



Regular City Council Meeting Agenda
City Council Chambers
July 24, 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 July 10, 2018

Documents:

[7-10-18.PDF](#)

- D. Vouchers/Payroll

Voucher Total = \$852,994.75

- 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. 18-070 - Resolution E-638 - Wastewater Headworks Rehab Project Bid Rejection
The Public Works Department requested bids for the Wastewater Headworks Rehab Project. We received two bids with TML Construction, Inc. submitting the lowest bid for \$154,200.00 plus taxes. Bid was higher than estimate and staff is requesting rejection of the bid.

Documents:

[CCAR 18-070 WW HEADWORKS REHAB PROJECT AWARD.PDF](#)
[RES E-638 WW HEADWORKS REHAB PROJECT BID REJECTION.PDF](#)
[WW HEADWORKS REHAB PROJECT BID RESULTS.PDF](#)

2. 18-073 - Resolution E-640 - Public Defender Agreement With Shawn Carr

A resolution authorizing the Mayor to sign an agreement with Shawn Carr for indigent defense professional services.

Documents:

[COUNCIL ACTION FORM FOR PUBLIC DEFENDER AGREEMENT - CARR - 2018 - RES E-640.PDF](#)
[RES E-640 - INDIGENT DEFENSE PROFESSIONAL SERVICES - CARR 2018.PDF](#)
[AGREEMENT FOR PUBLIC DEFENDER - CARR 2018 - FINAL.PDF](#)

3. 18-074 - Resolution E-641 - 2018 Electrical Engineering Services Award
The Light Department requested sealed bids for 2018 Electrical Engineering Services. Staff has reviewed the proposals and Ripplinger Engineering Lab received the highest score.

Documents:

[CCAR 18-074 2018 ELECTRICAL ENGINEERING SERVICES AWARD.PDF](#)
[RES E-641 2018 ELECTRICAL ENGINEERING SERVICES.PDF](#)
[20180717 CHENEY SUBSTATION BREAKER REPLACEMENT DESIGN ENGINEERS ESTIMATE.PDF](#)

4. 18-075 - Resolution E-642 - 2018 Replacement Well 3 Drilling Project Award
The Public Works Department requested bids for the 2018 Replacement Well 3 Drilling Project. We received four bids with Blue Star Enterprises Northwest Inc submitting the lowest bid for \$724,890.00 plus taxes.

Documents:

[CCAR 18-075 2018 REPLACEMENT WELL 3 DRILLING PROJECT AWARD.PDF](#)
[RES E-642 2018 REPLACEMENT WELL 3 DRILLING PROJECT AWARD.PDF](#)
[BID RESULTS 2018 REPLACEMENT WELL 3 DRILLING PROJECT.PDF](#)
[2018 REPLACEMENT WELL 3 DRILLING PROJECT CONTRACT.PDF](#)

5. 18-076 - Resolution E-643 - 2018 CDBG Project Award
The Public Works Department requested bids for the 2018 CDBG Project. We received five bids with Red Diamond Construction submitting the lowest bid for \$182,735.00 plus taxes.

Documents:

[CCAR 18-076 2018 CDBG PROJECT AWARD.PDF](#)
[RES E-643 2018 CDBG PROJECT AWARD.PDF](#)
[BID RESULTS 2018 CDBG PROJECT.PDF](#)
[2018 CDBG PROJECT CONTRACT.PDF](#)

6. 18-077 - Resolution E-644 - 2017 Cheney Arterial Lane Striping Appropriation Increase
The City Council authorized the Mayor to sign a contract with Sharp-Line Industries on 9/7/17 for the 2017 Cheney Arterial Lane Striping Project. Sharp-Line completed \$4791.60 in the fall of 2017 before weather intruded. Sharp-Line is now Stripe Rite and they returned in 2018 to complete the work. Original appropriation was \$15,100.00. The project exceeded the original appropriation amount by \$6,353.65 including taxes. Staff requests an increase of the appropriation amount

by \$6,353.65 including taxes.

Documents:

[CCAR 18-077 2017 ARTERIAL LANE STRIPING PROJECT APPROPRIATION INCREASE.PDF](#)
[RES E-644 2017 ARTERIAL LANE STRIPING PROJECT APPROPRIATION INCREASE.PDF](#)

Ordinances

Other Business

K. Staff Reports

L. Mayor's Report

M. Council Reports

N. Executive Session

O. Adjournment

REGULAR CITY COUNCIL MEETING
July 10, 2018

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

B. Roll Call – Excused Absences Councilmembers present included Councilmember Nixon, Councilmember Schmidt, Councilmember Weiszmann, Councilmember Gaard, Councilmember Hilton, and Councilmember Taves. Staff members present included Mr. Schuller, Ms. Niemeier, Mr. Schwartz, Ms. MacDonald, Mr. Hensley, Mr. Ableman, Mr. Boorman, Mr. Jenkins, and Mr. Nilles. Mayor Pro Tem Overhauser stated that Councilmember Hilton requested to be excused from the July 24 meeting and Councilmember Nixon from the August 28 meeting. Councilmember Schmidt moved to excuse the absences. Councilmember Nixon seconded. Carried unanimously.

C. Minutes of the Regular City Council meeting of June 26, 2018 were approved as distributed.

D. Claims and Vouchers nos. 144106 through 144221 and June interdepartmental billing in the amount of \$173,430.27; payroll warrants nos. 61667 through 61739 in the amount of \$29,229.24, direct deposits in the amount of \$373,168.32, claims warrants nos. 143560 through 143592 in the amount of \$451,924.48, and transfers to claims clearing fund for distribution of previously expensed and reported benefit adjustments in the amount of \$16,693.83, for a total payroll of \$871,015.87 were approved as read.

E. Claims for Damages Ms. Niemeier stated that there is one claim from George Khoury for \$956.35. Councilmember Schmidt stated that the Finance Committee discussed this and he moved to reject the claim. Councilmember Nixon seconded. Carried unanimously.

F. Small Contracts None

G. Information Items None

H. Appointments None

I. Citizen Comments Chris Babcock, 2607 Wheaton Ln, thanked the Council for having Hibbard Park mowed. She provided more information on dog parks. She visited the South Hill dog park. It is run by volunteers and is natural land. There is no water service there. The volunteers bring water and empty the garbage. Most dog parks are built on land that cannot be used for anything else. Councilmember Nixon stated that he wants to make sure a dog park does not become the City's responsibility.

J. Action Items

1. 18-071 – Resolution E-639 – NRU Member Director Appointment Mr. Boorman stated that he has been doing this for three years but they now require a formal resolution appointing him. Councilmember Gaard moved for approval of Resolution E-639. Councilmember Hilton seconded. Carried unanimously.

2. 18-061 – Ordinance X-29 – 2018-2023 Capital Facilities Plan Mr. Ableman stated that there have been no comments since the last meeting. Councilmember Schmidt moved for the second reading of Ordinance X-29 in title and summary form only, that reading considered the third, and that it be placed before Council for final passage. Councilmember Nixon seconded. Carried unanimously. Yes votes: Councilmember Nixon, Councilmember Schmidt, Councilmember Weiszmann, Councilmember Gaard, Councilmember Hilton, Councilmember Taves. Ordinance X-29 passed.

3. 18-062 – Ordinance X-30 – Critical Areas Ordinance Update Mr. Ableman stated that there have been no comments since the last meeting. Councilmember Schmidt moved for the second reading of Ordinance X-30 in title and summary form only, that reading considered the third, and that it be placed before Council for final passage. Councilmember Nixon seconded. Carried unanimously. Yes votes: Councilmember Nixon, Councilmember Schmidt, Councilmember Weiszmann, Councilmember Gaard, Councilmember Hilton, Councilmember Taves. Ordinance X-30 passed.

4. 18-066 – Ordinance X-31 – Zoning Code Consistency Mr. Ableman stated that there have been no comments since the last meeting. Councilmember Schmidt moved for the second reading of Ordinance X-31 in title and summary form only, that reading considered the third, and that it be placed before Council for final passage. Councilmember Nixon seconded. Carried unanimously. Yes votes: Councilmember Nixon, Councilmember Schmidt, Councilmember Weismann, Councilmember Gaard, Councilmember Hilton, Councilmember Taves. Ordinance X-31 passed.

5. 18-068 – Ordinance X-32 – Amending Development Standards for Nonresidential Buildings Mr. Ableman stated that there have been no comments since the last meeting. Councilmember Schmidt moved for the second reading of Ordinance X-32 in title and summary form only, that reading considered the third, and that it be placed before Council for final passage. Councilmember Nixon seconded. Yes votes: Councilmember Nixon, Councilmember Schmidt, Councilmember Weismann, Councilmember Gaard, Councilmember Hilton, Councilmember Taves. Ordinance X-32 passed.

6. 18-072 – Ordinance X-33 – 2018 Budget Amendment #1 Ms. Niemeier stated that the total amendment is \$16,700. The changes include RVI scanning equipment, servers, and the sander we purchased over the winter. Councilmember Schmidt moved for the first reading of Ordinance X-33 in title and summary form only, that reading considered the second and third, and that it be placed before Council for final passage. Councilmember Nixon seconded. Carried unanimously. Yes votes: Councilmember Nixon, Councilmember Schmidt, Councilmember Weismann, Councilmember Gaard, Councilmember Hilton, Councilmember Taves. Ordinance X-33 passed.

K. Staff Reports Mr. Ableman stated that the water level dropped considerably last weekend. Mr. Schuller stated that we placed reader boards to ask for conservation. Irrigation at the parks and the school district has stopped. We looked for leaks over the weekend and did not find anything. We have asked the heavy users to conserve. Mr. Schuller stated that the Special Olympics athletes competed in the USA Games. They won 3 gold and 3 silver medals. He congratulated all of the athletes.

L. Mayor’s Report None

M. Council Reports Councilmember Nixon attended the AWC conference. Councilmember Schmidt stated that there is a Public Works and Utilities committee meeting Thursday at 10 a.m. Mr. Ableman has scheduled a tour of the wastewater treatment facility for July 18 at 10:00 a.m. One of the candidates running for the State legislature is interested. Councilmember Weismann attended the AWC conference. She presented scholarship information at the conference for a CHS student that received a scholarship from AWC. Councilmember Hilton stated that we have a big week coming up with the rodeo. Councilmember Taves attended the AWC conference. The Cheney Depot Society received documents from BNSF stating that they can get the depot without charge if they comply with all of their requirements.

N. Executive Session None

O. Adjournment Councilmember Schmidt moved to adjourn the meeting. Councilmember Gaard seconded. Carried unanimously. The meeting was adjourned at 6:23 p.m.

City Clerk

Mayor

CITY OF CHENEY
CITY COUNCIL ACTION REQUEST

ISSUE:	Wastewater Headworks Rehab Project Bid Rejection	AGENDA ITEM #:	18-070
DEPT. OF ORIGIN:	Public Works	DATE:	6/27/2018

EXHIBITS ATTACHED OR REFERENCED:	(1) Resolution E-638 (2) Bid Results
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Council Committee Recommendation	Yes		No		None	
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DEPT/DEPT HEAD INITIALS	APPROVE	DO NOT APPROVE	NO COMMENT	COMMENTS
Public Works/TA	TA			

	EXPENDITURE REQUIRED:	\$ plus tax	AMOUNT BUDGETED	
FISCAL IMPACT	APPROPRIATION REQUESTED:	\$		

SUMMARY:	The Public Works Department requested bids for the Wastewater Headworks Rehab Project. We received two bids with TML Construction, Inc. submitting the lowest bid for \$154,200.00 plus taxes. Bid was higher than estimate and staff is requesting rejection of the bid.
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COUNCIL ACTION REQUESTED:	Passage of Resolution E-638
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APPROVED FOR AGENDA

 DISAPPROVED

July 24, 2018

_____ **COUNCIL MEETING DATE**

_____ **MAYOR/CITY ADMINISTRATOR**

City of Cheney
609 Second Street
Cheney, WA 99004

**CITY OF CHENEY, WASHINGTON
RESOLUTION E-638**

**A RESOLUTION AUTHORIZING BID REJECTION THE BID FOR THE
WASTEWATER HEADWORKS REHABILITATION PROJECT**

WHEREAS, TML Construction, Inc. submitted the lowest qualified bid for the Wastewater Headworks Rehabilitation 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 reject the bid received from TML Construction for the amount of \$154,200 plus tax.

NOW THEREFORE, BE IT RESOLVED, by the City Council of the City of Cheney to reject the bid from TML Construction, Inc..

ADOPTED, on this **24th day of July, 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 Niemeier, City Clerk

CITY OF CHENEY, WASHINGTON
BID TABULATION

DEPARTMENT

Sewer _____

PROJECT NO.

RECAP OF Wastewater Headworks Rehab Project

Opened

Wednesday, June 27, 2018, 10 a.m.

**BID
 SCHEDULE # 1**

VENDOR Award Construction	
Unit Price	Total
Roof Removal and Replacement	\$45,000.00
CMU Wall Repair and Painting	\$14,000.00
Electrical	\$53,000.00
Generator Replacement	\$8,500.00
Dimminutor Grinder Removal & Repla	\$22,000.00
Headworks Channel Grating	\$16,400.00
Discharge Valve Installation	\$18,500.00
Natural Gas Line Install	\$24,500.00

VENDOR TML Construction	
Unit Price	Total
	\$39,000.00
	\$10,500.00
	\$23,800.00
	\$15,000.00
	\$12,900.00
	\$14,000.00
	\$17,000.00
	\$22,000.00

VENDOR	
Unit Price	Total
	\$0.00
	\$0.00
	\$0.00
	\$0.00
	\$0.00
	\$0.00
	\$0.00
	\$0.00

VENDOR	
Unit Price	Total
	\$0.00
	\$0.00
	\$0.00
	\$0.00
	\$0.00
	\$0.00
	\$0.00
	\$0.00

Sub-Total
Tax 8.8%
Total

\$201,900.00
\$17,767.20
\$219,667.20

\$154,200.00
\$13,569.60
\$167,769.60

\$0.00
\$0.00
\$0.00

\$0.00
\$0.00
\$0.00

CITY OF CHENEY

CITY COUNCIL ACTION REQUEST

ISSUE Public Defender Agreement with Shawn Carr AGENDA ITEM# 18-073

DEPT. OF ORIGIN: City Administrator DATE 7/24/2018

EXHIBITS ATTACHED OR REFERENCED: Resolution E-640
Agreement for Indigent Defense Professional Services

Council Committee Recommendation	Yes	No	None
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DEPT/DEPT HEAD INITIALS	APPROVE	DO NOT APPROVE	NO COMMENT	COMMENTS
MAS				

FISCAL IMPACT	EXPENDITURE REQUIRED Additional	AMOUNT BUDGETED
	APPROPRIATION REQUESTED \$-0-	

SUMMARY: A resolution of the city council of the City of Cheney, Washington, authorizing the Mayor to sign a professional services agreement with Shawn C. Carr for the provision of indigent defense services. Terms of the agreement the same as those for the City's previous agreement with Sean O'Quinn.

COUNCIL ACTION REQUESTED: Approval of Resolution E-640 authorizing the Mayor to sign the agreement.

_____ APPROVED FOR AGENDA

_____ DISAPPROVED

7/24/2018
COUNCIL MEETING DATE:

MAYOR/CITY ADMINISTRATOR

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

**CITY OF CHENEY, WASHINGTON
RESOLUTION E-640**

**A RESOLUTION AUTHORIZING THE MAYOR TO SIGN AN AGREEMENT WITH
SHAWN C. CARR FOR INDIGENT DEFENSE PROFESSIONAL SERVICES**

WHEREAS, the State of Washington, pursuant to RCW 10.101.005, makes a legislative finding that effective legal representation must be provided for indigent persons consistent with the constitutional requirements of fairness, equal protection, and due process in all cases where the right to counsel attaches; and

WHEREAS, Cheney Municipal Code Section 2.33.010 creates an Office of the Public Defender; and

WHEREAS, Cheney Municipal Code Section 2.33.030 requires the Mayor appoint one or more persons to serve as the public defender; and

WHEREAS, Cheney Municipal Code Section 2.33.050 specifies the duties and standards required of the person appointed; and

WHEREAS, Shawn C. Carr, Attorney at Law, is found qualified and willing to provide indigent defense professional services.

NOW THEREFORE, BE IT RESOLVED by the City Council of the City of Cheney to authorize the Mayor to sign the Agreement for Indigent Defense Professional Services and appoint Shawn C. Carr to serve as the public defender.

ADOPTED, on this 24th day of July, 2018, by the Cheney City Council at their regularly scheduled meeting at Cheney Council Chambers, 609 2nd Street, Cheney, WA 99004.

Chris Grover, Mayor

ATTEST:

Cynthia Niemeier, City Clerk

AGREEMENT FOR INDIGENT DEFENSE PROFESSIONAL SERVICES

Shawn C. Carr, Public Defender

THIS AGREEMENT is made by and between the City of Cheney, a municipal corporation of the State of Washington (the “City”), and Shawn C. Carr (the “Public Defender”). The City and Public Defender are each sometimes referred to herein as a “Party” and together as the “Parties.”

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

1. **Work to Be Performed.** The Public Defender shall provide all labor, services, and material, to satisfactorily perform the duties of the City of Cheney Municipal Court Public Defender, generally described below (the “Scope of Work”).

Pursuant to RCW 39.34.180, the City is responsible for the costs incident to prosecution of misdemeanor and gross misdemeanor offenses which are violations of state statutes that occur within its jurisdiction and that are committed by adults and/or juveniles for traffic offenses pursuant to RCW 13.04.030(1)(e)(iii), as well as misdemeanor or gross misdemeanor offenses which are a violation of City ordinances and committed by adults and/or juveniles for traffic offenses pursuant to RCW 13.40.030(1)(e)(iii).

For the purpose of this Agreement, the Public Defender’s Scope of Work shall include representation of indigent persons as required by the Constitution or defined by RCW Chapter 10.101 and RCW 36.26.070 in conjunction with violations of City Ordinances (which may adopt by reference state statutes) that are punishable as misdemeanor and gross misdemeanor offenses that occur within the City’s jurisdiction and that are committed by adults and/or juveniles for traffic offenses pursuant to RCW 13.04.030(1)(e)(iii), as well as any appeals to Superior Court. Additionally, representation of indigent persons as required by the Constitution or state statutes includes the prosecution of violations of the City’s Traffic Code, as well as any appeals to Superior Court.

During the term of this Agreement, the Public Defender shall be licensed to practice law in the State of Washington and comply with the Rules of Professional Conduct and the requirements of Washington State Supreme Court Order No. 25700-A-1008, as amended (the “Supreme Court Orders”).

In addition, the Public Defender shall assist the City in developing standards for the provision of public defense services as generally identified in RCW 10.101.030 and endorsed by the Washington State Bar Association. These standards shall serve as guidelines to the City for the purpose of providing the Scope of Work.

The City further agrees to provide the Public Defender with an office that will provide for confidential meetings with clients.

A. **Administration.** The Mayor or designee shall administer this Agreement and be the primary contact for the Public Defender.

B. **Representations.** The City has relied upon the qualifications of the Public Defender in entering into this Agreement. By execution of this Agreement, the Public Defender represents it possesses the ability, skill, and resources necessary to perform the work and is familiar with all current laws, rules, and regulations which reasonably relate to the position.

C. Technical Accuracy. The Public Defender shall be responsible for the technical accuracy of its services and documents resulting therefrom, and the City shall not be responsible for discovering deficiencies therein. The Public Defender shall correct such deficiencies without additional compensation except to the extent such action is directly attributable to deficiencies in City-furnished information.

D. Office Hours. The Public Defender shall establish office hours at the City of Cheney Municipal Court for a minimum of four hours per week. The office hours and contact information shall be posted at the City of Cheney Municipal Court. This requirement will be reviewed annually with any adjustments to be mutually agreed upon in writing with the Mayor.

E. Implementation of Standards for Indigent Defense. It is the intent of the Parties to work jointly during the term of this Agreement to develop proposed written policies and procedures to implement or develop a potential case-weighting system in accordance with the Supreme Court Order. It is the intent of the Parties that the total case load, adjusted for case weighing, will comply with the standards adopted by the Supreme Court and allow the Public Defender to certify compliance to the City of Cheney Municipal Court.

F. Reimbursement of Non-Routine Expenses. The City agrees to reimburse to the Public Defender those Non-Routine Expenses incurred in connection with the Scope of Work, provided however, that the Non-Routine Expenses are first approved by the City of Cheney Municipal Court and the Public Defender agrees to comply with the Washington State Supreme Court Orders. As used herein, “**Non-Routine Expenses**” means the following:

- (i) Medical and psychiatric evaluation;
- (ii) Expert witness fees and expenses;
- (iii) Interpreters for languages not commonly spoken;
- (iv) Polygraph, forensic, and other scientific tests; and
- (v) Any other non-routine expense the City of Cheney Municipal Court finds necessary and proper for the investigation, preparation, and presentation of a case.

2. Performance Review. On or about December 1, 2018, the City shall conduct a performance review of the Public Defender. The scope of the performance review is intended to evaluate the Public Defender’s case load and the professional services rendered pursuant to the Scope of Work.

3. Term of Contract. This Contract shall be in full force and effect on August 1, 2018, following execution of this Agreement and shall remain in effect for a period of five (5) years until terminated by either Party.

Either Party may, without cause, terminate this Agreement by sixty (60) days’ advance written notice to the other Party. In the event of such termination, the City shall pay the Public Defender for all work previously authorized and satisfactorily performed prior to the termination date.

4. Compensation. The Public Defender is retained to provide public defense services as set forth in the Scope of Work for the anticipated amount of \$3,700.00 per month for all services (the

“**Compensation**”) including travel, telephones, law library use including electronic research, financial accounting, case management systems, computers and software, office space and supplies, training, compliance with all applicable standards and contract management, and use of private investigator, as appropriate. Payment of Compensation is determined as follows: (1) the total amount of \$2,200.00 per month from the City General Fund and (2) \$1,500.00 per month payable through Office of Public Defense grant funds obtained by the City. The Parties acknowledge the City will exercise best efforts to obtain grant funds as set forth in subsection (2) including timely advising the Public Defender of submitted grants and award of funds for the Scope of Work. Nothing contained herein shall increase the obligation of the General Fund to pay Compensation, unless agreed otherwise. The Public Defender is an independent contractor and shall be responsible for the payment of all federal and state taxes due and owing on the Scope of Work.

5. **Payment.** The Public Defender shall be paid monthly upon presentation of an invoice to the Finance Director.

The City reserves the right to withhold payment under this Agreement, which is determined in the reasonable judgment of the Mayor or designee to be noncompliant with the Scope of Work, City standards, City ordinances, or federal or state standards.

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

If to the City of Cheney

City of Cheney
Attn: Chris Grover, Mayor
609 2nd Street
Cheney, WA 99004

If to the Public Defender

Shawn C. Carr
1309 W. Dean Ave.
Suite 100
Spokane, WA 99201

7. **Applicable Laws and Standards.** The Parties, in the performance of this Agreement, agree to comply with all applicable federal, state, and local laws, ordinances, and regulations.

8. **Relationship of the Parties.** It is understood, agreed, and declared that the Public Defender shall be independent and not the agent or employee of the City, that the City is interested in only 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 Public Defender. Any and all employees who provide services to the City under this Agreement shall be deemed employees solely of the Public Defender. The Public Defender shall be solely responsible for the conduct and actions of all employees under this Agreement and any liability that may attach thereto.

9. **State and Federal Taxes.** The City will not:

- Withhold FICA (Social Security and Medicare taxes) from Public Defender’s payments or make FICA payments on Public Defender’s behalf;
- Make state or federal unemployment compensation contributions on Public Defender’s behalf; or
- Withhold state or federal income tax from Public Defender’s payments.

Public Defender shall pay all taxes incurred while performing services under this Agreement, including all applicable income taxes and, if Public Defender is not a corporation, self-

employment (Social Security) taxes. Upon demand, Public Defender shall provide the City with proof that such payments have been made.

10. **Fringe Benefits.** Public Defender understands that neither Public Defender nor Public Defender's employees or contract personnel are eligible to participate in any City employee pension, health, vacation pay, sick pay, or other fringe benefit plan.

11. **Workers' Compensation.** The City shall not obtain workers' compensation insurance on behalf of Public Defender or Public Defender's employees. If Public Defender hires employees to perform any work under this Agreement, Public Defender will cover them with workers' compensation insurance and provide the City with a certificate of workers' compensation insurance before the employees begin the work.

12. **Unemployment Compensation.** The City shall make no state or federal unemployment compensation payments on behalf of Public Defender or Public Defender's employees or contract personnel. Public Defender will not be entitled to these benefits in connection with work performed under this Agreement.

13. **Records.** The City or State Auditor or any of their representatives shall have full access to and the right to examine during normal business hours all of the Public Defender records with respect to all matters covered in this contract. Such representatives shall be permitted to audit, examine, and make excerpts or transcripts from such records and to make audits of all contracts, invoices, materials, payrolls, and record of matters covered by this contract for a period of three (3) years from the date final payment is made hereunder.

14. **Insurance.** During the term of the contract, the Public Defender shall maintain in force, at its own expense, Professional Liability Insurance with a combined single limit of not less than \$1,000,000.00 annual aggregate as set forth on the attached insurance certificate. This is to cover damage caused by the negligent acts related to the professional services to be provided under this Agreement. The coverage must remain in effect for at least two (2) years after the contract is completed. The City agrees to reimburse the Public Defender the difference in cost between Professional Liability Insurance in the amount of \$100,000 annual aggregate and \$1,000,000.00 annual aggregate upon the presentation of an invoice by the Public Defender.

There shall be no cancellation, material change, reduction of limits, or intent not to renew the insurance coverage(s) without thirty (30) days' written notice from the Public Defender or its insurer(s) to the City.

As evidence of the insurance coverages required by this contract, the Public Defender shall furnish acceptable insurance certificates to the City at the time the Public Defender returns the signed contract. The certificate shall specify all of the parties who are additional insured, and will include applicable policy endorsements, the thirty (30) day cancellation clause, and the deduction or retention level. Insuring companies or entities are subject to City acceptance. If requested, complete copies of insurance policies shall be provided to the City. The Public Defender shall be financially responsible for all pertinent deductibles, self-insured retentions, and/or self-insurance.

15. **Indemnification and Hold Harmless.** Each Party shall indemnify and hold the other, its officers, employees, agents, and volunteers harmless from and against any and all claims, demands, orders, decrees, or judgments for injuries, death, or damage to any person or property arising or resulting from any negligent or intentional act or omission on the part of said Party or its agents, employees, or volunteers in the performance of this Agreement.

16. **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.

17. **Assignment, Delegation, and Use of Interns or Associates.** 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. Notwithstanding the above, the Public Defender may, when periodically unavailable, delegate the responsibilities herein to a licensed Washington attorney or a legal intern with limited authorization to practice law as provided for by Washington State Supreme Court APR 9, provided the above persons are knowledgeable in the practice of criminal law and maintain similar office and contact information as the Public Defender. Notwithstanding any delegation, the Public Defender shall be responsible for the services provided hereunder to include devoting such time as is necessary to address matters on the dockets of the City of Cheney Municipal Court.

18. **Subcontracts.** Except as otherwise provided herein, the Public Defender shall not enter into subcontracts for any of the work contemplated under this Agreement without obtaining written approval of the City.

19. **Confidentiality.** The Public Defender may from time to time receive information which is deemed by the City to be confidential. The Public Defender shall not disclose such information without the express consent of the City or upon order of a Court of competent jurisdiction.

20. **Jurisdiction and Venue.** This Contract is entered into in Spokane County, Washington. Venue shall be in Spokane County, State of Washington. The City and Public Defender agree that they shall first submit any and all unsettled claims, counterclaims, disputes, and other matters in questions between them arising out of or relating to this Agreement or the breach thereof to non-binding mediation unless the Parties mutually agree otherwise.

21. **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 signed by the Parties hereto.

22. **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.

IN WITNESS WHEREOF, the Parties have executed this Agreement this _____ day of _____, 2018.

CITY OF CHENEY:

PUBLIC DEFENDER:

Chris Grover, Mayor

Shawn C. Carr, Attorney

ATTEST:

APPROVED AS TO FORM:

Cindy Niemeier, City Clerk

Stanley M. Schwartz, City Attorney

CITY OF CHENEY

CITY COUNCIL ACTION REQUEST

ISSUE:	2018 Electrical Engineering Services Award	AGENDA ITEM #:	18-074
DEPT. OF ORIGIN:	Light	DATE:	7/17/18

EXHIBITS ATTACHED OR REFERENCED:	1. Resolution E-641 2. Estimate of Cost
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Council Committee Recommendation	Yes		No		None	
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DEPT/DEPT HEAD INITIALS	APPROVE	DO NOT APPROVE	NO COMMENT	COMMENTS
Light	SB			

FISCAL IMPACT	EXPENDITURE REQUIRED:	\$ 49,875 plus taxes	AMOUNT BUDGETED	\$
	APPROPRIATION REQUESTED:	\$ 49,875 plus a 10% contingency and taxes		

SUMMARY:	The Light Department requested sealed bids for 2018 Electrical Engineering Services. Staff has reviewed the proposals and Ripplinger Engineering Lab received the highest score.
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COUNCIL ACTION REQUESTED:	Passage of Resolution E-641
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___ APPROVED FOR AGENDA

___ DISAPPROVED

July 24, 2018

COUNCIL MEETING DATE

ADMINISTRATOR

MAYOR/CITY

City of Cheney
609 Second Street
Cheney, WA 99004

**CITY OF CHENEY, WASHINGTON
RESOLUTION E-641**

**A RESOLUTION AUTHORIZING THE USE OF RIPPLINGER
ENGINEERING LABRATORIES FOR ELECTRICAL ENGINEERING
WORK TO UPDATE SUBSTATION DRAWINGS AND DESIGN FOR
BREAKER REPLACEMENT**

WHEREAS, the Light Department advertised for requests for proposals for 2018 Electrical Engineering Services; and

WHEREAS, city staff has reviewed all five proposals that were submitted for the 2018 Electrical Engineering Services; and

WHEREAS, staff is recommending using Ripplinger Engineering Laboratories (REL) after reviewing the five proposals received.

WHEREAS, the City has an existing contract with REL that was approved as a small contract and the future anticipated work exceeds the level of a small contract.

NOW THEREFORE, BE IT RESOLVED, by the City Council of the City of Cheney to authorize the Light Department to use REL for this work.

ADOPTED, on this 24th day of July, 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 Niemeier, City Clerk

Ripplinger Engineering Laboratories

Telephone: 509-892-1375

Fax: 509-892-7471

Internet: R.E.L@comcast.net

4117 N. Garry Rd.

Otis Orchards, WA 99027

REL

18 July 2018

Stephen Boorman, P.E.
City of Cheney Light Department
112 Anderson Rd
Cheney, WA 99004

RE: Engineer's Estimate for City of Cheney Substation Circuit Breaker Replacement

Hi Steven:

REL has formulated an Engineer's Estimate for providing design service to replace two 15 kV circuit breakers, associated protective relaying and control wiring. In addition REL will provide a construction specification for the City to publish for approved contractors to bid on.

Item	Description:	Quantity	Per Unit	Total
A	Field wire checking	80 hrs	\$150	\$12000
B	Drafting of existing substation control house protective relay wiring	50 hrs	\$50	\$2500
C	Review industry circuit breaker offerings and compose circuit breaker specification	20 hrs	\$150	\$3000
D	Design new protection systems, two each, compute relay settings	60 hrs	\$150	\$9000
E	Drafting for new systems	80 hrs	\$50	\$4000
F	Compose substation construction specification for bid process	35 hrs	\$150	\$5250
G	Provide field inspection service during construction	60 hrs	\$150	\$9000
H	Drafting for as-builts and changes	40 hrs	\$50	\$2000
I	Field vehicle mileage for field checking of existing wiring and construction inspection 20 days	2000	\$0.75	\$1500
J	Per diem	15	\$75	\$1125
K	Copying, reproduction, plotter drawings, and office expense.	Lot	\$500	\$500
L			Subtotal	\$49875

This does not include any tax. Estimate valid for 30 days.

Sincerely,

Craig A. Ripplinger, P.E.

CITY OF CHENEY
CITY COUNCIL ACTION REQUEST

ISSUE:	2018 Replacement Well 3 Drilling Project Award	AGENDA ITEM #:	18-075
DEPT. OF ORIGIN:	Public Works	DATE:	7/18/2018

EXHIBITS ATTACHED OR REFERENCED:	(1) Resolution E-642 (2) Bid Results (3) Contract
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Council Committee Recommendation	Yes		No		None	
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DEPT/DEPT HEAD INITIALS	APPROVE	DO NOT APPROVE	NO COMMENT	COMMENTS
Public Works/TA	TA			

	EXPENDITURE REQUIRED:	\$ 724,890.00 plus taxes	AMOUNT BUDGETED	
FISCAL IMPACT	APPROPRIATION REQUESTED:	\$ 868,000.00 expenses plus 10% contingencies		

SUMMARY:	The Public Works Department requested bids for the 2018 Replacement Well 3 Drilling Project. We received four bids with Blue Star Enterprises Northwest Inc submitting the lowest bid for \$724,890.00 plus taxes.
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COUNCIL ACTION REQUESTED:	Passage of Resolution E-642
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APPROVED FOR AGENDA

DISAPPROVED

July 24, 2018

COUNCIL MEETING DATE

MAYOR/CITY ADMINISTRATOR

City of Cheney
609 Second Street
Cheney, WA 99004

**CITY OF CHENEY, WASHINGTON
RESOLUTION E-642**

**A RESOLUTION AUTHORIZING THE MAYOR TO SIGN A
CONTRACT WITH BLUE STAR ENTERPRISES NORTHWEST INC
FOR THE 2018 REPLACEMENT WELL 3 DRILLING PROJECT
PROJECT**

WHEREAS, the Public Works Department received four bids for 2018 Replacement Well 3 Drilling Project Award; and

WHEREAS, Blue Star Enterprises Northwest Inc submitted the lowest qualified bid in the amount of \$ 724,890.00 plus taxes.

NOW THEREFORE, BE IT RESOLVED, the Cheney City Council by majority vote hereby authorize the Mayor to sign a contract with Blue Star Enterprises Northwest Inc in the amount of \$724,890.00 plus taxes for the 2018 Replacement Well 3 Drilling Project. In addition, the City Council of the City of Cheney authorizes an appropriation amount of \$868,000.00 for expenses plus contingencies. .

ADOPTED, on this **24th day of July, 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 Niemeier, City Clerk

CITY OF CHENEY, WASHINGTON
BID TABULATION

DEPARTMENT Water

PROJECT NO. #W18001

RECAP OF 2018 Replacement Well #3 Drilling Project **Opened** Wednesday, July 18, 2018, 10:00 a.m.

BID SCHEDULE	VENDOR Bluestar Enterprises	VENDOR Schneider Equipment, Inc	VENDOR Holt Services, Inc	VENDOR Gregory Drilling	VENDOR	VENDOR	VENDOR	VENDOR Engineer's Estimate
Schedule A	\$724,890.00	\$997,060.00	\$1,194,781.00	\$892,200.00				
Schedule B								
Sub-Total	\$724,890.00	\$997,060.00	\$1,194,781.00	\$892,200.00	\$0.00	\$0.00	\$0.00	\$0.00
Tax 8.8%	\$63,790.32	\$87,741.28	\$105,140.73	\$78,513.60	\$0.00	\$0.00	\$0.00	\$0.00
Total	\$788,680.32	\$1,084,801.28	\$1,299,921.73	\$970,713.60	\$0.00	\$0.00	\$0.00	\$0.00

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 Blue Star Enterprises Northwest 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 Replacement Well 3 Drilling 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 \$ 724,890.00 plus taxes 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:

Blue Star Enterprises Northwest Inc
Phone Number: 509-946-9388
Address: 2019 Butler Loop
Richland, WA 99354

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” “Blue Star Enterprises bid dated 7-18-18”

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:	2018 CDBG Project Award	AGENDA ITEM #:	18-076
DEPT. OF ORIGIN:	Public Works	DATE:	7/18/2018

EXHIBITS ATTACHED OR REFERENCED:	(1) Resolution E-643 (2) Bid Results (3) Contract
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Council Committee Recommendation	Yes		No		None	
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DEPT/DEPT HEAD INITIALS	APPROVE	DO NOT APPROVE	NO COMMENT	COMMENTS
Public Works/TA	TA			

	EXPENDITURE REQUIRED:	\$ 182,735.00 plus taxes	AMOUNT BUDGETED	
FISCAL IMPACT	APPROPRIATION REQUESTED:	\$ 219,000.00 expenditure plus 10% contingencies		

SUMMARY:	The Public Works Department requested bids for the 2018 CDBG Project. We received five bids with Red Diamond Construction submitting the lowest bid for \$182,735.00 plus taxes.
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COUNCIL ACTION REQUESTED:	Passage of Resolution E-643
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APPROVED FOR AGENDA

 DISAPPROVED

July 24, 2018

_____ **COUNCIL MEETING DATE**

_____ **MAYOR/CITY ADMINISTRATOR**

City of Cheney
609 Second Street
Cheney, WA 99004

**CITY OF CHENEY, WASHINGTON
RESOLUTION E-643**

**A RESOLUTION AUTHORIZING THE MAYOR TO SIGN A
CONTRACT WITH RED DIAMOND CONSTRUCTION FOR THE 2018
CDBG PROJECT**

WHEREAS, the Public Works Department received five bids for 2018 CDBG Project;
and

WHEREAS, Red Diamond Construction submitted the lowest qualified bid in the
amount of \$182,735.00 plus taxes.

NOW THEREFORE, BE IT RESOLVED, the Cheney City Council by majority vote
hereby authorize the Mayor to sign a contract with Red Diamond Construction in the amount of
\$182,735.00 plus taxes for the 2018 CDBG Project. In addition, the City Council of the City of
Cheney authorizes an appropriation amount of \$219,000.00 for expenses plus contingencies.

ADOPTED, on this **24th day of July, 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 Niemeier, City Clerk

CITY OF CHENEY, WASHINGTON
BID TABULATION

DEPARTMENT Water

PROJECT NO. W18002

RECAP OF 2018 CDBG Project

Opened Wednesday, July 18th, 2018, 10 a.m.

BID SCHEDULE	VENDOR J7 Contracting, Inc.	VENDOR Rolling Rock Excavating	VENDOR Award Construction	VENDOR DW Excavating	VENDOR Red Diamond Construction	VENDOR	VENDOR	VENDOR Engineer's Estimate
Schedule A	\$253,941.00	\$266,821.50	\$254,357.50	\$259,273.00	\$182,735.00			\$211,603.00
Schedule B								
Sub-Total	\$253,941.00	\$266,821.50	\$254,357.50	\$259,273.00	\$182,735.00	\$0.00	\$0.00	\$211,306.00
Tax 8.8%	\$22,346.81	\$23,480.29	\$22,383.46	\$22,816.02	\$16,080.68	\$0.00	\$0.00	\$18,594.93
Total	\$276,287.81	\$290,301.79	\$276,740.96	\$282,089.02	\$198,815.68	\$0.00	\$0.00	\$229,901.00

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 Red Diamond Construction (“**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 CDBG 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 \$ 182,735.00 plus taxes 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:

Red Diamond Construction
Phone Number: 509-922-6674
Address: PO Box 14806
Spokane, WA 99214

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" "Red Diamond Construction bid dated 7-18-18"

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:	2017 Cheney Arterial Lane Striping Appropriation Increase	AGENDA ITEM #:	18-077
DEPT. OF ORIGIN:	Public Works	DATE:	7/18/2018

EXHIBITS ATTACHED OR REFERENCED:	(1) Resolution E-644
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Council Committee Recommendation	Yes		No		None	
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DEPT/DEPT HEAD INITIALS	APPROVE	DO NOT APPROVE	NO COMMENT	COMMENTS
Public Works/TA	TA			

	EXPENDITURE REQUIRED:		AMOUNT BUDGETED	
FISCAL IMPACT	APPROPRIATION REQUESTED:	\$ 6,353.65		

SUMMARY:	The City Council authorized the Mayor to sign a contract with Sharp-Line Industries on 9/7/17 for the 2017 Cheney Arterial Lane Striping Project. Sharp-Line completed \$4791.60 in the fall of 2017 before weather intruded. Sharp-Line is now Stripe Rite and they returned in 2018 to complete the work. Original appropriation was \$15,100.00. The project exceeded the original appropriation amount by \$ 6,353.65 including taxes. Staff requests an increase of the appropriation amount by \$ 6,353.65 including taxes..
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COUNCIL ACTION REQUESTED:	Passage of Resolution E-644
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APPROVED FOR AGENDA

 DISAPPROVED

July 24, 2018

COUNCIL MEETING DATE	MAYOR/CITY ADMINISTRATOR
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City of Cheney
609 Second Street
Cheney, WA 99004

**CITY OF CHENEY, WASHINGTON
RESOLUTION E-644**

**A RESOLUTION AUTHORIZING THE AN APPROPRIATION
INCREASE FOR THE 2017 ARTERIAL LANE STRIPING PROJECT**

WHEREAS, the City Council authorized the Mayor to sign a contract with Sharp-Line for the 2017 Arterial Lane Striping Project on 9/7/17; and

WHEREAS, Stripe Rite (Sharp-Line) returned in 2018 to complete the work that was put on hold in the fall of 2017 due to weather; and

WHEREAS, the project exceeded the original appropriation amount by \$ 6,353.65 including taxes.

NOW THEREFORE, BE IT RESOLVED, by the City Council of the City of Cheney to authorize an increase in the appropriation amount to Stripe Rite for the 2017 Arterial Lane Striping Project from \$15,100.00 to \$21,453.65 including taxes.

ADOPTED, on this **24th day of July, 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 Niemeier, City Clerk