



Regular City Council Meeting Agenda  
City Council Chambers  
May 22, 2018 - 6:00 p.m.

- A. Call To Order - Pledge Of Allegiance
- B. Roll Call - Excused Absences
- C. Minutes

Minutes Of The Regular City Council Meeting Of May 8, 2018

Documents:

[5-8-18.PDF](#)

Minutes Of The Special City Council Meeting Of May 8, 2018

Documents:

[5-8-18 SPECIAL.PDF](#)

- D. Vouchers/Payroll

Voucher Total = \$744,927.27

- E. Claims For Damages
- F. Small Contracts (Less Than \$10,000) - Approved By Mayor
- G. Information Items
- H. Appointments
- I. Citizen Comments: Open To Public (Two Minute Limit)
- J. Action Items

Public Hearings

Resolutions

1. 18-049 - Resolution E-623 - Department Of Energy Services Interagency Agreement  
The purpose of the Department of Energy Services (DES) Interagency Agreement is to provide energy programs that helps City Facilities reduce energy and operational costs. DES provides professional expertise and contract management services through selected Energy Services Companies (ESCO).

Documents:

[AGENDA 18-049 DEPARTMENT OF ENERGY SERVICES INTERAGENCY AGREEMENT.PDF](#)  
[RES E-623 DEPARTMENT OF ENERGY SERVICES INTERAGENCY AGREEMENT.PDF](#)  
[DEPARTMENT OF ENERGY SERVICES INTERAGENCY AGREEMENT.PDF](#)

2. 18-050 - Resolution E-624 - 2018 Street Preservation Project Contract Award  
Bids were opened on May 16th for the 2018 Street Preservation Project. Three bids were received with Shamrock Paving being the lowest responsible bidder in the amount of \$ 839,551.00.

Documents:

[ACTION 18-050 2018 STREET PRESERVATION PROJECT.PDF](#)  
[RES E-624 2018 STREET PRESERVATION PROJECT.PDF](#)  
[BID RESULTS 2018 ART ST PRES PROJECT - 2018 CITY ST PROJECT.PDF](#)  
[2018 STREET PRESERVATION PROJECT CONTRACT 5-15-2018 .PDF](#)

3. 18-051 - Resolution E-625 - Electric Power And Service Contract With Willow Street Mining, Inc  
An Electric Power and Service Contract specific to the City and Willow Street Mining, Inc.

Documents:

[CCAR 18-051 ELECTRIC POWER AND SERVICE AGREEMENT WILLOW ST.PDF](#)  
[RES E-625 AUTHORIZING - ELECTRIC POWER AND SERVICE AGREEMENT WILLOW ST.PDF](#)  
[ELECTRIC POWER AND SERVICE CONTRACT - WILLOW STREET.PDF](#)

4. 18-053 - Resolution E-627 - 2018 Sidewalk Project  
The Public Works Department requested quotes for the 2018 Sidewalk Project. We received two quotes with Five Star Concrete Inc. submitting the lowest quote for \$ 40,100.00. The project includes sidewalk removal and replacement over several areas of the City.

Documents:

[ACT 2018 SIDEWALK PROJECT AWARD.PDF](#)  
[RES 2018 SIDEWALK PROJECT AWARD.PDF](#)  
[2018 SIDEWALK PROJECT CONTRACT.PDF](#)

5. 18-054 - Resolution E-628 - Waiving The Competitive Bid Requirements  
Approval of Resolution E-628 would waive the competitive bid requirements and authorize the acquisition of a used sedan to replace an unsafe detective vehicle, in order to properly provide and continue to perform essential police services within the city.

Documents:

[AGENDA ITEM 18-054 - WAIVING COMPETITIVE BID REQUIREMENTS FOR ACQUISITION OF A USED SEDAN.PDF](#)  
[RES E-628 - WAIVING COMPETITIVE BID REQUIREMENTS FOR](#)

## ACQUISITION OF A USED SEDAN.PDF

Ordinances

Other Business

K. Staff Reports

L. Mayor's Report

M. Council Reports

N. Executive Session

O. Adjournment

## REGULAR CITY COUNCIL MEETING

May 8, 2018

**A. Call to Order – Pledge of Allegiance** Mayor Grover called the Regular City Council meeting to order at 6:00 p.m.

**B. Roll Call – Excused Absences** Councilmembers present included Councilmember Overhauser, Councilmember Schmidt, Councilmember Weizmann, Councilmember Gaard, Councilmember Hilton, and Councilmember Taves. Staff members present included Mr. Schuller, Mr. Schwartz, Ms. Conley, Mr. Hensley, Mr. Ableman, Mr. Boorman, and Mr. Jenkins. Councilmember Nixon was excused.

**C. Minutes** of the Regular City Council meeting of April 24, 2018 were approved as distributed.

**D. Claims and Vouchers** nos. 143283, 143292, 143308 through 143412, and April interdepartmental billing in the amount of \$216,764.02; payroll warrants nos. 61587 through 61666 in the amount of 24,406.51, direct deposits in the amount of \$372,617.16, claims warrants nos. 143128 and 143251 through 143282 in the amount of \$474,232.69, and transfers to claims clearing fund for distribution of previously expensed and reported benefit adjustments in the amount of (\$26,694.86), for a total payroll of \$844,561.50 were approved as read.

**E. Claims for Damages** Mr. Schuller stated that there is one claim from Johnas Lara for \$928.98. Councilmember Overhauser moved to approve the claim. Councilmember Schmidt seconded. Carried unanimously.

**F. Small Contracts** The small contract was previously approved.

**G. Information Items** None

**H. Appointments** None

**I. Citizen Comments** None

### **J. Action Items**

**1. 18-041 – Resolution E-616 – 2018 Watermain Replacement Project – Consultant Agreement** Mr. Ableman stated the City applied for Community Development Block Grant funding for this project last year. A consultant agreement is required in order for the City to be reimbursed by grant funding. The project will start on North 3<sup>rd</sup> Street from Oak Street to Oakland Street, then hopefully can continue south toward Elm Street. Councilmember Weizmann moved for passage of Resolution E-616. Councilmember Gaard seconded. Carried unanimously.

**2. 18-047 – Resolution E-620 – Betz Road Overlay Project – Consultant Supplemental Agreement** Mr. Ableman stated this project is for Betz Road from Washington Street to North 6<sup>th</sup> Street. On January 23, 2018, Council approved the preliminary engineering services agreement. This supplemental agreement is for construction engineering services. The project is currently out for bid. Councilmember Schmidt moved for passage of Resolution E-620. Councilmember Taves seconded. Carried unanimously.

**3. 18-048 – Resolution E-622 – Waiving the Competitive Bid Requirements** Mr. Boorman stated we have three companies that we buy most of our wire from. He learned from a wire salesman that the City of Milton-Freewater wanted to sell some excess wire. A price of 50 cents on the dollar was negotiated. Since it is another public agency selling the wire, we need Council approval. The wire has been kept in covered storage and does not age or deteriorate. The purpose for this wire is the proposed data center projects. Councilmember Overhauser moved for passage of Resolution E-622. Councilmember Weizmann seconded. Carried unanimously.

**K. Staff Reports** Mr. Jenkins presented information on ESO software. This software would replace Lexipol, which is no longer suitable. The ESO platform offers much greater capability and shares patients' medical records with various providers. The software also has several preloaded questions in many languages in case the patient does not speak English. Several other fire departments and districts in our area have gone to ESO.

The Lexipol data would be transferred into the ESO system. Mr. Ableman presented a summary report of Cheney Clean Sweep, including statistics, tonnage, sponsors, donations, and expenses. It was a good event and had good weather.

**L. Mayor's Report** Mayor Grover thanked Mr. Ableman and his staff for their work on Clean Sweep. A citizen told Mayor Grover that Mr. Frank Betz and Mr. Steve Anderson went out of their way to work on a sewer issue. Mayor Grover spoke at the Special Olympics opening ceremony last Friday, and attended part of the Special Olympics games at Roos Field on Saturday. It is a wonderful event that has been held in Cheney for several years, and many college students and staff volunteer their time. Mayor Grover was honored to give remarks at the 100<sup>th</sup> anniversary of the Cheney Nazarene Church recently. He was a guest speaker at six Civics classes at Cheney High School. He will be hosting the Association of Northeast Washington Mayors' meeting on May 18 at the Utility Building.

**M. Council Reports** Councilmember Weiszmann stated she attended the Special Olympics games on Saturday, and it was a good event. Councilmember Hilton reminded everyone that Cheney MayFest is Friday evening and all day Saturday. Councilmember Taves stated he personally appreciates the emphasis on Special Olympics.

**N. Executive Session** None

**O. Adjournment** Councilmember Schmidt moved to adjourn the meeting. Councilmember Weiszmann seconded. Carried unanimously. The meeting was adjourned at 6:21 p.m.

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City Clerk

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Mayor

**SPECIAL CITY COUNCIL MEETING**  
**May 8, 2018**

Mayor Grover called the Special City Council meeting to order at 6:21 p.m. at the City Council Chambers, 609 2nd Street.

Councilmembers present were Councilmember Overhauser, Councilmember Schmidt, Councilmember Weizmann, Councilmember Gaard, Councilmember Hilton, and Councilmember Taves. Staff members present were Mr. Schuller, Mr. Schwartz, Ms. Conley, Mr. Hensley, Mr. Ableman, Mr. Boorman, and Mr. Jenkins.

Mr. Boorman presented information on the topics of bitcoin, cryptocurrency, blockchains, and data mining.

Councilmember Overhauser moved to adjourn the meeting. Councilmember Weizmann seconded. Carried unanimously. The meeting was adjourned at 7:14 p.m.

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City Clerk

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Mayor

CITY OF CHENEY

CITY COUNCIL ACTION REQUEST

<b>ISSUE:</b>	Department of Energy Services Interagency Agreement	<b>AGENDA ITEM #:</b>	18-049
<b>DEPT. OF ORIGIN:</b>	Public Works	<b>DATE:</b>	5/15/2018

<b>EXHIBITS ATTACHED OR REFERENCED:</b>	1. Resolution E-623 2. Interagency Agreement
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<b>Council Committee Recommendation</b>	Yes		No		None	
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DEPT/DEPT HEAD INITIALS	APPROVE	DO NOT APPROVE	NO COMMENT	COMMENTS
Public Works/TA	TA			

<b>FISCAL IMPACT</b>	<b>EXPENDITURE REQUIRED:</b>	\$	<b>AMOUNT BUDGETED</b>	\$
	<b>APPROPRIATION REQUESTED:</b>	\$		

<b>SUMMARY:</b>	The purpose of the Department of Energy Services (DES) Interagency Agreement is to provide energy programs that helps City Facilities reduce energy and operational costs. DES provides professional expertise and contract management services through selected Energy Services Companies (ESCO).
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<b>COUNCIL ACTION REQUESTED:</b>	Passage of Resolution E-623
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APPROVED FOR AGENDA

DISAPPROVED

May 22, 2018

\_\_\_\_\_  
COUNCIL MEETING DATE

\_\_\_\_\_  
MAYOR/CITY ADMINISTRATOR

City of Cheney  
609 Second Street  
Cheney, WA 99004

**CITY OF CHENEY, WASHINGTON  
RESOLUTION E-623**

**A RESOLUTION AUTHORIZING THE MAYOR TO SIGN AN INTERAGENCY AGREEMENT WITH THE DEPARTMENT OF ENERGY SERVICES.**

**WHEREAS**, Pursuant to RCW 39.34 an Interagency Agreement can be entered between the State of Washington and the City of Cheney; and

**WHEREAS**, through the State of Washington's Energy Program cities can receive energy program services to reduce energy and operational costs; and

**WHEREAS**, the city wishes to enter into an Interagency Agreement with the State of Washington for energy program services.

**NOW THEREFORE, BE IT RESOLVED**, by the City Council of the City of Cheney to authorize the Mayor to sign the State of Washington Energy Program Interagency Agreement.

ADOPTED, on this **22<sup>nd</sup> Day of May, 2018** by the Cheney City Council at their regularly scheduled meeting at the Cheney Council Chambers, 609 Second Street Cheney, WA 99004.

\_\_\_\_\_  
Chris Grover, Mayor

ATTEST:

\_\_\_\_\_  
Cynthia L. Niemeier, City Clerk



State of Washington <b>ENERGY PROGRAM</b> Department of Enterprise Services P.O. Box 41476 Olympia, WA 98504-1476	<b>INTERAGENCY AGREEMENT</b>	
	IAA No.:	K5257
<b>CITY OF CHENEY</b> 112 Anderson Rd. Cheney, WA 99004	Effective Date:	April 23, 2018

## **INTERAGENCY AGREEMENT**

**BETWEEN**

**CITY OF CHENEY**

**AND**

**WASHINGTON STATE DEPARTMENT OF ENTERPRISE SERVICES**

Pursuant to RCW Chap. 39.34, this Interagency Agreement (“Agreement”) is made and entered into by and between the State of Washington acting by and through the Energy Program of the Department of Enterprise Services, a Washington State governmental agency (“Enterprise Services”) and City of Cheney, a Washington State governmental agency (“Client Agency”) and is dated and effective as of April 23, 2018.

### **R E C I T A L S**

- A. Enterprise Services, through its Energy Program (“Energy Program”), helps owners of public facilities reduce energy and operational costs. The Energy Program is a national leader in developing and managing energy savings performance contracts that help reduce energy and operational costs pertaining to publicly-owned facilities.
- B. Upgrading to energy efficient infrastructure helps reduce long-term operations and maintenance costs. This allows owners to be better financial stewards while achieving their mission, so that Washington is a better place to live, learn, and work.
- C. Acting as the owner’s advocate, the Energy Program delivers professional expertise and contract management services. By leveraging capital investments, owners can achieve efficiencies, improve facilities, and yield carbon reductions in their publicly-owned facilities. The Energy Program also creates value to owners by managing risk through guaranteed total project costs, equipment performance, and energy savings.
- D. Client Agency, an owner of a public facility, desires to contract with Energy Program to access and obtain certain Energy Program Services.
- E. The purpose of this Agreement is to establish a vehicle for the Energy Program to provide future energy/utility conservation project management services to Client Agency and to authorize the development of the energy services proposal in a cost-effective, efficient manner as set forth herein.

## A G R E E M E N T

NOW THEREFORE, in consideration of the mutual covenants and agreements set forth herein, the parties agree as follows:

1. **TERM.** The term of this Agreement commences **April 23, 2018** and ending **December 31, 2022**.
2. **STATEMENT OF WORK; COMPENSATION.** Energy Program shall provide the following services, for the following compensation, to Client Agency.
  - a. **SERVICES.** Upon request by Client Agency, and amendment to this Agreement to specify the individual Energy/Utility Conservation Project(s), Enterprise Services shall furnish the necessary personnel and services and otherwise do all things necessary for or incidental to the performance of the Project Management Services set forth in Attachment A and the Measurement & Verification Services set forth in Attachment C. Unless otherwise specified, Energy Program shall be responsible for performing all fiscal and program responsibilities as set forth herein.
  - b. **COMPENSATION.** Compensation under this Agreement shall be by amendment to this Agreement for each authorized project. Each amendment shall include a payment schedule for the specific project.
    - i. **Project Management Services (Attachment A):** For Project Management Services provided by Energy Program, Client Agency shall pay Enterprise Services a project management fee for services based on the total project value per the project management fees schedule set forth in Attachment B.
    - ii. **Termination Fee:** If Client Agency, after authorizing an investment grade audit and energy services proposal, decides not to proceed with an energy/utility conservation project that meets Client Agency's cost effective criteria, then the Client Agency will be charged a termination fee as set forth in Attachment B. The termination fee shall be based on the estimated total project value outlined in the energy services proposal prepared by the ESCO.
    - iii. **Measurement & Verification Services (Attachment C):** If Measurement and Verification Services beyond the first three years following the Notice of Commencement of Energy Services are requested by Client Agency, Client Agency shall pay Energy Program \$2,000.00 annually for each year that such Measurement and Verification Services are provided.
  - c. **PAYMENT FOR ESCO SERVICES.** In the event that Client Agency authorizes Energy Program to contract with an ESCO, pursuant to an Enterprise Services Master Energy Services Agreement for ESCO Services, Client Agency shall make payment for such contracted services directly to the ESCO, after Energy Program has reviewed, verified, and sent such invoices to Client Agency for payment.

- d. **FURTHER ASSURANCES.** Client Agency shall provide the Energy Services Company (ESCO) with any additional necessary or desired contract language to comply with Client Agency's obligations pertaining to its use of federal, state, or other grants, funding restrictions, or unique contract/entity requirements. The ESCO and their subcontractors are required to comply with all applicable federal regulations and reporting procedures.
- e. **MANAGING COMPLIANCE WITH STATE AND FEDERAL LAW.** In all ESCO project agreements pertaining to this Agreement, the Energy Program will require ESCO compliance with applicable federal and state laws and state policies including, but not limited to, the following:
  1. RCW Title 39 and 43
  2. ADA Requirements
  3. Buy America
  4. Davis-Bacon
  5. Prevailing Wage
  6. DBE Participation
  7. Apprentice Participation

The Energy Program will collect and provide the weekly-certified payroll to Client Agency. Client Agency, however, shall remain responsible for any documentation required by Client Agency's funding source. All federal verification, investigation, survey, reporting and enforcement requirements when there is a possible violation shall remain the responsibility of the federal grant recipient (Client Agency) unless negotiated by the Energy Program and added by amendment to this Agreement. In the event that the Energy Program becomes aware of a possible violation, it will notify the Client Agency.

### **3. INVOICES; BILLING.**

- a. **BILLING PROCEDURE.** Energy Program shall submit a single invoice to the Client Agency upon substantial completion of each authorized project, unless a project specified a special billing condition in the Amendment. Substantial completion of the project will include the delivery and acceptance of the notice of commencement of energy cost savings issued by the ESCO. Each invoice will clearly indicate that it is for the services rendered in performance under this Agreement and shall reflect this Agreement and Amendment number. Energy Program will invoice for any remaining services within sixty (60) days of the expiration or termination of this Agreement.
- b. **PAYMENT PROCEDURE.** Client Agency shall pay all invoices received from Energy Program within ninety (90) days of receipt of properly executed invoice vouchers.
- c. **BILLING DETAIL.** Each invoice submitted to Client Agency by Energy Program shall include information as is necessary for Client Agency to determine the exact nature of all expenditures. At a minimum, the invoice shall reference this Agreement and include the following:
  - The date(s) such services were provided
  - Brief description of the services provided
  - Total invoice amount

d. BILLING ADDRESS. Invoices shall be delivered to Client Agency electronically to:

Email: [tableman@cityofcheney.org](mailto:tableman@cityofcheney.org)

4. **AGREEMENT MANAGEMENT.** The parties hereby designate the following agreement administrators as the respective single points of contact for purposes of this Agreement, each of whom shall be the principal contact for business activities under this Agreement. The parties may change administrators by written notice as set forth below. Any notices required or desired shall be in writing and sent by U.S. mail, postage prepaid, or sent via email, and shall be sent to the respective addressee at the respective address or email address set forth below or to such other address or email address as the parties may specify in writing:

**Enterprise Services**

Attn: Alysa Wyrick  
Energy Project Manager  
Energy Program  
Washington Dept. of Enterprise Services  
PO Box 41476  
Olympia, WA 98504-1476  
Tel: (509) 279-5024  
Email: [alysa.wyrick@des.wa.gov](mailto:alysa.wyrick@des.wa.gov)

**Client Agency**

Attn: Todd Ableman  
Director of Public Works  
City of Cheney  
112 Anderson Rd.  
Cheney, WA 99004  
Tel: (509) 498-9293  
Email: [tableman@cityofcheney.org](mailto:tableman@cityofcheney.org)

Notices shall be deemed effective upon the earlier of receipt, if mailed, or, if emailed, upon transmission to the designated email address of said addressee.

The Client Agency representative shall be responsible for working with Energy Program, approving billings and expenses submitted by Energy Program, and accepting any reports from Energy Program.

The Energy Program representative shall be the contact person for all communications regarding the conduct of work under this Agreement.

5. **RECORDS RETENTION.**

- a. **AGREEMENT AVAILABILITY.** Prior to its entry into force, this Agreement shall be posted on the parties' websites or other electronically retrievable public source as required by RCW 39.34.040.
- b. **RECORDS RETENTION.** Each party shall each maintain records and other evidence that sufficiently and properly reflect all direct and indirect costs expended by either party in the performance and payment of the services described herein. These records shall be subject to inspection, review, or audit by personnel of both parties, other personnel duly authorized by either party, the Office of the State Auditor, and officials authorized by law. Such

records shall be retained for a period of six (6) years following expiration or termination of this Agreement or final payment for any service placed against this Agreement, whichever is later; *Provided*, however, that if any litigation, claim, or audit is commenced prior to the expiration of this period, such period shall extend until all such litigation, claims, or audits have been resolved.

- c. **PUBLIC INFORMATION.** This Agreement and all related records are subject to public disclosure as required by Washington's Public Records Act, RCW chapter 42.56. Neither party shall release any record that would, in the judgment of the party, be subject to an exemption from disclosure under the Public Records Act, without first providing notice to the other party within ten (10) business days of the receipt of the request. The parties will discuss appropriate actions to be taken, including release of the requested information, seeking a protective order, or other action prior to the release of records. Should one party choose to seek a protective order, it shall do so at its sole expense.
6. **RESPONSIBILITY OF THE PARTIES.** Each party to this Agreement assumes responsibility for claims and/or damages to persons and/or property resulting from any act or omission on the part of itself, its employees, or its agents. Neither party assumes any responsibility to the other party for any third party claims.
7. **DISPUTE RESOLUTION.** The parties shall use their best, good faith efforts cooperatively and collaboratively to resolve any dispute that may arise in connection with this Agreement as efficiently as practicable, and at the lowest possible level with authority to resolve such dispute. The parties shall make a good faith effort to continue without delay to carry out their respective responsibilities under this Agreement while attempting to resolve any such dispute. If, however, a dispute persists and cannot be resolved, it may be escalated within each organization. In such situation, upon notice by either party, each party, within five (5) business days shall reduce its description of the dispute to writing and deliver it to the other party. The receiving party then shall have three (3) business days to review and respond in writing. In the event that the parties cannot then agree on a resolution of the dispute, the parties shall schedule a conference between the respective senior managers of each organization to attempt to resolve the dispute. In the event the parties cannot agree on a mutual resolution within fifteen (15) business days, the parties shall abide by the Governor's dispute resolution process (RCW 43.17.330), if applicable, or collectively shall appoint a third party to evaluate and resolve the dispute and such dispute resolution shall be final and binding on the parties hereto.
8. **TERMINATION FOR CONVENIENCE.** Except as otherwise provided in this Agreement, either party may terminate this Agreement upon thirty (30) calendar days prior written notification. Upon such termination, the parties shall be liable only for performance rendered or costs incurred in accordance with the terms of this Agreement prior to the effective date of such termination.

## 9. GENERAL PROVISIONS.

- a. COMPLIANCE WITH LAW. The Parties shall comply with all applicable law.
- b. INTEGRATED AGREEMENT. This Agreement constitutes the entire agreement and understanding of the parties with respect to the subject matter and supersedes all prior negotiations, representations, and understandings between them. There are no representations or understandings of any kind not set forth herein.
- c. AMENDMENT OR MODIFICATION. Except as set forth herein, this Agreement may not be amended or modified except in writing and signed by a duly authorized representative of each party hereto.
- d. AUTHORITY. Each party to this Agreement, and each individual signing on behalf of each party, hereby represents and warrants to the other that it has full power and authority to enter into this Agreement and that its execution, delivery, and performance of this Agreement has been fully authorized and approved, and that no further approvals or consents are required to bind such party.
- e. NO AGENCY. The parties agree that no agency, partnership, or joint venture of any kind shall be or is intended to be created by or under this Agreement. Neither party is an agent of the other party nor authorized to obligate it.
- f. GOVERNING LAW. The validity, construction, performance, and enforcement of this Agreement shall be governed by and construed in accordance with the laws of the State of Washington, without regard to its choice of law rules.
- g. JURISDICTION & VENUE. In the event that any action is brought to enforce any provision of this Agreement, the parties agree to submit to exclusive in personam jurisdiction in Thurston County Superior Court for the State of Washington and agree that in any such action venue shall lie exclusively at Olympia, Washington.
- h. EXHIBITS. All exhibits referred to herein are deemed to be incorporated in this Agreement in their entirety.
- i. CAPTIONS & HEADINGS. The captions and headings in this Agreement are for convenience only and are not intended to, and shall not be construed to, limit, enlarge, or affect the scope or intent of this Agreement nor the meaning of any provisions hereof.
- j. ELECTRONIC SIGNATURES. A signed copy of this Agreement or any other ancillary agreement transmitted by facsimile, email, or other means of electronic transmission shall be deemed to have the same legal effect as delivery of an original executed copy of this Agreement or such other ancillary agreement for all purposes.

- k. COUNTERPARTS. This Agreement may be executed in any number of counterparts, each of which shall be deemed an original and all of which counterparts together shall constitute the same instrument which may be sufficiently evidenced by one counterpart. Execution of this Agreement at different times and places by the parties shall not affect the validity thereof so long as all the parties hereto execute a counterpart of this Agreement.

EXECUTED AND EFFECTIVE as of the day and date first above written.

**CITY OF CHENEY**

**STATE OF WASHINGTON  
DEPARTMENT OF ENTERPRISE SERVICES**

BY: \_\_\_\_\_

By: \_\_\_\_\_

Name: \_\_\_\_\_

Name: Roger A. Wigfield, P.E.,

Title: \_\_\_\_\_

Title: Energy Program Manager

Date: \_\_\_\_\_

Date: \_\_\_\_\_

K5257IAAgrko

# **ATTACHMENT A – OF WORK**

Energy/Utility Conservation Projects

## **PROJECT MANAGEMENT SERVICES**

Statewide Energy Performance Contracting Program

Energy Program will provide the following project management services for each specific project for the Client Agency. Each individual project shall be authorized by an amendment to this Agreement.

1. Assist the Client Agency in the selection of an Energy Service Company (ESCO) consistent with the requirements of RCW 39.35A for local governments; or 39.35C for state agencies and school districts.
2. Assist in identifying potential energy/utility conservation measures and estimated cost savings.
3. Negotiate scope of work and fee for an ESCO audit of the facility(s).
4. Assist in identifying appropriate project funding sources and assist with obtaining project funding.
5. Assist in negotiating the technical, financial and legal issues associated with ESCO's Energy Services Proposal.
6. Review and recommend approval of ESCO energy/utility audits and Energy Services Proposals.
7. Provide assistance during the design, construction and commissioning processes.
8. Review ESCO invoice voucher(s) received for reasonableness and forward to Client Agency for review and payment.
9. Assist with final project acceptance.
10. Review up to the first three years of the ESCO's annual Measurement and Verification (M&V) reports for completeness and accuracy. Review any ESCO guarantee compared to reported results and resolve differences, if needed. Review and approve ESCO invoice vouchers for payment by the Client Agency.
11. Provide other services as required to complete a successful energy performance contract.



## ATTACHMENT B – FEE SCHEDULE

2017-19 Interagency Reimbursement Costs  
for Project Management Fees to Administer Energy/Utility Conservation Projects

<u>TOTAL PROJECT VALUE</u>	<u>PROJECT MANAGEMENT FEE</u>	<u>TERMINATION</u>
5,000,001.....6,000,000.....	\$68,800.....	25,700
4,000,001.....5,000,000.....	67,700.....	25,400
3,000,001.....4,000,000.....	66,700.....	25,000
2,000,001.....3,000,000.....	62,500.....	23,400
1,500,001.....2,000,000.....	58,300.....	21,800
1,000,001.....1,500,000.....	51,600.....	19,300
900,001. ... 1,000,000.....	43,800.....	16,400
800,001.....900,000.....	41,300.....	15,400
700,001.....800,000.....	38,300.....	14,400
600,001.....700,000.....	36,500.....	13,700
500,001.....600,000.....	33,800.....	12,600
400,001.....500,000.....	30,200.....	11,300
300,001.....400,000.....	25,800.....	9,700
200,001.....300,000.....	20,700.....	7,700
100,001.....200,000.....	14,400.....	5,400
50,001.....100,000.....	7,800.....	3,500
20,001.....50,000.....	4,200.....	2,000

The project management fee on projects over \$6,000,000 is 1.15% of the project cost. The maximum Energy Program termination fee is \$25,700.

1. These fees cover project management services for energy/utility conservation projects managed by Enterprise Services’ Energy Program.
2. Termination fees cover the selection and project management costs associated with managing an ESCO's investment grade audit and energy services proposal. No termination fee will be charged unless the client agency decided not to proceed to construction based on an energy services proposal that identifies projects that met the Client Agency’s cost effectiveness criteria.
3. If the project meets the Client Agency’s cost effectiveness criteria and the Client Agency decides not to move forward with a project, then the Client Agency will be invoiced per Attachment B Termination or \$25,700 whichever is less. If the Client Agency decides to proceed with the project then the Agreement will be amended per Attachment B for Project Management Fee.
4. If the audit fails to produce a project that meets the Client Agency’s established cost effectiveness criteria, then there is no cost to the Client Agency and no further obligation by the Client Agency.

# **ATTACHMENT C – SCOPE OF WORK**

Energy/Utility Conservation Projects

## **MEASUREMENT & VERIFICATION SERVICES**

Statewide Energy Performance Contracting Program

If requested, Energy Program will provide the following measurement and verification services for each year beyond the first three years following the Notice of Commencement of Energy Savings by the ESCO for the specific Client Agency project:

1. Review the ESCO's annual Measurement and Verification (M&V) report for completeness and accuracy. Review any ESCO guarantee compared to reported results and resolve differences, if needed. Review and approve any ESCO invoice vouchers for payment by the Client Agency.
2. Where necessary, review Client Agency facility operations including any changes in operating hours, changes in square footage, additional energy consuming equipment and negotiate changes in baseline energy use with the ESCO and the Client Agency that may impact achieved energy savings.
3. Attend a meeting or meetings with the Client Agency and the ESCO to review and discuss the annual M&V report.

CITY OF CHENEY

CITY COUNCIL ACTION REQUEST

<b>ISSUE:</b>	<b>2018 Street Preservation Project Contract Award</b>	<b>AGENDA ITEM #:</b>	<b>18-050</b>
<b>DEPT. OF ORIGIN:</b>	Public Works	<b>DATE:</b>	5/15/18

<b>EXHIBITS ATTACHED OR REFERENCED:</b>	1. Resolution E-624 2. Bid Tabulation 3. Contract
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<b>Council Committee Recommendation</b>	Yes		No		None	
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DEPT/DEPT HEAD INITIALS	APPROVE	DO NOT APPROVE	NO COMMENT	COMMENTS
Public Works/TA	TA			

<b>FISCAL IMPACT</b>	<b>EXPENDITURE REQUIRED:</b>	\$ 839,551.00 plus applicable taxes	<b>AMOUNT BUDGETED</b>	\$
	<b>APPROPRIATION REQUESTED:</b>	\$ 923,600.00 expenditure required plus 10% contingencies, plus applicable taxes.		

<b>SUMMARY:</b>	Bids were opened on May 16 <sup>th</sup> for the 2018 Street Preservation Project. Three bids were received with Shamrock Paving being the lowest responsible bidder in the amount of \$ 839,551.00.
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<b>COUNCIL ACTION REQUESTED:</b>	Passage of Resolution E-624
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\_\_\_ **APPROVED FOR AGENDA**

\_\_\_ **DISAPPROVED**

May 22, 2018

\_\_\_\_\_  
**COUNCIL MEETING DATE**

\_\_\_\_\_  
**ADMINISTRATOR**

\_\_\_\_\_  
**MAYOR/CITY**

City of Cheney  
609 Second Street  
Cheney, WA 99004

**CITY OF CHENEY, WASHINGTON  
RESOLUTION E-624**

**A RESOLUTION TO AUTHORIZE THE MAYOR TO SIGN A CONTRACT  
WITH \_\_SHAMROCK PAVING FOR THE 2018 STREET PRESERVATION  
PROJECT**

**WHEREAS**, Shamrock Paving, Inc. submitted the lowest of three bids received for the 2018 Street Preservation Project; and

**WHEREAS** the City Council has the authority under RCW 35.23 to award bids for public works contracts to the lowest responsible bidder or to reject any or all bids; and

**WHEREAS**, the City Council wishes to award the 2018 Street Preservation Project to Shamrock Paving, Inc in the amount of \$ 839,551.00 plus applicable taxes.

**NOW THEREFORE, BE IT RESOLVED**, by the City Council of the City of Cheney to award the bid of the 2018 Street Preservation Project Contract to Shamrock Paving Inc. in the amount of \$ 839,551.00. In addition, the City Council of the City of Cheney authorizes an appropriation amount of \$ 923,600.00 for quoted work plus contingencies plus applicable taxes.

**ADOPTED**, on this 22<sup>nd</sup> day of May, 2018 by the Cheney City Council at their regularly scheduled meeting at the Cheney Council Chambers, 609 Second Street, Cheney, WA 99004.

\_\_\_\_\_  
Chris Grover, Mayor

**ATTEST:**

\_\_\_\_\_  
Cynthia L. Niemeier, City Clerk

CITY OF CHENEY, WASHINGTON

**BID TABULATION**

DEPARTMENT Street

PROJECT NO. #A18001, RS#18001

**RECAP OF**

2018 Arterial Street Pres Project (Sched A)  
2018 City St Pres Project (Sched B,C)

**Opened** Wednesday May 16, 2018, 10:00 a.m.

BID SCHEDULE	VENDOR Shamrock Paving	VENDOR POE Asphalt	VENDOR Inland Asphalt	VENDOR	VENDOR	VENDOR Engineer's Estimate
Schedule A	\$275,735.00	\$418,481.00	\$347,411.00			
Schedule B	\$474,706.00	\$611,207.00	\$600,294.00			
Schedule C	\$89,110.00	\$165,035.00	\$128,045.00			
Sub-Total	\$839,551.00	\$1,194,723.00	\$1,075,750.00	\$0.00	\$0.00	\$879,201.00
Tax 8.8%	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00
Total	\$839,551.00	\$1,194,723.00	\$1,075,750.00	\$0.00	\$0.00	\$879,201.00

## AGREEMENT FOR CONSTRUCTION SERVICES

**THIS AGREEMENT** is made by and between the City of Cheney, a code City of the State of Washington (“**City**”) and Shamrock Paving, Inc (“**Contractor**”), jointly referred to as “**Parties**”.

IN CONSIDERATION of the terms and conditions contained herein the Parties covenant and agree as follows:

1. **Work to Be Performed.** The Contractor shall do all work and furnish all labor, tools, materials, supplies and equipment for 2018 Street Preservation Project (“**Work**”) in accordance with, and as described in the Project Plans and specifications stamped and as amended through addendums (“**Contract Provisions**”) including all related drawings, plans and other documents made available by the City which are by this reference incorporated herein and made part hereof (the “**Contract Documents**”). To the extent applicable or reasonably necessary to interpret the Work, the most recent publication of the Standard Specifications for Road, Bridge and Municipal Construction of the Washington State Department of Transportation (see <http://www.wsdot.wa.gov/Publications/Manuals/M41-10.htm>) is incorporated into the Contract Documents. All changes in the work shall be performed in accord with the Contract Documents, unless determined otherwise by the City.

The Contractor, as set forth in the Contractor’s bid proposal attached hereto as Exhibit A (the “**Bid Proposal**”), shall assume and be responsible for the cost and expense of all Work provided in the and Contract Documents, except those items agreed in writing to be furnished by the City of Cheney.

The Mayor or designee shall administer and be the primary contact for Contractor. Prior to commencement of work, Contractor shall contact the Mayor or designee to review the Work, schedule, and time of completion. Contractor shall receive written authorization from the City to proceed with the Work. Upon notice from the Mayor or designee, Contractor shall promptly commence Work, complete the same in a timely manner, and cure any failure in performance under this Agreement.

All Work shall be performed in conformance with the Contract Documents, City and State standards and Bid Proposal. Contractor acknowledges review of the Contract Documents and accepts the same. In the event of a conflict between the Contract Documents, City and State standards or Bid Proposal, they shall be interpreted and given precedence in the order listed herein.

2. **Term of Contract.** This Contract shall be in full force and effect upon execution of this Agreement and shall remain in effect until final completion of the Work or acceptance of the Work by the City.

The City may terminate this Agreement by ten (10) days written notice to the other party. In the event of such termination, the City shall pay the Contractor for all Work previously authorized and satisfactorily performed prior to the termination date.

3. **Compensation.** The City agrees to pay the Contractor \$ 839,551.00 plus applicable taxes and provided such amount does not exceed the Bid Proposal.

4. **Payment.** The Contractor may elect to be paid in monthly installments upon presentation of an invoice to the City, or in a lump sum upon completion of the Work. Applications for payment shall be sent to the City at the below-stated address.

The City reserves the right to withhold payment under this Agreement if the Work is determined, in the reasonable judgment of the Mayor or designee, to be noncompliant with the Contract Plans, Contract Documents, City or State standards, or Bid Proposal.

5. **Retainage.** State law requires that the City in a contract for a public improvement or work, other than performance of professional services, withhold from monies earned by the Contractor during the progress of the Work, a sum not to exceed 5% of the cost of the Work ("**Retainage**"), as a trust fund for the protection and payment of any person, mechanic, subcontractor or material men who shall perform any labor upon the contract, including the State of Washington, with respect to taxes imposed pursuant to RCW Title 82. The Retainage is held by the City pursuant to RCW 60.28.010 with the Contractor having certain options concerning the deposit or escrow of such funds. In addition, the Contractor may elect to submit a bond for all or any portion of the Retainage. After completion of the Work, other than landscaping, the Contractor may request that the City release the Retainage and sixty (60) days thereafter the City shall pay the Retainage provided there are no claims against the retained funds and the City has received from Department of Revenue, Employment Security Department and the Department of Labor and Industries certificates that all taxes, increases and penalties have been paid.

In lieu of Retainage, the Contractor may substitute a bond for the purposes set forth in RCW Chapter 60.28.

6. **Notice.** Notice shall be given in writing as follows:

**TO THE CITY:**

Name: Todd Ableman  
City of Cheney Public Works Director  
Phone Number: (509) 498-9293  
Address: 112 Anderson Road  
Cheney, WA 99004

**TO THE CONTRACTOR:**

Shamrock Paving, Inc  
Scott Willms  
Phone Number: 509-244-2800  
Address: PO Box 19263  
Spokane, WA 99219-9263

7. **Applicable Laws and Standards.** The Parties, in the performance of this Agreement, agree to comply with all applicable Federal, State and local laws, and City ordinances and regulations. Contractor shall exercise best efforts, including the selection of highest quality materials, so that all Work performed shall be in compliance with current related industry standards.

8. **Relationship of the Parties.** It is hereby understood, agreed and declared that the Contractor shall be an Independent Contractor, and not the agent or employee of the City; that the City is interested only in the results to be achieved; and that the right to control the particular manner, method and means in which the services are performed is solely within the discretion of

the Contractor. Any and all employees who provide services to the City under this Agreement shall be deemed employees solely of the Contractor.

The Contractor shall be solely responsible for the conduct and actions of all employees under this Agreement and any liability that may attach thereto.

9. **Contractor to Be Licensed, Bonded and Insured.**

A. **Licensed.** The Contractor shall be duly licensed by the State of Washington pursuant to RCW 39.06.010.

B. **Bond.** The Contractor shall, except as set forth below, obtain a bond from a surety company in an amount equal to the Contract Price for the purpose of guaranteeing the faithful performance of this contract, including paying all labors, mechanics, subcontractors and material men pursuant to RCW 39.08.010.

For a contract less than \$35,000.00, the Contractor may, in lieu of a bond, request the City retain fifty percent (50%) of the Contract Price for a period of thirty (30) days after final acceptance of the Work, or the necessary tax and labor releases are obtained from the State of Washington.

C. **Insurance.** Contractor shall purchase and maintain, during the term of this Agreement, a comprehensive general liability policy in the amount of \$1,000,000.00 per occurrence, with the City as an additional named insured. A copy of the certificate shall be provided to the City. Notice of cancellation of such insurance shall be given to the City by Contractor's insurer.

10. **Prevailing Wages on Public Works.** This Agreement provides for the construction of a public work and payment of prevailing wages according to Washington law. All employees, workers, laborers or mechanics shall be paid a prevailing rate of wage that is set forth in an attachment to this Agreement. The payment of prevailing wages is required by Washington law, RCW 39.12.020 and WAC 296-127-01308. A prevailing rate of wage is determined by the Industrial Statistician of the Department of Labor and Industries. RCW 39.12.015.

Before any payment may be made to Contractor, a "Statement of Intent to Pay Prevailing Wages" must be submitted to the City. Following final acceptance of the public works project, the Contractor and each subcontractor shall submit an "Affidavit of Wages Paid" before retained funds will be released to the Contractor. The affidavit must be certified by the Industrial Statistician of the Department of Labor and Industries. Any exemption to the above must be submitted by Contractor through an acknowledged statement.

11. **Warranty.** Unless provided otherwise in the Contract Plans or Contract Documents, Contractor warrants all work and materials performed or installed under this Contract is free from defect or failure for a period of one year following final acceptance by the City, unless a supplier or manufacturer has a warranty for a greater period, which warranty shall be assigned to the City. In the event a defect or failure occurs in work or materials, the Contractor shall within the warranty period remedy the same at no cost or expense to the City.



12. **Indemnification and Hold Harmless.** Contractor assumes responsibility for and shall defend, indemnify and hold the City, its agents, employees and officials (hereinafter “**Indemnitee**”) harmless from any and all claims, demands, damages, expenses, losses, fines, penalties or liabilities, including loss of use, arising from, resulting in any manner directly or indirectly from or connected with or in the course of the performance of the Work and the obligations herein, including without limitation claims of subcontractors and suppliers contracting with Contractor. Contractor’s obligation to defend, indemnify and hold Indemnitee harmless shall include, but is not be limited to, Indemnitee’s personnel-related costs, attorney and expert fees, court costs, and all other claim-related expenses, to the fullest extent permitted by law, even though such claims may prove to be false, groundless, or fraudulent, subject only to the limitations provided below.

Contractor’s duty to indemnify shall not apply to liability for damages arising out of bodily injury to persons or damage to property caused by or resulting from: (a) the sole negligence of Indemnitee or (b) the concurrent negligence of (i) Indemnitee, its agents or employees and (ii) Contractor, its agents or employees with such liability limited to the extent of Contractor or Contractor’s agents or employees negligence. RCW 4.24.115

Contractor specifically and expressly waives any immunity that may be granted it under the worker’s compensation laws under the Washington State Industrial Insurance Act, Title 51 RCW; provided that such waiver shall be expressly limited to Contractor’s indemnity obligations herein and shall not be intended as a benefit to any third party. Further, the indemnification obligation under this Contract shall not be limited in any way by any limitation on the amount or type of damages, compensation or benefits payable to or for any third party under workers compensation acts, disability benefits acts, or other employee benefits acts. This waiver was mutually negotiated.

The partial or complete invalidity of any one or more provisions of this Section shall not affect the validity or continuing force and effect of any other provision. If any provision is invalid, in whole or in part, the balance of the provisions shall be considered reformed to reflect the intent of the parties to the greatest extent possible consistent with the law. The provisions of this section shall survive termination of this Agreement.

13. **Waiver.** No officer, employee, agent, or other individual acting on behalf of either party, has the power, right, or authority to waive any of the conditions or provisions of this Agreement. No waiver in one instance shall be held to be waiver of any other subsequent breach or nonperformance. All remedies afforded in this Agreement, or by law, shall be taken and construed as cumulative, and in addition to every other remedy provided herein or by law. Failure of either party to enforce, at any time, any of the provisions of this Agreement, or to require, at any time, performance by the other party of any provision hereof, shall in no way be construed to be a waiver of such provisions, nor shall it affect the validity of this Agreement, or any part thereof.

14. **Assignment and Delegation.** Neither party shall assign, transfer, or delegate any or all of the responsibilities of this Agreement, or the benefits received hereunder, without first obtaining the written consent of the other party.

15. **Jurisdiction and Venue.** This Contract is entered into in Spokane County, Washington. Venue shall be in Spokane County, State of Washington.

16. **Arbitration.** All disputes arising under this Agreement shall be resolved through arbitration pursuant to State law. Rules for arbitration shall be those prescribed by the American Association of Arbitration.

17. **Entire Agreement.** This written Agreement constitutes the entire and complete agreement between the Parties, and supersedes any prior oral or written agreements. This Agreement may not be changed, modified, or altered, except in writing and signed by the Parties hereto.

18. **Anti-kickback.** No officer or employee of the City, having the power or duty to perform an official act or action related to this Agreement, shall have, or acquire, any interest in this Agreement, or have solicited, accepted, or granted, a present or future gift, favor, service, or other thing of value from any person with an interest in this Agreement.

19. **Exhibits.** Exhibits attached and incorporated into this agreement are:

**Exhibit "A" 2018 Street Preservation Project Bidders Packet from Shamrock Paving, Inc. dated 5/16/18**

IN WITNESS WHEREOF, the parties have executed this Agreement this \_\_\_\_ day of \_\_\_\_\_, 2018.

CITY OF CHENEY:

CONTRACTOR:

\_\_\_\_\_

Chris Grover, Mayor

By: \_\_\_\_\_

Its: \_\_\_\_\_

Fed Tax ID No. \_\_\_\_\_

ATTEST:

\_\_\_\_\_

Cindy Niemeier, Finance Director

[ End of Agreement ]

CITY OF CHENEY  
CITY COUNCIL ACTION REQUEST

<b>ISSUE:</b>	<b>Electric Power and Service Contract With Willow Street Mining, Inc</b>	<b>AGENDA ITEM #:</b>	18-051
<b>DEPT. OF ORIGIN:</b>	Light	<b>DATE:</b>	5/15/18

<b>EXHIBITS ATTACHED OR REFERENCED:</b>	1. Resolution E-625 2. Contract
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<b>Council Committee Recommendation</b>	Yes		No		None	
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DEPT/DEPT HEAD INITIALS	APPROVE	DO NOT APPROVE	NO COMMENT	COMMENTS
Light	SB			

<b>FISCAL IMPACT</b>	<b>EXPENDITURE REQUIRED:</b>	\$	<b>AMOUNT BUDGETED</b>	\$
	<b>APPROPRIATION REQUESTED:</b>	\$		

<b>SUMMARY:</b>	An Electric Power and Service Contract specific to the City and Willow Street Mining, Inc.
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<b>COUNCIL ACTION REQUESTED:</b>	Passage of Resolution E-625
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\_\_\_ **APPROVED FOR AGENDA**

\_\_\_ **DISAPPROVED**

May 22, 2018

\_\_\_\_\_  
**COUNCIL MEETING DATE**

\_\_\_\_\_  
**ADMINISTRATOR**                      **MAYOR/CITY**

City of Cheney  
609 Second Street  
Cheney, WA 99004

**CITY OF CHENEY, WASHINGTON  
RESOLUTION E-625**

**A RESOLUTION AUTHORIZING THE MAYOR TO SIGN AN ELECTRIC POWER  
AND SERVICE CONTRACT WITH WILLOW STREET MINING, INC LOCATED AT  
1618 WILLOW STREET, CHENEY, WA 99004**

**WHEREAS**, the City owns and operates an electrical, water, solid waste, and sewer system for the residents and businesses in the City of Cheney; and

**WHEREAS**, Willow Street Mining, Inc, is developing a data processing center which will add a new large single load as defined in Cheney Municipal Code Section 14.08.055; and

**WHEREAS**, Cheney Municipal Code Section 14.08.055 requires a specific rate be set by council resolution for any new large single loads; and

**WHEREAS**, Willow Street Mining, Inc has electrical power and usage characteristics different from all other City of Cheney customer classes; and

**WHEREAS**, Willow Street Mining, Inc and the City of Cheney desire to enter into a contract to address these special characteristics and construction requirements; and

**NOW THEREFORE, BE IT RESOLVED**, by the City Council of the City of Cheney to authorize the mayor to sign an Electric Power and Service Contract with Willow Street Mining, Inc

**ADOPTED**, on this 22<sup>nd</sup> day of May, 2018 by the Cheney City Council at their regularly scheduled meeting at the Cheney Council Chambers, 609 Second Street, Cheney, WA 99004.

\_\_\_\_\_  
Chris Grover, Mayor

**ATTEST:**

\_\_\_\_\_  
Cynthia L. Niemeier, City Clerk

ELECTRIC POWER AND SERVICE CONTRACT  
BY AND BETWEEN THE CITY OF CHENEY, WASHINGTON  
AND  
**WILLOW STREET MINING, INC**

This Electric Power and Service Contract (“**Contract**”), is entered into and effective \_\_\_\_\_, 2017 (“Effective Date”), by and between The City of Cheney, Washington (“**Cheney**”) and Willow Street Mining, Inc., a Washington limited liability company (“**Customer**”). Cheney and Customer may be referred to herein individually as a **Party** or collectively as **Parties**.

**WHEREAS**, Cheney owns and operates an electric system that it uses to provide retail electric services to end-use customers within and without its service territory; and

**WHEREAS**, For purposes of this Contract, the term “**Electric Power**” shall mean firm electric energy and capacity and related services purchased, generated or otherwise acquired or provided by Cheney the characteristics of which are set forth in Section E; and

**WHEREAS**, Customer intends to own and operate a datacenter facility (“**Facility**”) that will be located within Cheney’s service territory and will qualify as a new large single electric load pursuant to Cheney Municipal Code §14.08.055; and

**WHEREAS**, the Parties desire for Cheney to provide Electric Power to the Facility at rates established by Cheney city council from time to time as described in Cheney Municipal Code §14.08.055; and

**WHEREAS**, the Parties further desire that Cheney construct, cause to be constructed or otherwise acquire distribution facilities necessary to sell and deliver the Electric Power to the Facility at the Point of Delivery (“**Distribution Facilities**”) as provided under this Contract; and

**WHEREAS**, Cheney's commitments herein are made subject to any restrictions, terms and conditions of power purchases that Cheney has executed or will execute or power generation that Cheney may own or operate from time to time, in order to provide Electric Power to Customer’s Facility.

**NOW, THEREFORE**, the Parties hereto agree as follows:

**SECTION A: TERM**

1. **Term**: This Contract shall be effective as of the Effective Date and shall remain in effect through \_\_\_\_\_ (“**Term**”) unless terminated earlier as may be allowed under Section A.2.
2. **Termination**: Subject to payment of the Termination Costs as set forth in Section 3 below, this Contract may be terminated prior to expiration of the Term as follows:

- a. Either Party may terminate this Contract with or without cause after giving sixty (60) days prior written notice to the other Party.
  - b. A non-defaulting Party may terminate this Contract, effective immediately, for an uncured Event of Default as provided in Section G.2.d.
  - c. Customer may terminate this Contract, effectively immediately upon providing written notice to Cheney, if the Facility is destroyed or rendered inoperable by a casualty beyond the reasonable control of Customer.
3. **Termination Costs:** In the event of termination, all otherwise unrecovered wholesale power, transmission, distribution, administrative and other costs reasonably incurred by Cheney to provide Electric Power to the Facility under the terms of this Contract (collectively, the “**Termination Costs**”) shall become due and payable upon the effective date of such termination (“**Termination Date**”). Such Termination Costs may include costs to be incurred by Cheney after the Termination Date pursuant to legally enforceable obligations undertaken by Cheney prior to the Termination Date. Notwithstanding the forgoing, Cheney shall use commercially reasonable efforts to mitigate its Termination Costs. As soon as practicable following the Termination Date, Cheney shall send Customer a written invoice detailing such Termination Costs, which shall be due and payable by Customer within fifteen (15) calendar days.
  4. **Effect of Termination:** Upon the expiration or in the event of termination of this Contract by either Party, Cheney shall have the immediate right to disconnect the Facility from its electric system.
  5. **Survival of Obligations:** Upon the expiration or in the event of termination of this Contract by either Party, all outstanding obligations, including without limitation Customer’s obligation to pay Termination Costs, shall survive the expiration or termination of this Contract until satisfied.

## **SECTION B: TRANSACTION**

1. **Sale and Purchase of Electric Power:** Subject to the terms and conditions of this Contract, Cheney agrees to sell and deliver at the Point of Delivery (as defined in Section E.2), and Customer agrees to buy and receive at the Point of Delivery, Electric Power in an amount sufficient to meet the Facility’s electrical requirements up to a contract demand limit of 1,000 kilowatts at a power factor greater than 0.97 (“**Contract Demand Limit**”).
2. **Commencement of Electric Power Service:** Cheney shall commence deliveries of Electric Power for the Facility following the completion of all necessary Distribution Facilities and at a specific date and time to be established by mutual agreement of the Parties.
3. **Electric Power Requirements:** Customer shall purchase from Cheney all Electric Power required for use at the Facility, up to the Contract Demand Limit, pursuant to the terms and conditions of

this Contract. Except as otherwise provided herein, Cheney's right and obligation to provide Electric Power to the Facility during the Term of this Contract shall be exclusive.

- a. Customer may not increase the Electric Power use of the Facility by any amount that exceeds the Contract Demand Limit without prior written approval from Cheney.
  - b. Cheney may, in its sole discretion, adjust the Contract Demand Limit for the protection of its electric system when the Facility is operated at a power factor lower than 0.97 on a regular basis. Customer shall be responsible for all costs reasonably incurred by Cheney to repair damage to its electric system resulting from persistent operation of the Facility at a power factor lower than 0.97.
4. **Distribution Facilities:** Cheney shall design and construct the Distribution Facilities that it determines to be necessary, in its reasonable discretion consistent with prudent utility practices, to deliver Electric Power to the Facility at the Point of Delivery.
- a. Prior to constructing the Distribution Facilities, Cheney shall provide Customer with a written quote for the Distribution Facilities costs. Customer shall pay the entire quoted amount for the cost of such Distribution Facilities within the later of (i) ninety (90) days of receiving the quote or (ii) ninety (90) days of the Effective Date of this Contract. Cheney shall have no obligation to acquire or construct the Distribution Facilities, or to incur any other Contract implementation costs including delivery of Electric Power, prior to Customer's payment of the quoted Distribution Facilities costs.
  - b. Cheney reserves the right to invoice Customer for any cost that exceeded the initial quoted amount that were necessarily incurred because of unforeseen events or conditions.
  - c. Cheney shall at all times own, operate and maintain all of the Distribution Facilities. Cheney reserves the right to use the Distribution Facilities to provide service to third parties and other locations. In the event that the Distribution Facilities are used to provide service to third parties, the Customer may be entitled to a partial refund of the Distribution Facilities costs pursuant to Cheney's applicable line extension policy then in effect.

### **SECTION C: RATES AND CHARGES**

1. **Rate Schedule Charges:** Customer shall pay Cheney for all Electric Power provided to the Facility under this Contract at the rates and upon the terms and conditions established by duly adopted (and amended as set forth in Section C.2 resolutions of the Cheney City Council. The rate will be based on the impact to the existing customers rates, the price of Tier 2 (or other acquired) power from BPA, additional transmission cost, the financial impact of the service on the Cheney electric utility and such other factors as may be established by the City Council. The applicable rate schedule may include, but is not limited to, the following representative charges:
  - a. A Base charge for each meter that measures Customer's Electric Power usage.

- b. An Energy Charge applied against Customer's measured Electric Power use.
- c. A Demand Charge applied to Customer's peak demand.

Exhibit A to this Contract is the rate schedule adopted by Resolution \_\_\_\_ that is applicable to Cheney's provision of Electric Power to the Facility effective \_\_\_\_\_ ("Rate Schedule"). The Rate Schedule is hereby incorporated into this Contract by reference.

- 2. Rate Schedule Amendments: Cheney may amend the Rate Schedule as follows:
  - a. Upon thirty (30) days prior written notice to Customer, provided that the Rate Schedule shall not be amended more than once every twelve (12) month period pursuant to this Section C.2.a; or
  - b. If the characteristics of Customer's Electric Power requirements at the Facility changes; or
  - c. If the cost or supply of Electric Power available to lawfully serve the Facility changes.

The Parties agree that any amended or successor Rate Schedule shall be substituted for Exhibit A and shall be incorporated into this Contract by reference as of the effective date of the Amended or Successor Rate Schedule.

- 3. Other Services: Other services requested by Customer and provided by Cheney, including but not limited to construction, maintenance, or repair, will be provided at Cheney's option at the cost incurred by Cheney including reasonable overhead and administrative charges.
- 4. Payment Security: Customer shall provide to Cheney, and Cheney shall hold and may use as provided in Section C.4.c and C.4.f, a cash prepayment equal to two (2) months of total expected monthly charges and payments described in Section C.1 of this Contract (collectively, the "**Prepayment**").
  - a. The Prepayment amount shall be calculated by Cheney and included in Exhibit B. The Prepayment amount and Exhibit B, may be updated by Cheney pursuant to Section C.4.e.
  - b. The initial Prepayment amount shall be due and payable upon the Effective Date of this Contract.
  - c. Upon receipt by Cheney, the Prepayment shall be held by Cheney as security for the payment and performance of Customer's obligations under this Contract. The Prepayment shall be placed in a separately identified non-interest bearing account.
  - d. The Prepayment amount held by Cheney shall constitute available funds of Cheney and may be used by Cheney for any purpose under this Contract . Unless used to offset a payment obligation owed by Customer under this Contract, Cheney's use of such Prepayment funds shall not decrease the amount credited to Customer's account.



- e. The calculation of the Prepayment amount may be updated by Cheney in its reasonable discretion not less than six (6) months following the Effective Date and thereafter not more than once per calendar year at either Party's written notice in order to reflect changes in the total expected monthly charges and payments described in Section C.1. When the Prepayment amount has been recalculated, any balance due to Customer, or balance owed by Customer, based on the difference between the Prepayment funds, including interest shall be credited to Customer's account as provided herein. The difference between the previously determined Prepayment amount and the recalculated Prepayment amount shall either be held by Cheney as additional collateral security for Customer's obligations, as provided in Section C.4, or applied as a credit (as the case may be) on Customer's next subsequent monthly bill.
- f. Upon expiration or earlier termination of this Contract, the Prepayment amount held by Cheney as collateral security shall first be used by Cheney to satisfy any outstanding amounts owed by Customer under this Contract, including but not limited to any unpaid charges under Section C.1, and any applicable Termination Costs or other related charges pursuant to Section A.3, with the remaining balance, if any, to be refunded to Customer.

#### **SECTION D: PAYMENT OF BILLS**

1. Invoices: Cheney shall calculate the applicable rates and charges under Section C of this Contract and shall submit an invoice (in the form of a standard City utility bill) to Customer each month for all such rates and charges incurred by Customer in the preceding month. All invoices shall be submitted by U.S. Mail, courier or email with a mailed copy to Customer at:

Attn: Mr. John Tree  
Willow Street Mining, Inc. 1618 Willow Street  
Cheney, WA 99004

2. Payments: Customer shall pay all invoices by AHC or by check in the U.S. Mail or delivered to Cheney at:

City of Cheney  
Finance Department  
609 2nd Street,  
Cheney, WA 99004

Payment shall be due no later than fifteen (15) calendar days from the date received if by courier or by email, or if by U.S. Mail the postmarked date of the bill. Failure to receive a bill shall not release Customer from liability for payment.

3. Late Payments: Any payment not received by Cheney within the time required by Section D.2 shall be considered overdue. In addition to any other rights or remedies that may be available to

Cheney under Section G.4, interest shall accrue on any overdue amounts at a rate equal to one percent (1%) per month until paid.

4. **Billing Disputes:** In the event that any portion of an invoice is in dispute, including without limitation an invoice for Termination Costs under Section A.3, the entire amount of the invoice (including the disputed amount) shall be paid in full and when due. At the time of making such payment, the Customer shall indicate in writing the amount and nature of the invoice dispute. The Parties shall work together in good faith to try to resolve the dispute. If the Parties cannot resolve the invoice dispute on their own within thirty (30) calendar days, then either Party may initiate legal action to resolve the dispute. Upon determination of the correct invoice amount, an adjustment shall be made to reflect the correct amount, and the amount owed shall be paid to the Party to whom it is owed within ten (10) days of the determination of the correct amount, together with interest thereon at the rate of one percent (1%) per month.

### **SECTION E: CHARACTER OF SERVICE**

1. **Voltage:** Electric Power supplied under this Contract shall be three phase alternating current at approximately 60 Hertz and at approximately 208/120 volts.
2. **Point of Delivery:** Deliveries of Electric Power shall be made at the load-side of the transformer vault, which shall be the demarcation point of facilities owned by Cheney and Facilities owned by Customer (“**Point of Delivery**”). The Customer shall own the cables and cable terminations on the load-side of the transformer and all electrical equipment downstream of the Point of Delivery.
3. **Facilities:** Deliveries of Electric Power may be made via overhead or underground facilities or a combination thereof at the determination of Cheney.
4. **Metering:** Metering equipment necessary to measure both real kilowatt hours (kwh) and kilo volt amps demand (KVA) power will be provided by Cheney as part of the Distribution Facilities and the metered data shall form the basis of billing determinants. Such metering equipment shall be capable of providing energy and demand data for fifteen (15) minute intervals.
5. **Service Interruption:** Cheney shall use reasonable diligence to provide a regular and uninterrupted supply of Electric Power. Whenever necessary for the purpose of making repairs or improvements to its electric system, Cheney shall have the right to temporarily suspend the delivery of Electric Power to the Facility. In such cases, Cheney will give reasonable prior notice to Customer if circumstances permit. Whenever an interruption of service can be planned, Cheney will schedule its activities by mutual agreement with Customer. Any interruption will be as short in duration as practicable in accordance with prudent utility practices. Cheney further reserves the right to reduce the supply of power hereunder due to curtailment or proration requirements of governmental regulations or power suppliers without incurring any liability to Customer.

### **SECTION F: ACCESS RIGHTS**

1. Easements: Cheney's obligation to provide Electric Power service under this Contract is contingent upon Cheney's ability to obtain any and all easements across private property that may be necessary to install, operate and maintain the Distribution Facilities. Cheney shall use commercially reasonable efforts to obtain any such required easements. Upon request by Cheney, Customer shall cooperate in good faith with Cheney's efforts to obtain such easements.
2. Access: The duly authorized agents of Cheney shall have access at all reasonable hours to Customer's premises for the purpose of installing, inspecting, testing, maintaining, replacing, modifying or removing Distribution Facilities, reading meters, and for such other purposes necessary or incidental to carrying out this Contract. Any and all agents of Cheney shall comply with all applicable access and safety rules while on Customer's premises. Customer agrees to promptly advise Cheney of all such rules and subsequent amendments thereof.

## SECTION G: MISCELLANEOUS

1. Events of Default: Each of the following shall constitute an "**Event of Default**" hereunder:
  - a. Failure of either Party to make any payment required by this Contract when due, if such failure is not cured within ten (10) days after such payment becomes due;
  - b. Failure of either Party to perform any material obligation hereunder, if such failure is not cured within thirty (30) days after receipt by the non-performing Party of written notice from the other Party of such failure;
  - c. Either Party makes an assignment for the benefit of its creditors;
  - d. Either Party files a petition or otherwise commences, authorizes or acquiesces in the commencement of a proceeding or cause of action under any bankruptcy, insolvency, or similar law for the protection of creditors, or has such petition filed against it and such petition is not withdrawn or dismissed for sixty (60) days after such filing;
  - e. Customer fails to provide and maintain the Payment Security required by Section C.4 of this Contract.
2. Remedies: During the continuation of an Event of Default, the non-defaulting Party shall have the right, but not the obligation, to:
  - a. Suspend performance of its obligations under this Contract including disconnecting Electric Power for the period of default.
  - b. Recover from the defaulting Party all costs, fees, charges and expenses (including reasonable attorneys' fees) ("**Costs and Fees**") incurred as a result of such Event of Default (including during any applicable cure period whether or not the non-defaulting Party has elected to suspend performance during such cure period).

- c. Send the defaulting Party an invoice for such Costs and Fees or other amounts as are due and payable to the non-defaulting Party at such time under this Agreement. Such invoice shall be payable upon receipt by the defaulting Party.
  - d. Terminate this Contract by written notice designating the date of termination (“**Termination Date**”) and delivered to the defaulting Party no less than ten (10) days before such Termination Date.
  - e. In the case of an Event of Default for Customer’s failure to pay when due any amount owed to Cheney under this Contract, Cheney may apply the Prepayment maintained pursuant to Section C.4 to make the payment. The provisions of this Section G.2.e shall be in addition to any other remedies provided to Cheney herein.
  - f. Exercise any other rights and remedies under this Contract or under any applicable law then in effect.
3. Mitigation: The non-defaulting Party shall undertake all commercially reasonable efforts to mitigate its damages.
  4. No Assignment: Neither Party may assign their interest in this Contract.
  5. Entire Agreement and Modification: This Contract, the Exhibits attached hereto and any applicable provisions of the Cheney Municipal Code, customer policies or Rate Schedules adopted by Cheney, constitute the entire agreement of the Parties hereto with respect to the transactions addressed herein. Any amendments to this Contract must be in writing and signed by both Parties.
  6. No Waiver: Any waiver at any time by either Party hereto of its rights with respect to any default of the other Party hereto, or with respect to any other matter arising in connection with this Contract, shall not be considered a waiver with respect to any subsequent default or matter. A delay by a Party in asserting any right hereunder shall not be deemed a waiver of any right under this Contract.
  7. Attorney Fees: If any action at law or in equity is taken to enforce or interpret the terms of this Contract or for the breach hereof, the prevailing Party shall be entitled to its reasonable attorneys’ fees, costs and necessary disbursements as determined by a court with competent jurisdiction to be paid by the losing Party in addition to any other relief to which such prevailing Party may be entitled at trial and on appeal.
  8. Limitation of Liability: Except as expressly provided in this Contract, neither Party shall be liable for special, incidental, exemplary, indirect or consequential damages, whether based in contract or tort (including such Party’s own negligence) or under any legal theory which includes, but is not limited to, damages consisting of loss of profits or revenue, loss of use of equipment, cost of capital, cost of substitute equipment, facility equipment malfunction, loss of source code, data or information, delay in data processing or other costs, expenses and fees that may occur or result

from this Contract. Cheney shall not be liable to Customer for any loss or damages of any type or nature arising out of the interruption, fluctuation, outage, change in voltage, or other electrical disturbance associated with the provision of Electric Power service to the Facility, nor shall such event constitute a breach of contract on the part of Cheney.

9. Legal Authority: Each Party represents and warrants that: (i) it is duly organized and validly existing under the laws of the State of Washington, (ii) it has all requisite power and authority to carry on the business to be conducted by it and enter into this Contract, (iii) the execution and delivery of this Contract and the performance of the Party's obligations have been duly authorized and all necessary action has been taken, and (iv) this Contract is legal, valid and binding and enforceable in accordance with its terms.
10. Governing Law: This Contract shall be governed by the laws of the State of Washington and the ordinances and resolutions adopted by the City Council.
11. Notices: All written notices, demands or requests required under this Contract shall be considered given when delivered in person, by facsimile or email, or sent by first class U.S. mail, postage prepaid, or by overnight delivery service, directed to the attention of the following:

To Customer:

Attn: Mr. John Tree  
Willow Street Mining, Inc.  
1618 Willow Street  
Cheney, WA 99004

To Cheney:

Mayor  
City of Cheney  
609 2nd Street,  
Cheney, WA 99004

12. Generation: Customer shall not install or operate, either directly or through third parties, electrical generation at the Facility site or interconnected to the Facility without the prior written consent of Cheney.
13. Uncontrollable Force: Neither Party shall be liable to the other for any charges, damages, or claims of damage attributable to any Uncontrollable Force. An "Uncontrollable Force" includes any cause or event that, by the exercise of reasonable diligence, the affected Party is unable to avoid. Uncontrollable Forces include, but are not limited to, injunction or other decree or order of any court or government agency having jurisdiction, sabotage, labor disputes, strikes, lock-outs, work stoppages, riot, insurrection, acts of public enemy, fire, flood, explosion, extraordinary action

of the elements, earthquake or other acts of God, or failure or loss of facilities (including the Distribution Facilities and facilities of third parties providing power or transmission services). If either Party is rendered wholly or partly unable to perform any of its obligations under this Contract by reason of Uncontrollable Force, such obligation shall be suspended or excused, provided that such Party shall give prompt written notice of such fact to the other Party and shall exercise due diligence to remove such inability within a reasonable time period. Neither Party shall be relieved by operation of this Section of any payment obligation or liability with respect to performance that occurred prior to the Uncontrollable Force.

14. No Third Party Beneficiary: Nothing in this Contract shall be construed to create any duty to, any standard of care with reference to, or any liability to any person not a Party to this Contract. There shall be no express or implied third party beneficiary of this Contract. No entity or person, other than the Parties, shall have the right to enforce any right under this Contract.
15. No Dedication of Facilities: Nothing in this Contract shall be construed as or shall constitute the dedication of Cheney's electric system, or any portion thereof, to Customer or to the Facility.

**SECTION I: SIGNATURES**

The undersigned, as of the date indicated at signature, as duly authorized representatives of The City of Cheney and Willow Street Mining, Inc. do hereby agree to the terms and conditions of this Contract as set forth herein. This Contract may be executed in any number of counterparts, and upon execution by all Parties, each executed counterpart shall have the same force and effect as an original instrument and as if all Parties had signed the same instrument.

**City of Cheney**

\_\_\_\_\_

By \_\_\_\_\_

By \_\_\_\_\_

\_\_\_\_\_  
Chris Grover

\_\_\_\_\_  
Printed Name

\_\_\_\_\_  
Mayor

\_\_\_\_\_  
Title

Attest:

\_\_\_\_\_  
Cindy Niemeier, Finance Director

## Exhibit A

### RATE SCHEDULE – NEW LARGE SINGLE ELECTRIC LOAD

1) APPLICABILITY

The following rates shall be applicable to Willow Street Mining, Inc. datacenter facility (“Facility”) located at 2416 Cheney-Spokane Road, Cheney, WA 99004.

3) BASE CHARGE

A fee of **\$75.00** per month shall be charged for each meter.

4) ENERGY CHARGE

The charge for energy metered under this rate shall be:

**\$0.0425** per kilowatt-hour

5) DEMAND CHARGE

Demand shall be the maximum average kva (thousand volt amps) load used by the Facility for any period of 15 consecutive minutes during the month for which the bill is rendered, as indicated or recorded by a demand meter and shall be billed at the following rate:

**\$5.75 per kva**

6) TAX ADJUSTMENT

Billing is subject to tax adjustment as provided by law.

7) EFFECTIVE DATE

This rate schedule shall be effective for all bills on or after the Effective Date of the Electric Power and Service Agreement.

This Rate Schedule is adopted by Resolution E-\_\_ of the City of Cheney.



## Exhibit B

### PREPAYMENT AMOUNT

The Prepayment Amount will be two months of estimate billing (rounded to the nearest \$1,000). The initial Prepayment Amount will be based on installed capacity and will be equal to the following amounts as calculated below:

\$77,000 for 1 mw installed capacity

\$155,000 for 2 mw installed capacity

\$232,000 for 3 mw installed capacity

Data Center estimated billing  
Cheney Large Industrial Rate

Base Rate	\$	75.00		
Energy Charge	\$	0.0425		
Demand Charge	\$	5.75		
Average hours/month		730		
Estimated Capacity Factor		90%		
Peak Demand (KW)		1,000	2,000	3,000
Average usage (KW)		900	1,800	2,700
Kwh used		657,000	1,314,000	1,971,000

#### Charges

Base	\$	75.00	\$	75.00	\$	75.00
Energy	\$	27,922.50	\$	55,845.00	\$	83,767.50
Demand Charge	\$	5,750.00	\$	11,500.00	\$	17,250.00
Total-monthly	\$	33,748	\$	67,420	\$	101,093
Total-annually	\$	404,970	\$	809,040	\$	1,213,110
taxes-annually	\$	59,733	\$	119,333	\$	178,934
Final Bill-monthly	\$	38,725	\$	77,364	\$	116,004
Final Bill-annually	\$	464,703	\$	928,373	\$	1,392,044
Deposit	\$	77,000	\$	155,000	\$	232,000

CITY OF CHENEY  
CITY COUNCIL ACTION REQUEST

<b>ISSUE:</b>	<b>2018 Sidewalk Project – Contract</b>	<b>AGENDA ITEM #:</b>	<b>18-053</b>
<b>DEPT. OF ORIGIN:</b>	Public Works	<b>DATE:</b>	5/16/2018

<b>EXHIBITS ATTACHED OR REFERENCED:</b>	(1) Resolution E-627 (2) Contract
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<b>Council Committee Recommendation</b>	Yes		No		None	
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<b>DEPT/DEPT HEAD INITIALS</b>	<b>APPROVE</b>	<b>DO NOT APPROVE</b>	<b>NO COMMENT</b>	<b>COMMENTS</b>
Public Works/TA	TA			

<b>FISCAL IMPACT</b>	<b>EXPENDITURE REQUIRED:</b>	\$ 40,100.00	<b>AMOUNT BUDGETED</b>	
	<b>APPROPRIATION REQUESTED:</b>	\$ 44,200.00 expenses plus contingencies		

<b>SUMMARY:</b>	The Public Works Department requested quotes for the 2018 Sidewalk Project. We received two quotes with Five Star Concrete Inc. submitting the lowest quote for \$ 40,100.00. The project includes sidewalk removal and replacement over several areas of the City.
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<b>COUNCIL ACTION REQUESTED:</b>	Passage of Resolution E-627
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\_\_\_ **APPROVED FOR AGENDA**                      \_\_\_ **DISAPPROVED**

May 22, 2018  
\_\_\_\_\_  
**COUNCIL MEETING DATE**

\_\_\_\_\_  
**MAYOR/CITY ADMINISTRATOR**

City of Cheney, Washington  
609 Second Street  
Cheney, WA 99004

**CITY OF CHENEY, WASHINGTON  
RESOLUTION E-627**

**A RESOLUTION AUTHORIZING THE MAYOR TO SIGN A CONTRACT WITH FIVE STAR CONCRETE FOR THE 2018 SIDEWALK PROJECT**

**WHEREAS**, the Public Works Department received two quotes for 2018 Sidewalk Project; and

**WHEREAS**, Five Star Concrete, Inc. submitted the lowest qualified quote in the amount of \$ 40,100.00.

**NOW THEREFORE, BE IT RESOLVED** the Cheney City Council by majority vote hereby authorize the Mayor to sign a contract with Five Star Concrete, Inc in the amount of \$ 40,100.00 for the 2018 Sidewalk Project. In addition, the City Council of the City of Cheney authorizes an appropriation amount of \$ 44,200.00 for quoted work plus contingencies.

**ADOPTED**, on this 22<sup>nd</sup> day of May, 2018 by the Cheney City Council at their regularly scheduled meeting at the Cheney Council Chambers, 609 Second Street, Cheney, WA 99004

\_\_\_\_\_  
Chris Grover, Mayor

Attest:

\_\_\_\_\_  
Cynthia L. Niemeier, City Clerk

## AGREEMENT FOR CONSTRUCTION SERVICES

**THIS AGREEMENT** is made by and between the City of Cheney, a code City of the State of Washington (“**City**”) and Five Star Concrete, Inc. (“**Contractor**”), jointly referred to as “**Parties**”.

IN CONSIDERATION of the terms and conditions contained herein the Parties covenant and agree as follows:

1. **Work to Be Performed.** The Contractor shall do all work and furnish all labor, tools, materials, supplies and equipment for the 2018 Sidewalk Project (“**Work**”) in accordance with, and as described in the plans, specifications, drawings, instructions and other documents provided by the City, as amended which are by this reference incorporated herein and made part hereof (the “**Contract Documents**”). To the extent applicable or reasonably necessary to interpret the Work, the most recent publication of the Standard Specifications for Road, Bridge and Municipal Construction of the Washington State Department of Transportation (see <http://www.wsdot.wa.gov/Publications/Manuals/M41-10.htm>) is incorporated into the Contract Documents. All changes in the work shall be performed in accord with the Contract Documents, unless determined otherwise by the City.

The Contractor, as set forth in the Contractor’s bid proposal attached hereto as Exhibit A (the “**Bid Proposal**”), shall assume and be responsible for the cost and expense of all Work provided in the and Contract Documents, except those items agreed in writing to be furnished by the City of Cheney.

The Mayor or designee shall administer and be the primary contact for Contractor. Prior to commencement of work, Contractor shall contact the Mayor or designee to review the Work, schedule, and time of completion. Contractor shall receive written authorization from the City to proceed with the Work. Upon notice from the Mayor or designee, Contractor shall promptly commence Work, complete the same in a timely manner, and cure any failure in performance under this Agreement.

All Work shall be performed in conformance with the Contract Documents, City and State standards and Bid Proposal. Contractor acknowledges review of the Contract Documents and accepts the same. In the event of a conflict between the Contract Documents, City and State standards or Bid Proposal, they shall be interpreted and given precedence in the order listed herein.

2. **Term of Contract.** This Contract shall be in full force and effect upon execution of this Agreement and shall remain in effect until final completion of the Work or acceptance of the Work by the City.

The City may terminate this Agreement by ten (10) days written notice to the other party. In the event of such termination, the City shall pay the Contractor for all Work previously authorized and satisfactorily performed prior to the termination date.

3. **Compensation.** The City agrees to pay the Contractor \$ 40,100.00 provided such amount does not exceed the Bid Proposal.

4. **Payment.** The Contractor may elect to be paid in monthly installments upon presentation of an invoice to the City, or in a lump sum upon completion of the Work. Applications for payment shall be sent to the City at the below-stated address.

The City reserves the right to withhold payment under this Agreement if the Work is determined, in the reasonable judgment of the Mayor or designee, to be noncompliant with the Contract Plans, Contract Documents, City or State standards, or Bid Proposal.

5. **Retainage.** State law requires the City when contracting for a public improvement or work, other than performance of professional services, it withhold from monies earned by the Contractor during the progress of the Work, a sum not to exceed 5% of the cost of the Work ("**Retainage**"). as The Retainage is a trust fund held by the City for the protection and payment of any person, mechanic, subcontractor or material men who shall perform any labor upon the contract, as well as, the State of Washington, with respect to taxes imposed pursuant to RCW Title 82. The Retainage is held by the City pursuant to RCW 60.28.010 with the Contractor having certain options concerning the deposit or escrow of such funds. The Contractor may elect to submit a bond to the City for all or any portion of the Retainage. After completion of the Work, other than landscaping, the Contractor may request that the City release the Retainage and sixty (60) days thereafter the City shall pay the Retainage provided there are no claims against the retained funds and the City has received from Department of Revenue, Employment Security Department and the Department of Labor and Industries certificates that all taxes, increases and penalties have been paid.

In lieu of Retainage, the Contractor may substitute a bond for the purposes set forth in RCW Chapter 60.28.

6. **Notice.** Notice shall be given in writing as follows:

TO THE CITY:

Name: Todd Ableman  
City of Cheney Public Works Director  
Phone Number: (509) 498-9293  
Address: 112 Anderson Road  
Cheney, WA 99004

TO THE CONTRACTOR:

Five Star Concrete, Inc  
Phone Number: 509-226-1189  
Address: 4307 S Fossean Rd  
Spokane, WA 99224

7. **Applicable Laws and Standards.** The Parties, in the performance of this Agreement, agree to comply with all applicable Federal, State and local laws, and City ordinances and regulations. Contractor shall exercise best efforts, including the selection of highest quality materials; so that all Work performed shall be in compliance with current related industry standards.

8. **Relationship of the Parties.** It is hereby understood, agreed and declared that the Contractor shall be an independent contractor, and is not the agent or employee of the City. The

City is interested only in the results to be achieved with the right to control the particular manner, method and means in which the services are performed solely within the discretion of the Contractor. Any and all employees who provide services to the City under this Agreement shall be deemed employees solely of the Contractor. The Contractor shall be solely responsible for the conduct and actions of all employees, agents and persons under its control and authority including any liability that may attach thereto.

9. **Contractor to Be Licensed, Bonded and Insured.**

A. **Licensed.** The Contractor shall be duly licensed by the State of Washington pursuant to RCW 39.06.010.

B. **Bond.** The Contractor shall, except as set forth below, obtain a bond from a surety company in an amount equal to the Contract Price for the purpose of guaranteeing the faithful performance of this contract, including paying all labors, mechanics, subcontractors and material men pursuant to RCW 39.08.010.

On contracts of one hundred fifty thousand dollars (\$150,000.00) or less, at the option of the contractor or the general contractor/construction manager as defined in RCW [39.10.210](#), may, in lieu of the bond, have the City retain ten percent (10%) of the contract amount for a period of thirty (30) days after date of final acceptance, or until receipt of all necessary releases from the department of revenue, the employment security department, and the department of labor and industries including the settlement of any liens filed under chapter [60.28](#) RCW, whichever is later. The recovery of unpaid wages and benefits must be the first priority for any actions filed against retainage held by the City.

C. **Insurance.** Contractor shall purchase and maintain, during the term of this Agreement, a comprehensive general liability policy in the amount of \$1,000,000.00 per occurrence, with the City as an additional named insured. A copy of the certificate shall be provided to the City. Notice of cancellation of such insurance shall be given to the City by Contractor's insurer.

10. **Prevailing Wages on Public Works.** This Agreement provides for the construction of a public work and payment of prevailing wages according to Washington law. All employees, workers, laborers or mechanics shall be paid a prevailing rate of wage that is set forth in an attachment to this Agreement. The payment of prevailing wages is required by Washington law, RCW 39.12.020 and WAC 296-127-01308. A prevailing rate of wage is determined by the Industrial Statistician of the Department of Labor and Industries. RCW 39.12.015.

Before any payment may be made to Contractor, a "Statement of Intent to Pay Prevailing Wages" must be submitted to the City. Following final acceptance of the public works project, the Contractor and each subcontractor shall submit an "Affidavit of Wages Paid" before retained funds will be released to the Contractor. The affidavit must be certified by the Industrial Statistician of the Department of Labor and Industries. Any exemption to the above must be submitted by Contractor through an acknowledged statement.

11. **Warranty.** Unless provided otherwise in the Contract Documents, Contractor warrants all work and materials performed or installed under this Contract is free from defect or failure for a period of one year following final acceptance by the City, unless a supplier or manufacturer has a warranty for a greater period, which warranty shall be assigned to the City. In the event a defect or failure occurs in work or materials, the Contractor shall within the warranty period remedy the same at no cost or expense to the City.

12. **Indemnification and Hold Harmless.** Contractor assumes responsibility for and shall defend, indemnify and hold the City, its agents, employees and officials (hereinafter “**Indemnitee**”) harmless from any and all claims, demands, damages, expenses, losses, fines, penalties or liabilities, including loss of use, arising from, resulting in any manner directly or indirectly from or connected with or in the course of the performance of the Work and the obligations herein, including without limitation claims of subcontractors and suppliers contracting with Contractor. Contractor’s obligation to defend, indemnify and hold Indemnitee harmless shall include, but is not be limited to, Indemnitee’s personnel-related costs, attorney and expert fees, court costs, and all other claim-related expenses, to the fullest extent permitted by law, even though such claims may prove to be false, groundless, or fraudulent, subject only to the limitations provided below.

Contractor’s duty to indemnify shall not apply to liability for damages arising out of bodily injury to persons or damage to property caused by or resulting from: (a) the sole negligence of Indemnitee or (b) the concurrent negligence of (i) Indemnitee, its agents or employees and (ii) Contractor, its agents or employees with such liability limited to the extent of Contractor or Contractor’s agents or employees negligence. RCW 4.24.115

Contractor specifically and expressly waives any immunity that may be granted it under the worker’s compensation laws under the Washington State Industrial Insurance Act, Title 51 RCW; provided that such waiver shall be expressly limited to Contractor’s indemnity obligations herein and shall not be intended as a benefit to any third party. Further, the indemnification obligation under this Contract shall not be limited in any way by any limitation on the amount or type of damages, compensation or benefits payable to or for any third party under workers compensation acts, disability benefits acts, or other employee benefits acts. This waiver was mutually negotiated.

The partial or complete invalidity of any one or more provisions of this Section shall not affect the validity or continuing force and effect of any other provision. If any provision is invalid, in whole or in part, the balance of the provisions shall be considered reformed to reflect the intent of the parties to the greatest extent possible consistent with the law. The provisions of this section shall survive termination of this Agreement.

13. **Waiver.** No waiver in one instance shall be held to be waiver of any subsequent breach or nonperformance. All remedies afforded in this Agreement, or by law, shall be taken and construed as cumulative, and in addition to every other remedy provided herein or by law. Failure of either party to enforce, at any time, any of the provisions of this Agreement, or to require, at any time, performance by the other party of any provision hereof, shall in no way be

construed to be a waiver of such provisions, nor shall it affect the validity of this Agreement, or any part thereof.

14. **Assignment and Delegation.** Neither party shall assign, transfer, or delegate any of the responsibilities of this Agreement, or the benefits received hereunder, without first obtaining the written consent of the other party.

15. **Jurisdiction and Venue.** This Contract is entered into in Spokane County, Washington. Venue shall be in Spokane County, State of Washington.

16. **Arbitration.** All disputes arising under this Agreement shall be resolved through arbitration pursuant to State law. Rules for arbitration shall be those prescribed by the American Association of Arbitration.

17. **Entire Agreement.** This written Agreement constitutes the entire and complete agreement between the Parties, and supersedes any prior oral or written agreements. This Agreement may not be changed, modified, or altered, except in writing and signed by the Parties hereto.

18. **Anti-kickback.** No officer or employee of the City, having the power or duty to perform an official act or action related to this Agreement, shall have, or acquire, any interest in this Agreement, or have solicited, accepted, or granted, a present or future gift, favor, service, or other thing of value from any person with an interest in this Agreement.

19. **Exhibits.** Exhibits attached and incorporated into this agreement are:

**Exhibit "A" "Five Star Concrete, Inc. Bid Proposal" Dated 4/24/18**

IN WITNESS WHEREOF, the parties have executed this Agreement this \_\_\_\_ day of \_\_\_\_\_, 2018.

CITY OF CHENEY:

CONTRACTOR:

\_\_\_\_\_  
Chris Grover, Mayor

By: \_\_\_\_\_  
Its: \_\_\_\_\_

Fed Tax ID No. \_\_\_\_\_

ATTEST:

\_\_\_\_\_  
Cindy Niemeier, Finance Director

[End of Agreement]



CITY OF CHENEY

CITY COUNCIL ACTION REQUEST

ISSUE: Waiving the Competitive Bid Requirements

AGENDA ITEM #: 18-054

DEPT. OF ORIGIN: Police

DATE: May 17, 2018

EXHIBITS ATTACHED OR REFERENCED: Resolution E-628

Council Committee Recommendation		Yes	No	None
DEPT / DEPT HEAD INITIALS	APPROVE	DO NOT APPROVE	NO COMMENT	COMMENTS
Chief of Police	JH			
FISCAL IMPACT	EXPENDITURE REQUIRED:		AMOUNT BUDGETED:	
	APPROPRIATION REQUESTED:			

**SUMMARY:** Approval of Resolution E-628 would waive the competitive bid requirements and authorize the acquisition of a used sedan to replace an unsafe detective vehicle, in order to properly provide and continue to perform essential police services within the city.

**COUNCIL ACTION REQUESTED:** Approval of Resolution E-628

**APPROVED FOR AGENDA**       **DISAPPROVED**

May 22, 2018  
 \_\_\_\_\_  
**COUNCIL MEETING DATE**

\_\_\_\_\_  
**MAYOR/CITY ADMINISTRATOR**

City of Cheney  
609 Second Street  
Cheney, WA 99004

**CITY OF CHENEY, WASHINGTON**

**RESOLUTION E-628**

**A RESOLUTION WAIVING THE COMPETITIVE BID REQUIREMENTS  
FOR THE ACQUISITION OF A USED SEDAN**

**WHEREAS**, the policy of the State of Washington is to encourage competitive bidding of purchases and supplies by municipalities in order to obtain the lowest responsive bid; and

**WHEREAS**, certain exceptions exist to the above policy for the purchase of equipment including when the purchase involves an emergency, single source of supply, special facilities, or market conditions; and

**WHEREAS**, the City desires to acquire a used sedan to replace an unsafe detective vehicle, which is used to provide investigative services to further the best interests of the City; and

**WHEREAS**, the Police Chief has reported an emergency situation exists without a detective vehicle; and

**WHEREAS**, the Police Department does not have a spare replacement vehicle; and

**WHEREAS**, an adequate used sedan has been located in Spokane Valley to eliminate the emergency.

**NOW, THEREFORE, BE IT RESOLVED** by the City Council of the City of Cheney, Washington, as follows:

The City Council, pursuant to RCW 39.04.280 and/or RCW 35.23.352, hereby waives the competitive bidding requirements to authorize the acquisition of a used sedan to provide investigative services to the community. The City Council finds such waiver is reasonable and necessary due to the emergent needs of the Police Department. It is further necessary to acquire the vehicle at this time in order to properly provide and continue to perform essential police services within the City. Through this resolution, the City Council intends to waive the competitive bidding requirements in recognition of the above facts and circumstances.

**ADOPTED** on this **22<sup>nd</sup> day of May, 2018**, by the Cheney City Council at their regularly scheduled meeting at the Cheney City Council Chambers, 609 Second Street, Cheney, WA 99004.

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Chris Grover, Mayor

ATTEST:

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Cynthia L. Niemeier, City Clerk