it is agreed to by the ESCO and the Owner, ESCO may be contracted by the Owner to assist with the management and oversight of the removal and disposal of all hazardous or other materials, including, without limitation, those listed in this section that it may bring to the Project Site(s).

Section 11.2. Polychlorinated Biphenyl (PCB) Ballasts; Mercury Lamps

ESCO will enter into an agreement with an approved PCB ballast disposal company that will provide an informational packet, packing receptacles and instructions, labels and shipping materials, transportation, and recycling or incineration services for PCB ballasts. All capacitors and asphalt potting compound materials removed from Owner's PCB ballasts will be incinerated in a federally approved facility. After proper disposal, a Certificate of Destruction will be provided by the approved facility to Owner. ESCO's responsibility shall be for the proper and legal management of any of Owner's PCB ballasts removed as a result of the installation of

the Equipment and shall be limited only until said PCB ballasts are loaded onto an approved PCB ballast disposal ESCO's vehicle for transportation.

ESCO will enter into an agreement with an approved lamp disposal company who will provide approved containers, materials required to label, transportation, recycling or incineration in accordance with EPA requirements, and a copy of the manifest.

Owner agrees to sign manifests of ownership for all PCB ballasts and mercury lamps removed from the Project Site(s).

ARTICLE 12. TRAINING BY ESCO

The ESCO shall conduct the training program described in **Section 5 of the Energy Services Proposal (ESCO's Training Responsibilities)** hereto. The training specified in **Section 5 (ESCO's Training Responsibilities)** must be completed prior to Notice of Substantial Completion.

ARTICLE 13. EQUIPMENT SERVICE

Section 13.1. Malfunctions and Emergencies

Owner shall use its best efforts to notify the ESCO or its designated subcontractors within 24 hours after the Owner's actual knowledge and occurrence of: (i) any malfunction in the operation of the Equipment or any preexisting energy related equipment that might materially impact upon the guaranteed energy savings, (ii) any interruption or alteration to the energy supply to the Project Site(s), or (iii) any alteration or modification in any energy-related equipment or its operation.

Where Owner exercises due diligence in attempting to assess the existence of a malfunction, interruption, or alteration it shall be deemed not at fault in failing to correctly identify such conditions as having a material impact upon the guaranteed energy savings. Owner shall notify ESCO within twenty-four (24) hours upon it having actual knowledge of any emergency condition affecting the Equipment. ESCO shall respond or cause its designee(s) shall respond within **24** hours and shall promptly proceed with corrective measures. Any telephonic notice of such conditions by Owner shall be followed within three business days by written notice to ESCO from Owner. If Owner unreasonably delays in so notifying ESCO of a malfunction or emergency, and the malfunction or emergency is not otherwise corrected or remedied, ESCO may charge Owner for its loss, due to the delay, associated with the guaranteed savings under this Contract for the particular time period, provided that ESCO is able to show the direct causal connection between the delay and the loss.

The ESCO will provide a written record of all service work performed. This record will indicate the reason for the service, description of the problem and the corrective action performed.

Section 13.2. Actions by Owner

Owner shall not move, remove, modify, alter, or change in any way the Equipment or any part thereof without the prior written approval of ESCO. Notwithstanding the foregoing, Owner may take reasonable steps to protect the Equipment if, due to an emergency, it is not possible or reasonable to notify ESCO before taking any such actions. In the event of such an emergency, Owner shall take reasonable steps to protect the Equipment from damage or injury and shall follow instructions for emergency action provided in advance by ESCO. Owner agrees to maintain the Project Site(s) in good repair and to protect and preserve all portions thereof which may in any way affect the operation or maintenance of the Equipment.

ARTICLE 14. MODIFICATION, UPGRADE OR ALTERATION OF THE EQUIPMENT

Section 14.1. Modification of Equipment

During the Term of this Contract, Owner will not, without the prior written consent of ESCO, affix or install any accessory Equipment or device on any of the Equipment if such addition will change or impair the originally intended functions, value or use of the Equipment without ESCO's prior written approval, which shall not be unreasonably withheld. If prior written approval is not given by the ESCO, the measure and verification period will be terminated.

Section 14.2. Upgrade or Alteration of Equipment

ESCO shall at all times have the right, subject to Owner's prior written approval, which approval shall not be unreasonably withheld, to change the Equipment, revise any procedures for the operation of the Equipment or implement other energy saving actions in the Project Site(s), provided that: (i) the ESCO complies with the standards of comfort and services set forth in **Section 4 (Standards of Comfort) in the Energy Services Proposal** herein; (ii) such modifications or additions to, or replacement of the Equipment, and any operational changes, or new procedures are necessary to enable the ESCO to achieve the guaranteed energy and cost savings at the Project Site(s) and; (iii) any cost incurred relative to such modifications, additions or replacement of the Equipment, or operational changes or new procedures shall be the responsibility of the ESCO.

All modifications, additions or replacements of the Equipment or revisions to operating or other procedures shall be described in a supplemental Schedule(s) to be provided to the Owner for approval, which shall not be unreasonably withheld, provided that any replacement of the Equipment shall, unless otherwise agreed, be new and have equal or better potential to reduce energy consumption at the Project Site(s) than the Equipment being replaced. All replacements of and alterations or additions to the Equipment shall become part the Equipment described in **Section 3 in the Energy Services Proposal (Equipment to be Installed by ESCO)**.

ARTICLE 15. MATERIAL CHANGES

Section 15.1. Material Change Defined

A Material Change shall include any change in or to the Project Site(s), whether structural, operational or otherwise in nature which reasonably could be expected, in the judgment of the Owner, to increase or decrease annual energy consumption in accordance with the provisions and procedures set forth in **Section 4 (Baseline Energy Consumption)** and **Section 4 (Savings Measurement and Verification Plan; Post-Retrofit M&V Plan; Annual M&V Report Requirements)** Actions by the Owner which may result in a Material Change include but are not limited to the following:

- (i) manner of use of the Project Site(s) by the Owner; or
- (ii) hours of operation for the Project Site(s) or for any equipment or energy using systems operating at the Project Site(s); or
- (iii) Permanent changes in the comfort and service parameters set forth in **(Standards of Comfort)**; or
- (iv) occupancy of the Project Site(s); or
- (v) structure of the Project Site(s); or
- (vi) types and quantities of equipment used at the Project Site(s) or
- (vii) modification, renovation or construction at the Project Site(s); or
- (viii) the Owner's failure to provide maintenance of and repairs to the Equipment in accordance with **(Owner's Maintenance Responsibilities)**; or
- (ix) any other conditions other than climate affecting energy use at the Project Site(s) including but not limited to the replacement, addition or removal of energy and water consuming devices whether plug in or fixed assets,
- (x) casualty or condemnation of the Project Site(s) or Equipment, or
- (xi) changes in utility provider or utility rate classification, or
- (xii) any other conditions other than climate affecting energy or water use at the Project Site(s).
- (xiii) Modifications, alterations or overrides of the energy management system schedules or hours of operation, set back/start up or holiday schedules.

Section 15.2. Reported Material Changes; Notice by Owner

The Owner shall use its best efforts to deliver to the ESCO a written notice describing all actual or proposed Material Changes in the Project Site(s) or in the operations of the Project Site(s) at least **10** days before any actual or proposed Material Change is implemented or as soon as is practicable after an emergency or other unplanned event. Notice to the ESCO of Material Changes which result because of a bona fide emergency or other situation which precludes advance notification shall be deemed sufficient if given by the Owner within **24** hours after having actual knowledge that the event constituting the Material Change occurred or was discovered by the Owner to have occurred.

Section 15.3. Other Adjustments

As agreed in **Section 15.1** Owner will alert ESCO of materials changes as known. Both parties have a vested interest in meeting the guaranteed savings of the Contract. As such, the ESCO will work with Owner to investigate, identify and correct any changes that prevent the guaranteed savings from being realized. As a result of such investigation, ESCO and Owner shall determine what, if any, adjustments to the baseline will be made in accordance with the provisions set forth in **Section 4 of the Energy Services Proposal (Savings Measurement and Verification Plan; Post-Retrofit M&V Plan; Annual M&V Report Requirements)** and **(Baseline Energy Consumption)**. Any disputes between the Owner and the ESCO concerning any such adjustment shall be resolved in accordance with the provisions of **Article 27 Dispute Resolution** hereto.

ARTICLE 16. PERFORMANCE BY ESCO

Section 16.1. Corrective Action; Accuracy of the Services

ESCO shall perform all tasks/phases under the Contract, including construction, and install the Equipment in such a manner so as not to harm the structural integrity of the buildings or their operating systems and so as to conform to the standards set forth in **Section 4 of the Energy Services Proposal (Standards of Comfort)** and the construction schedule specified in **Section 5 of the Energy Services Proposal (Construction and Installation Schedule)**. ESCO shall repair and restore to its original condition any area of damage caused by ESCO's performance under this Contract. The Owner reserves the right to review the work performed by ESCO and to direct ESCO to take certain corrective action if, in the opinion of the Owner, the structural integrity of the Project Site(s) or its operating system is or will be harmed. All costs associated with such corrective action to damage caused by ESCO's performance of the work shall be borne by ESCO.

ESCO shall remain responsible for the professional and technical accuracy of all services performed, whether by the ESCO or its subcontractors or others on its behalf, throughout the term of this Contract.

ARTICLE 17. OWNERSHIP OF CERTAIN PROPRIETARY RIGHTS; EXISTING EQUIPMENT

Section 17.1. Ownership of Certain Proprietary Property Rights

Owner shall not, by virtue of this Contract, acquire any interest in any formulas, patterns, devices, secret inventions or processes, copyrights, patents, other intellectual or proprietary rights, or similar items of property which are or may be used in connection with the Equipment. The ESCO shall grant to the Owner a perpetual, irrevocable royalty-free license for any and all software or other intellectual property rights necessary for the Owner to continue to operate, maintain, and repair the Equipment in a manner that will yield guaranteed utility consumption reductions for the specified contract term. ESCO shall not be liable for providing new versions of software or other enhancements if or unless such new

versions or enhancements are necessary to achieve the guaranteed utility consumption reductions.

Section 17.2. Ownership of Existing Equipment

Ownership of the equipment and materials presently existing at the Project Site(s) at the time of execution of this Contract shall become the property of the ESCO if it is replaced or its operation made unnecessary by work performed by ESCO pursuant to this Contract. If applicable, ESCO shall advise the Owner in writing of all equipment and materials to be replaced at the Project Site(s) and the Owner shall within **10** days designate in writing to the ESCO which equipment and materials that should not be disposed of off-site by the ESCO. It is understood and agreed to by both Parties that the Owner shall be responsible for and designate the location and storage for any equipment and materials that should not be disposed of off-site. The ESCO shall be responsible for the disposal of all equipment and materials designated by the Owner as disposable off-site in accordance with all applicable laws and regulations regarding such disposal.

ARTICLE 18. PROPERTY/CASUALTY/INSURANCE; INDEMNIFICATION

Section 18.1 Insurances.

At all times during the term of this Contract, ESCO shall maintain in full force and effect, at its expense: (1) Workmen's Compensation Insurance sufficient to cover all of the employees of (ESCO) working to fulfill this Contract, and (2) Casualty and Liability Insurance on the Equipment and Liability Insurance for its employees and the possession, operation, and service of the Equipment. The limits of such insurance shall be not less than \$2,000,000 for injury to or death of one person in a single occurrence and \$4,000,000 for injury to or death of more than one person in a single occurrence and \$1,000,000 for a single occurrence of property damage. Such policies shall name the Owner as an additional insured.

Prior to commencement of work under this Contract, ESCO will be required to provide Owner with current certificates of insurance specified above. These certificates shall contain a provision that coverages afforded under the policies will not be canceled or changed until at least thirty (30) days' prior written notice has been given to Owner.

Section 18.2. Damages to Equipment or Property.

ESCO shall be responsible for (i) any damage to the Equipment or other property on the Project Site(s) and (ii) any personal injury where such damage or injury occurs as a result of ESCO's performance under this Contract.

Section 18.3. Indemnification.

ESCO shall save and hold harmless Owner and its officers, agents and employees or any of them from any and all claims, demands, actions or liability of any nature

based upon breach of contract or negligence arising out of any services performed by ESCO, its agents or employees under this Contract.

Section 18.4. Liabilities.

Neither party shall be liable for any special, incidental, indirect, punitive or consequential damages, arising out of or in connection with this Contract. Further, the liability of either party under this Contract shall not exceed the Contract Sum in the aggregate.

ARTICLE 19. CONDITIONS BEYOND CONTROL OF THE PARTIES

If a party ("performing party") shall be unable to reasonably perform any of its obligations under this Contract due to acts of God, insurrections or riots, or similar events, this Contract shall at the other party's option (i) remain in effect but said performing party's obligations shall be suspended until the said events shall have ended; or, (ii) be terminated upon ten (10) days' notice to the performing party, in which event neither party shall have any further liability to the other.

ARTICLE 20. EVENTS OF DEFAULT

Section 20.1. Events of Default by Owner

Each of the following events or conditions shall constitute an "Event of Default" by Owner:

- (i) any failure by Owner to pay ESCO any sum due for its services for a period of more than 15 days after written notification by ESCO that Owner is delinquent in making payment and provided that ESCO is not in default in its performance under the terms of this Contract: or
- (ii) any other material failure by Owner to perform or comply with the terms and conditions of this Contract, including breach of any covenant contained herein, provided that such failure continues for 15 days after notice to Owner demanding that such failures to perform be cured or if such cure cannot be effected in 15 days, Owner shall be deemed to have cured default upon the commencement of a cure within 10 days and diligent subsequent completion thereof;
- (iii) any representation or warranty furnished by Owner in this Contract which was false or misleading in any material respect when made.

Section 20.2. Events of Default by ESCO

Each of the following events or conditions shall constitute an "Event of Default" by ESCO:

- (iv) the standards of comfort and service set forth in **Section 4 of the Energy Services Proposal (Standards of Comfort)** are not provided due to failure of ESCO to properly design, install, maintain, repair or adjust the

Equipment except that such failure, if corrected or cured within 30 days after written notice by Owner to ESCO demanding that such failure be cured, shall be deemed cured for purposes of this Contract.

- (v) any representation or warranty furnished by ESCO in this Contract is false or misleading in any material respect when made;
- (vi) failure to furnish and install the Equipment and make it ready for use within the time specified by this Contract as set forth in **Section 3 of the Energy Services Proposal (Equipment to be Installed by ESCO) and Construction and Installation Schedule;**
- (vii) provided that the operation of the facility is not adversely affected and provided that the standards of comfort in **Section 4 of the Energy Services Proposal (Standards of Comfort)** are maintained, any failure by ESCO to perform or comply with the terms and conditions of this Contract, including breach of any covenant contained herein except that such failure, if corrected or cured within 30 days after written notice by the Owner to ESCO demanding that such failure to perform be cured, shall be deemed cured for purposes of this Contract;
- (viii) any lien or encumbrance upon the equipment by any subcontractor, laborer or materialman of ESCO;
- (ix) the filing of a bankruptcy petition whether by ESCO or its creditors against ESCO which proceeding shall not have been dismissed within 120 days of its filing, or an involuntary assignment for the benefit of all creditors or the liquidation of ESCO.
- (x) failure by the ESCO to pay any amount due the Owner or perform any obligation under the terms of this Contract or the Energy and Cost Savings Guarantee as set forth in **Schedule A (Savings Guarantee).**

ARTICLE 21. REMEDIES UPON DEFAULT

Section 21.1. Remedies upon Default by Owner

- (i) exercise all remedies available at law or in equity or other appropriate proceedings including bringing an action or actions from time to time for recovery of amounts due and unpaid by Owner, and/or for damages which shall include all costs and expenses reasonably incurred in exercise of its remedy;

Section 21.2. Remedies Upon Default by ESCO

In the Event of Default by ESCO, Owner shall have the choice of either one of the following remedies in law or equity:

- (i) exercise and any all remedies at law or equity, or institute other proceedings, including, without limitation, bringing an action or actions from time to time for specific performance, and/or for the recovery of amounts due and unpaid and/or for damages, which shall include all costs and expenses reasonably incurred, including attorney's fees;

ARTICLE 22. ASSIGNMENT

The ESCO acknowledges that the Owner is induced to enter into this Contract by, among other things, the professional qualifications of the ESCO. The ESCO agrees that neither this Contract nor any right or obligations hereunder may be assigned in whole or in part to another firm, without the prior written approval of the Owner.

Section 22.1. Assignment by ESCO

The ESCO may, with prior written approval of the Owner, which consent shall not be unreasonably withheld, delegate its duties and performance under this Contract, and/or utilize ESCOs, provided that any assignee(s), delegee(s), or ESCO(s) shall fully comply with the terms of this Contract. Notwithstanding the provisions of this paragraph, the ESCO shall remain jointly and severally liable with its assignees(s), or transferee(s) to the Owner for all of its obligations under this Contract.

Section 22.2. Assignment by Owner

Owner may transfer or assign this Contract and its rights and obligations herein to a successor or purchaser of the buildings or an interest therein. The Owner shall remain jointly and severally liable with its assignees or transferees to the ESCO for all of its obligations under this Contract.

ARTICLE 23. REPRESENTATIONS AND WARRANTIES

Each party warrants and represents to the other that:

- (i) it has all requisite power, authority, licenses, permits, and franchises, corporate or otherwise, to execute and deliver this Contract and perform its obligations hereunder;
- (ii) its execution, delivery, and performance of this Contract have been duly authorized by, or are in accordance with, its organic instruments, and this Contract has been duly executed and delivered for it by the signatories so authorized, and it constitutes its legal, valid, and binding obligation;
- (iii) its execution, delivery, and performance of this Contract will not breach or violate, or constitute a default under any Contract, lease or instrument to which it is a party or by which it or its properties may be bound or affected;
or
- (iv) it has not received any notice, nor to the best of its knowledge is there pending or threatened any notice, of any violation of any applicable laws, ordinances, regulations, rules, decrees, awards, permits or orders which would materially and adversely affect its ability to perform hereunder.

ARTICLE 24. ADDITIONAL REPRESENTATIONS OF THE PARTIES

In addition, the ESCO certifies that before beginning work under this contract it will: have become licensed to business in the state; provide proof of required insurance

and bonds; give Owner access to all document relating to the project (including all contracts and subcontracts) upon request; use licensed and qualified subcontractors; and is financially able to complete the project and perform under the terms of this contract. In addition, the ESCO certifies that the equipment will meet or exceed the functional design tests performed prior to Owner acceptance and the installed equipment will be compatible with existing equipment and building systems.

Owner hereby warrants, represents and promises that:

- (i) it has provided or shall provide timely to ESCO, all records relating to energy usage and energy-related maintenance of Project Site(s) requested by ESCO and the information set forth therein is, and all information in other records to be subsequently provided pursuant to this Contract will be true and accurate in all material respects; and
- (ii) it has not entered into any leases, contracts or Contracts with other persons or entities regarding the leasing of energy efficiency equipment or the provision of energy management services for the Project Site(s) or with regard to servicing any of the energy related equipment located in the Project Site(s). Owner shall provide ESCO with copies of any successor or additional leases of energy efficiency equipment and contracts for management or servicing of preexisting equipment at Project Site(s) which may be executed from time-to-time hereafter within 10 days after execution thereof.

ESCO hereby warrants, represents and promises that:

- (i) before commencing performance of this Contract:
 - (a) it shall have become licensed or otherwise permitted to do business in the State of Washington
 - (b) it shall have provided proof and documentation of required insurance and bonds pursuant to this Contract;
- (ii) it shall make available, upon reasonable request, all documents relating to its performance under this Contract, including all contracts and subcontracts entered into;
- (iii) it shall use qualified subcontractors who are qualified, licensed and bonded in this state to perform the work so subcontracted pursuant to the terms hereof;
- (iv) The Equipment will meet or exceed the provisions set forth in **Section 8.2 (Systems Start Up and Equipment Commissioning)** and in **Section 4 of Energy Services Proposal (Systems Start-Up and Commissioning; Operating Parameters of Installed Equipment)**.

- (v) The Equipment is or will be compatible with all other Project Site(s) mechanical and electrical systems, subsystems, or components with which the Equipment interacts, and that, as installed, neither the Equipment nor such other systems, subsystems, or components will materially adversely affect each other as a direct or indirect result of Equipment installation or operation;
- (v) that it is financially solvent, able to pay its debts as they mature and possessed of sufficient working capital to complete the Work and perform its obligations under this Contract.

ARTICLE 25. MICELLANEOUS DOCUMENTATION PROVISIONS

Section 25.1. Further Documents

The parties shall execute and deliver all documents and perform all further acts that may be reasonably necessary to effectuate the provisions of this Contract.

Section 25.2. Owner's Responsibilities

This provision protects both the ESCO and the Owner by establishing a method for the ESCO to supervise the Owner's compliance with the scheduled routine and preventative maintenance activities to be performed by the Owner (either by in-house personnel or existing maintenance contract). This checklist should be developed for both the newly installed and pre-existing energy-related equipment.

(a) Methods of Operation by Owner

The parties acknowledge and agree that said Energy and Cost Savings would not likely be obtained unless certain procedures and methods of operation designed for energy and water conservation shall be implemented and followed by Owner on a regular and continuous basis.

(b) Owner Maintenance Responsibilities

Owner agrees that it shall adhere to, follow and implement the energy conservation procedures and methods of operation to be set forth in the On-Site Training and in the O&M Manuals (**Owner's Maintenance Responsibilities**), to be attached hereto and made a part hereof after Owner's approval, such approval not to be unreasonably withheld, conditioned or delayed.

Section 25.3. Waiver Of Liens

ESCO will obtain and furnish to Owner a Waiver of Liens from each vendor, material manufacturer and laborer in the supply, installation and servicing of each piece of Equipment to extent applicable by law.

ARTICLE 26. CONFLICTS OF INTEREST

Conflicts of interest relating to this Contract are strictly prohibited. Except as otherwise expressly provided herein, neither party hereto nor any director,

employee or agent of any party hereto shall give to or receive from any director, employee or agent of any other party hereto any gift, entertainment or other favor of significant value, or any commission, fee or rebate in connection with this Contract. Likewise, neither party hereto nor any director, employee or agent of either party hereto, shall without prior notification thereof to the other party enter into any business relationship with any director, employee or agent of the other party or of any affiliate of the other party, unless such person is acting for and on behalf of the other party or any such affiliate. A party shall promptly notify the other party of any violation of this section and any consideration received as a result of such violation shall be paid over or credited to the party against whom it was charged. Any representative of any party, authorized by that party, may audit the records of the other party related to this Contract, upon reasonable notice and during regular business hours including the expense records of the party's employees involved in this Contract, upon reasonable notice and during regular business hours, for the sole purpose of determining whether there has been compliance with this section.

ARTICLE 27. DISPUTE RESOLUTION

Mediation (Pre-Mediation and Binding Mediation)

Mindful of the high cost of litigation, not only in dollars, but also in time and energy, the parties intend to and do hereby establish the following out-of-court alternate dispute resolution procedure to be followed in the event any controversy or dispute should arise out of or relating to this contract or relating to any change orders or other changes or addendums to this contract.

If a dispute develops between the parties to this contract, they will submit to mediation to address any controversy or claim arising out of or relating to this contract or relating to any change orders or other changes or addendums to this contract. Prior to the beginning of the mediation process, the parties may agree that if there is one or more disputed items that remain unresolved at the end of the mediation, the parties will proceed with binding mediation where the mediator will render a final and binding decision on those unresolved items, or the parties may elect to submit the remaining unresolved items to a mediation procedure where a new and separate binding arbitration session will be scheduled to settle any unresolved issues remaining after the mediation session has been concluded. The parties must mutually agree to utilize binding mediation, or the parties will be bound only to participate in the mediation process. The mediation shall be conducted by and according to the Construction Mediation Rules of the American Arbitration Association. Both parties shall share the cost of the dispute resolution process equally up to and including the mediation settlement agreement although personal attorneys and witnesses or specialists are the direct responsibility of each party, and their fees and expenses shall be the responsibility of the individual parties. As part of the decision of the mediator in binding mediation, the mediator shall award the prevailing party reasonable attorney's fees and reasonable expenses in any manner in which the mediator feels is fair and equitable to the parties. The

Mediation Settlement Agreement shall be binding on the parties and shall be enforceable in any court of competent jurisdiction. The venue for any mediation to enforce the provisions of this Contract shall be brought in Spokane, Washington.

ARTICLE 28. COMPLETE CONTRACT

This Contract, when executed, together with Energy Services Proposal attached hereto or to be attached hereto, as provided for by this Contract shall constitute the entire Contract between both parties and this Contract may not be amended, modified, or terminated except by a written Contract signed by the parties.

ARTICLE 29. APPLICABLE LAW

This Contract and the construction and enforceability thereof shall be interpreted under the laws of the State of Washington.

ARTICLE 30. INTERPRETATION OF CONTRACT

The Parties shall have the authority to determine questions of fact that arise in relation to the interpretation of this Contract and the ESCO'S performance hereunder. However, such determinations are subject to the Alternative Dispute Resolution procedures as described in **Article 27 Dispute Resolution**. Unless the Parties agree otherwise, or the Work cannot be continued without a resolution of the question of fact, such determinations and Alternative Dispute Resolution procedures shall not be cause for delay of the Work. The ESCO shall proceed diligently with the performance of this Contract and in accordance with the Owner's decision whether or not the ESCO or anyone else has an active claim pending. Continuation of the Work shall not be construed as a waiver of any rights accruing to the ESCO.

ARTICLE 31. NOTICE

Any notice required or permitted hereunder shall be deemed sufficient if given in writing and delivered personally or sent by registered or certified mail, return receipt requested, postage prepaid, or delivered to a nationally recognized express mail service, charges prepaid, receipt obtained, to the address shown below or to such other persons or addresses as are specified by similar notice.

TO ESCO: ***Attention: Dale Hollandsworth
Vice President
Apollo Sheet Metal, Inc., DBA Apollo Solutions Group
1133 W. Columbia Dr.
Kennewick WA 99336.
Include COPY TO: information for ESCO, if applicable.***

TO OWNER: ***Attention: City of Medical Lake
Terri Cooper, Mayor
124 S. Lefevre Street
Medical Lake, WA 99022***

IN WITNESS WHEREOF, and intending to be legally bound, the parties hereto subscribe their names to this Contract by their duly authorized representatives on the date first above written.

ATTEST:

(OWNER)

Terri Cooper, Mayor

Date

(ESCO)

Dale Hollandsworth, Vice-President

Date

APPENDICES

Appendix A Energy Services Proposal

Appendix B Notice of Commencement of Energy Savings

Appendix C Notice of Substantial Completion

Appendix D Notice of Project Acceptance and Completion

**CITY OF MEDICAL LAKE
SPOKANE COUNTY, WASHINGTON
ORDINANCE NO. 1109**

**AN ORDINANCE OF THE CITY OF MEDICAL LAKE, WASHINGTON, ADDING
CHAPTER 11.23, COMPLETE STREETS POLICY, TO MEDICAL LAKE MUNICIPAL
CODE TITLE 11, STREETS AND SIDEWALKS, CREATING THE COMPLETE
STREETS POLICY FOR USE WHEN CREATING FUTURE TRANSPORTATION
PROJECTS AS AN OPPORTUNITY TO IMPROVE PUBLIC STREETS FOR
PEDESTRIANS, BICYCLISTS, AND TRANSIT USERS REGARDLESS OF AGE OR
ABILITY; SEVERABILITY; AND ESTABLISHING EFFECTIVE DATE**

WHEREAS, the term "Complete Streets" describes a comprehensive, integrated transportation network with infrastructure and design that allows safe and convenient travel for all users, including pedestrians, bicyclists, motor vehicle drivers, transit users, emergency service providers and freight, and people of all ages and abilities, including children, youth, families, older adults, and individuals with disabilities; and

WHEREAS, in 2011, the state legislature passed the Complete Streets Act, codified in RCW 47.04.320-340, encouraging local governments to adopt their own complete streets ordinances. In particular, RCW 47.04.320(1) states that such ordinances should "provide safe access to all users, including bicyclists, pedestrians, motorists, and public transportation users."

WHEREAS, RCW 47.04.330 requires the Washington State Department of Transportation (WSDOT) to consult with local jurisdictions and consider the needs of all users by applying context sensitive solutions when constructing, reconstructing, or making major improvements to streets that are part of the state highway system; and

WHEREAS, RCW 47.04.320 establishes a grant program to help cities, towns, and counties pay for complete streets projects. To be eligible for a grant, RCW 47.04.320(2)(b) requires local governments to adopt a jurisdiction-wide complete streets ordinance; and

WHEREAS, more than 110,000 pedestrians and bicyclists are injured each year on roads in the United States with children and older adults at greatest risk and disproportionately affected; and

WHEREAS, the occurrence and severity of pedestrian and bicyclist injuries could readily be decreased by implementing Complete Streets practices; and

WHEREAS, the one-third of Americans that do not drive, disproportionately represented by older adults, low-income people, people with disabilities, and children would greatly benefit from the equitable distribution of safe, alternative means of travel that will result from Complete Streets practices; and

WHEREAS, the City of Medical Lake wants to create convenient, enjoyable connections from the parks and trails to its lakes, downtown business core, and the businesses located on Highway 902 within the city limits of Medical Lake to promote tourism and create economic development opportunities while creating a more sustainable community; and

WHEREAS, the Medical Lake City Council intends to improve the safety of City streets, enhance the quality of life of residents, encourage active living, and reduce traffic congestion and fossil fuel use by providing safe, convenient, and comfortable routes for walking, bicycling, and public transportation; and

WHEREAS, the Comprehensive Plan for the City of Medical Lake, as adopted in 2019, encourages efficient, multi-modal transportation systems that are based on regional priorities and coordinated with county and city comprehensive plans including pedestrian and bicycle travel.

NOW, THEREFORE, the City Council of the City of Medical Lake, Washington, does hereby ordain as follows:

Section 1. Title 11, Streets and Sidewalks, of the Medical Lake Municipal Code is hereby amended to include a new Chapter 11.23, Complete Streets Policy, which reads as follows:

11.23- Complete Streets Policy.

11.23.010 Purpose.

The City of Medical Lake shall, to the maximum extent practical, scope, plan, design, construct, operate and maintain appropriate facilities for the safe accommodation of pedestrians, bicyclists, transit users, motorists, emergency responders, freight and users of all ages and abilities in all new construction, retrofit or reconstruction projects. Through ongoing operations and maintenance, the City of Medical Lake shall identify cost-effective opportunities to include Complete Streets practices.

11.23.020 Exceptions.

Facilities for pedestrians, bicyclists, transit users and/or people of all abilities are not required to be provided when:

- A. A documented absence of current or future need exists;
- B. Non-motorized uses are prohibited by law;
- C. Routine maintenance of the transportation network is performed that does not change the roadway geometry or operations, such as mowing, sweeping and spot repair;
- D. The cost would be disproportionate to the current need or probable future uses;
or
- E. In instances where a documented exception is granted by the Mayor.

11.23.030 Complete Streets Infrastructure.

As feasible, the City of Medical Lake shall incorporate "Complete Streets Infrastructure" into existing public and private streets to create a comprehensive, integrated, connected transportation network for Medical Lake that balances access, mobility, health and safety needs of pedestrians, bicyclists, transit users, motorists, emergency responders, freight and users of all ages and abilities, ensuring a fully connected, integrated network that provides transportation options. "Complete Streets Infrastructure" means design features that contribute to a safe, convenient, or comfortable travel experience for users, including but not limited to features such as: sidewalks; shared use paths; bicycle lanes; automobile lanes; paved shoulders; street trees and landscaping; planting strips; curbs; accessible curb ramps; bulb outs; crosswalks; refuge islands; pedestrian and traffic signals, including countdown and accessible signals; signage; street furniture; bicycle parking facilities; public transportation stops and facilities; transit priority signalization; traffic calming devices such as rotary circles, traffic bumps, and surface treatments such as paving blocks, textured asphalt, and concrete; narrow vehicle lanes; raised medians; and dedicated transit lanes.

11.23.040 Goals to Foster Partnerships.

It is a goal of the City of Medical Lake to foster partnerships with all Washington State transportation funding agencies including the WSDOT, the Federal Highway Administration, Spokane County, Medical Lake School District, citizens, businesses, interest groups, neighborhoods, and any funding agency to implement the Complete Streets ordinance.

11.23.050 Best Practice Criteria.

The Mayor or designee shall modify, develop and adopt policies, design criteria, standards and guidelines based upon recognized best practices in street design, construction, and operations including but not limited to the latest editions of American Association of State Highway Transportation Officials, Institute of Transportation Engineers and National Association of City Transportation Officials while reflecting the context and character of the surrounding built and natural environments and enhance the appearance of such.

11.23.060 Performance Standards.

The City of Medical Lake shall put into place performance standards with measurable benchmarks to continuously evaluate the Complete Streets ordinance for success and opportunities for improvement. Performance standards may include transportation and mode shift, miles of bicycle facilities or sidewalks, public participation, number of ADA accommodations built, and number of exemptions from this policy approved.

Section 2. Severability. If any section, sentence, clause, or phrase of this Ordinance should be held to be invalid or unconstitutional by a court of competent jurisdiction, such invalidity or unconstitutionality shall not affect the validity or constitutionality of any other section, sentence, clause, or phrase of this Ordinance.

Section 3. Effective Date. This Ordinance shall be in full force and effect thirty (30) days after publication of this Ordinance or a summary thereof in the official newspaper of the City as provided by law.

PASSED by the City Council this _____ day of _____ 2023.

Mayor, Terri Cooper

ATTEST:

Finance Director/City Clerk Koss Ronholt

APPROVED AS TO FORM:

City Attorney, Sean P. Boutz

Date of Publication:

Effective Date: