EPHRATA CITY COUNCIL

MAYOR BRUCE REIM MAYOR PRO-TEM WILLIAM COE
COUNCIL MEMBERS: KATHLEEN ALLSTOT, KATHLEEN HARRIS,
SARAH McDONNELL, VALLI MILLARD, MATT MOORE, TONY MORA.

– AGENDA FOR January 18, 2023 –

6:00 PM **EXECUTIVE SESSION** THE CITY OF EPHRATA CONDUCTS EXECUTIVE SESSION IN ACCORDANCE WITH RCW 42.30.110 OF THE OPEN PUBLIC MEETING ACT

1. Litigation or Potential Litigation (RCW 42.30.110(1)(i))
2. Acquisition of Real Estate or Site Selection (RCW 42.30.110(1)(b))

7:00 PM **REGULAR SESSION**

1. Called to Order
2. Roll Call
3. Pledge of Allegiance
4. Recording of Meeting: **Yes**
5. Additions or corrections to published Agenda
6. Presentations:
   a. SCJ Alliance Comprehensive Plan Update

II **CONSENT AGENDA**

1. Approval of Claim Fund Bills and Checks Issued
2. Approval of Council Minutes: December 22, 2022
3. Approval of Special Event Application(s): None

III **STAFF, COMMITTEE, & AGENCY REPORTS**

IV **CLOSED RECORD DECISIONS** [RCW CHAPTERS 36, 42 OPEN PUBLIC INPUT NOT PERMITTED]

BILLS: Mora, Coe, McDonnell

V **PUBLIC HEARINGS**

1. Ordinance 23-01 Desert Plains Major Subdivision Development Agreement

VI **ORDINANCES & RESOLUTIONS**

1. Ordinance 23-01 Desert Plains Major Subdivision Development Agreement

VII **ITEMS FOR COUNCIL CONSIDERATION**

VIII **ITEMS FOR COUNCIL ACTION**

1. Financial Software Upgrade Recommendation
2. Professional Services Rate Increase – Marten Law
3. Engineering Contract Amendment Well #9 Site Evaluation
4. Nat Washington Way Overlay Project Consultant Agreement
5. Appointment of City Representative to GTA Board
6. Re-appointment of Joe Varick to Civil Service Commission
7. Re-appointment Joe Dennis and Don Guillemette to Planning Commission

IX **ADMINISTRATION REPORTS**

1. Personnel Policy Update

CITY COUNCIL MINUTES
December 21, 2022

City Council of the City of Ephrata, Grant County Washington met in regular session on December 21, 2022. The meeting was called to order at 7:00 p.m. by Mayor Bruce Reim

Members Present: Mayor Bruce Reim, Mayor Pro Tem William Coe, Council members Kathleen Allstot, Kathleen Harris, Valli Millard, Sarah McDonnell, Matt Moore, and Tony Mora

Staff Present: Interim City Administrator Kurt Adkinson, City Attorney Anna Franz, Public Works Director Bill Sangster, Community Relations Director Traci Bennett, Police Chief Erik Koch, City Clerk/Finance Director Leslie Trachsler and Deputy City Clerk Carrie Lnenicka

Pledge of Allegiance was said.

Agenda: There were additions/correction to the agenda.

- Presentations – Officer Joanna Navarro swearing in ceremony
- VIII, 3. Approve UV Procurement bid – Wastewater Treatment Facility
- VIII, 4. Approval of City Administrator Job Description

Presentations:

- Erik Koch sworn in as Chief of Police
- Joanna Navarro sworn in as Patrol Officer

Consent Agenda: Motion was made to approve consent agenda. (m/s Harris/Moore) Motion carried.

Items on the consent agenda are as follows:

Claims# 95929 through #95990 in the amount of $182,536.89
Payroll claim#47473 in the amount of $345.87
Checks #86122022, 87122022, 88122022 and 89122022 in the amount of $3,821.63
Voided checks #47345 and 94444 in the amount of ($537.87)
Minutes of the December 7, 2022, Council meeting

Special Event Applications:

- Thrill at Beezley Hills – April 29, 2023

Ordinance 22-15 – Amending 2022 Budget: This budget amendment addresses the legal obligation we have to adopt a budget that reflects all expenses known and unanticipated. The reflected increases are associated with the transfer of the second payment of the State Local Fiscal Recover Funds; increased cost for Professional Services; personnel costs associated with retirement benefits payouts; increased property insurance costs; and increased costs for supplies and equipment purchases.
Motion to accept and approve Ordinance 22-15 Amending the 2022 Budget as amended (m/s Allstott/McDonnell) Motion carried.

Ordinance 22-16 – Fee Schedule and Charges for City Services: The Council's philosophy has been to make small incremental increases to the City's fees and charges on a yearly basis by the amount of CPI. All rates have been increased by 8.7% with the exception of water, sewer and garbage rates. Council directed staff to increase utility rates by only 5% of the CPI. Combined with loan obligations for engineering and design for a new water tower and pressure zone, and upgrades to the sewer collection and treatment facility, the following are the increases for utility rates:

- Water – 11%
- Sewer – 7%
- Garbage – 5%

The Splashzone rates will increase 8.62%. Ephrata Parks Commission recommended that the rates increase by only minimum wage and not minimum wage plus CPI. The 2023 minimum wage rate increased to $15.75 per hour. The ERC rates have been moved from the Personnel Policy to the Fee Schedule which will allow staff to keep the rates current.
Amendment to Exhibit A: Garbage rates, 65 gallon should be $26.15, not $27.65.
Motion to accept and approve Ordinance 22-16 – Fee Schedule and Charges for City Services as amended on exhibit A (m/s McDonnell/Moore) Motion carried.

Approve amended Policy 5010 "Use of Public Building": Staff is requesting ERC rates to be moved from Policy 5010 to the Ephrata Municipal Code Chapter 3.35. This move will allow staff to review rates on a more consistent basis. This is to remove the fees from the policy that were approved to move to Ephrata Municipal Code and will reference the move.
Motion to Approve amended Policy 5010 "Use of Public Building" (m/s Millard/Mora) Motion carried.

Approve Nat Washington Overlay Project: The City has received TIB funding for Nat Washington Way Overlay Project-Phase 1. The project begins at the Railroad tracks and A Street SE and goes to 3rd Avenue SE, near Columbia Basin Hospital. The total project estimate is $625,705 with the City paying 10% matching funds, $62,571. This will come from the City's REET funds.
Motion to Accept Nat Washington Overlay Project and authorize administration to execute the contract with TIB (m/s Mora/Allstott) Motion carried.

Approve UV Procurement bid – Wastewater Treatment Facility: The City received 2 bids for the UV Procurement. The overall design is not complete but the largest part is the UV channel. This bid is for materials to be delivered to site and ready for contractors when work begins. The engineer's estimate was $460,700 and the lowest bid is $356,961.20.
Motion to Accept UV Procurement bid– Wastewater Treatment Facility and authorize administration to execute the contract with Trojan (m/s Allstott/Harris) Motion carried.

Approve Job Description for City Administrator: The job description has been modified by Council to be more marketable.
Motion to approve and accept job description for City Administrator (m/s Moore/Millard) Motion carried.

Nick Downs signed up to speak. He wanted to give a handwritten letter to Police Chief Koch and Council member Millard. He acknowledged and commended Council member Millard's vote against a 5% incentive for City employees.

Administration Report:

- **Personnel Policy update** – Staff has been working diligently with legal counsel on the personnel policy. The current personnel policy is severely outdated. Interim City Administrator Adkinson would like to have a study session with Council to review the significant updates.
- **2023 Council Bill Schedule**: Schedule is included in this council packet and can be emailed upon request.
- **Cancellation of Regular Meeting on January 4, 2023**: There will be no agenda items for the meeting on January 4th, 2023.
- Motion to cancel the regular meeting on January 4, 2023 (m/s Allstott/McDonnell) Motion carried.

There being no further business meeting adjourned at 7:33 p.m.

_____
Bruce Reim, Mayor

ATTEST:

_____
Carrie Lnenicka, Deputy City Clerk

DATE: January 18, 2023

ITEM: Public Hearing

SUMMARY

1. Ordinance 23-01 – Desert Plains Major Subdivision Development Agreement

BUDGET IMPACTS

1. N/A

CITY OF EPHRATA
STAFF REPORT

To:	Mayor and City Council
From:	Assistant City Attorney Anna Franz
	Community Development Director Ron Sell
Date:	January 18, 2023
Proceeding Type:	Public Hearing
Subject:	Desert Plains Major Subdivision Development Agreement

Legislative History:

• Requested Action:	Motion to Approve the Development Agreement presented by Staff

Staff Report Summary:

The proposed Development Agreement is for the Desert Plains Major Subdivision which was conditionally approved by the City Council on October 19, 2022, in Resolution 22-08. Resolution 22-08 established mitigation and other requirements as conditions of approval which are incorporated in the proposed Development Agreement. The Developer has requested the following items which staff do not recommend the City Council include in the approved Development Agreement:

- Extension of Term (*Section 7*): The term Developer requests that the term for development of the subdivision be extended to 10 years.
- Duplex (*Section 9.B*): The Developer requests the ability to convert up to 36 lots from single family dwellings to duplexes without public notice or public hearing.
- Delay of BNSF Buffer wall or fence (*Section 14.F*): The Developer requests that the BNSF buffer wall or fence construction be the responsibility of the individual lot owner to install at the time of building permit.

Discussion/Analysis:

Background. This development agreement relates to the Desert Plains subdivision of 57 acres into 329 lots located North of Prairie Bluff Major Plat and 8th Ave NE. The council previously adopted Resolution 22-08 conditionally approving the Desert Plains subdivision including a requirement that the Developer enter into a Development Agreement to address the conditions of approval as set forth in Section 3 of Resolution 22-08.

Development Agreements. Development Agreements are authorized by state law (RCW 36.70B.170-.210) to establish a contractual relationship between the City and the Developer regarding the development, uses, and mitigation of the development of a specific piece of property for the duration specified in the agreement. All subsequent development permits issued by the City must be consistent with the terms and conditions set forth in the Development Agreement. "Development standards" include permitted uses, residential densities; the amount and payment of impact fees imposed or agreed to in accordance with any applicable provisions of state law, any reimbursement provisions, other financial contributions by the property owner, inspection fees, or dedications; SEPA mitigation measures, conditions, and other SEPA requirements; phasing; and review procedures and standards. See RCW 36.70B.170(3). In establishing these development standards, they must be consistent with the City's applicable development regulations and comprehensive plan goals and policies. From the City perspective, the development agreement's terms and conditions should promote the public health, safety, and welfare of all Ephrata citizens. Because of the potential impact on members of the public, a public hearing is required before the approval of a development agreement. See RCW 36.70B.200.

Term. In Washington State, the vested rights doctrine provides that the development of a plat is considered only under the land use statutes and ordinances in effect at the time of the plat application's submission. Under the current context of Ephrata's development regulations, this means that because the Desert Plains application was received prior to the adoption of the moratorium and the upcoming comprehensive plan and development regulation update, the current version of the City's development code applies to the development of the Desert Plains subdivision and the City cannot impose future changes in the development code on this subdivision. These vested rights, however, do expire after a period of time unless the subdivision is completed and the final plat of all phases approved. State law and the Ephrata municipal code require that the final plat be submitted for approval within 5 years of the date of the preliminary plat approval. See RCW 58.17.140 and EMC 18.04.705. The Ephrata municipal code allows for a one time one year extension if the applicant can show a good faith attempt to submit the final plat within the 5 year period. Additional one year extensions may be approved by the City upon the Developer satisfying the burden of proof to show unusual circumstances or situations which made it impossible to file the final plat within the 6 year period. In the event of a failure to submit remaining phases for final plat approval within the required period, the Developer would be required to submit a new application for subdivision under the then current development regulations.

In response to the requests of the Developer for a longer development term, City staff recommend the 7 years approved in Resolution 22-08 with a one-time extension for up to 2 additional years. The Developer is requesting a 10-year term with an additional one-time

extension for up to 2 additional years. Staff do not recommend granting Developer's request given that the development standards controlling this development are already significantly outdated.

Duplex Approval. Developer's plat application, subsequent SEPA environmental analysis, and notice to the public was for 329 **single family** units. Subsequent to the adoption of Resolution 22-08, Developer requested the ability to convert single family units into duplex units on a one-to-one basis resulting in an increase in development density. The traffic impact study submitted by the Developer analyzed the impacts of 365 dwelling units.

The procedure for alterations of a major subdivision are set forth in EMC 18.04.735. Minor alterations requested prior to final plat approval are approved with the consent of the Community Development Director and the Public Works Director. Major plat alterations requested prior to final plat approval require the consent of the city council after public notice and a public hearing is held. While the conversion of up to 36 lots to duplexes is within the traffic impact analysis showing no impact, the public was not provided the opportunity to comment on the increase in density. Therefore, staff recommend that the conversion of up to 36 lots to duplexes be considered a minor alteration request but subject to additional public notice and opportunity to comment and any conversion over that amount be considered a major alteration.

Developer requests that the conversion of up 36 lots to duplexes be a minor alternation with no additional public notice or opportunity to comment. Staff does not recommend approval of this request given the lack of public opportunity to comment on the increase of density by converting the proposed single family home development to duplexes.

BNSF Buffer. The portion of the subdivision adjacent to the BNSF railroad right of way requires a landscape buffer in accordance with EMC 19.07.040 including a fence or wall between the housing and the railroad tracks. Developer is requesting that the installation of the fence or wall be delayed from final plat approval until the individual homes are constructed. This request would result in piecemeal construction of the fence/wall and shifts a substantial burden onto the City to monitor and enforce construction of the fence/wall as individual construction of lots occurs. The fence/wall is part of the subdivision improvements including streets, sidewalks, and utilities and should be installed within the same time frame at the cost of the developer.

Staff Recommendation: Staff recommends Council approval of the Development Agreement presented by Staff

Financial Implications: N/A

Attachments

A.	Desert Plains Development Agreement
B.	Resolution 22-08
C.	August 25, 2022 Staff Report
D.	Developer Requests

Legal Review

The following documents are attached and subject to legal review:

Type of Document	Title of Document	Date Reviewed by Legal Counsel
Agreement	Desert Plains Development Agreement	*12/22/2022*

ORDINANCE NO. 23-01

AN ORDINANCE OF THE CITY OF EPHRATA, WASHINGTON, TO APPROVE A DEVELOPMENT AGREEMENT BETWEEN THE CITY OF EPHRATA AND THE PROPERTY OWNERS OF THE DESERT PLAINS SUBDIVISION

THE CITY COUNCIL OF THE OF THE CITY OF EPHRATA DOES ORDAIN AS FOLLOWS:

Section 1. The Development Agreement attached hereto as Exhibit A is approved and the Mayor is authorized to sign the agreement.

Section 2. As provided in RCW 36.70B.190, the Development Agreement shall be recorded with the real property records of Grant County, Washington and shall be binding on the parties and their successors and assigns.

Section 3. This ordinance shall be in full force and effect five days after its passage and publication of its summary as provided by law.

PASSED by the City Council of the City of Ephrata, Washington, this 18th day of January, 2023.

_____
Bruce Reim, Mayor

ATTEST:

_____
Leslie Trachsler, City Clerk

APPROVED AS TO FORM:

_____
Katherine L. Kenison, City Attorney

PASSED the _____ day of _____, 2023.

APPROVED the _____ day of _____, 2023.

PUBLISHED the _____ day of _____, 2023.

Resolution No. 22-08

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF EPHRATA, WASHINGTON, CONDITIONALLY APPROVING THE DESERT PLAINS PRELIMINARY PLAT, A MAJOR SUBDIVISION

WHEREAS, Jeff and Lisa Fairchild ("Developer") have submitted an application to the City of Ephrata for the Desert Plains Subdivision Preliminary Major Plat, a 329 lot residential major subdivision on 57 acres in a Residential-2 zoning district located North of Prairie Bluff Major Plat and 8th Ave NE and approximately 1.5 miles northeast of Ephrata City Hall in a portion of the Southeast quarter of the Northeast Quarter South of the Railroad Right of Way and the Northeast Quarter of the Southeast Quarter of Section 10, Township 21 North, Range 25 East, WM, Grant County, Washington (Grant County Assessor's Parcel #13-0425-005); and

WHEREAS, following a duly noticed open record public hearing held before the City of Ephrata Planning Commission on August 25, 2022, to consider the preliminary plat application for the Desert Plains Subdivision, as provided by Chapter 18.04 EMC, the Planning Commission received exhibits and testimony into evidence, and issued Findings of Fact, Conclusions of Law, and Recommendation to the City Council; and

WHEREAS, the City Council held a closed record public hearing during the regularly scheduled Ephrata City Council Meeting on October 19, 2022, regarding the preliminary plat application for the Desert Plains Subdivision; and

NOW, THEREFORE, BE IT RESOLVED THAT the City Council of the City of Ephrata, Washington, as follows:

Section 1. Findings of Fact. Based on the evidence presented at the public hearing, the Ephrata Planning Commission makes the following Findings of Fact:

1.1 The development is consistent with the Ephrata Comprehensive Plan and meets the requirements and intent of the Ephrata Municipal Code, hereinafter referred to as the "EMC".

1.2 The proposed subdivision does make adequate and appropriate provisions for the public health, safety, and general welfare, and for roads, streets, curbs, gutters, sidewalks, street lighting circuits, alleys, the extension of municipal utilities (sewer and potable water), irrigation water rights-of-way, public rights-of-way, public easements, drainage ways, other public ways, public access, and municipal improvements deemed necessary in conformance with Community Street and Utility Standards and City Design Standards in effect at the time of plat approval.

1.3 The development adequately mitigates impacts identified under Chapters 16 through 20 of the EMC and in response to conditions from the Department of Fish and Wildlife, the Developer has addressed preservation of Shrub Steppe habitat

by offsetting a mitigation ratio of 1:1.2 preservation of a deed restricted property of quality habitat to mitigate the 57 acre development as proposed.

1.4 The public interest will be served by the proposed subdivision and the dedications made therein.

1.5 The development does not lower the level of service of transportation and/or neighborhood park facilities below the minimum standards established within the Ephrata Comprehensive Plan.

1.6 The Ephrata Planning Commission has determined that the proposed subdivision conforms to the General Purpose of the Comprehensive Plan and the Ephrata Municipal Code.

1.7 The current comprehensive land use designation of the subject property under the Ephrata Comprehensive Plan is Urban Residential, Mixed Residential Density.

1.8 The subject parcel is currently zoned Residential - 2.

1.9 The lot sizes within the proposed subdivision are consistent with EMC Section 19.04.170.

1.10 The proposed subdivision is compliant with all requirements as listed in Chapter 18.04 EMC. The subdivision proposal complies with all applicable health and zoning regulations and is consistent with the City's Comprehensive Plan.

1.11 The area, location, and features of land proposed for dedication under the subdivision proposal are a direct result of the development proposal, are reasonably needed to mitigate the effects of the development, and are proportional to the impacts created by the development.

1.12 Notice of the open public hearing on the subdivision proposal before the Ephrata Planning Commission was published in the Grant County Journal, the City of Ephrata's official newspaper of general circulation, on May 5, 2022, and was mailed to all property owners within 500 feet of the boundaries of the subject parcel on May 5, 2022, consistent with the applicable provisions of the EMC. Notices of the continuances of the public hearing were mailed to all property owners and commenters.

1.13 SEPA review was completed on this subdivision proposal. A Determination of Mitigation Non-Significance (MDNS) was issued on this subdivision proposal on May 19, 2022; a revised MDNS was issued on August 16, 2022.

Section 2. Conclusions of Law. Based on the record before the City Council on the Desert Plains Subdivision Preliminary Major Plat Proposal and the foregoing Findings of Fact, the Ephrata City Council makes the following Conclusions of Law:

2.1 The subdivision proposal meets the applicable development standards under the EMC.

2.2 The subdivision proposal is consistent with the Ephrata Comprehensive Land Use Plan and with the applicable zoning and health regulations of the EMC.

2.3 The subdivision proposal is in the best interests of the community and provides for the orderly and efficient division of land.

2.4 The proposed subdivision makes adequate and appropriate provisions for the public health, safety, and general welfare, and for roads, streets, curbs, gutters, sidewalks, street lighting circuits, alleys, the extension of municipal utilities (sewer and potable water), irrigation water rights-of-way, public rights-of-way, public easements, drainage ways, other public ways, public access, and municipal improvements deemed necessary in conformance with Community Street and Utility Standards and City Design Standards in effect at the time of plat approval. The development is beneficial to the public health, safety, and welfare and is in the public interest.

2.5 The public interest will be served by the proposed subdivision and the dedications made therein subject to the conditions of approval.

Section 3. The preliminary plat of the Desert Plains Subdivision is hereby approved by the Ephrata Council subject to the following conditions of approval, which shall apply to the Developer and the Developer's heirs, successors in interest, and assigns:

3.1 The Developer will enter into a mutually agreed upon Development Agreement approved by City Council, to be executed prior to recording of the Preliminary Plat and within three (3) months of the approval of this Resolution, and shall include the conditions of approval as set forth herein. This agreement shall outline the mitigation requirements and development phasing over the development period specified in the Development Agreement. The agreement shall run with the land.

3.2 Landscaping shall be installed adjacent to the sidewalk throughout the development, the Developer will submit a final landscape plan at the time of final platting in accordance with the approved preliminary plat.

3.3 Properties along the BNSF railroad right of way will require landscape buffering, including an exterior perimeter fence or wall to mitigate noise and visual effects to the development. The developer will include a deed restriction on the properties affected that all required landscape improvements, including but not

limited to plants, irrigation, and hardscape (fences or walls), must be maintained as a condition of lot ownership.

3.4 The City of Ephrata Public Works Department will conduct an onsite pre-construction conference with the Developer before written authorization to proceed will be issued.

3.4.1 During construction, any release of oil, hydraulic fluids, fuels, other petroleum products, paints, solvents, or other deleterious materials must be contained and removed in a manner that will prevent their discharge into water or soil. The cleanup of spills shall take precedence over other work on the site.

3.5 The developer is required to obtain all state, local and federal permits including but not limited to the following required permits:

3.5.1 The Developer must apply for coverage under the Department of Ecology's Construction Stormwater General Permit at least 60 days prior to start of construction. Additionally, discharge from the dry wells must comply with the ground water quality requirement (non-endangerment standard) at the top of the ground water table.

3.5.2 City of Ephrata approval of Erosion, Sediment and Dust Control Plans integrated with Interim Stormwater Management Plans prepared in accordance with the Department of Ecology Stormwater Manual for the Eastern Washington as adopted and implemented by the City of Ephrata.

3.5.3 City of Ephrata Mass Grading Permit; Building Permits

3.6 Since ground disturbance leads to weeds and dust, the portions of the site not proposed for development at this time shall remain undisturbed as much as possible. Disturbed areas that will not be built on, paved, or landscaped for more than 45 days shall be stabilized through long-term methods such as establishing dryland grasses or native shrub/steppe. The Developer shall ensure that nuisances, such as weeds and dust, do not develop.

3.7 To facilitate orderly flow of traffic, provide safe pedestrian facilities, and provide sufficient utility connections, the developer shall construct full-width street and utility improvements to Community Standards for all streets within the plat and shall connect the streets to existing improved City streets. Street construction should also be designed to connect the subdivision with the vacant property to the east of the proposed development. These connections should create a block length not greater than 600 feet and a right of way width of no less than 60 feet.

3.8 The Washington State Department of Archaeological and Historic Preservation (DAHP) has determined the proposed subdivision to be an area characterized as

moderate to high probability of encountering cultural resources. These resources would be destroyed by ground-disturbing activities. Identification during construction is not a recommended detection method because inadvertent discoveries often result in costly construction delays and damage to the resource. Therefore, a professional archaeological survey of the project area shall be conducted, and a report produced prior to ground disturbing activities. This report shall meet DAHP's Standards for Cultural Resource Reporting. Any conditions or mitigation measures recommended by this report shall become conditions of approval for this project.

3.9 After review of the proposed site by the Washington State Department of Fish and Wildlife (WDFW) it has been determined that the project site contains City of Ephrata Fish and Wildlife Habitat Conservation Areas, including shrub steppe habitat. WDFW designates shrub steppe habitat as a Washington State Priority Habitat. A site analysis and habitat assessment review have been conducted and a mitigation/habitat management plan has been developed. To mitigate for the impacts to the moderate shrub steppe rating found on the site the proposed development, the Developer has identified 70 acres as an off-site mitigation site to mitigate the 57 acre parcel to be developed. These sites are identified by the Grant County Auditor as Parcel Numbers 16-18260-16 and 16-18260-15. The land is adjacent to land owned and managed by the WDFW and surrounded by large areas of undeveloped shrub steppe habitat and has been determined to be a quality shrub steppe habitat which off sets the site to be developed. The habitat management plan will mitigate impacts of the proposed development at a ratio of 1:1.2 for the 70 acres of low to moderate quality shrub steppe located within the City of Ephrata, with 70 acres of moderate to high quality shrub steppe in an identified wildlife corridor/linkage area. The mitigation site will have a Native Growth Protection Deed Restriction (NGPDR) placed on it and be recorded and 'run with' the title of the property. The NGPDR shall be secured by the Developer prior to any construction. The restrictions on the 70 acres of land include the following:

3.9.1 No structures of any kind allowed.

3.9.2 No driveways, wells, drain fields or other improvements.

3.9.3 Fencing will be minimized.

3.9.4 Any livestock grazing will not be allowed or restricted by a WDFW approved grazing plan.

3.9.5 Motorized vehicles will be restricted to the existing power line maintenance road.

3.10 A traffic impact analysis was submitted to the City on July 13, 2022. The city Engineer, Gray & Osborne Consulting Engineers, has provided comments in their

Letter Dated July 13, 2022, and determined that the following mitigation efforts are required:

3.10.1 Compliance with Ephrata's Comprehensive Plan forecasting for a minimum of 10 years and using an estimated growth rate of 2%.

3.10.2 Verify the level of service standard used in the traffic impact analysis is measured equivalently to the City's standard of a ratio of hourly demand volume versus hourly capacity.

3.10.3 Provide a letter to the City and City Engineer before any final plat is approved from the Fire Department approving the development access points for emergency management purposes.

3.10.4 Intersection alignment to the development on Ivy Street must be worked out prior to recording the preliminary plat.

3.10.5 The development is increasing traffic at existing city streets of Ivy, K, and L street. There is a nexus for improvements to these intersections and the developer shall mitigate with stop signs and intersection improvements, if necessary, at final plat consideration.

3.11 The Developer resubmitted a road alignment exhibit on August 4, 2022, which did not address previous discussions relating to the alignment of Ivy Street NE. The Developer will be required to revise this exhibit to illustrate the access solely on the Developer's property, reworking turning radius, lot alignment, etc., or shall purchase land from neighboring properties to address the alignment prior to construction of any phases identified by the City as requiring access through Ivy Street NE.

3.12 The proposed subdivision shall meet all Community Street and Utility Standards and Improvement requirements as adopted by the City of Ephrata.

3.13 The subdivision proposal shall comply with all local, state, and federal rules, regulations, and laws pertaining to this proposed subdivision.

3.14 A street lighting plan as may be required by the City Engineer must be provided. The plan must be approved by the Grant County PUD and include certification that all street lighting fees have been paid or that arrangements acceptable to the city and the PUD have been made for the payment of the required fees.

ADOPTED by the City Council of the City of Ephrata, Washington, this 19th day of October, 2022.

Bruce Reim, Mayor

ATTEST:

Leslie Trachsler, City Clerk/Finance Director

CITY OF EPHRATA
Community Development Department
121 Alder Street Southwest

August 19, 2022

STAFF REPORT

TO: Ephrata Planning Commission

FROM: Rachel Granrath, Contract Planner SCJ Alliance

DATE: August 25, 2022

REQUEST: Application #22-001: Public Hearing: Preliminary Major Plat for Desert Plains Subdivision

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A. Request

Applicant is proposing a subdivision of 57 acres into 329 lots in the Residential-2 Zone. Ivy, K, and L streets NE will be extended northward and new interior streets to serve the subdivision will be constructed. The development will be completed in phases over approximately 7 years with each phase consisting of approximately 40 lots. Various mitigation efforts have been determined as part of this development and outlined as conditions of approval with the SEPA Mitigated Determination of Non-Significance (MDNS) and a proposed Development Agreement.

B. General Information

Project Location:	
Parcel Number:	Grant County Assessor's Parcel #13-0425-005
Legal Description & size:	SENE S OF RR R/W & NESE 10 21 26, 57 acres
Location:	North of Prairie Bluff Major Plat and 8* Ave NE and approximately 1.5 miles northeast of Ephrata City Hall.
Owner/Applicant:	Jeff and Lisa Fairchild, PO Box 2756, Pasco WA 99302
Zoning:	Residential 2 (R-2)
Comprehensive Plan Designation:	Urban Residential Mixed Urban Density

Existing Land Use & Permit History:	Undeveloped vacant land
Adjacent Properties	North: BNSF Railroad/ right of way East: Undeveloped vacant land South: Single family home subdivision West: Ranch home and undeveloped land
Critical Areas	Shrub steppe – see survey report and conditions
Cultural Resources	High likely discovery site - Inadvertent discovery plan required as conditions

Figure 1: Vicinity Map - Project Site

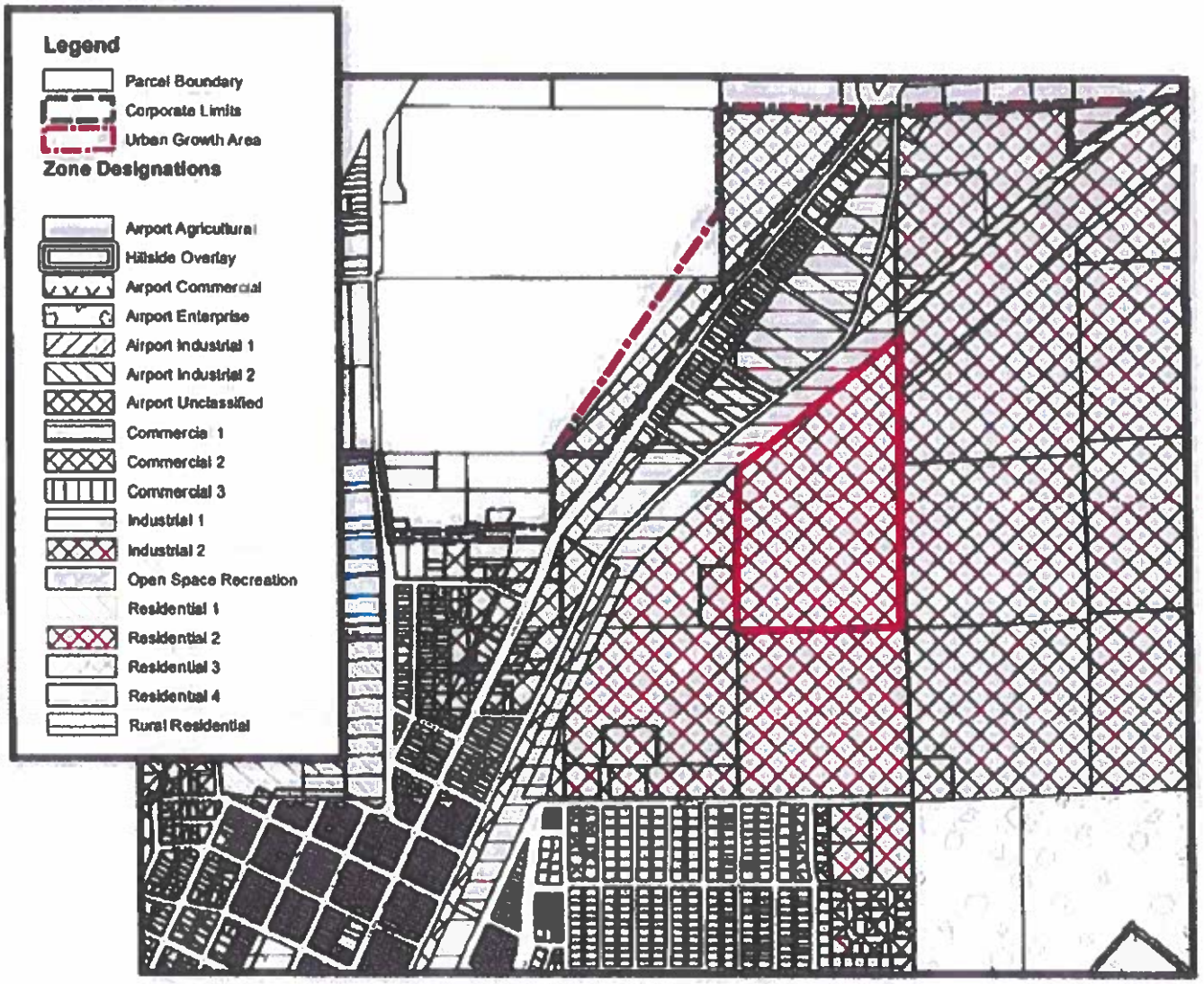


Figure 2 Zoning Map - Subject Property

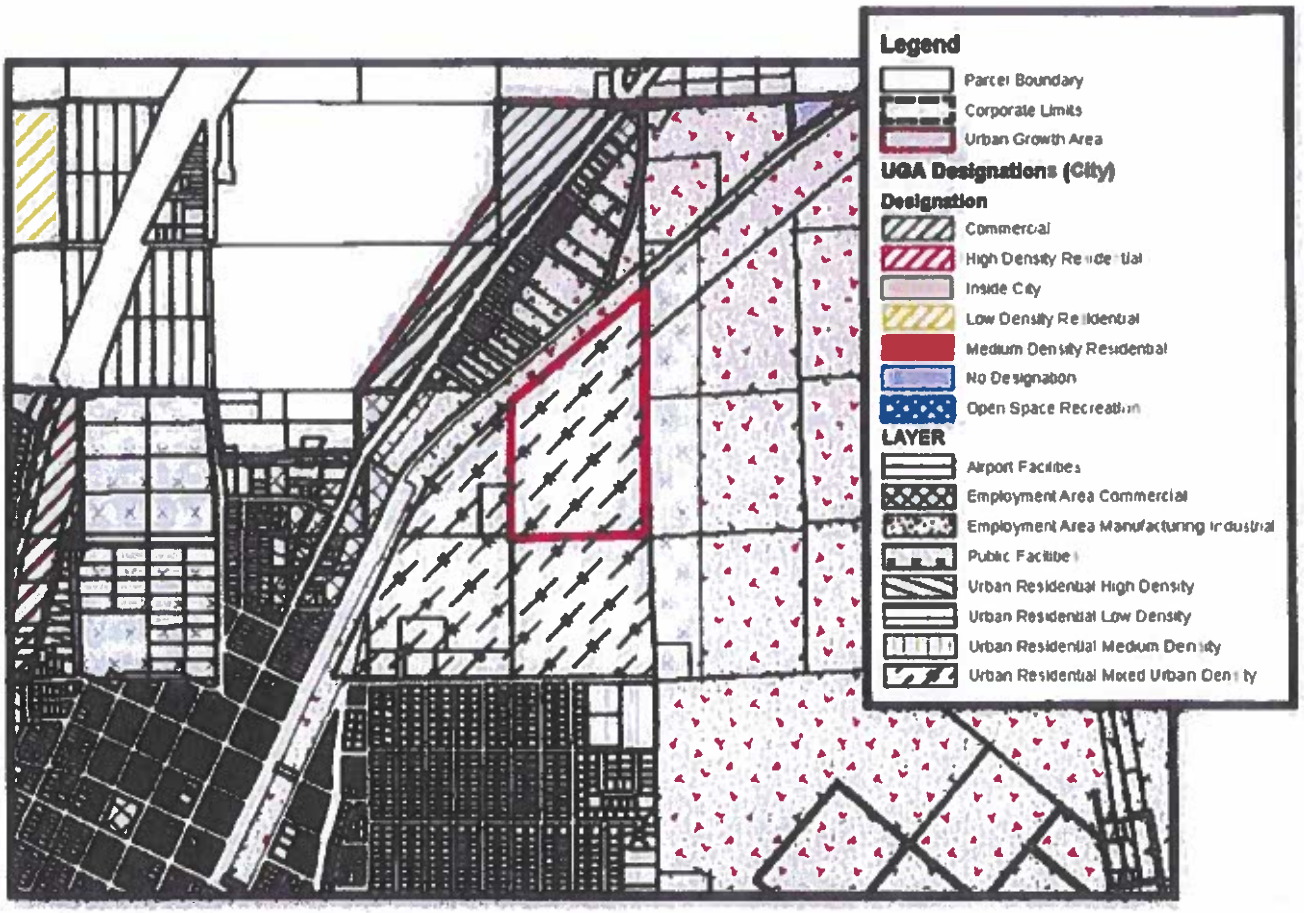


Figure 3 Future Land Use Map - Subject Property

C. Application and Public Hearing Notice

Application Milestone	Date
Application Submitted:	March 30, 2022, additional materials submitted April 15 and April 16
SEPA Determination	Mitigated Determination of Non-Significance (MDNS) – initial issued May 19, 2022/ revised August 16, 2022 Additional mitigated efforts required and submitted to City August 5, 2022
Determination of Completeness issued:	April 25, 2022
Notice of Application:	May 5, 2022
Notice of Public Hearings:	May 5, 2022 (continued to a date certain at meetings)

Planning Commission Public Hearing:	August 25, 2022

D. Noticing and Comments

The following agencies were notified as part of the review process in accordance with Ephrata Municipal Code. Below is a table that summarizes the response date and nature of each comment. Full comment letters are attached as Attachment 5.

Agencies Notified	Response Date	Nature of Comment
Ephrata Building Official	No Comment	Lot size clarification; park and open space dedication versus cash in lieu – lack of facility in this part of town.
Ephrata Engineering Department	No Comment	
Grant County Fire District	No Comment	
Grant County Health District	No Comment	
Grant County Public Utility District	No Comment	
Grant County Assessor Office	No Comment	
Burlington Northern Railroad	No Comment	
Ephrata School District	No Comment	
WA State Dept. of Ecology	May 18, 2022	Construction stormwater permit and water rights subject to Ecology review and permitting
WA State Dept. of Fish and Wildlife: Region Two	May 12, 2022; July 8, 2022 and August 4, 2022	Shrub steppe habitat, mitigation ratios, management and deed restrictions
WA State Dept. of Archaeology and Historic Preservation	May 18, 2022	Recommends a cultural resource inadvertent discovery plan
WA State Dept. of Transportation	No Comment	
WA State Dept. of Natural Resources	No Comment	
WA Department of Commerce	No Comment	
U.S. Bureau of Reclamation		
U.S. National Park Service	No Comment	
Confederated Tribes of the Colville Reservation	No Comment	

The city receives public comments both written and verbal on applications coming before hearing. The following table summarizes public comments, dates received, and nature of the comment.

Public Comments	Date Received	Nature of Comment
Donna Chase	July 4, 2022	Density of homes; traffic and access concerns; lack of green space; missing a crossing over BNSF railroad
James Tillotson	July 5, 2022	Not opposed to growth but has concerns on increased traffic; lot sizes and no parks proposed in subdivision
Michael and Val Weaver	June 7, 2022	Lack of green spaces and play areas; access to the school property and walking paths; access to development; is this a trailer park or mixed zoning?
Kent Ziemer	May 19, 2022	Traffic access; Water and sewer; pedestrian access; consistency with adjacent neighborhoods and designs; critical areas

E. Department Analysis

1. **Applicable Code Analysis**: Staff has provided an evaluation against EMC 17.01.150 (B) illustrating consistency with development regulations and the State Environmental Policy Act (SEPA).

EMC 17.01.150 (B) Consistency with development regulations and SEPA	
1. The type of land use permitted at the site, including uses that may be allowed under certain circumstances, if the criteria for their approval have been satisfied;	The R-2 Zone is described as a variety of housing options for single family or multifamily. Lots are a minimum of 5,000 sf each.
2. The level of development, such as units per acre, density of residential development in urban growth areas, or other measures of density;	Density is appropriate given the city code and comprehensive plan
3. Availability and adequacy of infrastructure, including public facilities and services identified in the comprehensive plan if the plan or development regulations provide for funding of these facilities as required by Chapter 36.70A RCW; and	Adequate infrastructure and services are in place, this is consistent with the comprehensive plan
4. Characteristics of the development, such as development standards.	The applicant has provided screening to BNSF railroad with a fence. The city requested additional vegetation screening to be maintained by the homeowner.

5. In deciding whether a project is consistent, the determinations made pursuant to subsection (B) of this section shall be controlling.	See conditions of approval
6. Nothing in this section limits the city from asking more specific or related questions in subsections (B)(1) through (5) of this section.	See conditions of approval

2. **Comprehensive Plan Consistency**

   Applicable Comprehensive Goals and Policies: the following goals are applicable to this development and associated conditions of approval.

   Land Use Goal 4: To manage development of the community so that the delivery of public facilities and services will occur in a fiscally responsible manner to support development and redevelopment of the city.

   Land Use Goal 5: To encourage efficient use of resources by discouraging the inappropriate conversion of undeveloped land into sprawling, low density development.

   Land Use Goal 7: To provide flexibility in mixing certain types of uses within an area or development while minimizing negative impacts of potentially incompatible uses.

   Land Use Goal 8: To ensure that all development proposals and public policy are considered within the broad framework of the comprehensive plan.

   Housing Goal 4: To promote new residential development at densities that will allow cost savings and consolidation of services.

   Capital Facilities Goal 2:To ensure future development bears a fair share of facility improvement cost necessitated by the development in order to achieve and maintain the adopted Level of Service (LOS) standards and measurable objectives standards.

3. **State Environmental Policy Act (SEPA) Environmental Review**: In accordance with the Optional DNS process in WAC 197-11-355, the city issued a Mitigated Determination of Non-Significance (MDNS) on May 19, 2022. However, this was issued prior to all comment windows ending, specifically for the Department of Fish and Wildlife relative to the critical habitat area of the shrub steppe. The City has since issued a revised MDNS on August 16, 2022. SEPA Attachments are included as Attachment 4.

4. **Approval Criteria Analysis:** Per EMC 18.04.685 a proposed subdivision and dedication shall not be approved unless the City finds that the following are met:

UNC 18.04.685 Approval criteria preliminary plat (1) Appropriate provisions have been made for: (a-n)	
a. The public health, safety and general welfare of the community;	**Criterion Met:** As conditioned the preliminary plat addresses public health, safety and welfare.
b. Protection of environmentally sensitive lands and habitat;	**Criterion Met:** In response to conditions from the Department of Fish and Wildlife, the applicant has addressed preservation of Shrub Steppe habitat by offsetting a mitigation ratio of 1:1.2 preservation of a deed restricted property of quality habitat to mitigate the 57 acre development as proposed.
c. Open spaces;	**Criterion Met:** The applicant has submitted to pay a 'fee in lieu' rather than develop on site recreation and open spaces. While there is a community concern relative to a lack of parks and open space in this area of the City, the applicant has met all current long range plans and codes.
d. Community parks and recreation;	**See comment for item C above.**
e. Neighborhood tot lots and play areas;	**See comment for item C above.**
f. Schools and school grounds;	**Criterion Met:** The development does not include schools but has adequate sidewalk and transportation systems to achieve walkability and connections to such facilities.
g. Drainageways;	**Criterion Met:** Proper drainage facilities are planned and delineated on the development.
h. Storm-water detention;	**See comment for item G above.**
i. Connectivity of sidewalks, pedestrian pathways and other planning features that assure safe walking conditions within and between subdivisions and neighborhoods for residents and students who walk to and from schools, parks, transit stops and other neighborhood services;	**See comment F above.**
j. Connectivity of streets or roads, alleys, pedestrian accessways, and other public ways within and between subdivisions and neighborhoods;	**Criterion Met (as conditioned):** As conditioned in this staff report and MDNS, the transportation layout will adequately serve the neighborhood and transition between existing land uses and neighborhoods. Specifically providing for future connections and re-analyzing the connection at Ivy.
k. Transit stops;	**N/A**
l. Potable water supplies;	**Criterion Met:** There are adequate water services to serve the proposed development.

m. Sanitary wastes;	**Criterion Met:** There are adequate sewer services to serve the proposed development
n. Other public utilities and services, as deemed necessary; and	**Criterion Met:** The development is served by adequate utilities and services.

F. Conclusions & Recommendation

EMC 18.04.690 Decisions on preliminary plat states the following:

A. The Planning Commission after reviewing the application materials, maps and reports, staff recommendation, oral and written testimony shall make a recommendation to approve, approve with conditions or deny the subdivision as presented. The Planning Commission shall direct the Community Development Department to prepare a written report setting forth the recommendation of the Planning Commission including: findings, conclusions, decision, staff report, and testimony on the record from agencies and interested parties in the form of a resolution. The decision of the Planning Commission constitutes a recommendation to the City Council. The Planning Commission is a recommending authority only for subdivision applications; the City Council renders the final decision.

Staff is recommending **approval** of the Desert Plains Preliminary Plat with the following conditions (outlined in the MDNS and this staff report):

1. Development Agreement: The City and the Applicant will enter into a mutually agreed upon Development Agreement approved by City Council, to be executed prior to recording of the Preliminary Plat, and shall include recommendations from Planning Commission at the duly noticed public hearing. This agreement shall outline the mitigation requirements and development phasing over the 7 year period. The agreement shall run with the land.

2. Landscaping shall be installed adjacent to the sidewalk throughout the development, the applicant will submit a final landscape plan at the time of final platting in accordance with the approved preliminary plat.

3. Properties along the BNSF railroad right of way will require landscape buffering, including an exterior perimeter fence at a minimum, to mitigate noise and visual affects to the development. The developer will include a deed restriction on the properties affected that all required landscape improvements, including but not limited to plants, irrigation, and hardscape (fences), must be maintained.

4. The City of Ephrata Public Works Department will conduct an onsite pre-construction conference with before written authorization to proceed will be issued.
    a. During construction, any release of oil, hydraulic fluids, fuels, other petroleum products, paints, solvents, or other deleterious materials must be contained and removed in a manner that will prevent their discharge into water or soil. The cleanup of spills shall take precedence over other work on the site.

5. The developer is required to obtain all state, local and federal permits including but not limited to the following required permits:
    a. The proponent must apply for coverage under the Department of Ecology's Construction Stormwater General Permit at least 60 days prior to start of construction. Additionally, discharge from the dry wells must comply with the ground water quality requirement (non-endangerment standard) at the top of the ground water table.
    b. City of Ephrata approval of Erosion, Sediment and Dust Control Plans integrated with Interim Stormwater Management Plans prepared in accordance with the Department of Ecology Stormwater Manual for the Eastern Washington as adopted and implemented by the City of Ephrata.
    c. City of Ephrata Mass Grading Permit; Building Permits

6. Since ground disturbance leads to weeds and dust, the portions of the site not proposed for development at this time shall remain undisturbed as much as possible. Disturbed areas that will not be built on, paved, or landscaped for more than 45 days shall be stabilized through long-term methods such as establishing dryland grasses or native shrub/steppe. The proponent shall ensure that nuisances, such as weeds and dust, do not develop.

7. To facilitate orderly flow of traffic, provide safe pedestrian facilities, and provide sufficient utility connections, the developer shall construct full-width street and utility improvements to Community Standards for all streets within the plat and shall connect the streets to existing improved City streets. Street construction should also be designed to connect the subdivision with the vacant property to the east of the proposed development. These connections should create a block length not greater than 600 feet and a right of way width of no less than 60 feet.

8. The Washington State Department of Archaeological and Historic Preservation (DAHP) has determined the proposed subdivision to be an area characterized as moderate to high probability of encountering cultural resources. These resources would be destroyed by ground-disturbing activities. Identification during construction is not a recommended detection method because inadvertent discoveries often result in costly construction delays and damage to the resource. Therefore, a professional archaeological survey of the project area shall be conducted, and a report produced prior to ground disturbing activities. This report shall meet DAHP's Standards for Cultural Resource Reporting.

9. After review of the proposed site by the Washington State Department of Fish and Wildlife (WDFW) it has been determined that the project site contains City of Ephrata Fish and Wildlife Habitat Conservation Areas, including shrub steppe habitat. WDFW designates shrub steppe habitat as a Washington State Priority Habitat. A site analysis and habitat assessment review have been conducted and a mitigation/habitat management plan has been developed. To mitigate for the impacts to the moderate shrub steppe rating found on the site the proposed development, the proponent has identified 70 acres as an off-site mitigation site to mitigate the 57 acre parcel to be developed. These sites are identified by the Grant County Auditor as parcels #16- 18260-16 and #16-18260-15. The land is adjacent to land owned and managed by the WDFW and surrounded by large areas of undeveloped shrub steppe habitat and has been determined to be a quality shrub steppe habitat which off sets the site to be developed. The habitat management plan will mitigate impacts of the proposed

development at a ratio of 1:1.2 for the 70 acres of low to moderate quality shrub steppe located within the City of Ephrata, with 70 acres of moderate to high quality shrub steppe in an identified wildlife corridor/linkage area. The mitigation site will have a Native Growth Protection Deed Restriction (NGPDR) placed on it and be recorded and 'run with' the title of the property. The restrictions on the 70 acres of land include the following:

a. No structures of any kind allowed
b. No driveways, wells, drain fields or other improvements
c. Fencing will be minimized
d. Any livestock grazing will not be allowed or restricted by a WDFW approved grazing plan
e. Motorized vehicles will be restricted to the existing power line maintenance road

10. A traffic impact analysis was submitted to the City on July 13, 2022. The city Engineer, Gray & Osborne Consulting Engineers, has provided comments in their Letter Dated July 13, 2022, and determined that the following mitigation efforts are required:
    a. Compliance with Ephrata's Comprehensive Plan forecasting for a minimum of 10 years and using an estimated growth rate of 2%.
    b. Verify the level of service standard used in the traffic impact analysis is measured equivalently to the City's standard of a ratio of hourly demand volume versus hourly capacity.
    c. Provide a letter to the City and City Engineer before any final plat is approved from the Fire Department approving the development access points for emergency management purposes.
    d. Intersection alignment to the development on Ivy Street must be worked out prior to final approvals of the preliminary plat.
    e. The development is increasing traffic at existing city streets of Ivy, K, and L street. There is a nexus for improvements to these intersections and the developer shall mitigate with stop signs and intersection improvements, if necessary, at final plat consideration.

11. The applicant resubmitted a road alignment exhibit on August 4, 2022, which did not address previous discussions relating to the alignment of Ivy Street NE. The applicant will be required to revise this exhibit to illustrate the access soly on the applicant's property, reworking turning radius, lot alignment, etc. or shall purchase land from neighboring properties to address the alignment.

G. Attachments

1. Attachment 1: Resolution 22-03
2. Attachment 2: Application Materials
3. Attachment 3: Reports and Exhibits
4. Attachment 4: SEPA MDNS
5. Attachment 5: Agency & Public Comments
6. Attachment 6: Noticing documents

DEVELOPMENT AGREEMENT
BY AND BETWEEN THE CITY OF EPHRATA
AND JEFF & LISA FAIRCHILD,
FOR THE PRELIMINARY MAJOR PLAT OF THE DESERT PLAINS DEVELOPMENT

THIS DEVELOPMENT AGREEMENT is made and entered into this _____ day of January, 2023, by and between the City of Ephrata, a Washington State municipality, hereinafter the "City" and Jeff and Lisa Fairchild, husband and wife, hereinafter the "Developer."

RECITALS

WHEREAS, the Washington State Legislature has authorized the execution of a development agreement between a local government and a person having ownership or control of real property within its jurisdiction, where appropriate to provide additional land use approval and mitigation certainty, especially for larger-scale developments intended to be constructed as a unified whole, but over a period of several to many years. (RCW 36.70B.170); and

WHEREAS, a development agreement must set forth the development standards and other provisions that shall apply to, govern, and vest the development, use, and mitigation of the development of the real property for the duration specified in the agreement (RCW 36.70B.170); and

WHEREAS, for the purposes of this development agreement, "development standards" includes, but is not limited to, all of the standards listed in RCW 36.70B.170(3); and

WHEREAS, a development agreement must be consistent with the applicable development regulations adopted by a local government planning under chapter 36.70A RCW (RCW 36.70B.170(1)); and

WHEREAS, this Development Agreement by and between the City and Developer (hereinafter the "Development Agreement"), relates to the development known as the 'Desert Plains Development', which is described in Exhibit A (being Parcel #13-0425-005) (hereinafter the "Property"); and

WHEREAS, the following events have occurred in the processing of the Developer's application:

a) A public hearing on the preliminary plat for the major subdivision was held by the Ephrata Planning Commission on August 25, 2022. The Planning Commission recommended approval subject to conditions as set forth in Planning Commission Resolution No. 22-02.

b) The City approved the preliminary plat application for the Desert Plains Subdivision on October 19, 2022, with modified conditions of approval as set forth in City Council Resolution No. 22-08.

c) After a public hearing, by Ordinance No. 23-01, the City Council authorized the Mayor to sign this Development Agreement with the Developer; and

Now, therefore, the parties hereto agree as follows:

GENERAL PROVISIONS

Section 1. The Project. The Project is the development and use of the Property, consisting of 57 acres in the City of Ephrata. Permit #22-001 describes the project as a preliminary major plat of a single tax parcel, #13-0425-005 within the City of Ephrata, zoned Residential-2.

Section 2. The Subject Property. The Project site is legally described in Exhibit A, attached hereto, and incorporated herein by this reference.

Section 3. Definitions. As used in this Development Agreement, the following terms, phrases, and words shall have the meanings and be interpreted as set forth in this Section.

A. "Adopting Ordinance" means the Ordinance which approves this Development Agreement, as required by RCW 36.70B.200.
B. "Certificate of Occupancy" means either a certificate issued after inspections by the City authorizing a person(s) in possession of property to dwell or otherwise use a specified building or dwelling unit, or the final inspection if a formal certificate is not issued.
C. "Council" means the duly elected legislative body governing the City of Ephrata.
D. "Effective Date" means the effective date of the Adopting Ordinance.
E. "Existing Land Use Regulations" means the ordinances adopted by the City Council of Ephrata in effect on the Effective Date, including the adopting ordinances that govern the permitted uses of land, the density and intensity of use, and the design, improvement, construction standards and specifications applicable to the development of the Subject Property, including, but not limited to the Comprehensive Plan, the City's Official Zoning Map and development standards, SEPA, Concurrency Ordinance, and all other ordinances, codes, rules and regulations of the City establishing subdivision standards, park regulations, and building standards, including without limitation Titles 16, 17, 18, 19, and 21 of the Ephrata Municipal Code, in existence as of the effective Date; provided however, that all building permit applications shall be subject to the building codes in effect when a complete building permit application is submitted. Existing Land Use Regulations do not include non-land use regulations, which include taxes and impact fees.
F. "Landowner" is the party who has acquired any portion of the Subject Property from the Developer who, unless otherwise released as provided in this Agreement, shall be subject to the applicable provisions of this Agreement. The "Developer" is identified in Section 5 of this Agreement.
G. "Project" means the anticipated development of the Subject Property, as specified in Section 1 and as provided for in all associated permits/approvals, and all incorporated exhibits.

Section 4. Exhibits. Exhibits to this Agreement are as follows:

A. Exhibit A – Legal description of the Subject Property.
B. Exhibit B – Road Plan with standards

C. Exhibit C – Prospective Phasing
D. Exhibit D – Landscape and buffering plan with standards
E. Exhibit E – Habitat conservation covenant

Section 5. Parties to Development Agreement. The parties to this Agreement are:

A. The "City" is the City of Ephrata, 121 Alder Street SW, Ephrata WA 98823
B. The "Developer" or "Owner" is Jeff and Lisa Fairchild, PO Box 2756, Pasco WA 99302
C. The "Landowner." From time to time, as provided in this Agreement, the Developer may sell or otherwise lawfully dispose of a portion of the Subject Property to a Landowner who, unless otherwise released, shall be subject to the applicable provisions of this Agreement related to such portion of the Subject Property.

Section 6. Project is a Private Undertaking. It is agreed among the parties that the Project is a private development, and that the City has no interest therein except as authorized in the exercise of its governmental functions.

Section 7. Term of Agreement. This Agreement shall commence upon the effective date of the Adopting Ordinance approving this Agreement and shall continue in force for a period of seven (7) years, unless extended or terminated as provided herein. Developer may request a one-time extension for up to two (2) additional years provided the Developer submits a request for extension to the City at least sixty (60) days prior to the expiration of the initial seven (7) year term. Any such extension request shall be reviewed by the City Council after a public hearing on the request. Following the expiration of the term or extension thereof, or if sooner terminated, this Agreement shall have no force and effect, subject however, to post-termination obligations of the Developer or Landowner.

Section 8. Vested Rights of Developer. During the term of this Agreement, unless sooner terminated in accordance with the terms hereof, in developing the Subject Property consistent with the Project described herein, Developer is assured, and the City agrees, that the development rights, obligations, terms and conditions specified in this Agreement, are fully vested in the Developer and may not be changed or modified by the City, except as may be expressly permitted by, and in accordance with, the terms and conditions of this Agreement, including the Exhibits hereto, or as expressly consented thereto by the Developer. More specifically, Existing Land Use Regulations shall apply to the Project throughout the term of this Agreement.

If the Existing Land Use Regulations are amended during the term of this Agreement, Developer may, at Developer's exclusive option, submit a new or amended subdivision application to the City for review and approval in accordance with the Land Use Regulations in effect at the time the new or amended subdivision application is determined to be complete.

Section 9. Permitted Uses and Development Standards. The permitted uses, the density and intensity of use, the maximum height and size of proposed buildings, provisions for reservation and dedication of land or payment of fees in lieu of dedication for public purposes, the construction, installation and extension of public improvements, development guidelines and standards for development of the Subject Property shall be those set forth in (a) this Agreement, (b) the City of Ephrata Municipal Code, (c) the Decision of the City Council, (d) the permits and approvals identified herein, and (e) all exhibits incorporated herein.

A. **Current Standards:** As of the Effective Date and based on the current zoning, R-2, for the Property, as outlined in Ephrata Municipal Code (EMC), the calculated density is as set forth in Title 19.04.170 EMC and in the chart below:

Permitted Uses	Maximum Allowed Dwelling Units Per Acre (du/ac)	Site Acreage in Zone	Total Units Allowed in Zone
Single-family	8 dus/ac	57 ac	456
Duplex	8 dus/ac	57 ac	456
Multi-Family	16 dus/ac	57 ac	912

Uses set forth in the chart are further defined as follows:

- **EMC 19.02.115 Defines a Duplex:** Duplex means (1) detached residential building containing two (2) dwelling units totally separated from each other by a one (1) hour fire wall or floor, designed for occupancy by not more than two (2) families.

- **EMC 19.02.116 Defines Dwelling, single-family:** Single-family dwelling means a detached residential dwelling unit, other than a mobile home, designed and occupied by one (1) family only.

- **EMC 19.02.125 Defines Dwelling, multi-family:** Multi-family dwelling means a residential building designed for or occupied by three (3) or more families, with the number of families in residence not exceeding the number of dwelling units provided.

- **EMC 19.02.126 Defines a Dwelling Unit:** Dwelling Unit means one (1) room, or rooms connected together, constituting a separate. Independent housekeeping establishment for owner occupancy, or rental or lease on a weekly, monthly or longer basis, and physically separated from any other rooms or dwelling units which may be in the same structure or on the same property, and containing independent cooking and sleeping facilities.

B. **Current Maximum Residential Units.** The parties agree that the number of residential units within the Project on the Property shall not exceed 329 single family dwellings unless the Developer seeks approval of duplexes as provided in this section. Developer shall be responsible for payment of costs associated with such requests.

1. Developer may seek City approval to convert up to thirty-six (36) single family dwellings within the Project to duplex units. Such request shall be submitted prior to final plat approval and processed as a minor alteration approved with the consent of the

Community Development Director and the Public Works Director, but subject to: i) public notice to all owners of property within the subdivision, ii) public notice as was required by the subdivision application, and iii) a public hearing. Each approved duplex unit shall be equivalent to a single family dwelling for purposes of the 329 single family dwelling maximum noted above, and each duplex unit shall be comprised of two residences on the same lot.

2. Any cumulative request to convert more than thirty-six (36) single family dwellings within the Project to duplex units shall be processed as a major alteration subject to the consent of the City Council after public notice and a public hearing is held.

C. **Road Standards.** For purposes of this Agreement, any reference to a "public street" or "public road" shall mean streets dedicated to the City as part of the Project and shall not include private drives. The road standards for all public roads were submitted to the City with the complete subdivision application prior to the Effective Date. Copies of those diagrams and standards are also set forth in attached Exhibit "D", which is incorporated herein by this reference. Specifically, each public road segment within the Project has been identified and described in the plans on file and summarized in Exhibit "D". The City accepts and agrees with the road standards for the public roads identified in the plans on file with the City and summarized on Exhibit "D". Developer agrees to construct the public roads for the Project consistent with said road standards. Furthermore, the road standards (public and private) identified in this Agreement and within the subdivision application shall serve as the approved standards for the Project and these standards will supersede any code language that is in conflict with these standards unless mutually agreed to by the City and Developer.

Section 10. Minor Modifications. Minor modifications from the approved permits or the exhibits attached hereto may be approved in accordance with the provisions of the City's code and shall not require an amendment to this Agreement.

Section 11. Further Discretionary Actions. Developer acknowledges that the Existing Land Use Regulations contemplate the exercise of further discretionary powers by the City. These powers include, but are not limited to, review of additional permit applications under SEPA. Nothing in this Agreement shall be construed to limit the authority or the obligation of the City to hold legally required public hearings, or to limit the discretion of the City and any of its officers or officials in complying with or applying Existing Land Use Regulations.

Section 12. Financing of Public Facilities. At the request of the Developer, the City may pursue the use of a local improvement district and other similar project-related public financing mechanism for financing the construction, improvement or acquisition of public infrastructure, facilities, lands and improvements to serve the Subject Property, whether located within or outside the Subject Property. To the extent allowed by law, the City shall address any reimbursement mechanism to Developer for expenses incurred by Developer associated with the Project, subject to the City's ordinances and State law.

Section 13. Existing Land Use Fees and Impact Fees.

A. Land use fees adopted by the City by ordinance as of the Effective Date of this Agreement may be increased by the City from time to time, and applicable to permits and approvals for the Subject Property, as long as such fees apply to similar applications and projects in the City.

B. During the term of this Agreement, the only impact fees paid by Developer shall be as set forth in Section 16.B.

Section 14. Improvements and Phasing of Development. The parties acknowledge that the most efficient and economic development of the Subject Property depends upon numerous factors, such as market orientation and demand, interest rates, competition and similar factors, and that generally it will be most economically beneficial to the ultimate purchasers of the Subject Property to have the rate of development determined by the Developer. However, the parties also acknowledge that because the Project will be phased, certain amenities associated with the Project must be available to all phases of the Project, in order to address health, safety, and welfare of the residents. The anticipated phasing of the Project is set forth in Exhibit "E" attached hereto and incorporated herein, which is intended to be representative only. Phase or build-out of the Project will be subject to the following conditions:

A. Phasing or build-out of the Project shall be limited based on the timing of infrastructure improvements set forth herein.

B. No fewer than 10 residential lots shall be included in a single phase of the Project (i.e. final plat), except for the final phase or if deviations from this limitation are approved by the City Community Development Director.

C. There is no limitation on the period of time that may elapse between phases subject to Section 7 above regarding the term of this Agreement. There is no requirement that phases occur in a certain order, provided, however, that Phase I as set forth in Exhibit E shall be completed prior to any other Phase to allow for traffic access to the Project from Ivy, K, and L streets. Any reconfiguration of Phase I set forth in Exhibit E shall include access from Ivy, K, and L streets. Any phase shall make adequate provision for all necessary improvements to provide for the health, safety, and welfare of the residents, including street improvements, potable water and fire flow facilities, sewer facilities, and other utilities.

D. Following approval of the subdivision application for the entire Project and the initial phase of the Project, each subsequent phase of the Project shall be administratively processed consistent with Article IV, Final Plats, Title 18, EMC (as of the Effective Date and not as amended), the SEPA mitigated determination of non-significance (see Section 14(I)), and this Agreement unless the applicant proposes a substantive amendment outside of the original approval. 'Substantive amendment' as used herein shall mean an amendment to the formal notes on an approved plat or conditions of approval of the plat or street alignment adjustments including access. "Minor amendments" shall be approved

administratively and include, for example, such matters as lot line reconfigurations and lot line eliminations (that do not increase the overall residential lot or unit count and comply with the Existing Land Use Regulations).

E. Developer understands and agrees that each phasing proposal will be reviewed by the Public Works Department and the Fire Code Official to determine if a temporary emergency turn-around will need to be installed. If so, then a temporary easement(s) in the adjacent future tract for the constructed temporary turnaround will be part of the phased plat documents.

F. Properties along the BNSF railroad right of way will require landscape buffer in accordance with Ephrata Municipal Code 19.07.040, comprised of a 10-foot-wide setback with fencing and landscaping. This strip shall be landscaped, fenced/walled, and maintained by the Landowners. A plat note shall identify the burdened properties and establish that such fencing/walls, landscaping, and maintenance are conditions of lot ownership. Developer may delay landscape installation until the homes are constructed to lessen the construction-related damage. The completion of the fence or wall is a requirement of final plat approval for each affected phase. Any incomplete sections will be subject to a performance bond posted by Developer with the City in an amount reasonably determined by the City Community Development Director. The setback width required for the buffer and any building/improvement setback otherwise required by Existing Land use Regulations shall run concurrently. To clarify, if the setback for structures or other improvements is ten feet, the Landowner shall be entitled to locate the improvement at the termination point of the buffer (10 feet from the lot line), and shall not be required to locate the improvement an additional ten feet from that point. The buffer is depicted on Exhibit D.

G. The City of Ephrata Public Works Department will conduct an onsite pre-construction conference with the Developer before written authorization to proceed will be issued for each Phase.

   1. During construction, any release of oil, hydraulic fluids, fuels, other petroleum products, paints, solvents, or other deleterious materials must be contained and removed in a manner that will prevent their discharge into water or soil. The cleanup of spills shall take precedence over other work on the site.

H. The Developer is required to obtain all state, local and federal permits including but not limited to the following required permits:

   1. The Developer must apply for coverage (including any applicable exemptions) under the Department of Ecology's Construction Stormwater General Permit at least 60 days prior to start of construction of any phase. Additionally, discharge from the dry wells must comply with the ground water quality requirement (non-endangerment standard) at the top of the ground water table.

   2. City of Ephrata approval of Erosion, Sediment and Dust Control Plans integrated with Interim Stormwater Management Plans prepared in accordance with the Department of Ecology Stormwater Manual for Eastern Washington as adopted and implemented by

the City of Ephrata.

3. City of Ephrata Mass Grading Permit; Building Permits

I. Developer has submitted an Environmental Checklist associated with this Agreement and the subdivision application for the Project, and the comment period associated therewith has expired. After consideration of all comments, the City's responsible official for the State Environmental Policy Act ("SEPA") issued a mitigated determination of non-significance ("MDNS") with respect to this Agreement and the subdivision application for the Project submitted simultaneously with this Agreement. This Agreement and associated MDNS shall be incorporated into and govern the SEPA review requirements for every building permit, development application, and phase of development within the Project.

J. Since ground disturbance leads to weeds and dust, the portions of the site not proposed for development at this time shall remain undisturbed as much as possible. Disturbed areas that will not be built on, paved, or landscaped for more than 45 days shall be stabilized through long-term methods such as establishing dryland grasses or native shrub/steppe. The Developer shall ensure that nuisances, such as weeds and dust that are not otherwise ordinarily occurring, do not develop.

K. To facilitate orderly flow of traffic, provide safe pedestrian facilities, and provide sufficient utility connections, the Developer shall construct full-width street and utility improvements as noted in Section 9, C above. Street alignment and access as depicted in the preliminary plat shall not be modified.

L. The City and Developer agree that sewer and water service for the Project will be solely provided by line extensions and that no off-site sewer or water improvements or analysis are required as a condition to the development of the Property consistent with this Agreement. If temporary maintenance access is required, a temporary easement(s) in the adjacent future tract for the constructed temporary access will be part of the phased plat documents. Sewer and water connection fees and plant investment fees that are generally applicable to all customers served by the City shall be paid at the time of building permit application.

M. As required, a sanitary sewer lift station shall discharge flow to the sewer improvements noted above with no further offsite or system analysis required. If temporary maintenance access is required, a temporary easement(s) in the adjacent future tract for the constructed temporary access will be part of the phased plat documents.

N. The Washington State Department of Archaeological and Historic Preservation (DAHP) has determined the proposed subdivision to be an area characterized as moderate to high probability of encountering cultural resources. A professional archaeological survey of the project area was conducted. The report meets DAHP's Standards for Cultural Resource Reporting.

O. A traffic impact analysis was submitted to the City on July 13, 2022. The city Engineer, Gray & Osborne Consulting Engineers, has provided comments in their Letter Dated July 13, 2022, and determined that the following mitigation efforts are required:

1. Compliance with Ephrata's Comprehensive Plan forecasting for a minimum of 10 years and using an estimated growth rate of 2%.

2. Verify the level of service standard used in the traffic impact analysis is measured equivalently to the City's standard of a ratio of hourly demand volume versus hourly capacity.

3. Provide a letter to the City and City Engineer before any final plat is approved from the Fire Department approving the development access points for emergency management purposes.

4. Intersection alignment to the development on Ivy Street must be worked out prior to final approvals of the preliminary plat.

5. The development is increasing traffic at existing city streets of Ivy, K, and L street. There is a nexus for improvements to these intersections and the Developer shall mitigate with stop signs and intersection improvements, if necessary, at final plat consideration.

P. Developer may delay installation of all landscaping adjacent to the sidewalks until the homes are constructed. Any incomplete landscape sections will be subject to a performance bond posted by Developer with the City in an amount reasonably determined by the City Community Development Director. A plat note shall establish landscaping installation and maintenance adjacent to the sidewalk as conditions of lot ownership. The landscape standards are depicted on Exhibit D.

Section 15. Habitat Mitigation. After review of the proposed site by the Washington State Department of Fish and Wildlife (WDFW) it has been determined that the project site contains City of Ephrata Fish and Wildlife Habitat Conservation Areas, including shrub steppe habitat. WDFW designates shrub steppe habitat as a Washington State Priority Habitat. A site analysis and habitat assessment review have been conducted and a mitigation/habitat management plan has been developed. To mitigate for the impacts to the moderate shrub steppe rating found on the site the proposed development, the Developer has identified 70 acres as an off-site mitigation site to mitigate the 57 acre parcel to be developed. These sites are identified by the Grant County Auditor as parcels #16- 18260-16 and #16-18260-15. The land is adjacent to land owned and managed by the WDFW and surrounded by large areas of undeveloped shrub steppe habitat and has been determined to be a quality shrub steppe habitat which off sets the site to be developed. The habitat management plan will mitigate impacts of the proposed development at a ratio of 1:1.2 for the 70 acres of low to moderate quality shrub steppe located within the City of Ephrata, with 70 acres of moderate to high quality shrub steppe in an identified wildlife corridor/linkage area. The mitigation site will have a Habitat Conservation Covenant set forth in Exhibit F placed on it and be recorded and 'run with' the title of the property prior to the approval of any final plat. At no time should more than 70 acres of mitigation be required for the Project. The restrictions on the 70 acres of land include the following:

1. No structures of any kind allowed
2. No driveways, wells, drain fields or other improvements
3. Fencing will be minimized
4. Any livestock grazing will not be allowed or restricted by a WDFW approved

grazing plan
5. Motorized vehicles will be restricted to the existing power line maintenance road

Section 16. Dedication of Public Lands. Except as otherwise provided herein, the Developer shall dedicate all public lands required in the permits/approvals within ninety (90) days of the Effective Date of this Agreement. Dedication shall be considered by the City in the following schedule:

A. Road Rights-Of-Way. Within fifteen (15) days of submission of an application for final plat to the City for any phase of the development, the Developer agrees to dedicate any or all road rights-of-way without expense to the City.

B. Dedication of Parks & Recreation. The Developer agrees to pay cash in lieu for parks and open space dedication. Final approval of any final plat by the City shall be contingent upon payment of the park development fee to the City in the amount of $1,800 per residential lot.

Section 17. Default.

A. Subject to extensions of time by mutual consent in writing, failure or delay by either party or Landowner not released from this Agreement, to perform any term or provision of this Agreement shall constitute a default. In the event of alleged default or breach of any terms or conditions of this Agreement, the party alleging such default or breach shall give the other party or Landowner not less than thirty (30) days notice in writing, specifying the nature of the alleged default and the manner in which said default may be cured. During this thirty (30) day period, the party or Landowner charged shall not be considered in default for purposes of termination or institution of legal proceedings.

B. After notice and expiration of the thirty (30) day period, if such default has not been cured or is not being diligently cured in the manner set forth in the notice, the other party or Landowner to this Agreement may, at its option, institute legal proceedings pursuant to this Agreement. In addition, the City may decide to file an action to enforce the City's Codes, and to obtain penalties and costs as provided in the Ephrata Municipal Code for violations of this Development Agreement and the Code.

Section 18. Termination. This Agreement shall expire and/or terminate as provided below:

A. Nothing in this Agreement shall extend the expiration date of any permit or approval issued by the City for any development.

B. This Agreement shall terminate upon the expiration of the term identified in Section 7 or when the Subject Property has been fully developed, which ever first occurs, and all of the Developer's obligations in connection therewith are satisfied as determined by the City. Upon termination of this Agreement, the City shall record a notice of such termination in a form satisfactory to the City Attorney that the Agreement has been terminated. This Agreement shall automatically terminate and be of no further force and effect as to any

single-family residence, any other residential dwelling unit or any nonresidential building and the lot or parcel upon which such residence or building is located, when it has been approved by the City for occupancy.

Section 19. Effect upon Termination on Developer Obligations. Termination of this Agreement as to the Developer of the Subject Property or any portion thereof shall not affect any of the Developer's obligations to comply with the City Comprehensive Plan and the terms and conditions or any applicable zoning code(s) or subdivision map or other land use entitlements approved with respect to the Subject Property, any other conditions of any other development specified in the Agreement to continue after the termination of this Agreement or obligations to pay assessments, liens, fees or taxes.

Section 20. Effects upon Termination on City. Upon any termination of this Agreement as to the Developer of the Subject Property, or any portion thereof, the entitlements, conditions of development, limitations on fees, and all other terms and conditions of this Agreement shall no longer be vested hereby with respect to the property affected by such termination (provided that vesting of such entitlements, Conditions, or fees may then be established for such property pursuant to then-existing planning and zoning laws).

Section 21. Assignment and Assumption. The Developer shall have the right to sell, assign, or transfer this Agreement with all its rights, title, and interests therein to any person, firm, or corporation at any time during the term of this Agreement. Developer shall provide the City with written notice of any intent to sell, assign, or transfer all or a portion of the Subject Property, at least 30 days in advance of such action.

Section 22. Covenants Running with the Land. The conditions and covenants set forth in this Agreement and incorporated herein by the Exhibits shall run with the land and the benefits and burdens shall bind and inure to the benefit of the parties or Landowner. The Developer, Landowner, and every purchaser, assignee, or transferee of an interest in the Subject Property, or any portion thereof, shall be obligated and bound by the terms and conditions of this Agreement, and shall be the beneficiary thereof and a party thereto, but only with respect to the Subject Property, or such portion thereof, sold, assigned, or transferred to it. Any such purchaser, assignee, or transferee shall observe and fully perform all of the duties and obligations of a Developer contained in this Agreement, as such duties and obligations pertain to the portion of the Subject Property sold, assigned, or transferred to it.

Section 23. Amendment to Agreement; Effect of Agreement on Future Actions. This Agreement may be amended by mutual consent of all of the parties, provided that any such amendment shall follow the process established by law for the adoption of a development agreement (*see,* RCW 36.70B.200). However, nothing in this Agreement shall prevent the City Council from making any amendment to its Comprehensive Plan, Zoning Code, Official Zoning Map, or development regulations affecting the Subject Property during the term of this Agreement if the City Council deems such amendments necessary to the extent required by a serious threat to public health and safety. Nothing in this Development Agreement shall prevent the City Council from making any amendments of any type to the Comprehensive Plan, Zoning Code, Official

Zoning Map, or development regulations relating to the Subject Property through the termination date set forth in Section 7 above.

A. In the event the Subject Property or any part of the Subject Property is rezoned in accordance with this Section 23, then Developer shall have the option to divest the re-zoned Property (or any part thereof) from the rights and entitlements set forth in the applicable development approval and submit a new development application (for example, a unit lot subdivision) under the applicable zoning provisions then in effect. Notwithstanding the decision to submit a development application for any portion of the Property that is rezoned, the terms and conditions of this Agreement shall continue to apply.

Section 24. Releases. Upon sale of each lot included in the Project, Developer shall have no further obligations relating to the sold, assigned, or transferred property, unless Developer is still bound by a performance bond as set forth in this Agreement.

Section 25. Notices. Notices, demands, correspondence to the City and Developer shall be sufficiently given if dispatched by pre-paid first-class mail to the addresses of the parties as designated in Section 5. Notice to the City shall be to the attention of both the City Administrator and the City Attorney. Notices to subsequent Landowners shall be required to be given by the City only for those Landowners who have given the City written notice of their address for such notice. The parties hereto may, from time to time, advise the other of new addresses for such notices, demands, or correspondence.

Section 26. Reimbursement for Agreement Expenses of the City. Developer agrees to reimburse the City for actual expenses incurred over and above fees paid by Developer as an applicant incurred by City directly relating to this Agreement, including recording fees and publishing fees, and reasonable staff and consultant costs not otherwise included within application fees. This development agreement shall not take effect until the fees provided for in this section, as well as any processing fees owed to the City for the Subject Property are paid to the City. Upon payment of all expenses, the Developer may request written acknowledgement of all fees. Such payment of all fees shall be paid, at the latest, within thirty (30) days from the City's presentation of a written statement of charges to the Developer.

Section 27. Applicable Law and Attorneys' Fees. This Agreement shall be construed and enforced in accordance with the laws of the State of Washington. If litigation is initiated to enforce the terms of this Agreement, the prevailing party shall be entitled to recover its reasonable attorneys' fees and costs from the non-prevailing party. Venue for any action shall lie in Grant County Superior Court or the U.S. District Court for the Eastern District of Washington.

Section 28. Third Party Legal Challenge. In the event any legal action or special proceeding is commenced by any person or entity other than a party or a Landowner to challenge this Agreement or any provision herein, the City may elect to tender the defense of such lawsuit or individual claims in the lawsuit to Developer and/or Landowner(s). In such event, Developer and/or such Landowners shall hold the City harmless from and defend the City from all costs and expenses incurred in the defense of such lawsuit or individual claims in the lawsuit, including but not limited

to, attorneys' fees and expenses of litigation, and damages awarded to the prevailing party or parties in such litigation. The Developer and/or Landowner shall not settle any lawsuit without the consent of the City. The City shall act in good faith and shall not unreasonably withhold consent to settle.

Section 29. Specific Performance. The parties specifically agree that damages are not an adequate remedy for breach of this Agreement, and that the parties are entitled to compel specific performance of all material terms of this Development Agreement by any party in default hereof.

Section 30. Severability. If any phrase, provision or section of this Agreement is determined by a court of competent jurisdiction to be invalid or unenforceable, or if any provision of this Agreement is rendered invalid or unenforceable according to the terms of any statute of the State of Washington which became effective after the effective date of the ordinance adopting this Development Agreement, and either party in good faith determines that such provision or provisions are material to its entering into this Agreement, that party may elect to terminate this Agreement as to all of its obligations remaining unperformed.

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

OWNER/DEVELOPER:

By _____
Lisa Fairchild
(50%)

By _____
Jeff Fairchild
(50%)

CITY OF EPHRATA

By _____
Bruce Reim, Its Mayor

ATTEST:

By _____
Leslie Trachsler, Finance Director

APPROVED AS TO FORM:

By _____
Katherine L. Kenison, City Attorney

ACKNOWLEDGEMENT

State of Washington }
}
_____ County }

On this day personally appeared before me Lisa Fairchild to be known to be the individual described in and who executed the within foregoing instrument and acknowledge to me that she signed the same as her free and voluntary act and deed for the uses and purposes therein mentioned.

Dated this _____ day of _____, 2023.

_____
NOTARY PUBLIC in and for the State of Washington
My Appointment Expires:

State of Washington }
}
_____ County }

On this day personally appeared before me Jeff Fairchild to be known to be the individual described in and who executed the within foregoing instrument and acknowledge to me that he signed the same as his free and voluntary act and deed for the uses and purposes therein mentioned.

Dated this _____ day of _____ , 2023 .

_____
NOTARY PUBLIC in and for the State of Washington
My Appointment Expires:

State of Washington }
}
Grant County }

I certify that I know or have satisfactory evidence that Bruce Reim signed this instrument, on oath stated that he was authorized to execute the instrument as Mayor for the City of Ephrata and acknowledged it to be the free and voluntary act of such party for the uses and purposes mentioned in this instrument.

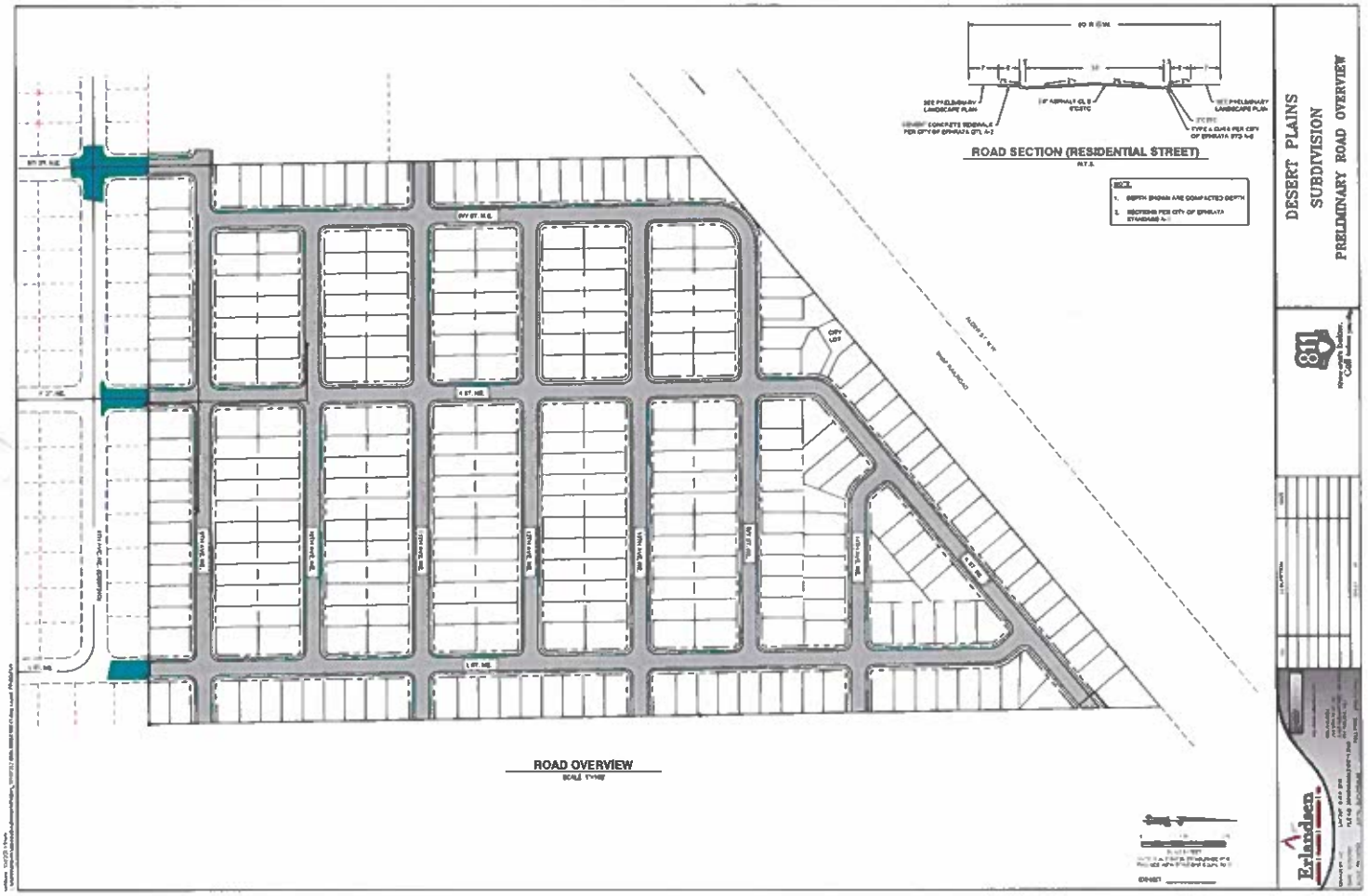
Dated this _____ day of _____ , 2023.

_____
NOTARY PUBLIC in and for the State of Washington
My Appointment Expires:

Exhibit A – Legal Description

That portion of the Southeast quarter of the Northeast quarter and the Northeast quarter of the Southeast quarter of Section 10, Township 21 North, Range 26, E.W.M., Grant County Washington, lying Southerly of the Right of Way of Burlington Northern Railroad Company (formerly Great Northern Railway Company).

Exhibit B - Road



DESERT PLAINS

SUBDIVISION

TPN: 130005000

PRELIMINARY PLAT

SECTION: T.11, R.29, S.30

109 W. DIVISION ST. EPHRATA, WA

CONTACT
THE CONSULTME GROUP ATT. BRANDON BERNARD 2809 S OUILLAN ST # 146 KENNEWICK, WA 99337 509-366-1982

SURVEYOR
ERLANDSEN *WES POTRIDGE, PLS* 230 SIMON STREET EAST WENATCHEE, WA 98802 (509) 884-2992

PHASING NOTE
PHASING SHOWN IS PRELIMINARY ONLY AND MAY CHANGE AS OUTLINED WITHIN THE DEVELOPMENT AGREEMENT

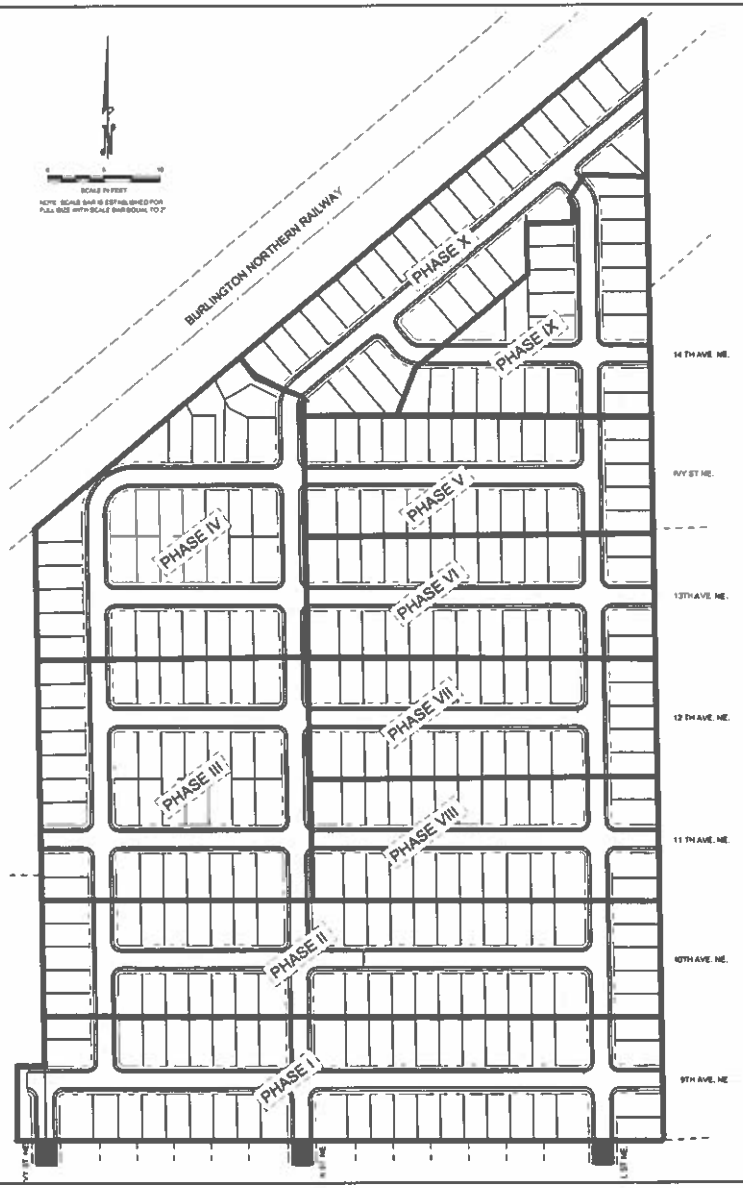


Exhibit C - Phasing

PROJECT LOCATION
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Exhibit D - Landscape and buffering

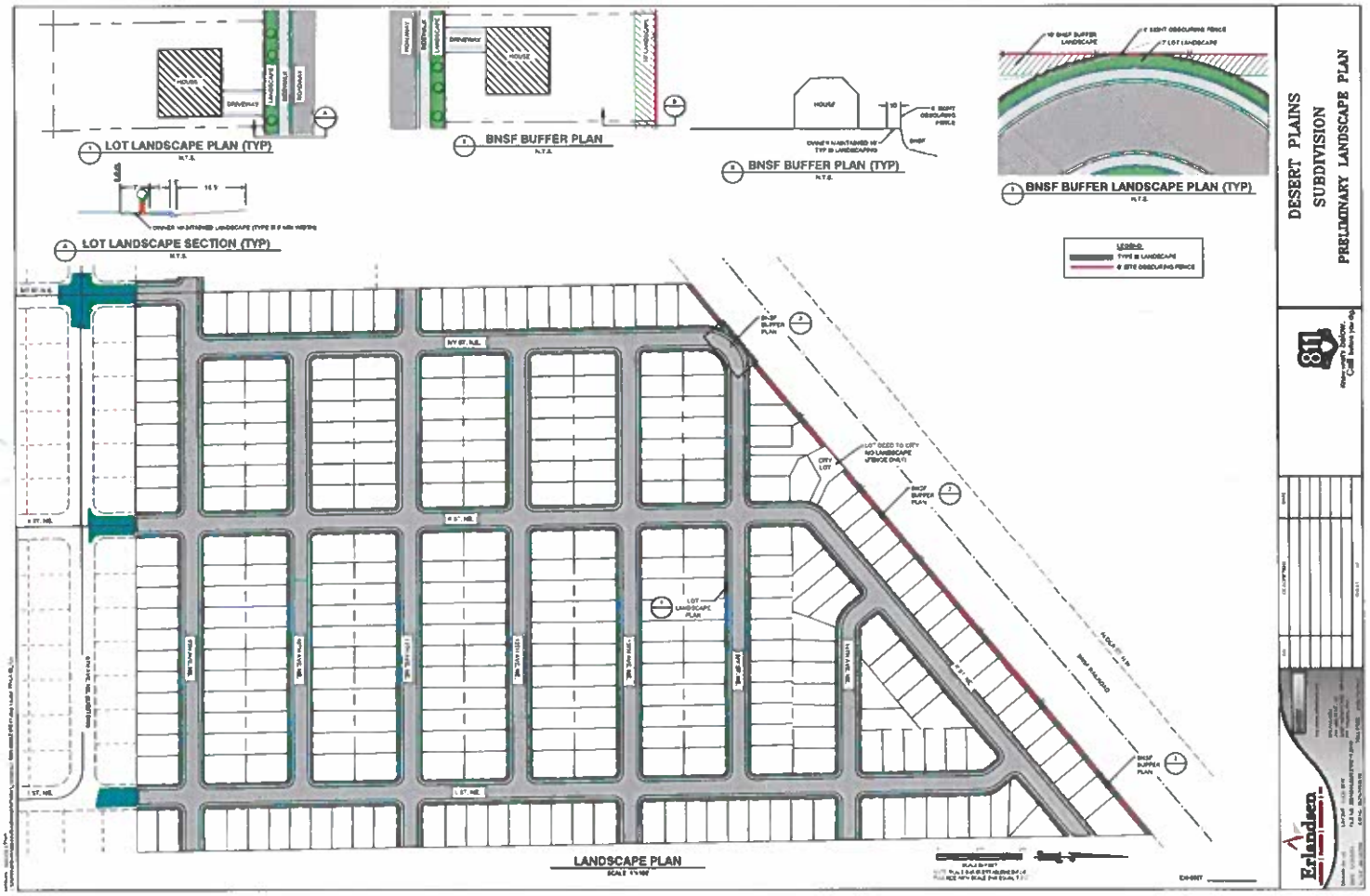


Exhibit E – Desert Plains Conservation Covenent

When Recorded, Return to

City of Ephrata
121 Alder Street SW
Ephrata, WA 98812

HABITAT CONSERVATION COVENANT RUNNING WITH THE LAND

GRANTOR: RYAN and CATHERINE HARRIS, husband and wife

GRANTEE: THE CITY OF EPHRATA, WASHINGTON

ADDITIONAL PARTY: JEFF and LISA FAIRCHILD, husband and wife

LEGAL DESCRIPTION (ABBREVIATED):

Complete legal description on Exhibit A.

ADDRESS:

ASSESSOR'S TAX PARCEL ID NO(S).

HABITAT CONSERVATION COVENANT RUNNING WITH THE LAND

This covenant ("Covenant") is executed in favor of the City of Ephrata ("Grantee") by Ryan and Catherine Harris, husband and wife ("Grantor" and "Owner"), owner of the real property described on Exhibit A (the "Property") for the benefit of Jeff and Lisa Fairchild ("Developer") related to the Desert Plains Development on certain real property owned by Developer in the City of Ephrata, Grant County, Washington (the "Project Site"). The Grantor warrants that Grantor is the sole owner of the Property and there is no other party that has any right, title, or interest in or to the Property.

Developer acknowledges that the Project Site or a portion of the Project Site is located in a Fish and Wildlife Habitat Conservation Area Critical Area described in Ephrata Municipal Code (EMC) Chapter 20.08 and is subject to the provisions of EMC Chapter 20.08. The City has approved an application for the Desert Plains Subdivision Preliminary Plat subject to certain conditions, many of which are memorialized in this Covenant. The Project Site for which the Subdivision Preliminary Plat was approved is depicted in Exhibit B.

Grantor, Ryan and Catherine Harris, are the fee simple owners of the Property, legally described as:

[Legal Description]

commonly referred to as Grant County Assessor Parcel Nos. 161826016 and 161826015 (herein "Receiving Property").

The Developer and Grantor have agreed that, for good and valuable consideration, Grantor would make the 70-acre portion of the Receiving Property as described and generally depicted in Exhibit A attached hereto, hereinafter referred to as the "Covenant Area", subject to the conservation-based covenants described in this Covenant as a condition of the Habitat Management Plan for the Project Site, Grant County Assessor Parcel No. 130425005, Grant County Washington.

LIMITATION ON DEVELOPMENT AND LAND-DISTURBING ACTIVITIES; PERMANENT CONDITIONS

Grantor understands and acknowledges the following:

The environmentally critical areas and any associated buffers (together referred to as the "Covenant Area") on the Receiving Property are identified in Exhibit A.

The purpose of this Covenant is:

To preserve and protect the native flora, fauna, soils, water table and drainage patterns, and other conservation values of the Covenant Area;

To view the Covenant Area, in its scenic and open condition; and in general,
To assure that the Covenant Area, including its air space and subsurface, will be retained in perpetuity in its natural condition as provided herein and to prevent any use of the Covenant Area that will impair or interfere with its natural resource functions and values.

Grantor intends that this Declaration will confine the use of the Covenant Area to such activities as are consistent with the purpose of this Covenant.

Any activity in or use of the Covenant Area inconsistent with the purpose of the Declaration by the Grantor; subsequent property owner(s); and the personal representatives, heirs, successors, and assigns of either the Grantor or subsequent property owner, is prohibited. Without limiting the generality of the foregoing, and except when an approved purpose under the following activities and uses are expressly prohibited in, on, over, or under the Covenant Area, subject to all of the express terms and conditions below:

A. **Structures**. The construction of man-made structures including but not limited to the construction, removal, placement, preservation, maintenance, alteration, or decoration of any buildings, driveways, wells, drain-fields, roads, utility lines, billboards, or other advertising. Fencing shall be minimized. This restriction does not include deer stands, bat boxes, bird nesting boxes, bird feeders and the placement of signs for safety purposes or boundary demarcation.

B. **Soils**. The removal, excavation, disturbance, or dredging of soil, sand, gravel, or aggregate material of any kind; or any change in the topography of the land, including any discharges of dredged or fill material, ditching, extraction, drilling, driving of piles, mining, or excavation of any kind.

C. **Waste or Debris**. The storage, dumping, depositing, abandoning, discharging, or releasing of any gaseous, liquid, solid, or hazardous waste substance, yard waste, materials or debris of whatever nature on, in, over, or underground or into surface or ground water, except for pre-existing or approved project-related stormwater discharges and any maintenance associated with those stormwater discharges;

D. **Non-Native Species**. The planting or introduction of non-native species;

E. **Herbicides, Insecticides and Pesticides**. The use of herbicides, insecticides, or pesticides, or other chemicals, except for as may be necessary to control invasive species that threaten the natural character of the Covenant Area.

F. **Removal of Vegetation**. The mowing, cutting, pruning, or removal of vegetation of any kind; disturbance, destruction, or the collection of any trees, shrubs, or other vegetation, except for pruning, cutting or removal for:

1. Safety purposes;
2. Control of non-native species and noxious weeds; or
3. Scientific or nature study;

G. **Agricultural Activities**. Conversion of any portion of the Covenant Area for use of agriculture, horticulture, livestock production, or grazing activities unless a grazing plan is approved by the Washington Department of Fish and Wildlife.

H. **Recreational**. Recreational use of ATVs, dirt bikes, motorcycles, off-road vehicles, or motor vehicle of any kind is prohibited in the Covenant Area except for the existing power line maintenance road.

Land disturbing activities (such as construction, excavation, or grading) in the Covenant Area and may not occur except as otherwise permitted by EMC Chapter 20.08.

Development and all associated land disturbing activity is restricted to the areas outside the Covenant Area.

The Covenant area shall not be considered for development credit in future subdivision or development proposals for the Receiving Property.

Grantor shall maintain permanent visible markers delineating the Covenant Area boundaries, if required. The locations of the required permanent markers are depicted on Exhibit A.

RIGHT TO ENTER

This Covenant shall not be interpreted to prohibit entry to, or the use and maintenance of, the Covenant Area consistent with EMC Chapter 20.08.

VIOLATIONS

If the City determines that a violation of this Covenant is occurring, has occurred, or is threatened, the City may demand corrective action sufficient to cure the violation, including without limitation, restoration or remediation of the Covenant Area and removal of any improvements not permitted by the City. The City reserves its existing rights at law and equity with respect to any violation of this Covenant by the Owner.

RECORDING

This Covenant shall be recorded in the real estate records of the Grant County Recorder's Office.

RUNNING COVENANT

This Covenant shall remain in effect in perpetuity, shall run with the land regardless of ownership or use, and is binding upon all subsequent declarants their heirs, executors, administrators, successors, representatives, devisees, and assigns, as the case may be, as long as said party shall have any interest in any part of the Conservation Area.

AMENDMENTS

No portion of this Covenant nor the restrictions imposed on the Covenant Area as contained herein shall be modified, amended, or terminated by Grantor, subsequent owners of the Covenant Area, or their respective heirs, executors, administrators, successors, representatives, devisees, or assigns without first obtaining the prior written consent and approval from the City of Ephrata Community Development Department.

SEVERABILITY

If any provision of this Covenant is held invalid, the remainder of the Covenant is not affected. If the application of this Covenant to any person or circumstance is held invalid, the application of the Covenant to other persons or circumstances is not affected.

GRANTOR

_____ _____

Ryan Harris Catherine Harris

Date:_____ Date:_____

DEVELOPER

_____ _____

Jeff Fairchild Lisa Fairchild

Date:_____ Date:_____

STATE OF WASHINGTON)
) ss.
COUNTY OF GRANT)

I certify that I know or have satisfactory evidence that Ryan Harris is the person who appeared before me, and said person acknowledged that he signed this instrument and acknowledged it to be his free and voluntary act for the uses and purposes mentioned in the instrument.

DATED:_____, 2022.

_____

_____
Notary Type or Print Name
NOTARY PUBLIC for State of Washington, residing at:_____
My commission expires:_____

STATE OF WASHINGTON)
) ss.
COUNTY OF GRANT)

I certify that I know or have satisfactory evidence that Catherine Harris is the person who appeared before me, and said person acknowledged that she signed this instrument and acknowledged it to be her free and voluntary act for the uses and purposes mentioned in the instrument.

DATED:_____, 2022.

_____

_____
Notary Type or Print Name
NOTARY PUBLIC for State of Washington, residing at:_____
My commission expires:_____

STATE OF WASHINGTON)
) ss.
COUNTY OF GRANT)

I certify that I know or have satisfactory evidence that Jeff Fairchild is the person who appeared before me, and said person acknowledged that he signed this instrument and acknowledged it to be his free and voluntary act for the uses and purposes mentioned in the instrument.

DATED:_____, 2022.

_____

_____
Notary Type or Print Name
NOTARY PUBLIC for State of Washington, residing at:_____
My commission expires:_____

STATE OF WASHINGTON)
) ss.
COUNTY OF GRANT)

I certify that I know or have satisfactory evidence that Lisa Fairchild is the person who appeared before me, and said person acknowledged that she signed this instrument and acknowledged it to be her free and voluntary act for the uses and purposes mentioned in the instrument.

DATED:_____, 2022.

_____

_____
Notary Type or Print Name
NOTARY PUBLIC for State of Washington, residing at:_____
My commission expires:_____

Ephrata Planning Commission Date: January 12, 2023
Public Hearing: Flood Damage Prevention Code Update

Name (Please Print)	Street Address City Zip E-mail:	Do you wish to speak on the this proposal?				
		Yes	No	If yes:		
				For	Against	Comment Only

SUMMARY OF DEVELOPER REQUESTS

The following changes to the City of Ephrata City Staff's version of the development agreement are requested by the developer:

1. Section 7:

   Asking for the Agreement to run 10 years and not the 7 listed:
   a. We expect to build at a rate of about 40 homes per year. With 329 approved, it would take a little over 8 years to complete the development.
   b. To meet 7 years, we would need to complete about 50 homes per year. While optimistic, we do not think such a pace is feasible.
   c. 10 years allows for a better response to market conditions.
   d. 10 years also allows for better flow and review by City staff by spreading out permit reviews.

2. Section 12:

   Asking for deletion of Paragraph A:
   a. We don't see a need for this as the conditions of approval already outlined the required improvements, and this provision is very broad.
   b. Based on conversations with City Staff no upgrades or modifications to existing system are required.
   c. We think this is simply a carry-over from a boilerplate agreement, and it only adds uncertainty/concern that future interpretations may result in broad and unanticipated costs being charged by the city, as items "related to" the agreement could be endless.

3. Section 14, F:

   Asking for the option to defer fencing to be a condition of occupancy, rather than it being a condition of plat approval:
   a. This will allow for lot development (home, landscaping, etc.) to be installed without damaging landscaping and/or the fence.
   b. If this is installed it will likely not meet the wants/need of the lot owner and they will remove and install to their wants/needs.
   c. If installed before plat, the developer will need to maintain, repair, and replace the fence that is located along BNSF right-of-way with limited access.
   d. Until lot development, there is very limited risk/safety from current conditions.
   e. Any incomplete sections of the fence can be covered by the bond noted in the agreement, if needed.

4. Section 26:

Asking for a reduction of the costs requested by the City relating to drafting and review of this agreement:

a. The City made the development agreement a condition of plat approval – the developer did not ask for the agreement. But the City is now requiring that the developer pay almost $10,000 in fees and costs to cover the City's drafting and review of the agreement.
b. The EMC provision relied on by the City (17.05 – attached) allows such fees to apply at the application review stage, which was completed no later than October 18, 2022. The application has already been reviewed and, according to Resolution 22-08 entered October 18, 2022, the preliminary plat has been approved.
c. The RCW relied on by the City (RCW 36.70B.170(3)(b)) allows such fees so long as they are "consistent with applicable development regulations adopted by a local government." Here, we feel the fees are not consistent with EMC.
d. None of the fees being requested by the City were published or discussed prior to negotiations over the development agreement, and developer was not aware of the amount until January 11, 2023.

CHAPTER 17.05

APPLICATION FEES AND CHARGES

Sections:

17.05.010 APPLICATION FEES AND CHARGES

17.05.010 APPLICATION FEES AND CHARGES

(A) The council shall adopt a resolution setting forth the fees, charges and rates for the various development applications, permits, and approvals authorized pursuant to the EMC and shall update said resolution as is appropriate and/or necessary for establishing such fees, charges and rates.

(B) In the review of a land use permit application, the City may determine that such review requires the retention of professional consultant services. In addition to any land use fees that an applicant is required to submit, the applicant shall also be responsible to reimburse the City for the cost of professional consultant services if the City determines such services are necessary to process and/or complete its review of the application submittal. These professional services may include, but shall not be limited to, planning, hearing examiner, engineering, traffic engineering, legal, financial and accounting, soils, mechanical and structural engineering, and electrical engineering, all contracted staff review expenses, publication costs and any consultant fees incurred to be able to review and process the application or permit request.

Additionally, the applicant shall be responsible for the costs of any independent inspector employed by the city to inspect installations of utilities to be delivered to the city upon completion as a condition of the platting process. The applicant is responsible for all costs for environmental impact study, traffic studies, soil studies, and other reports required for project evaluation. The City may also require the applicant to deposit an amount with the City, which is estimated, at the discretion of the Administrator, to be sufficient to cover anticipated costs of retaining professional consultant services to ensure reimbursement to the City for such costs.

(C) Fees paid are for administrative costs incurred in processing the application and are therefore nonrefundable, whether the permit is issued or not.

(D) Any application requiring the publication, mailing, and/or posting of notices or ordinances shall be required to reimburse the City for all such costs incurred by the City.

(E) The fees shall be billed to the applicant on a monthly basis based upon the time taken by city staff, city consultants, and/or the city attorney to review the subject applications (the invoice shall note the time and related charges). Any required deposit shall be due at the time of application. The deposit shall be held by the city and billed against the final invoice submitted by the city's consultants. An administrative fee of 10 percent shall also be added to cover the city's administrative costs of processing the applicant's invoices and billing expenses. If more than one application is required for a project, the applicant shall pay all deposits and fees as indicated for each required application.

Invoices shall be due and payable immediately upon receipt by the applicant. If the planning director ascertains that invoices are not paid within 21 days of mailing, the application shall be deemed incomplete and all processing shall stop until the invoice is paid in full. If the planning director ascertains that a deposit balance is less than the required minimum deposit balance, and said minimum balance is not restored within 21 days of mailing, the application shall be deemed incomplete and all processing shall stop

until the minimum balance is restored. Where no deposit is required, the applicant will be billed for the overall costs not covered by any application fee.

All invoices not paid within 30 days of the date of mailing shall be assessed a 12 percent APR (one percent per month) interest charge. If the final invoice exceeds the amount of the deposit, the applicant shall be responsible for paying the additional amount due. Permits or other approvals shall not be issued until the final invoice is paid in full. The city shall refund any funds left from the deposit after the final invoice is paid. (Ord. 09-06, 2009)

DEVELOPMENT AGREEMENT
BY AND BETWEEN THE CITY OF EPHRATA
AND JEFF & LISA FAIRCHILD,
FOR THE PRELIMINARY MAJOR PLAT OF THE DESERT PLAINS DEVELOPMENT

THIS DEVELOPMENT AGREEMENT is made and entered into this _____ day of January, 2023, by and between the City of Ephrata, a Washington State municipality, hereinafter the "City" and Jeff and Lisa Fairchild, husband and wife, hereinafter the "Developer."

RECITALS

WHEREAS, the Washington State Legislature has authorized the execution of a development agreement between a local government and a person having ownership or control of real property within its jurisdiction, where appropriate to provide additional land use approval and mitigation certainty, especially for larger-scale developments intended to be constructed as a unified whole, but over a period of several to many years. (RCW 36.70B.170); and

WHEREAS, a development agreement must set forth the development standards and other provisions that shall apply to, govern, and vest the development, use, and mitigation of the development of the real property for the duration specified in the agreement (RCW 36.70B.170); and

WHEREAS, for the purposes of this development agreement, "development standards" includes, but is not limited to, all of the standards listed in RCW 36.70B.170(3); and

WHEREAS, a development agreement must be consistent with the applicable development regulations adopted by a local government planning under chapter 36.70A RCW (RCW 36.70B.170(1)); and

WHEREAS, this Development Agreement by and between the City and Developer (hereinafter the "Development Agreement"), relates to the development known as the 'Desert Plains Development', which is described in Exhibit A (being Parcel #13-0425-005) (hereinafter the "Property"); and

WHEREAS, the following events have occurred in the processing of the Developer's application:

a) A public hearing on the preliminary plat for the major subdivision was held by the Ephrata Planning Commission on August 25, 2022. The Planning Commission recommended approval subject to conditions as set forth in Planning Commission Resolution No. 22-02.

b) The City approved the preliminary plat application for the Desert Plains Subdivision on October 19, 2022, with modified conditions of approval as set forth in City Council Resolution No. 22-08.

c) After a public hearing, by Ordinance No. 23-01, the City Council authorized the Mayor to sign this Development Agreement with the Developer; and

Now, therefore, the parties hereto agree as follows:

GENERAL PROVISIONS

Section 1. The Project. The Project is the development and use of the Property, consisting of 57 acres in the City of Ephrata. Permit #22-001 describes the project as a preliminary major plat of a single tax parcel, #13-0425-005 within the City of Ephrata, zoned Residential-2.

Section 2. The Subject Property. The Project site is legally described in Exhibit A, attached hereto, and incorporated herein by this reference.

Section 3. Definitions. As used in this Development Agreement, the following terms, phrases, and words shall have the meanings and be interpreted as set forth in this Section.

A. "Adopting Ordinance" means the Ordinance which approves this Development Agreement, as required by RCW 36.70B.200.
B. "Certificate of Occupancy" means either a certificate issued after inspections by the City authorizing a person(s) in possession of property to dwell or otherwise use a specified building or dwelling unit, or the final inspection if a formal certificate is not issued.
C. "Council" means the duly elected legislative body governing the City of Ephrata.
D. "Effective Date" means the effective date of the Adopting Ordinance.
E. "Existing Land Use Regulations" means the ordinances adopted by the City Council of Ephrata in effect on the Effective Date, including the adopting ordinances that govern the permitted uses of land, the density and intensity of use, and the design, improvement, construction standards and specifications applicable to the development of the Subject Property, including, but not limited to the Comprehensive Plan, the City's Official Zoning Map and development standards, SEPA, Concurrency Ordinance, and all other ordinances, codes, rules and regulations of the City establishing subdivision standards, park regulations, and building standards, including without limitation Titles 16, 17, 18, 19, and 21 of the Ephrata Municipal Code, in existence as of the effective Date; provided however, that all building permit applications shall be subject to the building codes in effect when a complete building permit application is submitted. Existing Land Use Regulations do not include non-land use regulations, which include taxes and impact fees.
F. "Landowner" is the party who has acquired any portion of the Subject Property from the Developer who, unless otherwise released as provided in this Agreement, shall be subject to the applicable provisions of this Agreement. The "Developer" is identified in Section 5 of this Agreement.
G. "Project" means the anticipated development of the Subject Property, as specified in Section 1 and as provided for in all associated permits/approvals, and all incorporated exhibits.

Section 4. Exhibits. Exhibits to this Agreement are as follows:

A. Exhibit A – Legal description of the Subject Property.
B. Exhibit B – Road Plan with standards

C. Exhibit C – Prospective Phasing
D. Exhibit D – Landscape and buffering plan with standards
E. Exhibit E – Habitat conservation covenant

Section 5. Parties to Development Agreement. The parties to this Agreement are:

A. The "City" is the City of Ephrata, 121 Alder Street SW, Ephrata WA 98823
B. The "Developer" or "Owner" is Jeff and Lisa Fairchild, PO Box 2756, Pasco WA 99302
C. The "Landowner." From time to time, as provided in this Agreement, the Developer may sell or otherwise lawfully dispose of a portion of the Subject Property to a Landowner who, unless otherwise released, shall be subject to the applicable provisions of this Agreement related to such portion of the Subject Property.

Section 6. Project is a Private Undertaking. It is agreed among the parties that the Project is a private development, and that the City has no interest therein except as authorized in the exercise of its governmental functions.

Section 7. Term of Agreement. This Agreement shall commence upon the effective date of the Adopting Ordinance approving this Agreement and shall continue in force for a period of ~~seven~~ ten (10~~7~~) years, unless extended or terminated as provided herein. Developer may request a one-time extension for up to two (2) additional years provided the Developer submits a request for extension to the City at least sixty (60) days prior to the expiration of the initial ~~seven~~ ten (10~~7~~) year term. Any such extension request shall be reviewed by the City Council after a public hearing on the request. Following the expiration of the term or extension thereof, or if sooner terminated, this Agreement shall have no force and effect, subject however, to post-termination obligations of the Developer or Landowner.

Section 8. Vested Rights of Developer. During the term of this Agreement, unless sooner terminated in accordance with the terms hereof, in developing the Subject Property consistent with the Project described herein, Developer is assured, and the City agrees, that the development rights, obligations, terms and conditions specified in this Agreement, are fully vested in the Developer and may not be changed or modified by the City, except as may be expressly permitted by, and in accordance with, the terms and conditions of this Agreement, including the Exhibits hereto, or as expressly consented thereto by the Developer. More specifically, Existing Land Use Regulations shall apply to the Project throughout the term of this Agreement.

If the Existing Land Use Regulations are amended during the term of this Agreement, Developer may, at Developer's exclusive option, submit a new or amended subdivision application to the City for review and approval in accordance with the Land Use Regulations in effect at the time the new or amended subdivision application is determined to be complete.

Section 9. Permitted Uses and Development Standards. The permitted uses, the density and intensity of use, the maximum height and size of proposed buildings, provisions for reservation and dedication of land or payment of fees in lieu of dedication for public purposes, the construction, installation and extension of public improvements, development guidelines and standards for development of the Subject Property shall be those set forth in (a) this Agreement, (b) the City of Ephrata Municipal Code, (c) the Decision of the City Council, (d) the permits and approvals identified herein, and (e) all exhibits incorporated herein.

A. **Current Standards:** As of the Effective Date and based on the current zoning, R-2, for the Property, as outlined in Ephrata Municipal Code (EMC), the calculated density is as set forth in Title 19.04.170 EMC and in the chart below:

Permitted Uses	Maximum Allowed Dwelling Units Per Acre (du/ac)	Site Acreage in Zone	Total Units Allowed in Zone
Single-family	8 dus/ac	57 ac	456
Duplex	8 dus/ac	57 ac	456
Multi-Family	16 dus/ac	57 ac	912

Uses set forth in the chart are further defined as follows:

- **EMC 19.02.115 Defines a Duplex:** Duplex means (1) detached residential building containing two (2) dwelling units totally separated from each other by a one (1) hour fire wall or floor, designed for occupancy by not more than two (2) families.

- **EMC 19.02.116 Defines Dwelling, single-family:** Single-family dwelling means a detached residential dwelling unit, other than a mobile home, designed and occupied by one (1) family only.

- **EMC 19.02.125 Defines Dwelling, multi-family:** Multi-family dwelling means a residential building designed for or occupied by three (3) or more families, with the number of families in residence not exceeding the number of dwelling units provided.

- **EMC 19.02.126 Defines a Dwelling Unit:** Dwelling Unit means one (1) room, or rooms connected together, constituting a separate. Independent housekeeping establishment for owner occupancy, or rental or lease on a weekly, monthly or longer basis, and physically separated from any other rooms or dwelling units which may be in the same structure or on the same property, and containing independent cooking and sleeping facilities.

B. **Current Maximum Residential Units.** The parties agree that the number of residential units within the Project on the Property shall not exceed 329 single family dwellings unless the Developer seeks approval of duplexes as provided in this section. Developer shall be responsible for payment of costs associated with such requests.

1. Developer may seek City approval to convert up to thirty-six (36) single family dwellings within the Project to duplex units. Such request shall be submitted prior to final plat approval and processed as a minor alteration approved with the consent of the

Community Development Director and the Public Works Director, but subject to: i) public notice to all owners of property within the subdivision, ii) public notice as was required by the subdivision application, and iii) a public hearing. Each approved duplex unit shall be equivalent to a single family dwelling for purposes of the 329 single family dwelling maximum noted above, and each duplex unit shall be comprised of two residences on the same lot.

2. Any cumulative request to convert more than thirty-six (36) single family dwellings within the Project to duplex units shall be processed as a major alteration subject to the consent of the City Council after public notice and a public hearing is held.

C. **Road Standards.** For purposes of this Agreement, any reference to a "public street" or "public road" shall mean streets dedicated to the City as part of the Project and shall not include private drives. The road standards for all public roads were submitted to the City with the complete subdivision application prior to the Effective Date. Copies of those diagrams and standards are also set forth in attached Exhibit "D", which is incorporated herein by this reference. Specifically, each public road segment within the Project has been identified and described in the plans on file and summarized in Exhibit "D". The City accepts and agrees with the road standards for the public roads identified in the plans on file with the City and summarized on Exhibit "D". Developer agrees to construct the public roads for the Project consistent with said road standards. Furthermore, the road standards (public and private) identified in this Agreement and within the subdivision application shall serve as the approved standards for the Project and these standards will supersede any code language that is in conflict with these standards unless mutually agreed to by the City and Developer.

Section 10. Minor Modifications. Minor modifications from the approved permits or the exhibits attached hereto may be approved in accordance with the provisions of the City's code and shall not require an amendment to this Agreement.

Section 11. Further Discretionary Actions. Developer acknowledges that the Existing Land Use Regulations contemplate the exercise of further discretionary powers by the City. These powers include, but are not limited to, review of additional permit applications under SEPA. Nothing in this Agreement shall be construed to limit the authority or the obligation of the City to hold legally required public hearings, or to limit the discretion of the City and any of its officers or officials in complying with or applying Existing Land Use Regulations.

Section 12. Financing of Public Facilities.

~~A. Developer acknowledges and agrees that it shall participate in the pro-rata share of the costs of public improvements which are incurred by the City related to this Agreement, but such participation shall be limited to public improvements that are located on the Subject Property (or adjacent to the Subject Property in the case of a connecting intersection) and that are required for approval of the final plat for each successive phase of the Project. For purposes of this Agreement, "public improvements" shall be defined consistent with common municipal code usage, namely, public improvements shall include construction,~~

~~reconstruction, or upgrading of a water line, sanitary sewer line, or storm sewer line, public street or public sidewalk, or underground public utilities.~~

~~B.~~A. At the request of the Developer, the City shall pursue the use of a local improvement district and other similar project-related public financing mechanism for financing the construction, improvement or acquisition of public infrastructure, facilities, lands and improvements to serve the Subject Property, whether located within or outside the Subject Property. To the extent allowed by law, the City shall address any reimbursement mechanism to Developer for expenses incurred by Developer associated with the Project, subject to the City's ordinances and State law.

Section 13. Existing Land Use Fees and Impact Fees.

A. Land use fees adopted by the City by ordinance as of the Effective Date of this Agreement may be increased by the City from time to time, and applicable to permits and approvals for the Subject Property, as long as such fees apply to similar applications and projects in the City.

B. During the term of this Agreement, the only impact fees paid by Developer shall be as set forth in Section 16.B.

Section 14. Improvements and Phasing of Development. The parties acknowledge that the most efficient and economic development of the Subject Property depends upon numerous factors, such as market orientation and demand, interest rates, competition and similar factors, and that generally it will be most economically beneficial to the ultimate purchasers of the Subject Property to have the rate of development determined by the Developer. However, the parties also acknowledge that because the Project will be phased, certain amenities associated with the Project must be available to all phases of the Project, in order to address health, safety, and welfare of the residents. The anticipated phasing of the Project is set forth in Exhibit "E" attached hereto and incorporated herein, which is intended to be representative only. Phase or build-out of the Project will be subject to the following conditions:

A. Phasing or build-out of the Project shall be limited based on the timing of infrastructure improvements set forth herein.

B. No fewer than 10 residential lots shall be included in a single phase of the Project (i.e. final plat), except for the final phase or if deviations from this limitation are approved by the City Community Development Director.

C. There is no limitation on the period of time that may elapse between phases subject to Section 7 above regarding the term of this Agreement. There is no requirement that phases occur in a certain order, provided, however, that Phase I as set forth in Exhibit E shall be completed prior to any other Phase to allow for traffic access to the Project from Ivy, K, and L streets. Any reconfiguration of Phase I set forth in Exhibit E shall include access from Ivy, K, and L streets. Any phase shall make adequate provision for all necessary

improvements to provide for the health, safety, and welfare of the residents, including street improvements, potable water and fire flow facilities, sewer facilities, and other utilities.

D. Following approval of the subdivision application for the entire Project and the initial phase of the Project, each subsequent phase of the Project shall be administratively processed consistent with Article IV, Final Plats, Title 18, EMC (as of the Effective Date and not as amended), the SEPA mitigated determination of non-significance (see Section 14(I)), and this Agreement unless the applicant proposes a substantive amendment outside of the original approval. 'Substantive amendment' as used herein shall mean an amendment to the formal notes on an approved plat or conditions of approval of the plat or street alignment adjustments including access. "Minor amendments" shall be approved administratively and include, for example, such matters as lot line reconfigurations and lot line eliminations (that do not increase the overall residential lot or unit count and comply with the Existing Land Use Regulations).

E. Developer understands and agrees that each phasing proposal will be reviewed by the Public Works Department and the Fire Code Official to determine if a temporary emergency turn-around will need to be installed. If so, then a temporary easement(s) in the adjacent future tract for the constructed temporary turnaround will be part of the phased plat documents.

F. Properties along the BNSF railroad right of way will require landscape buffer in accordance with Ephrata Municipal Code 19.07.040, comprised of a 10-foot-wide setback with fencing and landscaping. This strip shall be landscaped, fenced/walled, and maintained by the Landowners. A plat note shall identify the burdened properties and establish that such fencing/walls, landscaping, and maintenance are conditions of lot ownership. Developer may delay landscape and fence installation until the homes are constructed to lessen the construction-related damage. ~~The completion of the fence or wall is a requirement of final plat approval for each affected phase.~~ Any incomplete sections will be subject to a performance bond posted by Developer with the City in an amount reasonably determined by the City Community Development Director. The setback width required for the buffer and any building/improvement setback otherwise required by Existing Land use Regulations shall run concurrently. To clarify, if the setback for structures or other improvements is ten feet, the Landowner shall be entitled to locate the improvement at the termination point of the buffer (10 feet from the lot line), and shall not be required to locate the improvement an additional ten feet from that point. The buffer is depicted on Exhibit D.

G. The City of Ephrata Public Works Department will conduct an onsite pre-construction conference with the Developer before written authorization to proceed will be issued for each Phase.

1. During construction, any release of oil, hydraulic fluids, fuels, other petroleum products, paints, solvents, or other deleterious materials must be contained and

removed in a manner that will prevent their discharge into water or soil. The cleanup of spills shall take precedence over other work on the site.

H. The Developer is required to obtain all state, local and federal permits including but not limited to the following required permits:

1. The Developer must apply for coverage (including any applicable exemptions) under the Department of Ecology's Construction Stormwater General Permit at least 60 days prior to start of construction of any phase. Additionally, discharge from the dry wells must comply with the ground water quality requirement (non-endangerment standard) at the top of the ground water table.

2. City of Ephrata approval of Erosion, Sediment and Dust Control Plans integrated with Interim Stormwater Management Plans prepared in accordance with the Department of Ecology Stormwater Manual for Eastern Washington as adopted and implemented by the City of Ephrata.

3. City of Ephrata Mass Grading Permit; Building Permits

I. Developer has submitted an Environmental Checklist associated with this Agreement and the subdivision application for the Project, and the comment period associated therewith has expired. After consideration of all comments, the City's responsible official for the State Environmental Policy Act ("SEPA") issued a mitigated determination of non-significance ("MDNS") with respect to this Agreement and the subdivision application for the Project submitted simultaneously with this Agreement. This Agreement and associated MDNS shall be incorporated into and govern the SEPA review requirements for every building permit, development application, and phase of development within the Project.

J. Since ground disturbance leads to weeds and dust, the portions of the site not proposed for development at this time shall remain undisturbed as much as possible. Disturbed areas that will not be built on, paved, or landscaped for more than 45 days shall be stabilized through long-term methods such as establishing dryland grasses or native shrub/steppe. The Developer shall ensure that nuisances, such as weeds and dust that are not otherwise ordinarily occurring, do not develop.

K. To facilitate orderly flow of traffic, provide safe pedestrian facilities, and provide sufficient utility connections, the Developer shall construct full-width street and utility improvements as noted in Section 9, C above. Street alignment and access as depicted in the preliminary plat shall not be modified.

L. The City and Developer agree that sewer and water service for the Project will be solely provided by line extensions and that no off-site sewer or water improvements or analysis are required as a condition to the development of the Property consistent with this Agreement. If temporary maintenance access is required, a temporary easement(s) in the adjacent future tract for the constructed temporary access will be part of the phased plat documents. Sewer and water connection fees and plant investment fees that are generally applicable to all customers served by the City shall be paid at the time of building permit application.

M. As required, a sanitary sewer lift station shall discharge flow to the sewer improvements noted above with no further offsite or system analysis required. If temporary maintenance access is required, a temporary easement(s) in the adjacent future tract for the constructed temporary access will be part of the phased plat documents.

N. The Washington State Department of Archaeological and Historic Preservation (DAHP) has determined the proposed subdivision to be an area characterized as moderate to high probability of encountering cultural resources. A professional archaeological survey of the project area was conducted. The report meets DAHP's Standards for Cultural Resource Reporting.

O. A traffic impact analysis was submitted to the City on July 13, 2022. The city Engineer, Gray & Osborne Consulting Engineers, has provided comments in their Letter Dated July 13, 2022, and determined that the following mitigation efforts are required:

1. Compliance with Ephrata's Comprehensive Plan forecasting for a minimum of 10 years and using an estimated growth rate of 2%.

2. Verify the level of service standard used in the traffic impact analysis is measured equivalently to the City's standard of a ratio of hourly demand volume versus hourly capacity.

3. Provide a letter to the City and City Engineer before any final plat is approved from the Fire Department approving the development access points for emergency management purposes.

4. Intersection alignment to the development on Ivy Street must be worked out prior to final approvals of the preliminary plat.

5. The development is increasing traffic at existing city streets of Ivy, K, and L street. There is a nexus for improvements to these intersections and the Developer shall mitigate with stop signs and intersection improvements, if necessary, at final plat consideration.

P. Developer may delay installation of all landscaping adjacent to the sidewalks until the homes are constructed. Any incomplete landscape sections will be subject to a performance bond posted by Developer with the City in an amount reasonably determined by the City Community Development Director. A plat note shall establish landscaping installation and maintenance adjacent to the sidewalk as conditions of lot ownership. The landscape standards are depicted on Exhibit D.

Section 15. Habitat Mitigation. After review of the proposed site by the Washington State Department of Fish and Wildlife (WDFW) it has been determined that the project site contains City of Ephrata Fish and Wildlife Habitat Conservation Areas, including shrub steppe habitat. WDFW designates shrub steppe habitat as a Washington State Priority Habitat. A site analysis and habitat assessment review have been conducted and a mitigation/habitat management plan has been developed. To mitigate for the impacts to the moderate shrub steppe rating found on the site the proposed development, the Developer has identified 70 acres as an off-site mitigation site to mitigate

the 57 acre parcel to be developed. These sites are identified by the Grant County Auditor as parcels #16- 18260-16 and #16-18260-15. The land is adjacent to land owned and managed by the WDFW and surrounded by large areas of undeveloped shrub steppe habitat and has been determined to be a quality shrub steppe habitat which off sets the site to be developed. The habitat management plan will mitigate impacts of the proposed development at a ratio of 1:1.2 for the 70 acres of low to moderate quality shrub steppe located within the City of Ephrata, with 70 acres of moderate to high quality shrub steppe in an identified wildlife corridor/linkage area. The mitigation site will have a Habitat Conservation Covenant set forth in Exhibit F placed on it and be recorded and 'run with' the title of the property prior to the approval of any final plat. At no time should more than 70 acres of mitigation be required for the Project. The restrictions on the 70 acres of land include the following:

1. No structures of any kind allowed
2. No driveways, wells, drain fields or other improvements
3. Fencing will be minimized
4. Any livestock grazing will not be allowed or restricted by a WDFW approved grazing plan
5. Motorized vehicles will be restricted to the existing power line maintenance road

Section 16. Dedication of Public Lands. Except as otherwise provided herein, the Developer shall dedicate all public lands required in the permits/approvals within ninety (90) days of the Effective Date of this Agreement. Dedication shall be considered by the City in the following schedule:

A. Road Rights-Of-Way. Within fifteen (15) days of submission of an application for final plat to the City for any phase of the development, the Developer agrees to dedicate any or all road rights-of-way without expense to the City.

B. Dedication of Parks & Recreation. The Developer agrees to pay cash in lieu for parks and open space dedication. Final approval of any final plat by the City shall be contingent upon payment of the park development fee to the City in the amount of $1,800 per residential lot.

Section 17. Default.

A. Subject to extensions of time by mutual consent in writing, failure or delay by either party or Landowner not released from this Agreement, to perform any term or provision of this Agreement shall constitute a default. In the event of alleged default or breach of any terms or conditions of this Agreement, the party alleging such default or breach shall give the other party or Landowner not less than thirty (30) days notice in writing, specifying the nature of the alleged default and the manner in which said default may be cured. During this thirty (30) day period, the party or Landowner charged shall not be considered in default for purposes of termination or institution of legal proceedings.

B. After notice and expiration of the thirty (30) day period, if such default has not been cured or is not being diligently cured in the manner set forth in the notice, the other party or Landowner to this Agreement may, at its option, institute legal proceedings pursuant to this Agreement. In addition, the City may decide to file an action to enforce the City's Codes,

and to obtain penalties and costs as provided in the Ephrata Municipal Code for violations of this Development Agreement and the Code.

Section 18. Termination. This Agreement shall expire and/or terminate as provided below:

A. Nothing in this Agreement shall extend the expiration date of any permit or approval issued by the City for any development.

B. This Agreement shall terminate upon the expiration of the term identified in Section 7 or when the Subject Property has been fully developed, which ever first occurs, and all of the Developer's obligations in connection therewith are satisfied as determined by the City. Upon termination of this Agreement, the City shall record a notice of such termination in a form satisfactory to the City Attorney that the Agreement has been terminated. This Agreement shall automatically terminate and be of no further force and effect as to any single-family residence, any other residential dwelling unit or any nonresidential building and the lot or parcel upon which such residence or building is located, when it has been approved by the City for occupancy.

Section 19. Effect upon Termination on Developer Obligations. Termination of this Agreement as to the Developer of the Subject Property or any portion thereof shall not affect any of the Developer's obligations to comply with the City Comprehensive Plan and the terms and conditions or any applicable zoning code(s) or subdivision map or other land use entitlements approved with respect to the Subject Property, any other conditions of any other development specified in the Agreement to continue after the termination of this Agreement or obligations to pay assessments, liens, fees or taxes.

Section 20. Effects upon Termination on City. Upon any termination of this Agreement as to the Developer of the Subject Property, or any portion thereof, the entitlements, conditions of development, limitations on fees, and all other terms and conditions of this Agreement shall no longer be vested hereby with respect to the property affected by such termination (provided that vesting of such entitlements, Conditions, or fees may then be established for such property pursuant to then-existing planning and zoning laws).

Section 21. Assignment and Assumption. The Developer shall have the right to sell, assign, or transfer this Agreement with all its rights, title, and interests therein to any person, firm, or corporation at any time during the term of this Agreement. Developer shall provide the City with written notice of any intent to sell, assign, or transfer all or a portion of the Subject Property, at least 30 days in advance of such action.

Section 22. Covenants Running with the Land. The conditions and covenants set forth in this Agreement and incorporated herein by the Exhibits shall run with the land and the benefits and burdens shall bind and inure to the benefit of the parties or Landowner. The Developer, Landowner, and every purchaser, assignee, or transferee of an interest in the Subject Property, or any portion thereof, shall be obligated and bound by the terms and conditions of this Agreement, and shall be the beneficiary thereof and a party thereto, but only with respect to the Subject Property, or such portion thereof, sold, assigned, or transferred to it. Any such purchaser, assignee,

or transferee shall observe and fully perform all of the duties and obligations of a Developer contained in this Agreement, as such duties and obligations pertain to the portion of the Subject Property sold, assigned, or transferred to it.

Section 23. Amendment to Agreement; Effect of Agreement on Future Actions. This Agreement may be amended by mutual consent of all of the parties, provided that any such amendment shall follow the process established by law for the adoption of a development agreement (*see,* RCW 36.70B.200). However, nothing in this Agreement shall prevent the City Council from making any amendment to its Comprehensive Plan, Zoning Code, Official Zoning Map, or development regulations affecting the Subject Property during the term of this Agreement if the City Council deems such amendments necessary to the extent required by a serious threat to public health and safety. Nothing in this Development Agreement shall prevent the City Council from making any amendments of any type to the Comprehensive Plan, Zoning Code, Official Zoning Map, or development regulations relating to the Subject Property through the termination date set forth in Section 7 above.

A. In the event the Subject Property or any part of the Subject Property is rezoned in accordance with this Section 23, then Developer shall have the option to divest the re-zoned Property (or any part thereof) from the rights and entitlements set forth in the applicable development approval and submit a new development application (for example, a unit lot subdivision) under the applicable zoning provisions then in effect. Notwithstanding the decision to submit a development application for any portion of the Property that is rezoned, the terms and conditions of this Agreement shall continue to apply.

Section 24. Releases. Upon sale of each lot included in the Project, Developer shall have no further obligations relating to the sold, assigned, or transferred property, unless Developer is still bound by a performance bond as set forth in this Agreement.

Section 25. Notices. Notices, demands, correspondence to the City and Developer shall be sufficiently given if dispatched by pre-paid first-class mail to the addresses of the parties as designated in Section 5. Notice to the City shall be to the attention of both the City Administrator and the City Attorney. Notices to subsequent Landowners shall be required to be given by the City only for those Landowners who have given the City written notice of their address for such notice. The parties hereto may, from time to time, advise the other of new addresses for such notices, demands, or correspondence.

Section 26. Reimbursement for Agreement Expenses of the City. Developer agrees to reimburse the City for actual expenses incurred over and above fees paid by Developer as an applicant incurred by City ~~directly relating to this Agreement, including recording fees and publishing fees, and reasonable staff and consultant costs~~for the recording of this Agreement and the publishing of notice for the public hearing on this agreement, which fees were not otherwise included within application fees. This development agreement shall not take effect until the fees provided for in this section~~, as well as any processing fees owed to the City for the Subject Property~~ are paid to the City. Upon payment of all expenses, the Developer may request written

acknowledgement of all fees. Such payment of all fees shall be paid, at the latest, within thirty (30) days from the City's presentation of a written statement of charges to the Developer.

Section 27. Applicable Law and Attorneys' Fees. This Agreement shall be construed and enforced in accordance with the laws of the State of Washington. If litigation is initiated to enforce the terms of this Agreement, the prevailing party shall be entitled to recover its reasonable attorneys' fees and costs from the non-prevailing party. Venue for any action shall lie in Grant County Superior Court or the U.S. District Court for the Eastern District of Washington.

Section 28. Third Party Legal Challenge. In the event any legal action or special proceeding is commenced by any person or entity other than a party or a Landowner to challenge this Agreement or any provision herein, the City may elect to tender the defense of such lawsuit or individual claims in the lawsuit to Developer and/or Landowner(s). In such event, Developer and/or such Landowners shall hold the City harmless from and defend the City from all costs and expenses incurred in the defense of such lawsuit or individual claims in the lawsuit, including but not limited to, attorneys' fees and expenses of litigation, and damages awarded to the prevailing party or parties in such litigation. The Developer and/or Landowner shall not settle any lawsuit without the consent of the City. The City shall act in good faith and shall not unreasonably withhold consent to settle.

Section 29. Specific Performance. The parties specifically agree that damages are not an adequate remedy for breach of this Agreement, and that the parties are entitled to compel specific performance of all material terms of this Development Agreement by any party in default hereof.

Section 30. Severability. If any phrase, provision or section of this Agreement is determined by a court of competent jurisdiction to be invalid or unenforceable, or if any provision of this Agreement is rendered invalid or unenforceable according to the terms of any statute of the State of Washington which became effective after the effective date of the ordinance adopting this Development Agreement, and either party in good faith determines that such provision or provisions are material to its entering into this Agreement, that party may elect to terminate this Agreement as to all of its obligations remaining unperformed.

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

OWNER/DEVELOPER:

By _____
Lisa Fairchild
(50%)

By _____
Jeff Fairchild
(50%)

CITY OF EPHRATA

By _____
Bruce Reim, Its Mayor

ATTEST:

By _____
Leslie Trachsler, Finance Director

APPROVED AS TO FORM:

By _____
Katherine L. Kenison, City Attorney

ACKNOWLEDGEMENT

State of Washington }
}
_____ County }

On this day personally appeared before me Lisa Fairchild to be known to be the individual described in and who executed the within foregoing instrument and acknowledge to me that she signed the same as her free and voluntary act and deed for the uses and purposes therein mentioned.

Dated this _____ day of _____, 2023.

_____
NOTARY PUBLIC in and for the State of Washington
My Appointment Expires:

State of Washington }
}
_____ County }

On this day personally appeared before me Jeff Fairchild to be known to be the individual described in and who executed the within foregoing instrument and acknowledge to me that he signed the same as his free and voluntary act and deed for the uses and purposes therein mentioned.

Dated this _____ day of _____ , 2023 .

_____
NOTARY PUBLIC in and for the State of Washington
My Appointment Expires:

State of Washington }
}
Grant County }

I certify that I know or have satisfactory evidence that Bruce Reim signed this instrument, on oath stated that he was authorized to execute the instrument as Mayor for the City of Ephrata and acknowledged it to be the free and voluntary act of such party for the uses and purposes mentioned in this instrument.

Dated this _____ day of _____ , 2023.

_____
NOTARY PUBLIC in and for the State of Washington
My Appointment Expires:

Exhibit A – Legal Description

Exhibit B – Road Plan with Standards

Exhibit C – Prospective Phasing

Exhibit D – Landscape and Buffering Plan with Standards

Exhibit E – Habitat Conservation Covenant

DATE: January 18, 2023

ITEM: Ordinances & Resolutions

SUMMARY

1. Ordinance 23-01 – Desert Plains Major Subdivision Development Agreement

BUDGET IMPACTS

1. None

RECOMMENDATION Staff recommends acceptance and approval.

ENABLING ACTIONS *Motion to Authorize, Confirm, or Approve and Accept All Items.*

If you have any questions, concerns, or require additional information; please contact me prior to the meeting.

ORDINANCE NO. 23-01

AN ORDINANCE OF THE CITY OF EPHRATA, WASHINGTON, TO APPROVE A DEVELOPMENT AGREEMENT BETWEEN THE CITY OF EPHRATA AND THE PROPERTY OWNERS OF THE DESERT PLAINS SUBDIVISION

THE CITY COUNCIL OF THE OF THE CITY OF EPHRATA DOES ORDAIN AS FOLLOWS:

Section 1. The Development Agreement attached hereto as Exhibit A is approved and the Mayor is authorized to sign the agreement.

Section 2. As provided in RCW 36.70B.190, the Development Agreement shall be recorded with the real property records of Grant County, Washington and shall be binding on the parties and their successors and assigns.

Section 3. This ordinance shall be in full force and effect five days after its passage and publication of its summary as provided by law.

PASSED by the City Council of the City of Ephrata, Washington, this 18th day of January, 2023.

_____
Bruce Reim, Mayor

ATTEST:

_____
Leslie Trachsler, City Clerk

APPROVED AS TO FORM:

_____
Katherine L. Kenison, City Attorney

PASSED the _____ day of _____, 2023.

APPROVED the _____ day of _____, 2023.

PUBLISHED the _____ day of _____, 2023.

DATE: January 18, 2023

ITEM: Items for Council Action

SUMMARY

1. Financial Software Upgrade Recommendation
2. Professional Services Rate Increase – Marten Law
3. Engineering Contract Amendment Well #9 Site Evaluation
4. Nat Washington Way Overlay Project Consultant Agreement

BUDGET IMPACTS

1. $142,798 year one; $43,228 annual maintenance cost
2. $250,000 - $300,000; budgeted
3. Not to exceed $6,800
4. $70,000

Staff recommends acceptance and approval of all Items.

ENABLING ACTIONS

Motion to Authorize, Confirm, or Approve and Accept All Items.

If you have any questions, concerns, or require additional information, please contact me prior to the meeting.

CITY OF EPHRATA
STAFF REPORT

To:	Mayor, City Council and City Administrator
From:	Finance Director Trachsler/ Deputy Finance Director Lnenicka
Date:	January 12, 2023
Proceeding Type:	Council Action
Subject:	Financial Software Upgrade Recommendation

Legislative History:	
• First Presentation:	January 18, 2023
• Second Presentation:	N/A
• Requested Action:	Council Approval

Staff Report Summary: The City of Ephrata published an RFP in 2021 and 2022 for Finance Software. There were 3 respondents to each RFP: Vision Municipal, Springbrook and Tyler Technologies. Staff analyzed each vendor based on the demonstrations provided. One of the requirements was that the software be web/cloud based and not server based. The reason behind this requirement is the City currently has Springbrook v6 that was purchased in 2008 and is server based. This has restricted the city's ability to receive updates to software as technology progressed.

Due to that requirement, Vision Municipal was eliminated.

Discussion/Analysis: Springbrook demonstrated their web based software, v7. This version is transitioning from server based to web based. Not all modules have been fully transitioned and the product is not fluid and intuitive. The consideration of v7 led staff to believe that by staying with Springbrook and transitioning to v7, the City could potentially be in the same position 5 years from now in terms of not having up to date technology.

After evaluation of both proposals, considering long term costs, and the city's needs for reporting and efficiency, staff recommends the ERP PRO software by Tyler Technologies. It provides a comprehensive modern software solution designed to address the City's software, training, and support needs well into the future. The financial system is fully integrated and provides all the required applications.

ERP PRO uses the latest software technology which will enable staff to perform their jobs quicker and with more accuracy. Based on the demonstrations, the software seems more intuitive and will provide staff a quicker and more in-depth ability to research and provide necessary financial information for decision-making. The software also allows for the employees in the organization to have access only to the areas which they are responsible for. This means

individuals can enter their own timecards and payables into the system and have it reviewed by the appropriate staff prior to processing.

Staff Recommendation: Council authorize staff to move forward with Tyler Technologies, Inc. for Financial Software.

Financial Implications: Cost for implementation and maintenance for the first year is $142,798; annual maintenance costs which includes any new updates to the software is $43,228; credit card processing fees are 2% of the monthly payments processed.

Attachments:

A.	Cost Analysis between Tyler and Springbrook

Legal Review

The following documents are attached and subject to legal review:

Type of Document	Title of Document	Date Reviewed by Legal Counsel
•		

Finance Software Price Comparison

	Current SB	SB v7	Tyler Tech
Annual Fee	$ 16,000.00	$ 29,418.00	$ 43,228.00
Migration		$ 47,250.00	$ 99,570.00
Total	$ 16,000.00	$ 76,668.00	$ 142,798.00

Online Pmt Fees	Rate	Avg Month Payments	Average Month Fee
Current SB			$ 4,025.00
SB v7	Variable	$ 262,000.00	$ 4,025.00
Tyler	2%	$ 262,000.00	$ 5,240.00

CITY OF EPHRATA
STAFF REPORT

To:	Mayor and City Council
From:	Leslie Trachsler, Finance Director
Date:	January 03, 2023
Proceeding Type:	Council Action
Subject:	Professional Service Rate Increase

Legislative History:	
• First Presentation:	January 18, 2023
• Second Presentation:	N/A
• Requested Action:	Motion to accept

Staff Report Summary: City has established and maintained a working relationship with Martin Law since 2005 to represent the city's interest in the Grant County Landfill Remediation project. Environmental Law is their expertise.

Discussion/Analysis: Marten Law is asking the city to approve a proposed hourly rate increase of 10% for 2023 and to cover any costs they incur on the city's behalf. Their rates are competitive for their field of expertise and is a necessary business response to the accelerating inflation rate.

Staff Recommendation: Motion to authorize administration to accept proposed 2023 Billing Guidelines from Marten Law.

Financial Implications: $250,000 - $300,000 based on time spent - budgeted

Attachments

A.	Proposed 2023 Billing Guidelines
B.	Schedule A – Billing Policies and Terms of Engagement

Legal Review

The following documents are attached and subject to legal review:

Type of Document	Title of Document	Date Reviewed by Legal Counsel
•		

MARTEN LAW

December 27, 2022

Leslie Trachsler
City of Ephrata
121 Alder Street S.W.
Ephrata, WA 98823
ltrachsler@ephrata.org

Re: Request for 2023 Billing Adjustment

Dear Leslie:

Thank you for giving Marten Law the opportunity to work with you in 2022. I am writing to confirm the City of Ephrata's approval of our proposed 2023 rates, which are set out in the attached table.

While price increases are never welcome, we hope you will appreciate that our costs have risen substantially. In particular, our payroll has significantly increased this past year, as yours probably did, in order to continue to attract and retain top law school talent. We succeeded at that (adding several recent graduates from law schools ranked in the top 10 nationally), but only by paying the competitive salaries that lawyers at that level command.

We continue not to charge for telecommunication, postage, Westlaw research, copies, and related costs. However, we ask that this year you approve our request to pass through, at our cost, data and cloud storage costs where we incur such costs for data – such as discovery documents – specifically held for our work on your matters. We will only charge document cloud storage costs when you pre-approve them.

Updated terms of our representation are attached as Exhibit A.

Please call me if you have any concerns about our proposed 2023 rates or revised billing guidelines. If you are satisfied with our proposal, please indicate so by signing and returning a copy of this letter to our Chief Administrative Officer, William Ashby, at bashby@martenlaw.com. Thank you.

Sincerely,

Bradley M. Marten

Attorney at Law

Direct: (206) 999-1808
Email: bmarten@martenlaw.com

Enclosure

The terms of the foregoing letter are agreed to and accepted as of this _____ day of _____, 2022.

City of Ephrata

By: _____
Leslie Trachsler

Schedule A

BILLING POLICIES
&
TERMS & CONDITIONS OF ENGAGEMENT

Professional Fees

Our goal is to ensure that the fees we charge reflect the value we bring to your project. Hourly rates are the major determinant of our fees. Each lawyer and paralegal is assigned a billing rate that we believe is a fair reflection of his or her knowledge, skill and experience. Our attorneys' hourly rates range from $465.00 per hour for our junior associates to $975.00 per hour for our most experienced partners. We reassess our rates at the close of each year, but we will not change the rates we charge you from that shown below without your consent. Staffing decisions will be made by the attorney in charge of your matter, after consultation with you, with the objective of rendering services to you on the most efficient and cost-effective basis.

Title	Name	2023 Rates
Attorney	Allan, Richard H.	$690.00
Attorney	Brown, Bryce M.	$465.00
Attorney	Carey, Isabel Q.	$465.00
Attorney	Ferrell, Jessica K.	$725.00
Attorney	Fite, Lawson E.	$725.00
Attorney	Kray, Jeffrey B.	$725.00
Attorney	Lyman, Jack B.	$795.00
Attorney	Marten, Bradley M.	$975.00
Attorney	Nelson, Shannon E.	$465.00
Attorney	Odell, Stephen J.	$650.00
Attorney	Pollack, James B.	$495.00
Attorney	Ross, Jack L.	$495.00
Attorney	Smith, Michael B.	$465.00
Attorney	Uhling, Terry T.	$975.00
Attorney	Xu, Victor Y.	$465.00
Paralegal	Baker, David K.	$360.00
Paralegal	Goodrich, Marina V.	$385.00
Paralegal	Herlihy, Erin E.	$325.00

Time Records

To accurately establish the fair value of the services that we provide to you, each lawyer and paralegal that works on this matter will maintain, review and submit detailed time records for the work they do. Time will be accounted for in increments of one-tenth of an hour.

Estimates of Fees

Estimates of legal fees are estimates only and are not an agreement to perform services for a fixed fee. Despite our best efforts, the time necessary to complete the legal services for this matter may exceed our best estimates.

Expenses and Costs

In the course of our representation, we will incur third-party costs and expenses on your behalf. The dollar amount of these costs will depend on the work that we do for you. We will keep these expenses to a minimum. You agree that Marten is authorized to incur those costs and expenses which Marten deems necessary to perform the legal services for this engagement on your behalf.

For most third-party costs, we receive vendor invoices specific to accomplishing your tasks. We do not "mark-up" vendor costs, but pass these costs through to you at the exact amount invoiced us by each vendor. As a general rule, when vendor costs aggregate $1,000.00 or less, we will pay these costs from our own funds and include them for reimbursement on your next invoice. However, we reserve the right to require that you pay providers of goods and services directly or that you deposit funds with us in advance when we estimate that these expenditures will exceed $1,000.00.

We will strive to include all costs and expenses that were incurred on your behalf during the month on our invoice for that month's work. However, should a cost not be available in our billing system in time to be posted on the current invoice, it will be included on your next invoice.

If you should ever have any question regarding the fairness or accuracy of the costs and expenses reflected on your bill or if you would like more in-depth detail, please let your attorney or our Finance Department know. They will work with you to ensure that the bill was indeed fair and that you are satisfied with the value which we have provided.

Data and Cloud Storage

Occasionally, during the course of representation, we may be required to utilize a third-party vendor to electronically store large amounts of case related data on Clients' behalf. Our data storage vendors identify the size of data storage

necessary for each Clients' specific matter, and charges Marten on a per Gigabyte basis. We pass through to each Client, without mark-up, the costs for the data storage specifically identified as having been held on that Clients' behalf.

Monthly Invoicing

Generally, we prepare and forward to you our billing statements during the first week following the calendar month to which they apply. Our invoices will reflect the time spent and a brief description of the services performed on your behalf. Prior to our rendering your bill, the attorney in charge of your matter will review all time charged to it to ensure that your bill is accurate and fair.

Payment Terms

Marten's invoices are due and payable thirty (30) days from invoice date. Interest will be charged on amounts remaining unpaid more than ninety (90) days after the invoice date, at an interest rate not to exceed twelve percent (12.0%) per annum, compounded monthly. For amounts remaining unpaid more than one hundred eighty (180) days, in addition to the interest charges specified above, Marten shall be entitled to recover attorney fees and court costs incurred to collect these amounts.

Use the following ACH/Wiring information to make electronic payments:

NAME OF BANK: The Commerce Bank of Washington
601 Union Street, Suite 3600
Seattle, WA 98101

ABA/ROUTING #: 125008013
ACCOUNT NAME: Marten Law LLP
ACCOUNT #: 003155862

Send physical checks for payment directly to the following address:

Marten Law LLP
1191 Second Avenue, Suite 2200
Seattle, Washington 98101

File Storage

Marten retains client files for seven years from the date we close the file. Once we have completed the legal work on this matter, we will notify you via letter that we are closing your file. If we have gathered materials in support of this matter during the engagement, we will give you the opportunity at that time to request the return of those documents. We will also pass through to each Client, without mark-up, the costs of consolidation and transportation of matter materials. If you request

the return of the documents, Marten reserves the right to retain copies. On or shortly before the seventh anniversary of the original archive date, we will notify you via letter that, absent instructions from you requesting delivery of the materials, the firm will follow its established policy and destroy the portion of the file that belongs to you.

Disclaimer of Guarantee

Marten makes and has made no promise or guarantees about the outcome of this representation undertaken by Marten.

Termination

You may terminate Marten's engagement at any time and for any reason (or no reason) by written notice. Upon receipt of such notice, Marten will stop performing services on your behalf except with respect to those specific matters, if any, identified in the notice of termination or related correspondence. As to those specific matters only, Marten will continue to represent you during a reasonable transition period until new counsel is engaged and Marten is instructed to cease work on such matters.

Upon such termination, within ten (10) days, you agree to pay Marten's outstanding fees and expenses. Outstanding fees and expenses include both billed but unpaid invoices and unbilled time and expenses for services performed on your behalf.

Marten may terminate its engagement as your counsel at any time and for any reason, including but not limited to non-payment or late payment of fees, to the extent permitted by the applicable rules of professional conduct. Upon such termination of its engagement as counsel, Marten will cooperate with you in the transfer of its responsibilities to successor counsel at your direction.

You agree to pay Marten's outstanding fees and expenses within thirty (30) days of the effective date of such termination.

Your Satisfaction

Your satisfaction with the value you receive from Marten is our top priority. Our goal is to provide outstanding legal services to you on the most cost-efficient basis possible. If at any time you wish to discuss your relationship with Marten, our billing policies and procedures, or a specific bill, we encourage you to contact the attorney responsible for this engagement. Bradley Marten can be reached at 206-999-1808. You may also contact our Finance Department at (206) 292-2623 for general billing inquiries.

CITY OF EPHRATA
STAFF REPORT

To:	Mayor and City Council Kurt Adkinson – City Admin.
From:	Bill Sangster
Date:	1/18/2023
Proceeding Type:	Council Action
Subject:	**Amendment #9 – Contract for Engineering Services for Well #9 site evaluation to G&O.**

Legislative History:	
• First Presentation:	January 18, 2023
• Second Presentation:	N/A
• Requested Action:	Council Approval of Amendment # 9

Staff Report Summary: This Amendment to the G &O contract is for additional Well #9 Site Evaluation. It will consist of the hydrogeologist Performing a video inspection and well tests to determine the cause of ongoing issues with Well #9. It will be a part of the Reservoir 6 and Pressure Zone 5 Improvements Project.

Discussion/Analysis: This Work will determine the process to get Well #9 back to operating at full capacity.

Staff Recommendation: Motion to Authorize Administration to execute Amendment #9 to contract for Professional Engineering Services.

Financial Implications: Not to exceed $6,800

Attachments

A.	Amendment #9 to Contract for Professional Engineering Services
B.	

Legal Review

The following attached documents are subject to legal review:

Type of Document	Title of Document	Date Reviewed by Legal Counsel
•		N/A

AMENDMENT NO. 9
TO
CONTRACT FOR PROFESSIONAL ENGINEERING SERVICES

THIS AMENDMENT, made this day, by and between the City of Ephrata, Grant County, Washington, hereinafter referred to as the Agency, and Gray & Osborne, Inc., hereinafter referred to as the Engineer, hereby modifies the Contract for Engineering Services dated (by Agency) July 18, 2019, for General Engineering Services.

City of Ephrata – Reservoir 6 and Zone 5 Improvements – Design Services

See attached Exhibits A and B for scope and fee. For a not-to-exceed cost of $6,800.

IN WITNESS WHEREOF, the parties hereto have executed, or cause to be executed by their duly authorized officials, this AMENDMENT to the Contract for Engineering Services in duplicate on the respective dates indicated below.

GRAY & OSBORNE, INC.

By: _____
(Signature)

Name: Michael B. Johnson, P.E., President
GRAY & OSBORNE, INC.

Date: 1/4/23

CITY OF EPHRATA

By: _____
(Signature)

Name: _____
(Print)

Date: _____

"Equal Opportunity/Affirmative Action Employer"

EXHIBIT A

SCOPE OF WORK

CITY OF EPHRATA
DESIGN SERVICES FOR RESERVOIR 6 AND ZONE 5 IMPROVEMENTS

Based on our understanding of the project, this Scope of work Presents professional engineering services requested by the City of Ephrata for an amendment to the design services for the Reservoir 6 and Zone 5 Improvements project.

Work performed includes a site visit and initial evaluation of Well 9. Gray & Osborne will coordinate a site visit with the hydrogeologist and City staff to visit the site and perform the initial video inspection and well testing. Additional well testing may be required based on results of the initial evaluation.

PROJECT BUDGET

The maximum amount payable to the Engineer for completion of work associated with this scope of work, including contingencies, salaries, overhead, direct non-salary costs, and net fee, is set forth in the attached Exhibit B. This amount will not be exceeded without prior written authorization of the City.

EXHIBIT B

ENGINEERING SERVICES
SCOPE AND ESTIMATED COST

CITY OF EPHRATA - RESERVOIR 6 AND ZONE 5 IMPROVEMENTS

Tasks	Project Manager Hours	Project Engineer Hours
1 Well 9 Intial Evaluation Coordination	4	8
Hour Estimate:	4	8
Fully Burdened Billing Rate Range:*	$140 to $215	$125 to $160
Estimated Fully Burdened Billing Rate:*	$190	$155
Fully Burdened Labor Cost:	$760	$1,240

Total Fully Burdened Labor Cost:	$	2,000
Direct Non-Salary Cost:		
Mileage & Expenses (Mileage @ current IRS rate)	$	70
Subconsultant:		
Hydrogeological - Aspect Consulting	$	4,300
Subconsultant Overhead (10%)	$	430
TOTAL ESTIMATED COST:	**$**	**6,800**

* Actual labor cost will be based on each employee's actual rate. Estimated rates are for determining total estimated cost only. Fully burdened billing rates include direct salary cost,

Contract Change

Client: City of Ephrata Attn: Mr. Kurt Adkinson 121 Alder Street SW Ephrata, WA 98823	**Date:** December 5, 2022 **Contract No.:** 1 **Project No.:** 210371
Project Name: Water Right Permitting and Well Support Ephrata, Washington	
Subject: Draft Scope of Work for Well 9 Site Visit and Initial Evaluation	

Description of Work	Cost
Aspect Consulting, LLC (Aspect) is pleased to provide the City of Ephrata (City) with an initial evaluation of the City's Well 9. We understand the City experiences operational problems with Well 9. Specifically, the discharge from Well 9 has entrained air. The City operates Well 9 at about 1,400 gpm primary during summer months to meet peak demand. The City does not track water levels in Well 9 but has had reported issues with low groundwater levels impacting the well performance in other wells. It is not clear if the recent air entrainment may be related to lower water levels or to a broken line in the pump column. Under this scope of work, Aspect will conduct a site visit to evaluate access for collecting water levels and conducting a video scan of Well 9, attempt collection of water levels, and interview operational staff. We understand there is a ¾ inch access port with two 90-degree turns but that one of the turns may be removed to provide better access for collection of water levels. Ideally, Aspect will collect a pumping and static water level during the site visit. We will coordinate with the City's operator to determine the optimum time following a period of non-pumping to measure the static water level and ideally have the City's operator turn the pump on during our site visit to also collect a pumping water level. Aspect will also interview the City's operator during our site visit about their recent observations and options for conducting a short 4-hour pumping test and a well video scan to evaluate well performance and conditions. Aspect will produce an email summary of the results of the initial site visit and interview that includes recommendations to address observations. The recommendations are likely to include options to gain downhole well access for collection of water levels with a pressure transducer and video scan; such as,pump removal, lifting and shifting the pump, or drilling of a new access port in the wellhead.	Time and Materials; not to exceed basis: $4,300 **Total Budget $4,300**

This contract order incorporates the attached Terms and Conditions and Schedule of Charges. Except as amended above, these terms, conditions, and rates apply to this contract order.

ASPECT CONSULTING, LLC *a limited liability company*	**By:** Daniel R Haller **Printed Name:** Daniel R. Haller, PE Principal Engineer
CLIENT	**By:**

	Printed Name/Date:

Aspect Consulting, LLC
Terms and Conditions

1. RIGHT OF ENTRY AND PROPERTY RESPONSIBILITY
The Client will obtain right of entry to the property where the Services are to be performed ("Property"). The right of entry shall allow Aspect and its subcontractors to enter the Property to perform the Services, which may require repeated visits to the Property for on-site monitoring if included in the description of Services. Aspect is responsible for its own activities, but has no responsibility for the Property, for third party safety precautions, or for the safety or control of third parties.

2. SUBSURFACE RISKS
Client recognizes special risks exist whenever professional consulting services are employed to determine subsurface water resources at a site. Client shall disclose to Aspect all known conditions, substances, or features in writing or in maps, plans or drawings. Even with adequate disclosure by Client, Client acknowledges that the use of exploration and testing equipment may unavoidably damage or alter the Property surface or subsurface and Client accepts this risk. Client assumes responsibility for claims and/or damages arising from changed or differing site conditions or to subsurface structures, including buried utility lines, pipes, tanks, tunnels, or other conditions and agrees to hold harmless, defend and indemnify Aspect and its subcontractors from any such claims and/or damages, including attorney fees, except to the extent directly caused by the negligence of Aspect or its subcontractors.

3. HAZARDOUS SUBSTANCES
Client shall provide Aspect with all information available to Client concerning past and present use of the Property and the nature and extent of any known or suspected hazardous substances or conditions, prior to Aspect performing the Services. Unless expressly stated otherwise in the Agreement, Client acknowledges that Aspect has no liability as a generator, operator, transporter, disposer, or arranger of the transportation and/or disposal of hazardous substances from the Property. Client agrees to hold harmless, defend and indemnify Aspect and its subcontractors from any claims and/or damages, including attorney fees, arising out of the presence, release, or threatened release of hazardous substances on or from the Property, except to the extent directly caused by the negligence of Aspect or its subcontractors.

4. SAMPLE DISPOSAL / WELL DECOMMISSIONING
4.1 Aspect may dispose of any samples obtained from the Property 30 calendar days after the issuance of any document that includes the data obtained from the sample, unless other arrangements are mutually agreed upon in writing. Unless expressly stated otherwise in the description of Services, the disposal cost for samples is not included in any cost estimate for the Services. Client acknowledges the difficulty in determining disposal costs in advance and authorizes Aspect to bill Client for expenses incurred in disposing of samples obtained from the Property.

4.2 Any wells installed as part of Aspect's work may later need to be properly decommissioned and recorded in accordance with applicable law. Unless expressly stated otherwise in the description of Services, well decommissioning and recording are not included in the Services to be performed by Aspect.

5. OWNERSHIP OF DOCUMENTS / WORK PRODUCT
5.1 Data, reports or information provided by Aspect under this Agreement shall only become the property of Client upon full payment for the Services. After full payment, Aspect shall retain joint ownership of all such information. Aspect shall retain copies of the original electronic files and/or hardcopy versions of information provided by Aspect or by Client. Aspect's originals shall govern in the event of any dispute regarding the content of electronic media furnished to others.

5.2 All reports prepared by Aspect under this Agreement are intended solely for the Client and apply only to the Services. Any use or reuse by Client for purposes outside of this Agreement is at the sole risk of Client and without liability to Aspect. Aspect shall not be liable for any third parties' use of the deliverables provided by Aspect.

5.3 Aspect is entitled to rely upon the completeness and accuracy of reports, documents, drawings, plans and other information furnished by Client concerning the Property or the project that is the subject of this Agreement.

5.4 In the event Aspect is required to respond to legal process related to the Services for Client, Client agrees to reimburse Aspect its current hourly charges for personnel involved in the response and attorney fees reasonably incurred in obtaining advice concerning the response, preparation to testify, and appearances related to the legal process, travel and all reasonable expenses associated with the litigation.

5.5 Unless a different time period is stated in the Agreement, Aspect shall retain records in accordance with Aspect's records retention policy.

Revision Date June, 2015

6. PAYMENT TERMS

Invoices shall be submitted to Client upon completion of the Services, or if Services extend beyond 30 days, on a monthly basis for the preceding months work. Billing corrections must be requested within 30 days of invoice date. Payment terms are net 30 days from the date of invoice. All overdue payments are subject to an additional interest and service charge of one and one-half percent (1.5%) (or the maximum rate permissible by law, whichever is lesser) per month or portion thereof from the due date until the date of payment. All fees will be charged or billed directly to Client. Aspect will not bill a third party without a statement, signed by the third party, accepting payment responsibility. In the event a third party fails to pay, Client shall remain liable for all unpaid invoices for the Services. Aspect may suspend work and/or withhold delivery of data for Services in the event Client fails to pay its invoices. Client shall be responsible for all costs and expenses of collection including reasonable attorney's fees.

7. PERFORMANCE AND WARRANTY LIMITATION

Aspect will perform all Services, including hydrogeology for developing ground water that may reasonably exist beneath the site, consistent with recognized standards of professionals in the same locality and involving similar conditions. Aspect makes no warranty, express or implied, on the actual capacity or drawdown of any proposed water well(s), or the quality of ground water, if any, which may be produced by any water well(s) to be drilled and/or developed under this Agreement. **ASPECT MAKES NO OTHER WARRANTIES OR GUARANTEES OF ANY KIND, EXPRESS OR IMPLIED, IN CONNECTION WITH THE SERVICES.** No representative of Aspect is authorized to give or make any other representation or warranty in any way, in connection with the Services. Aspect shall not be liable for any failure or delay in performance by Aspect resulting, in whole or in part, from any cause beyond the reasonable control of Aspect, nor shall Aspect be liable for the action or inaction of governmental agencies, including but not limited to, the issuance or non-issuance of any water right permit, certificate, amendment and/or transfer.

8. INSURANCE / LIMITATION OF LIABILITY

8.1 Aspect maintains primary General Liability Insurance for bodily injury and property damage with a limit of $1,000,000 per occurrence and $2,000,000 aggregate. Aspect maintains Professional Liability insurance to provide coverage for liability resulting from professional errors and omissions.

8.2 Aspect's liability to Client for bodily injury or property damage covered by Aspect's General Liability Insurance policy shall be limited to the proceeds available from the primary General Liability Insurance policy. The liability of Aspect, its manager, members, professionals, employees, and subcontractors to the Client for damages, including attorney fees, resulting from an act, error or omission in providing or failing to provide professional services, whether based in tort or in contract, shall be limited to the greater of $50,000 or the amount of compensation paid to Aspect under this Agreement, unless higher limits are agreed upon in writing. In no event shall either party be liable to the other party, for any consequential or incidental damages, including, without limitation, damages for loss of income, and/or loss of profits.

9. TERMINATION

Suspension or termination of all or any part of the Services may be initiated by Client; however Client shall be responsible for all fees owed Aspect for Services performed by Aspect, including all direct costs and all expenses incurred or committed that cannot be cancelled without penalty as well as reasonable termination expenses, prior to Aspect's receipt of written notice from Client. Either party may terminate this Agreement for cause in the event of the other party's substantial or material failure to perform in accordance with the terms hereof, through no fault of the terminating party. Except for termination arising out of delinquency in payment, a termination for cause shall not be effective unless: (i) not less than seven days' written notice of intent to terminate has been provided; (ii) the notice specifies all reasons for the termination; and (iii) the notified party is given an opportunity to consult with the terminating party to discuss the termination and to cure the substantial failure before the expiration of the period specified in the written notice.

10. MISCELLANEOUS PROVISIONS

10.1 These Terms and Conditions, together with the Agreement, the Schedule of Charges, and any additions or revisions agreed upon in writing by the parties, form the entire Agreement and control over all previous communications, representations, or agreements, either verbal or written, between Client and Aspect.

10.2 Aspect may assign work included under the Agreement to subcontractors.

10.3 Client and Aspect agree to use their best efforts to resolve any disputes, claims or other matters in controversy arising under or related to this Agreement.

10.4 These Terms and Conditions shall be governed by the laws of the State of Washington. The sole venue for any legal action related to this Agreement shall be King County, Washington.

10.5 The unenforceability of any term or condition herein shall not affect the validity or enforceability of the remainder to these Terms and Conditions; the intent of the parties being the provisions are severable. The section headings of these Terms and Conditions are intended solely for convenience and do not define or affect these Terms and Conditions or their interpretation. No waiver by either party of any provision, term or condition hereof or of any obligation of the other party hereunder shall constitute a waiver of any subsequent breach or other obligation.

Aspect CONSULTING

SCHEDULE OF CHARGES

Effective January 2022

Unless otherwise stated in the proposal or services agreement, current rates are as follows:

PERSONNEL CHARGES: ENGINEERS, SCIENTISTS, AND ANALYSTS	*Hourly Rate*
Principals and Associates	
Principal Scientist/Engineer/Analyst **2**	$290
Principal Scientist/Engineer/Analyst **1**	$275
Sr. Associate Scientist/Engineer/Analyst	$254
Associate Scientist/Engineer/Analyst	$238
Technical Professionals	
Senior Scientist/Engineer/Analyst **3**	$238
Senior Scientist/Engineer/Analyst **2**	$224
Senior Scientist/Engineer/Analyst **1**	$209
Project Scientist/Engineer/Analyst **3**	$192
Project Scientist/Engineer/Analyst **2**	$178
Project Scientist/Engineer/Analyst **1**	$166
Staff Scientist/Engineer/Analyst **3**	$153
Staff Scientist/Engineer/Analyst **2**	$138
Staff Scientist/Engineer/Analyst **1**	$128

PERSONNEL CHARGES: TECHNICAL AND PROJECT SUPPORT STAFF	*Hourly Rate*
Field/Construction Staff	
Field/Construction **Supervisor**	$140
Field **Technician 2**	$114
Field **Technician 1**	$105
Design, CAD, and Graphics Staff	
Engineering **Designer**	$166
Sr. CAD Technician/Specialist	$148
CAD Technician	$130
Technical Editing and Project Operations	
Sr. Technical **Editor**	$132
Technical **Editor** / Project **Coordinator 3**	$120
Project **Coordinator 2**	$112
Project **Coordinator 1**	$105

PERSONNEL CHARGES: TECHNOLOGY AND SOFTWARE DEVELOPMENT	*Hourly Rate*
Sr. Technology **Project Manager**	$246
Technology **Project Manager**	$228
Senior Software/Database Architect/**Developer**	$234
Software/Database Architect/**Developer**	$207

OTHER DISBURSEMENT CHARGES	
Legal Testimony (4-hour minimum)	$350/hr
Mileage	Federal Gov Rate **Plus 15%**
Subcontractors and Miscellaneous Expenses	Cost **Plus 15%**

Other equipment, rentals, and expenses will be provided on a per job basis.

Client acknowledges that Aspect will adjust the Schedule of Charges annually, and that the Agreement will remain valid for any and all annually adjusted Schedule of Charges.

CITY OF EPHRATA
STAFF REPORT

To: Mayor and City Council
Kurt Adkinson, City Administrator

From: Bill Sangster

Date: 1/18/2023

Proceeding Type: Council Action

Subject: **Nat Washington Way Overlay Project – Consultant Agreement**

Legislative History:	
• First Presentation:	January 18, 2023
• Second Presentation:	
• Requested Action:	Council Approval

Staff Report Summary: The City has received TIB funding for Nat Washington Way Overlay Project – Phase 1. The project begins at the Railroad Tracks and A St. and goes to 3rd Ave. SE. The total project cost estimate is $625,705, with the City paying 10% matching funds ($62,571) which will come from the City's TBD Funding. Part of this funding is for the Design work and Bid documentation for the project.

Discussion/Analysis: The Consultant Agreement needs to be accepted so the Gray & Osborne , Inc. can begin Design of the Project and complete Bid Documents for a call for bid in April/ May 2023. This project was funded by TIB and was accounted for in the 2023 City Budget.

Staff Recommendation: Motion to Approve the Nat Washington Way Overlay Project Design work by Gray & Osborne, Inc.

Financial Implications: $70,000

Attachments

A.	Consultant Agreement
B.	
C.	

Legal Review

The following documents are attached and subject to legal review:

Type of Document	Title of Document	Date Reviewed by Legal Counsel
•		N/A

Transportation Improvement Board (TIB)

Consultant Agreement

TIB PROJECT NUMBER	PROJECT PHASE *(check one)*
3-E-164(007)-1	☒ Design ☐ Construction

PROJECT TITLE & WORK DESCRIPTION

Nat Washington Way Overlay

A Street SE to 2nd Avenue SE

CONSULTANT NAME & ADDRESS

Gray & Osborne, Inc. 1130 Rainier Avenue South, Suite 300, Seattle, Washington 98144

AGREEMENT TYPE *(check one)*

☐ LUMP SUM $_____

☒ COST PLUS FIXED FEE

OVERHEAD PROGRESS PAYMENT RATE 186%

OVERHEAD COST METHOD

- ☐ Actual Cost
- ☐ Actual Cost Not To Exceed _____%
- ☒ Fixed Rate 42%

FIXED FEE $8,629

☐ SPECIFIC RATES OF PAY

- ☐ Negotiated Hourly Rate
- ☐ Provisional Hourly Rate

☐ COST PER UNIT WORK

DBE PARTICIPATION	WBE PARTICIPATION
☐ Yes ☒ No _____%	☐ Yes ☒ No _____%
COMPLETION DATE	MAXIMUM AMOUNT PAYABLE
December 31, 2024	$70,000

THIS AGREEMENT, made and entered into this _____ day of December 2022 between the City of Ephrata, Washington, hereinafter called the AGENCY, and the above organization hereinafter called the CONSULTANT. The Transportation Improvement Board hereinafter called the TIB, administers the following accounts: Transportation Improvement Account funds, Small City Account funds, and City Hardship Assistance Account funds.

WITNESSETH THAT:

WHEREAS, the AGENCY desires to accomplish the above referenced project, with the aid of TIB funds in conformance with the rules and regulations promulgated by the TIB; and

WHEREAS, the AGENCY does not have sufficient staff to meet the required commitment and therefore deems it advisable and desirable to engage the assistance of a CONSULTANT to provide the necessary services for the PROJECT; and

WHEREAS, the CONSULTANT represents that he/she is in compliance with the Washington State Statutes relating to professional registration, if applicable, and has signified a willingness to furnish Consulting services to the AGENCY,

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

I
GENERAL DESCRIPTION OF WORK

The work under this AGREEMENT shall consist of the above described work and services as herein defined and necessary to accomplish the completed work for this PROJECT. The CONSULTANT shall furnish all services, labor and related equipment necessary to conduct and complete the work as designated elsewhere in this AGREEMENT.

II
SCOPE OF WORK

The Scope of Work and project level of effort for this project is detailed in Exhibit B attached hereto, and by this reference made a part of this AGREEMENT.

III
GENERAL REQUIREMENTS

All aspects of coordination of the work of this AGREEMENT, with outside agencies, groups or individuals shall receive advance approval by the AGENCY. Necessary contacts and meetings with agencies, groups or individuals shall be coordinated through the AGENCY.

The CONSULTANT shall attend coordination, progress and presentation meetings with the AGENCY or such Federal, Community, State, City or County officials, groups or individuals as may be requested by the AGENCY. The AGENCY will provide the CONSULTANT sufficient notice prior to meetings requiring CONSULTANT participation. The minimum number of hours or days notice required shall be agreed to between the AGENCY and the CONSULTANT and shown in Exhibit B attached hereto and made part of this AGREEMENT. The CONSULTANT shall prepare a monthly progress report, in a form approved by the AGENCY, that will outline in written and graphical form the various phases and the order of performance of the work in sufficient detail so that the progress of the work can easily be evaluated. Goals for Disadvantaged Business Enterprises (DBE), Minority Business Enterprises (MBE), and Women-owned Business Enterprises (WBE) if required shall be shown in the heading of this Agreement.

The original copies of all reports, PS&E, and other data furnished to the CONSULTANT by the AGENCY shall be returned. All designs, drawings, specifications, documents, and other work products prepared by the CONSULTANT prior to completion or termination of this AGREEMENT are instruments of service for the PROJECT and are property of the AGENCY. Reuse by the AGENCY or by others acting through or on behalf of the AGENCY of any such instruments of service, not occurring as a part of this PROJECT, shall be without liability of legal exposure to the CONSULTANT.

IV
TIME FOR BEGINNING AND COMPLETION

The CONSULTANT shall not begin any work under the terms of this AGREEMENT until authorized in writing by the AGENCY. All work under this AGREEMENT shall be completed by the date shown in the heading of this AGREEMENT under completion date.

The established completion time shall not be extended because of any delays attributable to the CONSULTANT, but may be extended by the AGENCY, in the event of a delay attributable to the AGENCY, or because of unavoidable delays caused by an act of GOD or governmental actions or other conditions beyond the control of the CONSULTANT. A prior supplemental agreement issued by the AGENCY is required to extend the established completion time.

V
PAYMENT

The CONSULTANT shall be paid by the AGENCY for completed work and services rendered under this AGREEMENT as provided in Exhibit C attached hereto, and by this reference made part of this AGREEMENT. Such payment shall be full compensation for work performed or services rendered and for all labor, materials, supplies, equipment, and incidentals necessary to complete the work specified in Section II, Scope of Work.

VI
SUBCONTRACTING

The AGENCY permits subcontracts for those items of work as shown in Exhibit G to this Agreement. Compensation for this subconsultant work shall be based on the cost factors shown on Exhibit G, attached hereto and by this reference made a part of this AGREEMENT.

The work of the subconsultant shall not exceed its maximum amount payable unless a prior written approval has been issued by the AGENCY.

All reimbursable direct labor, overhead, direct non-salary costs and fixed fee costs for the subconsultant shall be substantiated in the same manner as outlined in Section V. All subcontracts exceeding $10,000 in cost shall contain all applicable provisions of this AGREEMENT.

The CONSULTANT shall not subcontract for the performance of any work under this AGREEMENT without prior written permission of the AGENCY. No permission for subcontracting shall create, between the AGENCY and subcontractor, any contract or any other relationship.

VII
EMPLOYMENT

The CONSULTANT warrants that he/she has not employed or retained any company or person, other than a bona fide employee working solely for the CONSULTANT, to solicit or secure this contract, and that it has not paid or agreed to pay any company or person, other than a bona fide employee working solely for the CONSULTANT, any fee, commission, percentage, brokerage fee, gift, or any other consideration, contingent upon or resulting from the award or making of this contract. For breach or violation of this warrant, the AGENCY shall have the right to annul this AGREEMENT without liability, or in its discretion, to deduct from the AGREEMENT price or consideration or otherwise recover the full amount of such fee, commission, percentage, brokerage fee, gift, or contingent fee.

Any and all employees of the CONSULTANT or other persons while engaged in the performance of any work or services required of the CONSULTANT under this AGREEMENT, shall be considered employees of the CONSULTANT only and not of the AGENCY, and any and all claims that may or might arise under any Worker's Compensation Act on behalf of said employees or other persons while so engaged, and any and all claims made by a third party as a consequence of any act or omission on the part of the CONSULTANTs employees or other persons while so engaged on any of the work or services provided to be rendered herein, shall be the sole obligation and responsibility of the CONSULTANT.

The CONSULTANT shall not engage, on a full or part time basis, or other basis, during the period of the contract, any professional or technical personnel who are, or have been, at any time during the period of the contract, in the employ of the STATE, or the AGENCY, except regularly retired employees, without written consent of the public employer of such person.

VIII
NONDISCRIMINATION

The CONSULTANT agrees not to discriminate against any client, employee or applicant for employment or for services because of race, creed, color, national origin, marital status, sex, age or handicap except for a bona fide occupational qualification with regard to, but not limited to the following: employment upgrading, demotion or transfer, recruitment or any recruitment advertising, layoffs or terminations, rates of pay or other forms of compensation, selection for training, rendition of services. The CONSULTANT understands and agrees that if it violates this provision, this AGREEMENT may be terminated by the AGENCY and further that the CONSULTANT shall be barred from performing any services for the AGENCY now or in the future unless a showing is made satisfactory to the AGENCY that discriminatory practices have terminated and that recurrence of such action is unlikely.

During the performance of this AGREEMENT, the CONSULTANT, for itself, its assignees, and successors in interest agrees as follows:

A. COMPLIANCE WITH REGULATIONS: The CONSULTANT shall comply with the Regulations relative to nondiscrimination in the same manner as in Federally-assisted programs of the Department of Transportation, Title 49, Code of Federal Regulations, Part 21, as they may be amended from time to time, (hereinafter referred to as the Regulations), which are herein incorporated by reference and made a part of this AGREEMENT.

B. NONDISCRIMINATION: The CONSULTANT, with regard to the work performed by it during the AGREEMENT, shall not discriminate on the grounds of race, creed, color, sex, age, marital status, national origin or handicap except for a bona fide occupational qualification in the selection and retention of subconsultants, including procurements of materials and leases of equipment. The CONSULTANT shall not participate either directly or indirectly in the discrimination prohibited by Section 21.5 of the Regulations, including employment practices when the contract covers a program set forth in Appendix II of the Regulations.

C. SOLICITATIONS FOR SUBCONSULTANTS, INCLUDING PROCUREMENTS OF MATERIALS AND EQUIPMENT: In all solicitations either by competitive bidding or negotiation made by the CONSULTANT for work to be performed under a subcontract, including procurements of materials or leases of equipment, each potential subconsultant or supplier shall be notified by the CONSULTANT of the CONSULTANTs obligations under this AGREEMENT and the Regulations relative to nondiscrimination on the grounds of race, creed, color, sex, age, marital status, national origin and handicap.

D. INFORMATION AND REPORTS: The CONSULTANT shall provide all information and reports required by the Regulations, or directives issued pursuant thereto, and shall permit access to its books, records, accounts, other sources of information, and its facilities as may be determined by the AGENCY or TIB to be pertinent to ascertain compliance with such Regulations or directives. Where any information required of the CONSULTANT is in the exclusive possession of another who fails or refuses to furnish this information the CONSULTANT shall so certify to the AGENCY, or the TIB as appropriate, and shall set forth what efforts it has made to obtain the information.

E. SANCTIONS FOR NONCOMPLIANCE: In the event of the CONSULTANTs noncompliance with the nondiscrimination provisions of this AGREEMENT, the AGENCY shall impose such sanctions as it or the Transportation Improvement Board may determine to be appropriate, including, but not limited to:

1. Withholding of payments to the CONSULTANT under the AGREEMENT until the CONSULTANT complies, and/or
2. Cancellation, termination or suspension of the AGREEMENT, in whole or in part.

F. INCORPORATION OF PROVISIONS: The CONSULTANT shall include the provisions of paragraphs (A) through (G) in every subcontract, including procurements of materials and leases of equipment, unless exempt by the Regulations or directives issued pursuant thereto. The CONSULTANT shall take such action with respect to any subconsultant or procurement as the AGENCY or the Transportation Improvement Board may direct as a means of enforcing such provisions including sanctions for noncompliance; provided, however, that, in the event a CONSULTANT becomes involved in, or is threatened with, litigation with a subconsultant or supplier as a result of such direction, the CONSULTANT may request the AGENCY to enter into such litigation to protect the interests of the AGENCY, and in addition, the CONSULTANT may request the TIB to enter into such litigation to protect the interests of the TIB.

G. UNFAIR EMPLOYMENT PRACTICES: The CONSULTANT shall comply with RCW 49.60.180 prohibiting unfair employment practices and the Executive Orders numbered E.O.70-01 and E.O.66-03 of the Governor of the State of Washington.

IX
TERMINATION OF AGREEMENT

The right is reserved by the AGENCY to terminate this AGREEMENT at any time upon ten days written notice to the CONSULTANT.

In the event this AGREEMENT is terminated by the AGENCY other than for fault on the part of the CONSULTANT, a final payment shall be made to the CONSULTANT as shown in Exhibit F for the type of AGREEMENT used.

No payment shall be made for any work completed after ten days following receipt by the CONSULTANT of the Notice of Termination. If the accumulated payment made to the CONSULTANT prior to Notice of Termination exceeds the total amount that would be due computed as set forth herein above, then no final payment shall be due and the CONSULTANT shall immediately reimburse the AGENCY for any excess paid.

In the event the services of the CONSULTANT are terminated by the AGENCY for fault on the part of the CONSULTANT, the above formula for payment shall not apply. In such an event, the amount to be paid shall be determined by the AGENCY with consideration given to the actual costs incurred by the CONSULTANT in performing the work to the date of termination, the amount of work originally required which was satisfactorily completed to date of termination, whether that work is in a form or a type which is usable to the AGENCY at the time of termination, the cost to the AGENCY of employing another firm to complete the work required and the time which maybe required to do so, and other factors which affect the value to the AGENCY of the work performed at the time of termination. Under no circumstances shall payment made under this subsection exceed the amount which would have been made using the formula set forth in the previous paragraph.

If it is determined for any reason that the CONSULTANT was not in default or that the CONSULTANTs failure to perform is without it or its employees fault or negligence, the termination shall be deemed to be a termination for the convenience of the AGENCY in accordance with the provision of this AGREEMENT.

In the event of the death of any member, partner or officer of the CONSULTANT or any of its supervisory personnel assigned to the project, or, dissolution of the partnership, termination other corporation, or disaffiliation of the principally involved employee, the surviving members of the CONSULTANT hereby agree to complete the work under the terms of this AGREEMENT, if requested to do so by the AGENCY. The subsection shall not be a bar to renegotiation of the AGREEMENT between the surviving members of the CONSULTANT and the AGENCY, if the AGENCY so chooses.

In the event of the death of any of the parties listed in the previous paragraph, should the surviving members of the CONSULTANT, with the AGENCYs concurrence, desire to terminate this AGREEMENT, payment shall be made as set forth in the second paragraph of this section.

In the event this AGREEMENT is terminated prior to completion, the original copies of all reports and other data, PS&E materials furnished to the CONSULTANT by the AGENCY and documents prepared by the CONSULTANT prior to said termination, shall become and remain the property of the AGENCY and may be used by it without restriction. Such unrestricted use, not occurring as a part of this PROJECT, shall be without liability or legal exposure to the CONSULTANT.

Payment for any part of the work by the AGENCY shall not constitute a waiver by the AGENCY of any remedies of any type it may have against the CONSULTANT for any breach of this AGREEMENT by the CONSULTANT, or for failure of the CONSULTANT to perform work required of it by the AGENCY. Forbearance of any rights under the AGREEMENT will not constitute waiver of entitlement to exercise those rights with respect to any future act or omission by the CONSULTANT.

X
CHANGES OF WORK

The CONSULTANT shall make such changes and revisions in the complete work of this AGREEMENT as necessary to correct errors appearing therein, when required to do so by the AGENCY, without additional compensation thereof. Should the AGENCY find it desirable for its own purposes to have previously satisfactorily completed work or parts thereof changed or revised, the CONSULTANT shall make such revisions as directed by the AGENCY. This work shall be considered as Extra Work and will be paid for as herein provided under Section XIV.

XI
DISPUTES

Any dispute concerning questions of fact in connection with the work not disposed of by AGREEMENT between the CONSULTANT and the AGENCY shall be referred for determination to the Director of Public Works or AGENCY Engineer, whose decision in the matter shall be final and binding on the parties of this AGREEMENT, provided however, that if an action is brought challenging the Director of Public Works or AGENCY Engineer's decision, that decision shall be subject to the scope of judicial review provided under Washington Case Law.

XII
VENUE, APPLICABLE LAW AND PERSONAL JURISDICTION

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

XIII
LEGAL RELATIONS AND INSURANCE

The CONSULTANT shall comply with all Federal, State, and local laws and ordinances applicable to the work to be done under this AGREEMENT. This AGREEMENT shall be interpreted and construed in accord with the laws of Washington.

The CONSULTANT shall indemnify and hold the AGENCY and the STATE of Washington, and their officers and employees harmless from and shall process and defend at its own expense all claims, demands, or suits at law or equity arising in whole or in part from the CONSULTANT's negligence or breach of any of its obligations under this AGREEMENT; provided that nothing herein shall require a CONSULTANT to indemnify the AGENCY and the STATE against and hold harmless the AGENCY and the STATE from claims, demands or suits based solely upon the conduct of the AGENCY and the STATE, their agents, officers and employees and provided further that if the claims or suits are caused by or result from the concurrent negligence of (a) the CONSULTANT's agents or employees and (b) the AGENCY and the STATE, their agents, officers and employees, this indemnity provision with respect to (1) claims or suits based upon such negligence, (2) the costs to the AGENCY and the STATE of defending such claims and suits, etc. shall be valid and enforceable only to the extent of the CONSULTANT's negligence or the negligence of the CONSULTANT's agents or employees.

The CONSULTANT's relation to the AGENCY shall be at all times as an independent contractor.

The CONSULTANT specifically assumes potential liability for actions brought by the CONSULTANT's own employees against the AGENCY and, solely for the purpose of this indemnification and defense, the CONSULTANT specifically waives any immunity under the state industrial insurance law, Title 51 RCW. The CONSULTANT recognizes that this waiver was specifically entered into pursuant to the provisions of RCW 4.24.115 and was the subject of mutual negotiation.

Unless otherwise specified in the AGREEMENT, the AGENCY shall be responsible for administration of construction contracts, if any, on the project. Subject to the processing of an acceptable, supplemental agreement, the CONSULTANT shall provide on-call assistance to the AGENCY during contract administration. By providing such assistance, the CONSULTANT shall assume no responsibility for: proper construction techniques, job site safety, or any construction contractor's failure to perform its work in accordance with the contract documents.

The CONSULTANT shall obtain and keep in force during the terms of the AGREEMENT, or as otherwise required, the following insurance with companies or through sources approved by the State Insurance Commissioner pursuant to RCW 48.

Insurance Coverage

A. Worker's compensation and employer's liability insurance as required by the STATE.

B. General commercial liability insurance in an amount not less than a single limit of one million and 00/100 Dollars ($1,000,000.00) for bodily injury, including death and property damage per occurrence.

Excepting the Worker's Compensation insurance and any professional liability insurance secured by the CONSULTANT, the AGENCY will be named on all certificates of insurance as an additional insured. The CONSULTANT shall furnish the AGENCY with verification of insurance and endorsements required by this AGREEMENT. The AGENCY reserves the right to require complete, certified copies of all required insurance policies at any time.

All insurance shall be obtained from an insurance company authorized to do business in the State of Washington. The CONSULTANT shall submit a verification of insurance as outlined above within 14 days of the execution of this AGREEMENT to the AGENCY. No cancellation of the foregoing policies shall be effective without thirty (30) days prior notice to the AGENCY.

The CONSULTANT's professional liability to the AGENCY shall be limited to the amount payable under this AGREEMENT or one million dollars, whichever is the greater unless modified by Exhibit H. In no case shall the CONSULTANT's professional liability to third parties be limited in any way.

The AGENCY will pay no progress payments under Section V until the CONSULTANT has fully complied with this section. This remedy is not exclusive; and the AGENCY and the STATE may take such other action as is available to them under other provisions of this AGREEMENT, or otherwise in law.

XIV
EXTRA WORK

A. The AGENCY may at any time, by written order, make changes within the general scope of the AGREEMENT in the services to be performed.

B. If any such change causes an increase or decrease in the estimated cost of, or the time required for, performance of any part of the work under this AGREEMENT, whether or not changed by the order, or otherwise affects any other terms and conditions of the AGREEMENT, the AGENCY shall make an equitable adjustment in the (1) maximum amount payable; (2) delivery or completion schedule, or both; and (3) other affected terms and shall modify the AGREEMENT accordingly.

C. The CONSULTANT must submit any proposal for adjustment (hereafter referred to as proposal) under this clause within 30 days from the date of receipt of the written order. However, if the AGENCY decides that the facts justify it, the AGENCY may receive and act upon a proposal submitted before final payment of the AGREEMENT.

D. Failure to agree to any adjustment shall be a dispute under the disputes clause. However nothing in this clause shall excuse the CONSULTANT from proceeding with the AGREEMENT as changed.

E. Notwithstanding the terms and condition of paragraphs (a) and (b) above, the maximum amount payable for this AGREEMENT, shall not be increased or considered to be increased except by specific written supplement to this AGREEMENT.

XV
ENDORSEMENT OF PLANS

The CONSULTANT shall place his endorsement on all plans, estimates or any other engineering data furnished by him.

XVI
TIB AND AGENCY REVIEW

The AGENCY and TIB shall have the right to participate in the review or examination of the work in progress.

XVII
CERTIFICATION OF THE CONSULTANT AND THE AGENCY

Attached hereto as Exhibit A-1, are the Certifications of the Consultant and the Agency.

XVIII
COMPLETE AGREEMENT

This document and referenced attachments contains all covenants, stipulations and provisions agreed upon by the parties. No agent, or representative of either party has authority to make, and the parties shall not be bound by or be liable for, any statement, representation, promise or agreement not set forth herein. No changes, amendments, or modifications of the terms hereof shall be valid unless reduced to writing and signed by the parties as an amendment to this AGREEMENT.

XIX
EXECUTION AND ACCEPTANCE

This AGREEMENT may be simultaneously executed in several counterparts, each of which shall be deemed to be an original having identical legal effect. The CONSULTANT does hereby ratify and adopt all statements, representations, warranties, covenants, and agreements contained in the proposal, and the supporting materials submitted by the CONSULTANT, and does hereby accept the AGREEMENT and agrees to all of the terms and conditions thereof.

In witness whereof the parties hereto have executed this AGREEMENT as of the day and year first above written.

By _____ By _____

Michael B. Johnson, P.E., President

Consultant Gray & Osborne, Inc. City of Ephrata

EXHIBIT A-1
Certification of Consultant

Project No.	City of
3-E-164(007)-1	Ephrata

I hereby certify that I am Michael B. Johnson, P.E. a duly authorized representative of the firm of Gray & Osborne, Inc. whose address is 1130 Rainier Avenue South, Suite 300, Seattle, Washington 98144 and that neither I nor the above firm I here represent has:

(a) Employed or retained for a commission, percentage, brokerage, contingent fee or other consideration, any firm or person (other than a bona fide employee working solely for me or the above CONSULTANT) to solicit or secure this contract.

(b) Agreed, as an express or implied condition for obtaining this contract, to employ or retain the services of a firm or person in connection with carrying out the contract.

(c) Paid, or agreed to pay, to any firm, organization or person (other than a bona fide employee working solely for me or the above CONSULTANT) any fee, contribution, donation or consideration of any kind for, or in connection with procuring or carrying out the contract; except as here expressly stated (if any):

I further certify that the firm I hereby represent is authorized to do business in the State of Washington and that the firm is in full compliance with requirements of the Board of Professional Registration.

I acknowledge that this certificate is to be available to the Transportation Improvement Board (TIB), in connection with this contract involving participation of TIB funds and is subject to applicable State and Federal laws, both criminal and civil.

12/23/22
Date

Michael B Johnson
Signature

Certification of Agency Official

I hereby certify that I am the AGENCY Official of the City of Ephrata, Washington and that the above consulting firm or his/her representative has not been required, directly or indirectly as an express or implied condition in connection with obtaining or carrying out this contract to:

(a) Employ or retain, or agree to employ or retain, any firm or person, or

(b) Pay or agree to pay to any firm, person or organization, any fee, contribution, donation or consideration of any kind, except as here expressly stated (if any).

I acknowledge that this certificate is to be available to the TIB, in connection with this contract involving participation of TIB funds and is subject to applicable State and Federal laws, both criminal and civil.

Date

Signature

EXHIBIT B-1
Scope of Work

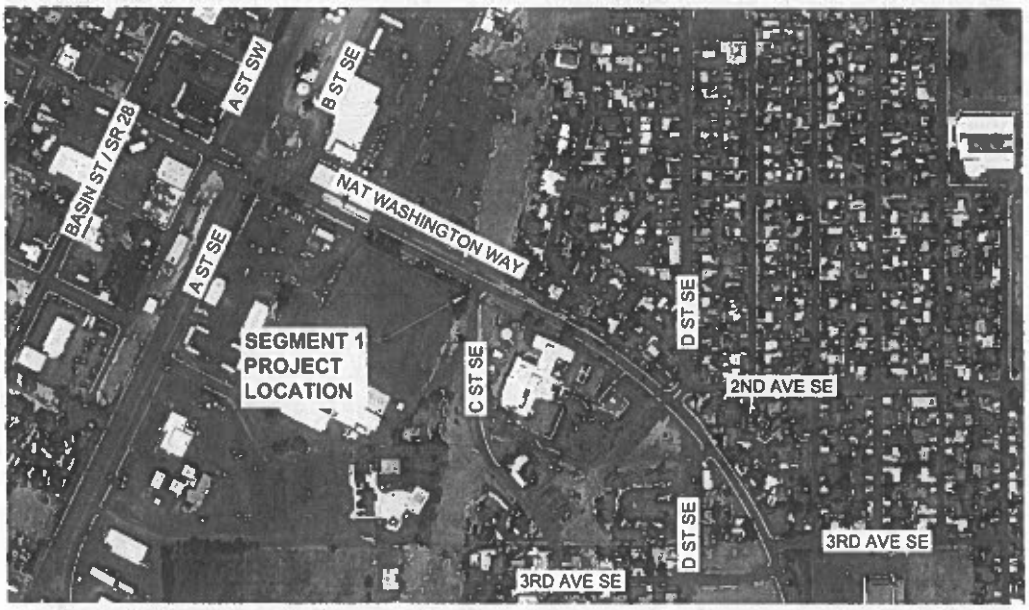
Project. No.

3-E-164(007)-1

Describe the Scope of Work

Introduction

The City of Ephrata, with financial assistance (grant) from the Washington State Transportation Improvement Board (TIB), desires to improve Nat Washington Way, from A Street SE to D Street SE. The improvements will include planing the existing roadway, completing subgrade repair (digouts) where needed, replacing 9 non-compliant curb ramps with ADA compliant ramps, overlaying with 2-inches of Hot Mix Asphalt (HMA) over the existing roadway, restriping the paved surfaces to their current configuration, and raising existing catch basins and utility covers/lids to the new surface. The proposed depth of HMA replacement will be based on similar projects completed for the City, and allowable limits for TIB. No separate geotechnical analysis of the site will be completed. The approximate project limits are outlined below:



Unless otherwise directed and approved by the City and the TIB, the project will be designed in conformance with the TIB grant applications (FY 2024 projects). This scope of work includes the following assumptions:

Stormwater: Assumes no improvements will be made to the stormwater collection system. It is anticipated that existing stormwater facilities will only be adjusted to the new roadway grades.

Cultural Resource Survey: This project is funded with TIB Preservation funds. Per a programmatic agreement with DAHP, this project does not require additional review for compliance with Executive Order 21-02. As such, services to complete this have not been included in this scope of work. Should it be determined that this work is necessary it will be considered an extra cost and a supplement to this agreement will be required for that work.

Roadway Geometry: It is anticipated that the existing roadway geometry will not be altered. Curb ramps within the project vicinity will be evaluated for ADA compliance and improved if necessary.

Permits: It is anticipated that a SEPA checklist will not be required as part of this project. It is anticipated that an Ecology Construction Stormwater Erosivity Waiver will be required. It is anticipated that WSDOT approval of the proposed design will not be required. The scope of this agreement includes completion of the identified required permits.

Topographic survey: It is assumed that a limited topographic survey of the project site will be completed. It is assumed that the footprint of the improvements will lie entirely within the existing roadway and curb ramps and will not require right of way acquisition.

Task 1 – Project Management

A. Provide overall project management services including:

1. Project staff management,
2. Implementation of quality control program, and
3. Management of project budget and schedule.

Task 2 – Community and Agency Coordination

A. Participate at two project meetings with City staff to review project, project concerns, status of deliverables, budget, critical path items, any new project concerns, etc., during the course of the project.

Task 3 – Quality Assurance/Quality Control Meetings

A. Conduct two in-house quality assurance/quality control (QA/QC) meetings during the course of the project. The meetings will take place at approximately 60 and 90 percent completion status. The meetings will include review by qualified senior staff members, key design team members, and Agency staff (as desired), and TIB staff (as desired).

B. Incorporate pertinent recommendations and suggestions into bid/construction documents regarding QA/QC reviews.

Task 4 – Project Funding Agency Coordination

A. The Engineer shall coordinate their work (as applicable) as authorized by the City with the City's funding agency (TIB) and assist the City in preparing project forms, on-line reimbursement requests, and other required paperwork.

Task 5 – Right-of-Way and Topographical Survey

A. Establish vertical and horizontal (right-of-way) control for survey and mapping within project corridor.

B. Acquire records of survey, plat maps, assessor maps, etc., as required for establishing right-of-way. Identify right-of-way (centerline and edges).

C. Acquire limited topographical survey of site (within and adjacent to project corridor) to include referencing surface grades, utility markings, pavement edges, curb and gutter, sidewalk, sidewalk curb ramps, driveways, utility structures, including utility poles, hydrants, valves, sanitary, and storm facilities, and water facilities in sufficient detail to support design of the project.

D. Acquire off-site survey at properties abutting project corridor, intersecting streets, and all driveways to facilitate incorporation of ingress/egress corridors into design and in sufficient details to identify impacts and provide adequate mitigation to adjacent properties. Extend topography to back of curb/sidewalk, where determined to be necessary by the Engineer. Note: This work assumes right of access will be granted by property owners for this work if needed.

E. Incorporate all electronic files (produced by survey) and create a base map of the project corridor, adjacent parcel lines, and existing utilities of record and/or surveyed utilities.

Task 6 – Preliminary Design

A. Prepare preliminary plans (50 percent design level) in City approved format. The Plans will utilize Washington State Department of Transportation (WSDOT) and City design standards, as applicable.

B. Prepare specifications in City-approved format, to also include proposal, contract, bonds, and insurance documents/requirements and related documentation. The Specifications will be prepared with reference to the WSDOT 2023 Standard Specifications for Road, Bridge, and Municipal Construction and City design standards, as applicable.

C. Prepare preliminary plans, drawings, special details, etc., of all motorized and non-motorized facilities including road improvements, sidewalk curb ramps, road striping, minor restoration, and related facilities at 90 percent level of design, and in City-approved format to include updated Engineer's construction cost estimate(s). Submit (two copies) of plan sets and specifications (including updated cost estimates) to City for review and comment at 90 percent. Incorporate applicable City comments. Format of plan sets shall be similar to other transportation and TIB funded products the Engineer has prepared for the City and modeled after the 2023 Standard Specifications.

Task 7 – Temporary Construction and Right-of-Way Documentation

A. Identify areas on adjacent private property where temporary construction permits need to be acquired to facilitate construction. This may include small, parallel, and adjacent strips of land or driveway areas needed to be reconstructed and incorporated into project documents.

B. Prepare generic temporary construction permits for City distribution and acquisition as may be required.

Note: Right-of-way acquisition is not anticipated nor included in this scope of work. If such is required, it will be negotiated as an extra.

Task 8 – Final Design Plans and Specifications

A. Prepare and submit final (100%) project plans, specifications, and cost estimates to include evaluation and/or incorporation of all previous and pertinent City, and/or funding agency review comments.

B. Submit final plans, specifications, engineer's cost estimate (construction), and TIB Bid Authorization form to the City and TIB and solicit authorization to bid the project from both the City and TIB.

C. Prepare and assist City in submitting Department of Ecology-required Construction Stormwater Erosivity Waiver (include generic copy in Specifications regarding transfer of coverage from City to Contractor).

Task 9 – Bid and Award Services

A. Prepare bid advertisement and distribute to up to two newspapers (Daily Journal of Commerce as well as City's newspaper of record). Our fees do not include cost of publication of advertisements.

B. Prepare and post electronic bid documents (PDF format) to Gray & Osborne's Bid Document Distribution System website. Maintain bidders list.

C. Answer bid inquiries during bid phase, to include providing written clarification as may be required.

D. Prepare and distribute any bid addenda as required.

E. Attend bid opening, review bids tendered, check references of responsible, qualified low bidder, prepare and distribute bid summary, and prepare and transmit Engineer's "Letter of Recommendation for Award."

F. Prepare TIB Bid Award UCE. Coordinate with City and TIB.

Construction Engineering Services

The Engineer shall provide Construction Engineering Services as may be further desired by the City and at the City's option. If the City elects to exercise this option, the Engineer shall prepare a scope and fee for this additional work for the City's review and approval. Since the extent of this work cannot be reasonably determined at this time, it will be prepared at the completion of the design phase as a contract supplement. The Engineer will also be entitled to subcontract work to a qualified firm as further approved by the City.

Services Specifically Not Included:

A. Any work associated with rectifying discrepancies in rights-of-way, record surveys, and plat maps, etc.

B. Any work associated with right-of-way acquisition, including: appraisals, appraisal reviews, fair cost estimates of market value of properties, Project Funding Estimates (PFE), legal descriptions, deeds, schematic exhibits, negotiations, and conveyance documents.

C. Any survey work associated with staking of right-of-way and/or property lines.

D. Any work associated with the preparation and filing of easements and/or record surveys.

E. Any costs associated with the actual purchase of real estate.

F. Any work associated with Cultural Resource Studies/Assessments.

Documents to be Furnished by the Consultant

- One electronic copy of the Project Specifications and Construction Drawings in Portable Document Format (PDF).
- One Set of Project Specifications (hard copy)
- One Set of Half Size Construction Drawings (hard copy, 11" x 17")

EXHIBIT C-2
Payment
(Cost Plus Fixed Fee)

The CONSULTANT shall be paid by the AGENCY for completed work and services rendered under this AGREEMENT as provided hereinafter. Such payment shall be full compensation for all work performed or services rendered and for all labor, materials, equipment, and incidentals necessary to complete the work specified in Section II, "Scope of Work."

A. Actual Costs

Payment for all consulting services for this project shall be on the basis of the CONSULTANTs actual cost plus a fixed fee. The actual cost shall include direct salary cost, overhead, and direct nonsalary cost.

1. **Direct Salary Costs**
   The direct salary cost is the direct salary paid to principals, professional, technical, and clerical personnel for the time they are productively engaged in work necessary to fulfill the terms of this AGREEMENT.

2. **Overhead Costs**
   Overhead costs are those costs other than direct costs which are included as such on the books of the CONSULTANT in the normal everyday keeping of its books. Progress payments shall be made at the rate shown in the heading of this AGREEMENT, under "Overhead Progress Payment Rate." Total overhead payment shall be based on the method shown in the heading of the AGREEMENT. The three options are explained as follows:

   a. Actual Cost: If this method is indicated in the heading of the AGREEMENT, the AGENCY agrees to reimburse the CONSULTANT the actual overhead costs verified by audit, up to maximum amount payable, authorized under this AGREEMENT, when accumulated with all other actual costs.
   b. Actual Cost Not To Exceed Maximum Percent: If this method is indicated in the heading of this AGREEMENT, the AGENCY agrees to reimburse the CONSULTANT at the actual overhead rate verified by audit up to the maximum percentage shown in the space provided. Final overhead payment when accumulated with all other actual costs shall not exceed the total maximum amount payable shown in the heading of this AGREEMENT.
   c. Fixed Rate: If this method is indicated in the heading of the AGREEMENT, the AGENCY agrees to reimburse the CONSULTANT for overhead at the percentage rate shown. This rate shall not change during the life of the AGREEMENT.

   A summary of the CONSULTANTs cost estimate and the overhead computation are attached hereto as Exhibits D and E and by this reference made part of this AGREEMENT. When an actual cost overhead rate or actual cost not to exceed overhead rate is used, the actual overhead rate determined at the end of each fiscal year shall be used for the computation of progress payments during the following year and for retroactively adjusting the previous year's overhead cost to reflect the actual rate.

   The CONSULTANT shall advise the AGENCY as soon as possible of the actual overhead rate for each fiscal year and of the actual rate incurred to the date of completion of the work. The AGENCY and/or TIB may perform an audit of the CONSULTANT's books and records at any time during regular business hours to determine the actual overhead rate, if they so desire.

3. **Direct Nonsalary Cost**
   Direct nonsalary costs will be reimbursed at the actual cost to the CONSULTANT applicable to this contract. These charges may include, but are not limited to the following items: travel, printing, long distance telephone, supplies, computer charges, and fees of subconsultants. Air or train travel will only be reimbursed to economy class levels unless otherwise approved by the AGENCY. The billing for nonsalary cost, directly identifiable with the Project, shall be an itemized listing of the charges supported by original bills or legible copies of invoices, expense accounts, and miscellaneous supporting data retained by the CONSULTANT. Copies of the original supporting documents shall be provided to the AGENCY upon request. All of the above charges must be necessary for services to be provided under this AGREEMENT.

4. **Fixed Fee**
   The fixed fee, which represents the CONSULTANT's profit, is shown in the heading of this AGREEMENT under Fixed Fee. This fee is based on the scope of work defined in this AGREEMENT and the estimated man-months required to perform the stated scope of work. In the event a supplemental agreement is entered into for additional work by the CONSULTANT, the supplemental agreement may include provision for the added costs and appropriate additional fee. The fixed fee will be prorated and paid monthly in proportion to the percentage of work completed by the CONSULTANT and reported in the monthly progress reports accompanying the invoices.

Any portion of the fixed fee earned by not previously paid in the progress payments will be cover in the final payment, subject to the provisions of Section IX, Termination of Agreement.

5. **Maximum Total Amount Payable**
The maximum total amount payable, by the AGENCY to the CONSULTANT under this AGREEMENT, shall not exceed the amount shown in the heading of this AGREEMENT as maximum amount payable, which includes the Fixed Fee, unless a supplemental agreement has been negotiated and executed by the AGENCY prior to incurring any costs in excess of the maximum amount payable.

B. Monthly Progress Payments

The CONSULTANT may submit invoices to the AGENCY for reimbursement of actual costs plus the calculated overhead and fee not more often than once per month during the progress of the work. Such invoices shall be in a format approved by the AGENCY and accompanied by the monthly progress reports required under Section III, General Requirements, of the AGREEMENT. The invoices will be supported by itemized listing and support document for each item including direct salary, direct nonsalary, and allowable overhead costs to which will be added the prorated Fixed Fee.

C. Final Payment

Final Payment of any balance due the CONSULTANT of the gross amount earned will be made promptly upon its verification by the AGENCY after the completion of the work under this AGREEMENT, contingent upon receipt of all PS&E, plans, maps, notes, reports, and other related documents which are required to be furnished under this AGREEMENT. Acceptance of such final payment by the CONSULTANT shall constitute a release of all claims of any nature which the CONSULTANT may have against the AGENCY unless such claims are specifically reserved in writing and transmitted to the AGENCY by the CONSULTANT prior to its acceptance. Said final payment shall not, however, be a bar to any claims that the AGENCY may have against the CONSULTANT or to any remedies the AGENCY may pursue with respect to such claims that the AGENCY may have against the CONSULTANT or to any remedies the AGENCY may pursue with respect to such claims.

D. Inspection of Cost Records

The CONSULTANT and his subconsultants shall keep available for inspection by representatives of the AGENCY and/or TIB, for a period of three years after final payment, the cost records and accounts pertaining to this AGREEMENT. If any litigation, claim, or audit arising out of, in connection with, or related to this contract is initiated before the expiration of the three-year period, the cost records and accounts shall be retained until such litigation, claim, or audit involving the records is completed.

EXHIBIT D-1
Consultant Fee Determination Summary Sheet
(Lump Sum, Cost Plus Fixed Fee, Cost per Unit of Work)

Prepared by	Date
Michael Meskimen, P.E., Gray & Osborne, Inc.	December 22, 2022

Project: Nat Washington Way Overlay

Direct Salary Cost (DSC)

Classification	Man Hours		Rate		Cost
Principal-In-Charge	6	x	$46 to $70	=	$360
Project Manager	60	x	$42 to $70	=	$2,880
Civil Engineer	160	x	$35 to $46	=	$6,400
AutoCAD/GIS Tech./Engineering Intern	160	x	$18 to $49	=	$6,720
Professional Land Surveyor	18	x	$38 to $57	=	$936
Survey Crew (2 Person)	50	x	$55 to $88	=	$3,250
				TOTAL DSC	**$20,546**
OVERHEAD (OH Cost including Salary Additives)					
				OH Rate x DSC or 186% x $20,546	**$38,216**
FIXED FEE (FF)					
				FF Rate x DSC or 42% x $20,546	**$8,629**
REIMBURSABLES					
Misc. Expenses, including mileage, per diem (room and board), Reproduction, etc.					**$2,609**
SUBCONSULTANT COST					**$0**
GRAND TOTAL					**$70,000**

EXHIBIT D-2
Consultant Fee Determination Summary Sheet
(Specific Rates of Pay)
FEE SCHEDULE

Discipline or Job Title	Hourly Rate	Overhead 186%	Profit 42%	Rate Per Hour
AutoCAD/GIS Tech./Engineering Intern	$18-$49	$33.48-$91.14	$7.56-$20.58	$59.04-$160.72
Electrical Engineer	$36-$65	$66.96-$120.90	$15.12-$27.30	$118.08-$213.20
Structural Engineer	$34-$63	$63.24-$117.18	$14.28-$26.46	$111.52-$206.64
Environmental Tech./Specialist	$25-$50	$52.08-$93.00	$11.76-$21.00	$91.84-$164.00
Engineer-In-Training	$30-$51	$55.80-$94.86	$12.60-$21.42	$98.40-$167.28
Civil Engineer	$35-$46	$65.10-$85.56	$14.70-$19.32	$114.80-$150.88
Project Engineer	$38-$52	$70.68-$96.72	$15.96-$21.84	$124.64-$170.56
Project Manager	$42-$70	$78.12-$130.20	$17.64-$29.40	$137.76-$229.60
Principal-in-Charge	$46-$70	$85.56-$130.20	$19.32-$29.40	$150.88-$229.60
Resident Engineer	$37-$55	$68.82-$102.30	$15.54-$23.10	$121.36-$180.40
Field Inspector	$30-$52	$55.80-$96.72	$12.60-$21.84	$98.40-$170.56
Field Survey Crew (2 Person)	$55-$88	$102.30-$163.68	$23.10-$36.96	$180.40-$288.64
Field Survey Crew (3 Person)	$91-$120	$169.26-$223.20	$38.22-$50.40	$298.48-$393.60
Professional Land Surveyor	$38-$57	$70.68-$106.02	$15.96-$23.94	$124.64-$186.96
Secretary/Word Processor*	N/A	N/A	N/A	N/A

* Secretarial and clerical fees are not billed, but are included in the overhead multiplier listed. The same is true for accounting, bookkeeping, postage, in-house printing up to $150, word processing, computer use, computer-aided drafting, and telephone and fax costs.

All actual out-of-pocket expenses incurred directly on the project are added to the billing. The billing is based on direct out-of-pocket expenses; meals, lodging, laboratory testing and transportation. The transportation rate is $0.58 per mile or the current maximum IRS rate without receipt IRS Section 162(a).

EXHIBIT E-1
Breakdown of Overhead Cost

GRAY & OSBORNE

COMPUTATION OF OVERHEAD MULTIPLIER

Federal, State, and Local Taxes	21.2%
Insurance and Medical	23.0%
Professional Development and Education	0.6%
Sick Leave, Vacations and Holidays	14.2%
Administration (Typing, CADD, GIS, Computer)**	37.2%
Rent, Utilities, and Depreciation	19.0%
Office Expenses, Support and Maintenance	5.1%
Travel	2.0%
Retirement and Incentive Program	63.4%
Facilities Cost of Capital	0.3%
TOTAL:	**186.0%**

**Administration expenses include secretarial and clerical work; GIS, CADD, and computer equipment; owned survey equipment and tools (stakes, hubs, lath, etc. – Note: mileage billed separately at rate noted); miscellaneous administration tasks; facsimiles; telephone; postage; and printing costs, which are less than $150.

EXHIBIT F-1
Payment Upon Termination of Agreement by the Agency Other than for Fault of the Consultant

(Refer to Agreement, Section IX)

Lump Sum Contracts

A final payment shall be made to the CONSULTANT which when added to any payments previously made shall total the same percentage of the Lump Sum Amount as the work completed at the time of termination is to the total work required for the PROJECT. In addition, the CONSULTANT shall be paid for any authorized extra work completed.

Cost Plus Fixed Fee Contracts

A final payment shall be made to the CONSULTANT which when added to any payments previously made, shall total the actual costs plus the same percentage of the fixed fee as the work completed at the time of termination is to the total work required for the PROJECT. In addition, the CONSULTANT shall be paid for any authorized extra work completed.

Specific Rates of Pay Contracts

A final payment shall be made to the CONSULTANT for actual hours charged at the time of termination of this AGREEMENT plus and direct nonsalary costs incurred at the time of termination of this AGREEMENT.

Cost Per Unit of Work Contracts

A final payment shall be made to the CONSULTANT for actual units of work completed at the time of termination of this AGREEMENT.

EXHIBIT G-1
Subcontracted Work

The AGENCY permits subcontracts for the following portions of the work of this AGREEMENT:

None.