

**UNION GAP CITY COUNCIL**  
**REGULAR MEETING AGENDA**  
**MONDAY, JANUARY 27, 2014 – 6:00 P.M.**  
**102 W. AHTANUM ROAD, UNION GAP**

**I. CALL TO ORDER/PLEDGE OF ALLEGIANCE**

**II. CONSENT AGENDA:** There will be no separate discussion of these items unless a Council Member requests in which event the item will be removed from the Consent Agenda and considered immediately following the Consent Agenda. All items listed are considered to be routine by the Union Gap City Council and will be enacted by one motion.

*A. Approval of Minutes:*

Regular Council Meeting Minutes, dated January 13th, 2014, As attached to the Agenda and maintained in electronic format;

*B. Approve Vouchers:*

Claims Vouchers – EFT's and Voucher Nos. 87020 through 87090 for January 20, 2014, in the amount of \$201,918.88;

Claims Vouchers – EFT's and Voucher Nos. 87091 through 87143 for January 27, 2014, in the amount of \$309,345.60;

**III. GENERAL ITEMS**

**Public Works/Community Development**

1. Ordinance No. \_\_\_\_\_ - Amending Municipal Code – Adopting 2012 International Fire Codes;
2. Ordinance No. \_\_\_\_\_ - Amending Municipal Code – Adopting 2012 International Building Codes;
3. Resolution No. \_\_\_\_\_ - HLA Task Order 2014-1 – Main Street Stormwater Improvements – Second Street to Franklin Street;

4. Resolution No. \_\_\_\_\_ - HLA Task Order 2014-2 – Main Street Stormwater Improvements – Franklin Street to Washington Street;
5. Resolution No. \_\_\_\_\_ - HLA Consultant Agreement – West Ahtanum Road Resurfacing;
6. Appointment – Transit RFP Council Sub-Committee.

**Public Safety**

1. Resolution No. \_\_\_\_\_ – State Patrol Memorandum of Understanding – Statewide Emergency Mobilization;
2. Resolution No. \_\_\_\_\_ - Surplus Vehicles;
3. Council Information – Purchase of New Police Vehicles.

**Legal**

1. Discussion - Moratorium for Marijuana Collective Gardens and for I-502, Production, Processing, and Retail of Marijuana;
2. Ordinances (8 in total) - Amendments to Union Gap Municipal Code, Chapter 1.01, Code Adoption.

**City Manager**

1. Discussion - Transportation Benefit District;
2. Ordinance No. \_\_\_\_\_ - 2014 Budget Amendment - Salary Schedules for Newly Created Positions;
3. Resolution No. \_\_\_\_\_ - Amendment to the Legal Services Contract.

**Finance/Administration**

1. Ordinance No. \_\_\_\_\_ - 2013 Budget Amendment -Year-End Budget Adjustments.

**Mayor**

Discussion – Council Committees.

**IV. ITEMS FROM THE AUDIENCE:** The City Council will allow comments under this section on items NOT already on the agenda. Where appropriate, the public will be allowed to comment on agenda items as they are addressed during the meeting. Each speaker will have three (3) minutes to address the City Council. Any handouts provided must also be provided to the City Clerk and are considered a matter of public record.

**V. CITY MANAGER REPORT**

**VI. COMMUNICATIONS/QUESTIONS/COMMENTS**

**VII. BOARDS, COMMISSION & STANDING COMMITTEE REPORTS**

**VIII. DEVELOPMENT OF NEXT AGENDA**

**IX. RECESS TO 10 – MINUTES EXECUTIVE SESSION:**

Potential Property Acquisition Pursuant to RCW 42.30.110 (b)

The City Council **Does Not** intend on taking Action upon reconvening the meeting.

**X. ADJOURN REGULAR MEETING.**

**UNION GAP CITY COUNCIL REGULAR MEETING**  
**UNION GAP COUNCIL CHAMBERS**  
**Union Gap, Washington**  
**January 13, 2013**  
**MINUTES**

- Call to Order Mayor Wentz called the Regular Meeting of the Union Gap City Council to order at 6:00 p.m.
- Council Members Present Council Members Lenz, Carney, Olson, Matson, and Murr were present.
- Excuse Council Member Motion by Council Member Lenz second by Council Member Carney to excuse Council Member Butler. Motion carried unanimously.
- Staff Present Public Works & Community Development Director Henne, Finance & Administration Director Clifton, Acting Public Safety Director Cobb, AP/PR Technician Bisconer, Acting Deputy Director for Public Works and Community Development Spurlock, City Manager Otterness, City Attorney Noe were present.
- Audience Present See list.
- Pledge of Allegiance Mayor Wentz led the Pledge of Allegiance.
- Oath of Office City Manager Otterness administered the oath of office to Council Members Carney, Lenz, Olson, and Wentz.
- Election of Mayor Council Member Lenz nominated Council Member Wentz to serve as Mayor. Council Member Carney nominated Council Member Olson to serve as Mayor. Roll Call was taken with Council Members Murr, Matson, Lenz and Wentz voting for Roger Wentz and Council Members Olson and Carney voting for Dan Olson. Council Member Dave Butler was absent. Council Member Wentz was elected as Mayor.
- Election of Mayor Pro-Tem Council Member Carney nominated Council Member Olson to serve as Mayor Pro-Tem. Council Member Murr nominated Council Member Matson to serve as Mayor-Pro-Tem. Roll call was taken with Council Members Murr, Matson, Lenz and Wentz voting for Council Member Matson. Council Members Olson and Carney voted for Council Member Dan Olson. Council Member Butler was absent. Council Member Matson was elected as Mayor Pro-Tem.
- Consent Agenda Motion by Council Member Murr second by Council Member Lenz to approve the consent agenda as follows:
- Approve the Regular Council Meeting Minutes dated October 28, 2013.
- Approve the Regular Council Meeting Minutes dated December 2, 2013.

Approve the Regular Council Meeting Minutes dated December 9, 2013

Approve EFT's and Claim Voucher Nos. 86791 through 86882 in the amount of \$375,478.09 dated December 23, 2013.

Approve EFT's and Payroll Vouchers Check Nos. 41065 through 41082 and 86883 through 86896 in the amount of \$436,423.46 issued and paid in the month of December, 2013.

Approve EFT's and Claim Voucher Nos. 86897 through 87019 in the amount of \$378,051.28 dated January 13, 2014.

Motion carried unanimously.

**General Items**

**City Manager**

Convention Bureau –  
Request for Council  
Appointment to Board.

John Cooper, President and CEO of the Yakima Valley Visitors and Convention Bureau presented a recommendation requesting that Mayor Wentz continue to serve as the Union Gap ex-officio member of the Bureau Board. Motion by Council Member Matson second by Council Member Murr to appoint Mayor Wentz as Union Gap ex-officio member of the board. Motion carried unanimously.

**Public Works/Community  
Development**

Resolution No. 14-01 –  
Technical Assistance  
Contract with Yakima  
Valley Conference of  
Governments (YVCOG)

Public Works and Community Development Director Henne recommended approval of the technical assistance contract. Motion by Council Member Olson second by Council Member Carney to adopt Resolution No. 14-01 approving technical assistance contract with Yakima Valley Conference of Governments. Motion carried unanimously.

Resolution No. 14-02 –  
Stormwater Grant Program  
Proviso Funding Agreement

Public Works/Community Development Director Henne recommended that the Council authorize execution of contract with the State Department of Ecology for receipt of a \$495,000.00 stormwater grant from the Department of Ecology for the Main Street Stormwater Improvement Project. Motion by Council Member Lenz second by Council Member Carney to adopt Resolution No. 14-02 authorizing the City Manager to sign an Agreement with the Washington State Department of Ecology for FY 2014 a Stormwater Grant for the Main Street Stormwater Improvements project. Motion carried unanimously.

Resolution No. 14-03 —  
Valley Mall Blvd.  
Interchange

Motion by Council Member Carney second by Council Member Murr to adopt Resolution No. 14-03 authorizing execution of amendment to Turnback Agreement TB5-0060 with the Washington State Department of Transportation regarding the SR82 and Valley Mall Boulevard Interchange

Project. Motion carried unanimously.

Resolution No. 14-04 –  
Arterial Preservation Project  
3-E-181(002)-1;

Motion by Council Member Lenz second by Council Member Carney to adopt Resolution No. 14-04 authorizing the City Manager to sign an agreement between the Washington State Transportation Improvement Board and the City of Union Gap relating to Fuel Tax Grant funds for the FY 2015 Arterial Preservation Project. Motion carried unanimously.

Resolution No. 14-05 –  
Main Street; Second St to  
Franklin St; P-E-181(P01)-1

Motion by Council Member Olson second by Council Member Murr to adopt Resolution No. 14-05 authorizing the City Manager to sign an agreement between the Washington State Transportation Improvement Board and the City of Union Gap relating to Fuel Tax Grant funds for the Main Street - Second Street to Franklin Street project. Motion carried unanimously.

YVCOG General  
Membership Primary and  
Alternate Designation

Motion by Council Member Carney second by Council Member Murr to appoint Mayor Wentz as the primary representative of YVCOG. Motion carried unanimously. Motion by Council Member Lenz second by Council Member Olson to elect Council Member Carney as the first alternate representative of YVCOG. Motion carried unanimously. Motion by Council Member Olson second by Mayor Wentz to elect Sandy Dailey to serve as second alternate representative of YVCOG. Motion carried unanimously.

Appoint TRANS-Action  
Voting Delegate &  
Alternates

Motion by Council Member Olson second by Council Member Lenz to appoint Public Works and Community Development Director Henne as primary voting delegate on TRANZ-Action. Motion carried unanimously. Motion by Council Member Lenz second by Council Member Carney to appoint Council Member Olson as first alternate voting delegate on TRANZ-Action. Motion carried unanimously. Motion by Council Member Olson second by Lenz to appoint Mayor Wentz as second alternate voting delegate on TRANZ-Action. Motion carried unanimously.

Resolution No. 14-06 -  
Hearing Examiner Gary  
Cullier Professional  
Services Contract

Motion by Council Member Olson second by Council Member Lenz to adopt Resolution No. 14-06 authorizing the City Manager to sign a Professional Services Contract for Hearing Examiner with Gary Cuillier. Motion carried unanimously.

Main Street Revitalization  
Project – Update

Public Works and Community Development Director Henne gave an update on the Main Street Revitalization project explaining the “Walk & Talk” meeting is scheduled for January 22, 2014 at the City of Union Gap Council Chambers at 1:00p.m.

## **Council**

Council Committees –  
Discussion

Mayor Wentz opened a discussion regarding Council Committees. Council Member Olson expressed his concern that minutes be taken during the

committee meetings. Mayor Wentz stated that he would like to hold committee meetings on the first and third Mondays of each month at 6:00 p.m. and that all council members would be on each committee so that everybody heard the same things at the same time. He asked for further discussion at the next meeting.

Resolution No. 14-07 -  
Proclaiming Martin Luther  
King, Jr. Week January 19<sup>th</sup>  
through January 25<sup>th</sup>, 2014

Motion by Council Member Murr second by Council Member Carney to adopt Resolution No. 14-07 proclaiming the week of January 19 through January 25, 2014 as Martin Luther King Jr. Week. Motion carried unanimously.

Ordinance No. 2842 – City  
Hall Position Descriptions

City Manager Otterness gave an explanation as to the recent department reorganizations. Council Member Olson expressed concerns about the legality of the restructure. City Attorney Noe stated his opinion that the restructure was legal. Motion by Council Member Olson second by Council Member Murr to adopt Ordinance No. 2842 establishing position descriptions. Roll call was taken with Council Members Murr, Matson, Lenz, and Mayor Wentz voting yea and Council Members Olson and Carney voting nay. Motion passed.

**Items from the Audience**

John Hodkinson read from correspondence that he submitted to the Council criticizing the City's Department reorganization.

**City Manager Report**

City Manager Otterness thanked Mike Brown & Julie Schilling for their organization of the Union Gap Christmas Parade and thanked Council Member Murr for his work with the year-end wellness dinner.

**Communications  
Questions/Comments**

**Traho Report**

Mayor Wentz explained that the representatives from Traho Architects were unable to attend this meeting and hope they will be able to attend the first meeting in February 2014.

**Boards, Commission &  
Standing Committee  
Reports**

None reported.

**Development of the Next  
Agenda**

The Council asked for salary recommendations for positions approved with Ordinance No. 2842.

**Recess to Executive  
Session**

**Litigation Pursuant to RCW  
42.30.110 (i); and  
Contract and Labor  
Negotiations Pursuant to**

At 7:14 Mayor Wentz recessed to an Executive Session for 20 minutes to discuss Contract and Labor Negotiations Pursuant to RCW 42.30.110(g) Mayor Wentz, Council Members, City Manager Otterness, Acting Public Safety Director Cobb and City Attorney Noe attended.

RCW 42.30.110(g)

Re-convened 7:34

Motion by Council Member Lenz second by Council Member Olson to approve a Memorandum of Understanding with the International Association of Fire Fighters to authorize a 2% wage increase effective January 1, 2013. Motion carried unanimously.

Motion by Council Member Olson, second by Council Member Carney authorizing the City Manager to sign the proposed collective bargaining agreement with the Police Department Non-Uniformed Employees. Motion carried unanimously.

City Manager Otterness stated that as the result of contracting of municipal court services with Yakima County, Judge Northcott's services are no longer required although his contract runs through the end of the year. He requested that the Council authorize him to approve a payment to him equal to ten months of compensation rather than 12 months to settle the city's contract obligation to him. He noted that Judge Northcott has been cooperative and helpful throughout the transition period. Motion by Council Member Olson second by Council Member Lenz to approve 10 months compensation to resolve contract obligation. Motion approved with Council Member Carney voting no.

**Adjournment of Meeting**

At 7:35 p.m. Mayor Wentz adjourned the January 13, 2014, Regular Council Meeting.

ATTEST

\_\_\_\_\_  
Rodney Otterness, City Manager

\_\_\_\_\_  
Karen Clifton, City Clerk





## **CITY COUNCIL COMMUNICATION**

**Meeting Date:** January 27, 2014  
**From:** Karen Clifton, Director of Finance and Administration  
**Topic/Issue:** Claim Vouchers, January 20, 2014

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**SYNOPSIS:** Claim Vouchers Dated January 20, 2014

**RECOMMENDATION:** Request Council to approve EFTs and Voucher Nos. 87020 through 87090 in the amount of \$201,918.88 dated January 20, 2014.

**LEGAL REVIEW:** N/A

**FINANCIAL REVIEW:** N/A

**BACKGROUND INFORMATION:** N/A

**ADDITIONAL OPTIONS:** N/A

**ATTACHMENTS:** 1. Claim Voucher Roster

# WARRANT/CHECK REGISTER

CITY OF UNION GAP  
MCAG #: 0853

01/01/2013 To: 12/31/2013

Time: 08:53:54 Date: 01/22/2014

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Trans	Date	Type	Acct #	War #	Claimant	Amount	Memo
9047	12/31/2013	Claims	2	EFT	CHASE PAYMENTECH	401.93	UB ONLINE PAYMENTS - 12/2013
9048	12/31/2013	Claims	2	87020	AM SAN	73.83	PD SUPPLIES-PURELL HAND SANITIZER
9049	12/31/2013	Claims	2	87021	ASAP METAL FABRICATORS INC	23,741.74	TRANSIT SHELTER X4; TEMP GLASS
9050	12/31/2013	Claims	2	87022	BANK OF AMERICA	942.84	LATE PMT/FC REVERSED - 10/23/2013; WELLNESS NYE EVENT
9051	12/31/2013	Claims	2	87023	BRANOM INSTRUMENT CO	744.05	SUPPLIES
9052	12/31/2013	Claims	2	87024	CASCADE ANALYTICAL INC	131.50	SAMPLING; WATER
9053	12/31/2013	Claims	2	87025	CASCADE NATURAL GAS CORP	3,414.84	3007 2ND ST - DECEMBER 2013; 107 W AHTANUM RD - DECEMBER 2013; 102 W AHTANUM RD; 3106 1ST ST; 4401 MAIN ST #2; PD NATURAL GAS 12/4/13-01/6/14
9054	12/31/2013	Claims	2	87026	CENTRAL PRE-MIX CONCRETE CO.	789.73	TRANSIT SHELTERS
9055	12/31/2013	Claims	2	87027	CENTRAL WA AG MUSEUM	2,939.12	SECURITY SYSTEM, CHAIRS BROCHURES ETC
9056	12/31/2013	Claims	2	87028	CENTURY LINK - LD	18.36	PD PHONES DEC 2013; CH LD-MULTIPLE
9057	12/31/2013	Claims	2	87029	CENTURY LINK	510.57	MONTHLY BILLING; MONTHLY BILLING
9058	12/31/2013	Claims	2	87030	CI SHRED	37.80	PD SHREDDING DECEMBER 2013
9059	12/31/2013	Claims	2	87031	CLASSIC CAR WASH	27.50	PD CAR WASHES
9060	12/31/2013	Claims	2	87032	CLIFF'S SEPTIC SERVICE	508.06	RENTAL SERVICE; 12.01.13-12.31.13
9061	12/31/2013	Claims	2	87033	COMMERCIAL TIRE	2,148.06	#3009 BACKHOE TIRES & LABOR
9062	12/31/2013	Claims	2	87034	CORALIE'S PROFESSIONAL	37.87	UNIFORM REPAIR-TURLEY
9063	12/31/2013	Claims	2	87035	JOHN CRIMIN	30.00	BATTERIES
9064	12/31/2013	Claims	2	87036	DB SECURE SHRED	46.76	CH/COURT SHRED 12/13
9065	12/31/2013	Claims	2	87037	DEX WEST	219.74	MONTHLY BILLING -12/13
9066	12/31/2013	Claims	2	87038	DIVCO INC	583.69	DIVCO - CED BLDG COLD 12-31-13
9067	12/31/2013	Claims	2	87039	FASTENERS	74.29	REPAIR PARTS & TOOLS; SAWZALL BLADES & NAILS FOR COURT OFC
9068	12/31/2013	Claims	2	87040	FOWLER COMPANY HD	3,650.86	CREDIT MEMO; SUPPLIES; SUPPLIES; SUPPLIES
9069	12/31/2013	Claims	2	87041	FRANKS OK TIRE STORE	250.76	#4001 TIRES; FC - 11/2013
9070	12/31/2013	Claims	2	87042	GAP AUTO PARTS	29.90	#1013 VEHICLE
9071	12/31/2013	Claims	2	87043	GEARJAMMER	2,180.12	PD FUEL DEC 16-31, 2013
9072	12/31/2013	Claims	2	87044	GILLILAND LAW FIRM PLLC	160.00	CONFLICT ATTORNEY
9073	12/31/2013	Claims	2	87045	HARRIS & ASSOCIATES	6,690.00	CH REPLACEMENT STUDY 12-2012; CH REPLACEMENT STUDY - 12/2013

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CITY OF UNION GAP  
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Time: 08:53:54 Date: 01/22/2014

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Trans	Date	Type	Acct #	War #	Claimant	Amount	Memo
9074	12/31/2013	Claims	2	87046	HUIBREGTSE, LOUMAN ASSOC INC	28,346.32	PE&LS SERVICES; MAIN STREET/RUDKIN ROAD WATER SYSTEM IMPROVEMENTS; PE&LS SERVICES; S 12TH AVE BRIDGE #329 REPLACEMENT; PE&LS SERVICES; REGIONAL BELTWAY CONNECTOR; PE&LS SERVICES; MAIN ST RECON 2ND TO;
9075	12/31/2013	Claims	2	87047	INTEGRA TELECOM	2,554.32	COURT-12/13; FIRE STA 85 FAX - JANUARY 2014; CH-12/13; PD PHONES 01/03/14-02/02/14
9076	12/31/2013	Claims	2	87048	DAN LESLIE LESLIE & CAMPBELL, INC	59,276.64	REROOF - STATION 85
9077	12/31/2013	Claims	2	87049	LEXISNEXIS	84.18	ONLINE SVC - 12/2013
9078	12/31/2013	Claims	2	87050	JO LINDER	138.98	NEW YEARS EVE CELEBRATION
9079	12/31/2013	Claims	2	87051	LOWES COMPANY INC	460.85	TOOLS & SUPPLIES; SUPPLIES
9080	12/31/2013	Claims	2	87052	MOTOROLA SOLUTIONS, INC	2,718.45	RADIOS
9081	12/31/2013	Claims	2	87053	N C MACHINERY CO	126.08	BACKHOE HINGE
9082	12/31/2013	Claims	2	87054	NEOFUNDS BY NEOPOST	1,000.00	POSTAGE - 12/2013
9083	12/31/2013	Claims	2	87055	OFFICE DEPOT	34.83	PENS/STAPLES; STAPLES - RETURN
9084	12/31/2013	Claims	2	87056	OFFICE DEPOT	113.73	PD OFFICE SUPPLIES-CALENDAR, USB, PENS; PD SUPPLIES-SANDISK AND BINDING COMBS
9085	12/31/2013	Claims	2	87057	OFFICE DEPOT	431.25	PAPER; STAPLES & BINDER CLIPS; OFFICE SUPPLIES
9086	12/31/2013	Claims	2	87058	ONE CALL CONCEPTS INC	40.92	UTILITY LOCATES 11 - 12/2013
9087	12/31/2013	Claims	2	87059	PACIFIC POWER	14,061.01	MONTHLY BILLING; 3103 2ND ST-12/13; 102 W AHTANUM-12/13; 3106 1ST ST-12/13; PD POWER 12/2/13-1/2/14; 107 W AHTANUM RD - DEC 2013; 3007 2ND ST - DEC 2013; AG MUSEUM-12/13
9088	12/31/2013	Claims	2	87060	PAPE MACHINERY	92.68	PARTS
9089	12/31/2013	Claims	2	87061	PHILIPS HEALTHCARE	47.08	HEARTSTART CONFIGURE SOFTWARE
9090	12/31/2013	Claims	2	87062	PROTECTION ONE	67.16	102 W AHTANUM RD/ 3106 S 1ST ST JAN/2014
9091	12/31/2013	Claims	2	87063	REPUBLIC PUBLISHING CO	45.25	SUMMARY OF ORDINANCE # 2841
9092	12/31/2013	Claims	2	87064	RICOH USA INC (MAINTENANCE)	130.19	PD COPIER MAINTENANCE 12/11/13-01/10/14
9093	12/31/2013	Claims	2	87065	SAN DIEGO POLICE EQUIPMENT CO INC	1,057.33	AMMUNITION-223 55GR FMJ
9094	12/31/2013	Claims	2	87066	SCI DOOR	2,199.84	BAY DR 1 LIFTMASTER/3 RECEIVERS/4 REMOTES

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Trans	Date	Type	Acct #	War #	Claimant	Amount	Memo
9095	12/31/2013	Claims	2	87067	SOUSLEY SOUND & COMMUNICATIONS	483.21	SOUND EQUIP RENTAL FOR COUNCIL CHAMBERS 12/13
9096	12/31/2013	Claims	2	87068	SPRINT ACCT #929468397	163.96	MONTHLY BILLING; INV 11/29/13; MONTHLY BILLING
9097	12/31/2013	Claims	2	87069	SPRINT CH/FD/PW ACT #516627226	1,727.01	PHONE ACCESSORIES; BLD/PLN - 11/13 - 12/2013; PARKS - 11 - 12/2013; PW - 11 - 12/2013; RESCUE 85 - NOV AND DEC 2013; FIRE DEPT - NOV AND DEC 2013
9098	12/31/2013	Claims	2	87070	TRANS-ACTION	1,000.00	2014 MEMBERSHIP DUES
9099	12/31/2013	Claims	2	87071	UNION GAP WATER FUND & SEWER	852.42	MONTHLY BILLING
9100	12/31/2013	Claims	2	87072	UNION GAP	200.00	INVESTIGATION COSTS
9101	12/31/2013	Claims	2	87073	UNITED PARCEL SERVICE	15.63	PD SHIPPING DEC 10, 2013
9102	12/31/2013	Claims	2	87074	UNITED STATES POSTMASTER	198.61	REVERSE UB OVERPAYMENTS 09/13 - 11/13; UB STATEMENTS - 12/2013; UB POSTAGE 01-2014
9103	12/31/2013	Claims	2	87075	US LINEN & UNIFORM	172.22	UNIFORM SERVICE; 12/23; 12/30
9104	12/31/2013	Claims	2	87076	VALLEY MEDI-CENTER	65.00	DOT PHYSICAL; BUNTING, CRAIG
9105	12/31/2013	Claims	2	87077	VERIZON WIRELESS	233.75	CH CELL PHONES-12/13
9106	12/31/2013	Claims	2	87078	WA ST DEPT OF EMPLOYMENT SECURITY	15,317.38	UNEMPLOYMENT BENEFITS - 4TH QTR 2013
9107	12/31/2013	Claims	2	87079	WA STATE DEPT OF L&I	79.00	4TH QTR 2013
9108	12/31/2013	Claims	2	87080	WA STATE PATROL	66.00	BACKGROUND CHECKS
9109	12/31/2013	Claims	2	87081	WAPATO POLICE DEPT	45.00	JAIL PRESCRIPTION BILLING DECEMBER 2013
9110	12/31/2013	Claims	2	87082	WASHINGTON TRACTOR	289.61	MOWER BLADES
9111	12/31/2013	Claims	2	87083	WILSON IRRIGATION &	69.60	BRASS BALL VALVES
9112	12/31/2013	Claims	2	87084	WONDRACK DIST INC	6,764.00	FUEL BILLING; 11/13; 12/13; CHEV DELO 15W/40
9113	12/31/2013	Claims	2	87085	YAKIMA CO DEPT OF CORRECTIONS	5,882.16	JAIL BILLING DECEMBER 2013
9114	12/31/2013	Claims	2	87086	YAKIMA COOPERATIVE ASSN	3,540.62	PROPANE FOR PARKS; 12/2013
9115	12/31/2013	Claims	2	87087	YAKIMA COUNTY GIS DEPT	50.00	YAKIMA CO. GIS - DEC 2013 ARCVIEW UPDATE
9116	12/31/2013	Claims	2	87088	YAKIMA COUNTY PUBLIC SERVICES	598.86	STORMWATER UTILITY; 10/2013; 11/2013
9117	12/31/2013	Claims	2	87089	YAKIMA COUNTY PUBLIC SERVICES	670.05	GARBAGE; STORMWATER SERVICES-12/2013
9118	12/31/2013	Claims	2	87090	YAKIMA WELDERS SUPPLY INC	23.78	OXYGEN NONFLAMMABLE

001 Current Expense Fund	53,402.49
101 Street Fund	18,970.24
107 Convention Center Reserve Fund	3,242.85
116 City Hall Building Reserve Fund	59,276.64
121 Street Development Reserve Fund	691.32
123 Criminal Justice Fund	2,718.45

# WARRANT/CHECK REGISTER

CITY OF UNION GAP

Time: 08:53:54 Date: 01/22/2014

MCAG #: 0853

01/01/2013 To: 12/31/2013

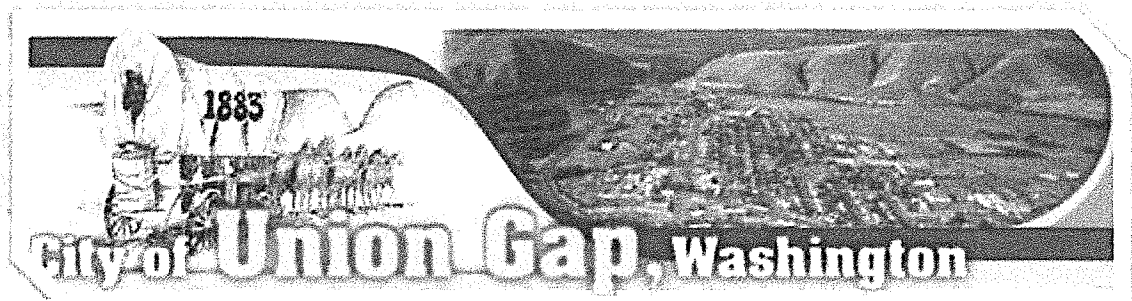
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Trans	Date	Type	Acct #	War #	Claimant	Amount	Memo
		124			Infrastructure Reserve Fund	11,267.00	
		128			Transit System Fund	24,835.42	
		401			Water Fund	8,327.09	
		402			Garbage Fund	1,169.22	
		403			Sewer Fund	4,500.16	
		404			Water/Sewer Improvement Reserve	13,518.00	
						<u>201,918.88</u>	Claims: 201,918.88
						201,918.88	

CERTIFICATION: I, the undersigned, do hereby certify under penalty of perjury that the materials have been furnished, the services rendered, or the labor performed as described and that the claim is a due and unpaid obligation against the City of Union Gap, and that I am authorized to authenticate and certify to said claim.

Certified By: \_\_\_\_\_ Date: \_\_\_\_\_

( ) Finance Director ( ) Auditing Officer ( ) Deputy Finance Director



## **CITY COUNCIL COMMUNICATION**

**Meeting Date:** January 27, 2014  
**From:** Karen Clifton, Director of Finance and Administration  
**Topic/Issue:** Claim Vouchers, January 27, 2014

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**SYNOPSIS:** Claim Vouchers Dated January 27, 2014

**RECOMMENDATION:** Request Council to approve EFTs and Voucher Nos. 87091 through 87143 in the amount of \$309,345.60 dated January 27, 2014.

**LEGAL REVIEW:** N/A

**FINANCIAL REVIEW:** N/A

**BACKGROUND INFORMATION:** N/A

**ADDITIONAL OPTIONS:** N/A

**ATTACHMENTS:** 1. Claim Voucher Roster

# WARRANT/CHECK REGISTER

CITY OF UNION GAP  
MCAG #: 0853

Time: 10:50:57 Date: 01/22/2014  
Page: 1

01/01/2014 To: 01/31/2014

Trans	Date	Type	Acct #	War #	Claimant	Amount	Memo
18	01/02/2014	Claims	2	EFT	XPRESS BILL PAY		WRONG YEAR
226	01/23/2014	Claims	2	87091	UNITED STATES POSTAL SERVICE	268.00	CH PO ANNUAL FEE 2014
227	01/27/2014	Claims	2	87092	ASSOCIATION OF WA CITIES	3,777.00	MAYOR 2014 MEMBERSHIP FEE
228	01/27/2014	Claims	2	87093	BANK OF AMERICA	4,476.26	AWC CITY ACTION DAYS - MC, RW, RO & DO. OLSON NLC REGISTRATION; ICC RESIDENTIAL BLDG INSP CERTIFICATION EXAM-JAN 9TH, 2014 8AM: M. ACEVEDO; TRAINING-LEVESQUE; NLC CONF & FLIGHT - WENTZ; MUSTANG ICE CO
229	01/27/2014	Claims	2	87094	BERGEN SCREEN PRINT	64.92	FIRE DEPT SWEATSHIRTS (PRINTED)
230	01/27/2014	Claims	2	87095	BIAS SOFTWARE	19,905.84	FINANCIAL 2014; 2014 SERVICE AGREEMENT
231	01/27/2014	Claims	2	87096	MARIA CABALLERO	20.23	OVERPAYMENT REFUND
232	01/27/2014	Claims	2	87097	CASCADE FIRE EQUIPMENT	721.05	HIGH PRESSURE HYDRO (12); 18 HIGH PRESSURE HYDRO
233	01/27/2014	Claims	2	87098	CENTRAL WASHINGTON FAIR ASSOC.	1,250.00	MARKETING & SALES - 01/2014
234	01/27/2014	Claims	2	87099	CERTIFIABLE TRAINING	200.00	TIME, LLC - ICC PERMIT COACHING PROGRAM - A.ELY
235	01/27/2014	Claims	2	87100	CINTAS CORP #605	374.64	SR CTR MOP & MAT SVC; PD MAT SERVICE 01/03, 01/10/14; FIRE DEPT UNIFORM CLEANING
236	01/27/2014	Claims	2	87101	JOHN CRIMIN	104.90	LEOFF I MEDICARE - 01/2014
237	01/27/2014	Claims	2	87102	CULLIGAN YAKIMA, WA	29.53	BLD/PLN WA SVC - 01/14
238	01/27/2014	Claims	2	87103	DIVCO INC	399.97	CH/LIBRARY MAIN 01/2014-03/2014
239	01/27/2014	Claims	2	87104	EMERGENCY REPORTING	203.23	FIRE/EMS REPORTING - FEB 2014
240	01/27/2014	Claims	2	87105	FIRE ENGINEERING	21.00	2014 SUBSCRIPTION
241	01/27/2014	Claims	2	87106	FIREHOUSE	29.95	2014 SUBSCRIPTION
242	01/27/2014	Claims	2	87107	GAP AUTO PARTS	10.83	DIP BRUSH
243	01/27/2014	Claims	2	87108	GOV FINANCE OFFICERS ASSOC.	170.00	MEMBERSHIP DUES 02/01/2014-01/31/2015
244	01/27/2014	Claims	2	87109	JANITORS CLOSET	85.20	CAN LINERS
245	01/27/2014	Claims	2	87110	LEGAL COURIERS INC	30.00	COURIER SVC - 01/2014
246	01/27/2014	Claims	2	87111	LIFE-ASSIST INC	368.85	GLOVES/HEARING PROTECTOR/ETC
247	01/27/2014	Claims	2	87112	LOWES COMPANY INC	220.81	FAUCET; PAINT SUPPLIES FOR BAY; ITEMS FOR STA 85 WALL; STATION CLEANING SUPPLIES
248	01/27/2014	Claims	2	87113	ROBERT F NOE	11,000.00	CITY ATTORNEY - 01/2014
249	01/27/2014	Claims	2	87114	NTA WA STATE DELEGATION PARTICIPATION	500.00	WA STATE DELEGATION SPONSORSHIP & BOOTH 2014
250	01/27/2014	Claims	2	87115	NTA	725.00	2014 ANNUAL DUES
251	01/27/2014	Claims	2	87116	OFFICE SOLUTIONS NORTHWEST	80.99	RECEIPT PAPER ROLL

# WARRANT/CHECK REGISTER

CITY OF UNION GAP  
MCAG #: 0853

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Trans	Date	Type	Acct #	War #	Claimant	Amount	Memo
252	01/27/2014	Claims	2	87117	PETTY CASH	8.16	MISC RECEIPTS
253	01/27/2014	Claims	2	87118	SMITTYS OUTDOOR POWER EQUIP	72.97	CASE FOR SAW/CAN
254	01/27/2014	Claims	2	87119	TRAHO ARCHITECTS PS	450.00	13-22 PHASE 1 ARCHITECTURAL SVC
255	01/27/2014	Claims	2	87120	U-HAUL MOVING & STORAGE	422.85	STORAGE UNITS - 01/2014
256	01/27/2014	Claims	2	87121	UNUM LIFE INSURANCE	137.40	LEOFF 1 BENEFITS 01/2014
257	01/27/2014	Claims	2	87122	US BANK CARDMEMBER SVC	53.01	SR CTR SNACKS
258	01/27/2014	Claims	2	87123	US LINEN & UNIFORM	90.75	UNIFORM SERVICE; 01/6/14
259	01/27/2014	Claims	2	87124	UYVUCC	120.00	2014 ANNUAL DUES
260	01/27/2014	Claims	2	87125	WA ASSN OF SHERIFFS &	180.00	2014 ACTIVE CHIEF DUES-COBB
261	01/27/2014	Claims	2	87126	WA ASSOC OF BUILDING OFFICIALS	115.00	2014 MEMBERSHIP DUES D. SPURLOCK; WINTER COMMITTEE MTG 1-24-14_LACEY, WA - D. SPURLOCK
262	01/27/2014	Claims	2	87127	WA CITIES INS. AUTHORITY	163,385.00	LIABILITY/PROGRAM ASSESSMENT - 2014
263	01/27/2014	Claims	2	87128	WA FINANCE OFFICERS ASSN	100.00	2014 MEMBERSHIP - CLIFTON/BISCONER
264	01/27/2014	Claims	2	87129	WA STATE ASSOC OF FIRE MARSHAL	90.00	2014 FIRE DEPT MEMBERSHIP - T. WHITEHURST
265	01/27/2014	Claims	2	87130	IAAI WA STATE CHAPTER #21	40.00	2014 MEMBERSHIP - B. LINE
266	01/27/2014	Claims	2	87131	WA STATE FIREFIGHTERS ASSN	110.00	2014 DEPT MEMBERSHIP
267	01/27/2014	Claims	2	87132	WASHINGTON FIRE CHIEFS	700.00	FIRE DEPT 2014 MEMBERSHIP
268	01/27/2014	Claims	2	87133	WSAPT TREASURER, AMY DONLAN	35.00	MEMBERSHIP RENEWAL A. ELY 2014
269	01/27/2014	Claims	2	87134	YAKIMA CO DISTRICT COURT	57,630.84	COURT MAINT. 01/2014; COURT AGREEMENT FEB 2014
270	01/27/2014	Claims	2	87135	YAKIMA COUNTY DEVELOPMENT ASSN	1,300.00	01/2014 NEW VISION PLEDGE
271	01/27/2014	Claims	2	87136	YAKIMA NETWORKING	3,242.90	INTEL CORE I3, 8GB RAM, 120GB SS HARD DRIVE, INTEL MOTHERBOARD, DVD BURNER, WINDOWS 7, OFFICE 2013, 24" MONITOR; CORE I3, 8 GB RAM, 120 GB SS HARD DRIVE, MOTHERBOARD, DVD BURNER, WINDOWS 7, OFFICE I3
272	01/27/2014	Claims	2	87137	YAKIMA POLICE DEPT	300.00	SUPERVISOR LIABILITY TRAINING-MCKINLEY, COBB. INTERNAL AFFAIRS INVESTIGATION-MCKINLEY
273	01/27/2014	Claims	2	87138	YAKIMA REG.CLEAN AIR AUTHORITY	2,442.00	PRO RATA SHARE
274	01/27/2014	Claims	2	87139	YAKIMA VALLEY CONFERENCE	7,877.00	2014 ASSESSMENT



## WARRANT/CHECK REGISTER

CITY OF UNION GAP  
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Trans	Date	Type	Acct #	War #	Claimant	Amount	Memo
275	01/27/2014	Claims	2	87140	YAKIMA VALLEY LIBRARIES	19,250.00	2014 LIBRARY SERVICES
276	01/27/2014	Claims	2	87141	YAKIMA VALLEY OFFICE OF	4,573.00	2014 LOCAL ASSESSMENT
277	01/27/2014	Claims	2	87142	YAKIMA VALLEY VISITORS	1,500.00	2014 VISITORS GUIDE AD
					&		
278	01/27/2014	Claims	2	87143	MICHAEL JULIUS	81.52	Refund Utility Deposit
		001 Current Expense Fund				216,746.55	
		101 Street Fund				11,368.23	
		107 Convention Center Reserve Fund				725.00	
		108 Tourism Promotion Area Fund				3,250.00	
		114 Seniors Activity Fund				53.01	
		116 City Hall Building Reserve Fund				450.00	
		120 City Hall Equipment Reserve Fund				19,905.84	
		401 Water Fund				17,276.45	
		402 Garbage Fund				16,720.78	
		403 Sewer Fund				22,768.22	
		414 Water Deposits				81.52	
						309,345.60	
						Claims:	309,345.60

CERTIFICATION: I, the undersigned, do hereby certify under penalty of perjury that the materials have been furnished, the services rendered, or the labor performed as described and that the claim is a due and unpaid obligation against the City of Union Gap, and that I am authorized to authenticate and certify to said claim.

Certified By: \_\_\_\_\_ Date: \_\_\_\_\_

( ) Finance Director ( ) Auditing Officer ( ) Deputy Finance Director



## **CITY COUNCIL COMMUNICATION**

**Meeting Date:** January 27, 2014  
**From:** Dennis Henne, Director of Public Works & Community Development  
**Topic / Issue:** Ordinance - Amending Municipal Code - Adopting 2012 International Fire Code

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**SYNOPSIS:** Adoption of an Ordinance affirming the City's adoption of the 2012 International Fire Codes as amended by the State of Washington.

**RECOMMENDATION:** Adopt and publish an Ordinance amending Title 13.04 of the Union Gap Municipal Code relating to fire codes; adopting the 2012 International Fire Code as required by state law.

**LEGAL REVIEW:** The City attorney has reviewed ordinance

**FINANCIAL REVIEW:** NA

**BACKGROUND INFORMATION:** The International Codes Council (ICC) reviews and updates code on a three year cycle so codes remain current with safety, trends and technology. The State Building Code Council and Legislature approved the adoption of the 2012 International Fire Code which became effective in July 2013. Codes can be amended provided the amendment does not decrease the minimum code requirement.

**ADDITIONAL OPTIONS:**

**ATTACHMENTS:** Ordinance

**CITY OF UNION GAP, WASHINGTON**  
**ORDINANCE NO. \_\_\_\_\_**

**AN ORDINANCE** amending Title 13.04 of the Union Gap Municipal Code relating to fire codes; adopting the 2012 International Fire Code as required by state law; adopting local option amendments; and revising fee schedules.

**WHEREAS**, Washington Statutes require all jurisdictions in the state to adopt by reference and enforce the International Fire Code as published by the International Code Council throughout Washington; and

**WHEREAS**, Washington establishes the 2012 International Codes, promulgated by the International Code Council (ICC), as the basis of the new State Building Code pursuant to RCW 19.27;

**NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF UNION GAP, WASHINGTON ORDAINS** as follows:

**UNION GAP MUNICIPAL CODE Section 13.04, ADOPTION OF FIRE CODE, is hereby amended to read as follows:**

**Sections:**

- 13.04.010      Adoption.**
- 13.04.015      Adoption of appendices.**
- 13.04.020      Conflict with city or state provisions.**

**13.04.010      Adoption.**

Except as amended and/or modified by this code, the International Fire Code ~~2009~~ 2012 Edition, as published by the International Code Council, is adopted by reference as regulations of the city, governing conditions hazardous to life and property from fire and explosion, and shall have the same force and effect as if it is fully set forth in this chapter.

**13.04.015      Adoption of Appendices.**

Pursuant to Section 101.2.1 of the International Fire Code ~~2009~~ 2012 Edition, the following appendices are adopted;

- Appendix B, Fire Flow for Buildings
- Appendix C, Fire Hydrant Locations and Distribution
- Appendix D, Fire Apparatus Access Roads

**13.04.020      Conflict with city or state provisions.**

(a) In case of conflict of the International Fire Code adopted by reference by the city in this title, the priorities specified in RCW 19.27.030 shall apply.

(b) Pursuant to RCW 19.27.090, certain zoning requirements, building setbacks, side and rear yard requirements, site development standards, property line requirements, subdivision requirements, and general land use requirements are contained and reserved in other enacted

ordinances of the city. In case of conflict between the provisions of this title and other such ordinances, the most restrictive shall apply. Provided, in cases where the chairperson of the planning commission of the city believes that application of any provisions of the International Fire Code, adopted by reference, interferes, directly or indirectly, with a land use policy as set forth by adopted ordinances, he/she may refer such conflict to the city council for formal determination of specific priority which shall thereafter govern. Such determination shall be adopted by resolution and kept on file with the fire department for public reference. Such determination shall be made at an open public hearing. The city council may also initiate a determination by its own action.

**Effective date.** This ordinance shall be in full force and effect five days after publication.

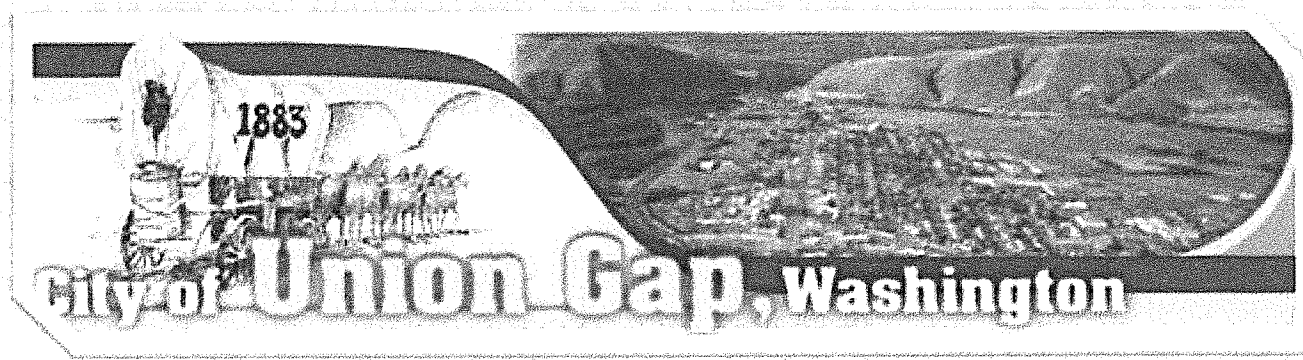
**ORDAINED** this 27<sup>th</sup> day of January 2014.

\_\_\_\_\_  
Roger Wentz, Mayor

ATTEST:

\_\_\_\_\_  
Karen Clifton, City Clerk

\_\_\_\_\_  
Robert F. Noe, City Attorney



## **CITY COUNCIL COMMUNICATION**

**Meeting Date:** January 27, 2014  
**From:** Dennis Henne, Director of Public Works & Community Development  
**Topic/Issue:** Ordinance - Amending Union Gap Municipal Code – Adopting 2012 International Building Codes

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**SYNOPSIS:** Adoption of an ordinance affirming the City's enforcement of the 2012 International Building, Residential, Mechanical, Fuel Gas, Existing Building and Property Maintenance Codes as amended by the State of Washington. Also adopted is the 2012 Uniform Plumbing Code, as well as the Washington State Accessibility and energy codes.

**LEGAL REVIEW:** The City Attorney has reviewed the proposed ordinance.

**RECOMMENDATION:** Adopt an Ordinance amending Title 14 of the Union Gap Municipal Code relating to building codes; adopting revised building codes as required by state law; adopting local option amendments; revising fee schedules; and establishing an effective date.

**FINANCIAL REVIEW:** N/A

**BACKGROUND INFORMATION:** State law requires the enforcement of the 2012 editions of the codes. This ordinance allows the city to make changes to administrative portions of the codes and update the fee schedule. State law prohibits amendments to substantive provisions of the International Residential Code or provisions of any code related to handicapped access. Other codes can be amended provided the amendment does not decrease the minimum code requirement.

**ADDITIONAL OPTIONS:**

**ATTACHMENTS:** Ordinance

**CITY OF UNION GAP, WASHINGTON**  
**ORDINANCE NO. \_\_\_\_\_**

AN ORDINANCE amending Section 14.04.010 of the Union Gap Municipal Code, Adoption of Referenced Codes, relating to building codes; adopting revised building codes as required by state law; adopting local option amendments; revising fee schedules; and establishing an effective date.

WHEREAS, Washington statutes require all jurisdictions in the state to adopt by reference and enforce the same building code throughout Washington;

WHEREAS, Washington established the 2012 International Codes, promulgated by the International Code Council (ICC), as the basis of the State Building Code pursuant to RCW 19.27. The exceptions to the International Codes are the 2012 Uniform Plumbing Code published by the International Association of Plumbing and Mechanical Officials;

WHEREAS, Washington previously developed an energy conservation code and a code for the elimination of physical barriers to promote accessibility;

WHEREAS, the Washington State Energy Code is a stand alone code while the accessibility provisions reside as a state amendment to the International Building Code;

**NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF UNION GAP, WASHINGTON ORDAINS as follows:**

**Section 1. Union Gap Municipal Code Section 14.04.010, Adoption of Referenced Codes, is hereby amended to read as follows:**

The City of Union Gap hereby adopts the following codes, as amended by the Washington State Building Code Council pursuant to RCW 19.27.074 for the purpose of establishing rules and regulations for the construction, alteration, removal, demolition, equipment, use and occupancy, location and maintenance of buildings and structures, including permits and penalties:

(a) The ~~2009~~ 2012 International Building Code (IBC) as published by the International Code Council, Inc. The following appendices are specifically adopted:

Appendix E, Supplementary Accessibility Requirements  
Appendix H, Signs  
Appendix I, Patio Covers

(b) The ~~2009~~ 2012 International Residential Code (IRC) as published by the International Code Council, Inc., PROVIDED: that IRC Chapters 11 and 25 through 43 are not adopted. The following appendices are specifically adopted:

Appendix F, Radon Control Methods  
Appendix G, Swimming Pools, Spas and Hot tubs

Appendix H, Patio Covers  
Appendix R, Dwelling Unit Fire Sprinkler Systems

- (c) The 2009 2012 International Mechanical Code (IMC) as published by the International Code Council, Inc. ~~except that the standards for liquefied petroleum gas installations shall be NFPA 58 (Storage and Handling of Liquefied Petroleum Gases) and ANSI Z223.1/NFPA 54 (National Fuel Gas Code).~~ The following appendices are specifically adopted:

Appendix A, Combustion Air Openings and Chimney Connector Pass-Through(s)

- (d) Except as provided in RCW 19.27.170, The 2009 2012 edition of the Uniform Plumbing Code, including Appendices A, B, and I, published by the International Association of Plumbing and Mechanical Officials, is hereby adopted by reference with the following additions, deletions and exceptions: Provided that chapters 12 and 15 of this code are not adopted. Provided further, that those requirements of the Uniform Plumbing Code relating to venting and combustion air of fuel fired appliances as found in chapter 5 and those portions of the code addressing building sewers are not adopted. The following appendices are specifically adopted:
- (e) The rules adopted by the Washington State Building Code Council establishing standards for making buildings and facilities accessible to and usable by the physically disabled or elderly persons as provided in RCW 70.92.100 through 70.92.160.
- (f) The 2009 2012 International Fuel Gas Code as published by the International Code Council, Inc.
- (g) The Washington State Energy Code as adopted by the State of Washington pursuant to Chapter 51-11 WAC.
- (h) The 2009 2012 International Property Maintenance Code as published by the International Code Council, Inc.
- (i) The 2009 2012 International Existing Building Code as published by the International Code Council, Inc.

**Section 2. Effective date.** This ordinance shall be in full force and effect five days after publication.

**ORDAINED** this 27th day of January 2014.

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Roger Wentz, Mayor

ATTEST:

APPROVED AS TO FORM:

City of Union Gap, Washington  
Ordinance – Amending Municipal Code – 2012 International Building Codes

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Karen Clifton, City Clerk

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Robert F. Noe, City Attorney





## **CITY COUNCIL COMMUNICATION**

**Meeting Date:** January 27, 2014  
**From:** Dennis Henne, Director of Public Works & Community Development  
**Topic/Issue:** Resolution - HLA Task Order 2014-1 - Main Street Stormwater Improvements - Second Street to Franklin Street

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**SYNOPSIS:** The City of Union Gap has received a \$495,000 grant from the Washington State Department of Ecology for the Main Street Stormwater Improvements - Second Street to Franklin Street.

At the direction of the City, HLA shall provide professional engineering and surveying services for the Main Street - Second Street to Franklin Street Stormwater Improvements Project.

**RECOMMENDATION:** Adopt a Resolution authorizing the City Manager to sign Task Order 2014-1 with Huibregtse, Louman Associates, Inc. relating to the Main Street Stormwater Improvements – Second Street to Franklin Street.

**LEGAL REVIEW:**

**FINANCIAL REVIEW:** Funding for this project is through a DOE Proviso Grant.

**BACKGROUND INFORMATION:**

**ADDITIONAL OPTIONS:**

**ATTACHMENTS:** 1. Resolution  
2. HLA Task Order 2014-1

**CITY OF UNION GAP, WASHINGTON**  
**RESOLUTION NO. \_\_\_\_\_**

**A RESOLUTION** authorizing the City Manager to sign Task Order 2014-1 with Huibretgse Louman Associates, Inc. (HLA) for Main Street- Stormwater Improvements – Second Street to Franklin Street.

**WHEREAS**, the City of Union Gap wishes to intercept and redirect stormater discharges out falling directly to Spring Creek along Main Street from Second Street to Franklin Street to new detention/infiltration basins with pretreatment;

**WHEREAS**, the City desires to contract with HLA for the professional engineering and surveying services associated with the project identified above;

**NOW, THEREFORE, BE IT RESOLVED BY THE UNION GAP CITY COUNCIL as follows:**

That the City Manager is authorized to sign Task Order 2014-1 with Huibretgse Louman Associates, Inc. (HLA) for Main Street- Stormwater Improvements – Second Street to Franklin Street.

**PASSED** this 27<sup>th</sup> day of January, 2014.

\_\_\_\_\_  
Roger Wentz, Mayor

ATTEST:

APPROVED AS TO FORM:

\_\_\_\_\_  
Karen Clifton, City Clerk

\_\_\_\_\_  
Robert F. Noe, City Attorney

**TASK ORDER NO. 2014-1**

REGARDING GENERAL AGREEMENT BETWEEN CITY OF UNION GAP

AND

HUIBREGTSE, LOUMAN ASSOCIATES, INC.

**PROJECT DESCRIPTION:**

**MAIN STREET – STORMWATER IMPROVEMENTS – SECOND ST. TO FRANKLIN ST.**  
**HLA Project No. 13106E**

The City of Union Gap has received a FY 2014 Stormwater Grant Program Proviso from the Washington State Department of Ecology to improve storm water conditions within the City of Union Gap. The Project consists of intercepting and redirecting existing stormwater discharges currently out falling directly to Spring Creek along Main Street from Second St. to Franklin St., to new detention/infiltration basins with pretreatment. The project design will include investigation of the reuse or modifications of existing storm drain conveyance facilities, suitable detention/infiltration sites, use of L.I.D. options where possible, and necessary street improvements to collect, convey, and treat storm water runoff from Main Street.

**SCOPE OF SERVICES:**

At the direction of the City of Union Gap (CITY), Huibregtse, Louman Associates, Inc. (HLA), shall provide professional engineering, and surveying services for the Main Street - Stormwater Improvements project (PROJECT). HLA services shall include:

**PHASE 1 – PROJECT ADMINISTRATION**

- A. Assist CITY with contract requirements of funding agency including progress reports.
- B. Assist CITY with funding agency reimbursement process, preparation of payment vouchers and supportive documentation.
- C. Assist CITY with funding agency design-project closeout process.

**PHASE 2 – ENVIRONMENTAL COMPLIANCE**

- A. Assist CITY with State Environmental Review Process (SERP) requirements, including preparation of a SEPA checklist for transmittal to lead agency for review and action.

The following environmental items are not anticipated to be required for this PROJECT:

1. JARPA Application
2. Hydraulic Project Approval (HPA)
3. Corp of Engineers Permit
4. Biological Assessment
5. Wetland Delineation
6. Environmental Impact Statement

Should it be determined any of these items must be prepared, they will be added as a separate and additional phase of work.

- B. Assist the CITY with Cultural Resources Review (Executive Order 05-05).
- C. Prepare General Storm Water Notice of Intent (NOI), where ground disturbance is greater than 1 acre and potential exists for discharge to waters of the State.

### PHASE 3 – PROJECT FORMULATION AND FINAL ENGINEERING DESIGN

- A. Perform field investigations necessary to design the identified improvements.
- B. Conduct a topographic survey of the project area as required to complete design, plans, and specifications for publicly bid improvements.
- C. Investigate existing storm drain connections to the existing stormwater mains from adjacent properties.
- D. Prepare Pre-Design Report for transmittal to the Department of Ecology (DOE) for review and approval.
- E. Prepare preliminary design plans, specifications, and cost estimate for transmittal to the CITY and DOE.
- F. Review and discuss preliminary plans with CITY staff.
- G. Prepare final design, and complete plans and specifications for publicly-bid improvements, as authorized by the CITY.
- H. Prepare the Engineer's Estimate of construction cost.
- I. Assist the City to provide DOE information necessary to request construction funding.
- J. Furnish forty (40) copies of the final plans and specifications for bidding and construction. It is anticipated the ENGINEER will prepare one (1) complete set of plans and specifications for one bid call; additional bid packages will be considered additional services.
- K. Send advertisement for bids to the Paper of Record and other papers selected by the CITY. CITY shall pay all advertisement fees.
- L. Answer and supply such information as is requested by prospective bidders.
- M. Prepare and issue addenda, if necessary.
- N. Attend bid opening and participate in the prospective bidder evaluation process.
- O. Prepare tabulation of all bids received by the CITY and review bidder's qualifications.
- P. Make recommendation to the CITY of construction contract award to the lowest responsible bidder.

### PHASE 4 – SERVICES DURING CONSTRUCTION

- A. Furnish the field survey crew necessary to set horizontal and vertical control for the improvements authorized for construction.
- B. Furnish a qualified resident engineer who shall make construction observations and be on the job site at all times that significant work is in progress, whose duty shall be to provide surveillance of project construction for substantial compliance with plans and specifications.
- C. Prepare and file progress reports on the PROJECT with the CITY and provide monthly progress estimates to the CITY.
- D. Consult and advise the CITY during construction and make a final report of the completed work.

- E. The CITY is required to monitor the Contractor's payment of prevailing wage rates. As part of construction services, HLA will monitor General Contractor and Subcontractor compliance with State labor standards during the construction phase of this project. This work includes checking monthly certified payrolls, conducting employee interviews in the field, and issuing letters of non-compliance and/or letters of missing documents.
- F. Review Contractor's submission of samples and shop drawings, where applicable.
- G. Recommend progress payments for the Contractor to the CITY.
- H. Prepare and submit proposed contract change orders when applicable.
- I. Prepare and furnish reproducible record drawings of all completed work from as-built drawings furnished by the resident engineer and Contractor. If as-built drawings from the Contractor are not received by HLA within thirty (30) calendar days from the date of the letter of recommendation of project acceptance, HLA will submit the reproducible record drawings to the CITY with a note stating that no as-built information was received by HLA.
- J. Participate in the 11th month warranty inspection and make recommendations to Contractor for warranty work that needs to be addressed.

PHASE 5 – ADDITIONAL SERVICES

- A. Provide professional engineering and surveying services for additional work requested by the CITY that is not included in Phases 1 through 5.

ITEMS TO BE FURNISHED AND RESPONSIBILITY OF CITY

The CITY will provide or perform the following:

- A. Provide full information as to CITY requirements of the PROJECT.
- B. Assist HLA by placing at their disposal all available information pertinent to the site of the PROJECT including previous reports, drawings, plats, surveys, utility records, and any other data relative to design and construction of the PROJECT.
- C. Examine all studies, reports, sketches, estimates, specifications, drawings, proposals, and other documents presented by HLA and render in writing decisions pertaining thereto within a reasonable time so as not to delay the work of HLA.
- D. Obtain approval of all governmental authorities having jurisdiction over the PROJECT and such approvals and consents from such other individuals or bodies as may be necessary for completion of the PROJECT.
- E. Pay for project bid advertisement costs.

**TIME OF PERFORMANCE:**

The services called for under the various phases of this Agreement shall be completed as follows:

PHASE 1 – PROJECT ADMINISTRATION

Project administration services shall begin immediately upon notice of authorization to proceed and continue until all design funding close-out requirements for the PROJECT have been satisfied.

PHASE 2 – ENVIRONMENTAL COMPLIANCE

Environmental and cultural resource review and compliance information shall be prepared and submitted to the controlling authority/authorities within 90 calendar days after the date of authorization to proceed.

### PHASE 3 – PROJECT FORMULATION AND FINAL DESIGN ENGINEERING

The DOE Pre-Design Report will be provided within 45 calendar days after the date of authorization to proceed (anticipated January 31, 2014).

Project reports, plans, specifications, and estimates for all project elements shall be provided within 180 calendar days after the date of authorization to proceed (anticipated August 1, 2014).

### PHASE 4 – SERVICES DURING CONSTRUCTION

Engineering services during construction for the PROJECT shall begin upon construction contract award by the CITY to the lowest responsible bidder and shall extend through the completion of construction, and completion of as-constructed drawings and labor documentation closeout. A maximum of 45 working days has been assumed for the construction of improvements. Should the Contractor be granted time extensions for construction completion due to recognized delays, requested additional work, and/or change orders, engineering services beyond the 45 working days shall be considered additional services.

### PHASE 5 – ADDITIONAL SERVICES

Time of completion for work directed by the CITY under additional services shall be negotiated and mutually agreed to at the time of service request by the CITY.

## **FEE FOR SERVICE:**

For the services furnished by HLA as described under this Agreement, the CITY agrees to pay HLA the fees as set forth herein. The amounts listed below may be revised only by written agreement of both parties.

### PHASE 1 – PROJECT ADMINISTRATION

All work for this phase shall be performed for the lump sum fee of \$ 5,000.00.

### PHASE 2 – ENVIRONMENTAL COMPLIANCE

All work for this phase shall be performed for the lump sum fee of \$10,000.00.

### PHASE 3 – PROJECT FORMULATION AND FINAL DESIGN ENGINEERING

All work for this phase shall be performed for the lump sum fee of \$38,600.00.

### PHASE 4 – SERVICES DURING CONSTRUCTION

All work for this phase shall be performed for the lump sum fee of \$50,400.00.

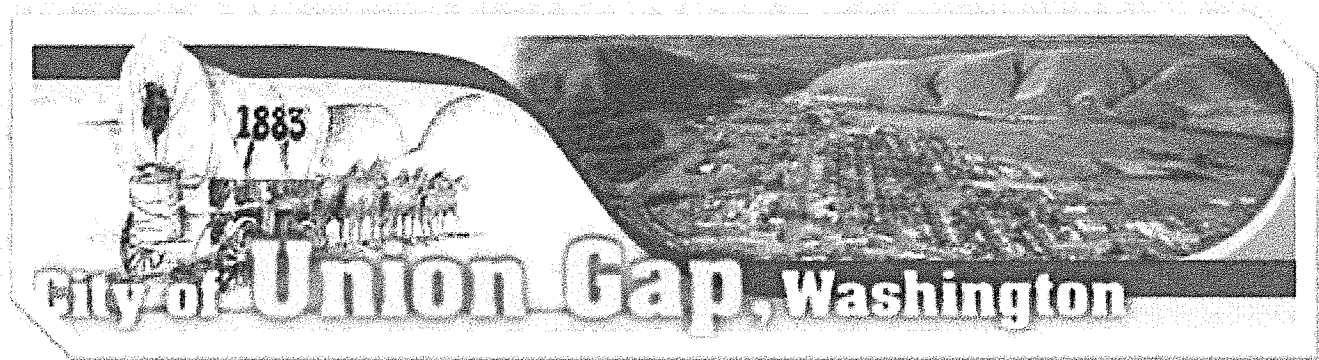
### PHASE 5 – ADDITIONAL SERVICES

Any additional work requested by the CITY that is not included in Phases 1 through 5 shall be authorized by the CITY and agreed to by HLA in writing prior to proceeding with the services. HLA shall perform the additional services as directed/authorized by the CITY on a time-spent basis at the hourly billing rates included in our General Agreement, plus reimbursement for direct non-salary

expenses such as laboratory testing, reproduction expenses, out of town travel costs, and outside engineers.

**Proposed:** Jeffrey T. Louman 1/9/14  
Huibregtse, Louman Associates, Inc. Date  
Jeffrey T. Louman, PE, President

**Approved:** \_\_\_\_\_ Date  
City of Union Gap  
Rodney Otterness, City Manager



## **CITY COUNCIL COMMUNICATION**

**Meeting Date:** January 27, 2014  
**From:** Dennis Henne, Director of Public Works & Community Development  
**Topic/Issue:** Resolution - HLA Task Order 2014-2 - Main Street Stormwater Improvements – Franklin Street to Washington Street

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**SYNOPSIS:** The City of Union Gap has received a \$170,000 2013-2015 Stormwater Capacity Grant from the Washington State Department of Ecology to improve stormwater conditions within the City of Union Gap. At the direction of the City, HLA shall provide professional engineering and surveying services for the Main Street Stormwater Improvements – Franklin Street to Washington Street.

**RECOMMENDATION:** Adopt a Resolution authorizing the City Manager to sign Task Order 2014-2 with Huibregtse, Louman Associates, Inc. relating to the Main Street Stormwater Improvements – Franklin Street to Washington Street.

**LEGAL REVIEW:**

**FINANCIAL REVIEW:** Funding for this project is through a DOE Capacity Grant.

**BACKGROUND INFORMATION:**

**ADDITIONAL OPTIONS:**

**ATTACHMENTS:**

1. Resolution
2. HLA Task Order 2014-2



**CITY OF UNION GAP, WASHINGTON**  
**RESOLUTION NO. \_\_\_\_\_**

**A RESOLUTION** authorizing the City Manager to sign Task Order 2014-2 with Huibretgse Louman Associates, Inc. (HLA) for Main Street- Stormwater Improvements – Franklin Street to Washington Street.

**WHEREAS**, the City of Union Gap received a 2013-2015 Storm Water Capacity Grant from Washington DOE to improve stormwater conditions within the City;

**WHEREAS**, wishes to intercept and redirect stormater discharges out falling directly to Spring Creek along Main Street from Franklin Street to Washington Street to new detention/infiltration basins with pretreatment;

**WHEREAS**, the City desires to contract with HLA for the professional engineering and surveying services associated with the project identified above;

**NOW, THEREFORE, BE IT RESOLVED BY THE UNION GAP CITY COUNCIL as follows:**

That the City Manager is authorized to sign Task Order 2014-2 with Huibretgse Louman Associates, Inc. (HLA) for Main Street- Stormwater Improvements – Franklin Street to Washington Street.

**PASSED** this 27<sup>th</sup> day of January, 2014.

\_\_\_\_\_  
Roger Wentz, Mayor

ATTEST:

APPROVED AS TO FORM:

\_\_\_\_\_  
Karen Clifton, City Clerk

\_\_\_\_\_  
Robert F. Noe, City Attorney

**TASK ORDER NO. 2014-2**

REGARDING GENERAL AGREEMENT BETWEEN CITY OF UNION GAP

AND

HUIBREGTSE, LOUMAN ASSOCIATES, INC.

**PROJECT DESCRIPTION:**

**MAIN STREET – STORMWATER IMPROVEMENTS – FRANKLIN ST. TO WASHINGTON ST.**  
**HLA Project No. 13137E**

The City of Union Gap has received a 2013-2015 Storm Water Capacity Grant from the Washington State Department of Ecology to improve storm water conditions within the City of Union Gap. The Project consists of intercepting and redirecting existing stormwater discharges currently out falling directly to Spring Creek along Main Street from Franklin St. to Washington St., to new detention/infiltration basins with pretreatment. The project design will include investigation of the reuse or modifications of existing storm drain conveyance facilities, suitable detention/infiltration sites, use of L.I.D. options where possible, and necessary street improvements to collect, convey, and treat storm water runoff from Main Street and other areas of Union Gap.

**SCOPE OF SERVICES:**

At the direction of the City of Union Gap (CITY), Huijbregtse, Louman Associates, Inc. (HLA), shall provide professional engineering, and surveying services for the Main Street - Stormwater Improvements project (PROJECT). HLA services shall include:

**PHASE 1 – PROJECT ADMINISTRATION**

- A. Assist CITY with contract requirements of funding agency including progress reports.
- B. Assist CITY with funding agency reimbursement process, preparation of payment vouchers and supportive documentation.
- C. Assist CITY with funding agency design-project closeout process.

**PHASE 2 – ENVIRONMENTAL COMPLIANCE**

- A. Assist CITY with State Environmental Review Process (SERP) requirements, including preparation of a SEPA checklist for transmittal to lead agency for review and action.

The following environmental items are not anticipated to be required for this PROJECT:

- 1. JARPA Application
- 2. Hydraulic Project Approval (HPA)
- 3. Corp of Engineers Permit
- 4. Biological Assessment
- 5. Wetland Delineation
- 6. Environmental Impact Statement

Should it be determined any of these items must be prepared, they will be added as a separate and additional phase of work.

- B. Assist the CITY with Cultural Resources Review (Executive Order 05-05).
- C. Prepare General Storm Water Notice of Intent (NOI), where ground disturbance is greater than 1 acre and potential exists for discharge to waters of the State.

### PHASE 3 – PROJECT FORMULATION AND FINAL ENGINEERING DESIGN

- A. Perform field investigations necessary to design the identified improvements.
- B. Conduct a topographic survey of the project area as required to complete design, plans, and specifications for publicly bid improvements.
- C. Investigate existing storm drain connections to the existing stormwater mains from adjacent properties.
- D. Prepare Pre-Design Report for transmittal to the Department of Ecology (DOE) for review and approval.
- E. Prepare preliminary design plans, specifications, and cost estimate for transmittal to the CITY and DOE.
- F. Review and discuss preliminary plans with CITY staff.
- G. Prepare final design, and complete plans and specifications for publicly-bid improvements, as authorized by the CITY.
- H. Prepare the Engineer's Estimate of construction cost.
- I. Assist the City to provide DOE information necessary to request construction funding.

### PHASE 4 – SERVICES DURING BIDDING

*THE FOLLOWING SERVICES ARE ANTICIPATED TO BE NECESSARY FOR THE PROJECT AND WILL BE ADDED BY ADDENDUM TO THIS AGREEMENT ONCE THE CITY SECURES CONSTRUCTION FUNDING.*

- A. Furnish forty (40) copies of the final plans and specifications for bidding and construction. It is anticipated the ENGINEER will prepare one (1) complete set of plans and specifications for one bid call; additional bid packages will be considered additional services.
- B. Send advertisement for bids to the Paper of Record and other papers selected by the CITY. CITY shall pay all advertisement fees.
- C. Answer and supply such information as is requested by prospective bidders.
- D. Prepare and issue addenda, if necessary.
- E. Attend bid opening and participate in the prospective bidder evaluation process.
- F. Prepare tabulation of all bids received by the CITY and review bidder's qualifications.
- G. Make recommendation to the CITY of construction contract award to the lowest responsible bidder.

### PHASE 5 – SERVICES DURING CONSTRUCTION

*THE FOLLOWING SERVICES ARE ANTICIPATED TO BE NECESSARY FOR THE PROJECT AND WILL BE ADDED BY ADDENDUM TO THIS AGREEMENT ONCE THE CITY SECURES CONSTRUCTION FUNDING.*

- A. Furnish the field survey crew necessary to set horizontal and vertical control for the improvements authorized for construction.

- B. Furnish a qualified resident engineer who shall make construction observations and be on the job site at all times that significant work is in progress, whose duty shall be to provide surveillance of project construction for substantial compliance with plans and specifications.
- C. Prepare and file progress reports on the PROJECT with the CITY and provide monthly progress estimates to the CITY.
- D. Consult and advise the CITY during construction and make a final report of the completed work.
- E. The CITY is required to monitor the Contractor's payment of prevailing wage rates. As part of construction services, HLA will monitor General Contractor and Subcontractor compliance with State labor standards during the construction phase of this project. This work includes checking monthly certified payrolls, conducting employee interviews in the field, and issuing letters of non-compliance and/or letters of missing documents.
- F. Review Contractor's submission of samples and shop drawings, where applicable.
- G. Recommend progress payments for the Contractor to the CITY.
- H. Prepare and submit proposed contract change orders when applicable.
- I. Prepare and furnish reproducible record drawings of all completed work from as-built drawings furnished by the resident engineer and Contractor. If as-built drawings from the Contractor are not received by HLA within thirty (30) calendar days from the date of the letter of recommendation of project acceptance, HLA will submit the reproducible record drawings to the CITY with a note stating that no as-built information was received by HLA.
- J. Participate in the 11th month warranty inspection and make recommendations to Contractor for warranty work that needs to be addressed.

#### PHASE 6 – ADDITIONAL SERVICES

- A. Provide professional engineering and surveying services for additional work requested by the CITY that is not included in Phases 1 through 5.

#### ITEMS TO BE FURNISHED AND RESPONSIBILITY OF CITY

The CITY will provide or perform the following:

- A. Provide full information as to CITY requirements of the PROJECT.
- B. Assist HLA by placing at their disposal all available information pertinent to the site of the PROJECT including previous reports, drawings, plats, surveys, utility records, and any other data relative to design and construction of the PROJECT.
- C. Examine all studies, reports, sketches, estimates, specifications, drawings, proposals, and other documents presented by HLA and render in writing decisions pertaining thereto within a reasonable time so as not to delay the work of HLA.
- D. Obtain approval of all governmental authorities having jurisdiction over the PROJECT and such approvals and consents from such other individuals or bodies as may be necessary for completion of the PROJECT.
- E. Pay for project bid advertisement costs.

**TIME OF PERFORMANCE:**

The services called for under the various phases of this Agreement shall be completed as follows:

PHASE 1 – PROJECT ADMINISTRATION

Project administration services shall begin immediately upon notice of authorization to proceed and continue until all design funding close-out requirements for the PROJECT have been satisfied.

PHASE 2 – ENVIRONMENTAL COMPLIANCE

Environmental and cultural resource review and compliance information shall be prepared and submitted to the controlling authority/authorities within 90 calendar days after the date of authorization to proceed.

PHASE 3 – PROJECT FORMULATION AND FINAL DESIGN ENGINEERING

The DOE Pre-Design Report will be provided within 45 calendar days after the date of authorization to proceed (anticipated January 31, 2014).

Project reports, plans, specifications, and estimates for all project elements shall be provided within 180 calendar days after the date of authorization to proceed (anticipated August 1, 2014).

PHASE 4 – SERVICES DURING BIDDING

*THE FOLLOWING SERVICES ARE ANTICIPATED TO BE NECESSARY FOR THE PROJECT AND WILL BE ADDED BY ADDENDUM TO THIS AGREEMENT ONCE THE CITY SECURES CONSTRUCTION FUNDING.*

Engineering services during bidding for the PROJECT shall begin upon notification of secured construction funding, contract addendum for services, and notification to proceed by the CITY.

PHASE 5 – SERVICES DURING CONSTRUCTION

*THE FOLLOWING SERVICES ARE ANTICIPATED TO BE NECESSARY FOR THE PROJECT AND WILL BE ADDED BY ADDENDUM TO THIS AGREEMENT ONCE THE CITY SECURES CONSTRUCTION FUNDING.*

Engineering services during construction for the PROJECT shall begin upon construction contract award by the CITY to the lowest responsible bidder and shall extend through the completion of construction, and completion of as-constructed drawings and labor documentation closeout. A maximum of 45 working days has been assumed for the construction of improvements. Should the Contractor be granted time extensions for construction completion due to recognized delays, requested additional work, and/or change orders, engineering services beyond the 45 working days shall be considered additional services.

PHASE 6 – ADDITIONAL SERVICES

Time of completion for work directed by the CITY under additional services shall be negotiated and mutually agreed to at the time of service request by the CITY.

**FEE FOR SERVICE:**

For the services furnished by HLA as described under this Agreement, the CITY agrees to pay HLA the fees as set forth herein. The amounts listed below may be revised only by written agreement of both parties.

PHASE 1 – PROJECT ADMINISTRATION

All work for this phase shall be performed for the lump sum fee of \$5,000.00.

PHASE 2 – ENVIRONMENTAL COMPLIANCE

All work for this phase shall be performed for the lump sum fee of \$10,000.00.

PHASE 3 – PROJECT FORMULATION AND FINAL DESIGN ENGINEERING

All work for this phase shall be performed for the lump sum fee of \$105,000.00.

PHASE 4 – SERVICES DURING BIDDING

*To be added at a later date by contract addendum following secured construction funding.*

PHASE 5 – SERVICES DURING CONSTRUCTION

*To be added at a later date by contract addendum following secured construction funding.*

PHASE 6 – ADDITIONAL SERVICES

Any additional work requested by the CITY that is not included in Phases 1 through 3 shall be authorized by the CITY and agreed to by HLA in writing prior to proceeding with the services. HLA shall perform the additional services as directed/authorized by the CITY on a time-spent basis at the hourly billing rates included in our General Agreement, plus reimbursement for direct non-salary expenses such as laboratory testing, reproduction expenses, out of town travel costs, and outside engineers.

Proposed: Jeffrey T. Louman Date 1/9/14  
Huijbregtse, Louman Associates, Inc.  
Jeffrey T. Louman, PE, President

Approved: \_\_\_\_\_ Date \_\_\_\_\_  
City of Union Gap  
Rodney Otterness, City Manager



## **CITY COUNCIL COMMUNICATION**

**Meeting Date:** January 27, 2014  
**From:** Dennis Henne, Director of Public Works & Community Development  
**Topic/Issue:** Resolution - Huibregtse, Louman Associates, Inc. Consultant Agreement - West Ahtanum Road Resurfacing

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**SYNOPSIS:** For your consideration is an agreement with Huibregtse Louman Associates, Inc. providing engineering services for the West Ahtanum Road Resurfacing Project.

**RECOMMENDATION:** Adopt a Resolution authorizing the City Manager to sign a Local Agency Standard Consultant Agreement with Huibregtse, Louman Associates, Inc. (HLA) for services relating to the West Ahtanum Road Resurfacing Project.

**LEGAL REVIEW:**

**FINANCIAL REVIEW:**

**BACKGROUND INFORMATION:**

**ADDITIONAL OPTIONS:**

**ATTACHMENTS:** 1. Resolution  
2. HLA - Local Agency Standard Consultant Agreement

**CITY OF UNION GAP, WASHINGTON**  
**RESOLUTION NO. \_\_\_\_\_**

**A RESOLUTION** authorizing the City Manager to sign a Local Agency Standard Consultant Agreement with Huibretgse Louman Associates for the West Ahtanum Road Resurfacing Project.

**WHEREAS**, the West Ahtanum Road Resurfacing Project requires that the City enter into a Local Agency Standard Consultant with a Consultant possessing architectural and engineering expertise and project management experience to assist with the Project; and

**WHEREAS**, the City desires to enter into the Consultant agreement with Huibretgse Louman Associates for such expertise;

**NOW, THEREFORE, BE IT RESOLVED BY THE UNION GAP CITY COUNCIL as follows:**

That the City Manager is authorized to sign a Local Agency Standard Consultant Agreement with Huibretgse Louman Associates for the West Ahtanum Road Resurfacing Project.

**PASSED** this 27<sup>th</sup> day of January, 2014.

\_\_\_\_\_  
Roger Wentz, Mayor

**ATTEST:**

**APPROVED AS TO FORM:**

\_\_\_\_\_  
Karen Clifton, City Clerk

\_\_\_\_\_  
Robert F. Noe, City Attorney



<b>Local Agency Standard Consultant Agreement</b>		Consultant/Address/Telephone Huibregtse, Louman Associates, Inc. 801 No. 39th Avenue Yakima, WA 98902	
<input checked="" type="checkbox"/> Architectural/Engineering Agreement <input type="checkbox"/> Personal Services Agreement		509-966-7000	
Agreement Number 13131E		Project Title And Work Description City of Union Gap - West Ahtanum Road Resurfacing Project	
Federal Aid Number STPUS - 4550 (005)			
Agreement Type (Choose one) <input checked="" type="checkbox"/> <b>Lump Sum</b> Lump Sum Amount \$ <u>176,497.00</u>  <input type="checkbox"/> <b>Cost Plus Fixed Fee</b> Overhead Progress Payment Rate _____ % Overhead Cost Method <input type="checkbox"/> Actual Cost <input type="checkbox"/> Actual Cost Not To Exceed _____ % <input type="checkbox"/> Fixed Overhead Rate _____ %  Fixed Fee \$ _____  <input type="checkbox"/> <b>Specific Rates Of Pay</b> <input type="checkbox"/> Negotiated Hourly Rate <input type="checkbox"/> Provisional Hourly Rate  <input type="checkbox"/> <b>Cost Per Unit of Work</b>		Grind HMA, regrade subbase, pave back HMA, place gravel shouldering.	
		DBE Participation <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No _____ %	
		Federal ID Number or Social Security Number 91-1237188	
		Do you require a 1099 for IRS? <input type="checkbox"/> Yes <input type="checkbox"/> No	Completion Date December 31, 2015
		Total Amount Authorized \$ <u>176,497.00</u>	
		Management Reserve Fund \$ _____	
		Maximum Amount Payable \$ <u>176,497.00</u>	

**Index of Exhibits (Check all that apply):**

- |   |  |
|---|--|
| <input checked="" type="checkbox"/> Exhibit A-1 Scope of Work         | <input type="checkbox"/> Exhibit G-2 Fee-Sub Specific Rates                              |
| <input type="checkbox"/> Exhibit A-2 Task Order Agreement             | <input type="checkbox"/> Exhibit G-3 Sub Overhead Cost                                   |
| <input type="checkbox"/> Exhibit B-1 DBE Utilization Certification    | <input checked="" type="checkbox"/> Exhibit H Title VI Assurances                        |
| <input type="checkbox"/> Exhibit C Electronic Exchange of Data        | <input type="checkbox"/> Exhibit I Payment Upon Termination of Agreement                 |
| <input checked="" type="checkbox"/> Exhibit D-1 Payment - Lump Sum    | <input checked="" type="checkbox"/> Exhibit J Alleged Consultant Design Error Procedures |
| <input type="checkbox"/> Exhibit D-2 Payment - Cost Plus              | <input checked="" type="checkbox"/> Exhibit K Consultant Claim Procedures                |
| <input type="checkbox"/> Exhibit D-3 Payment - Hourly Rate            | <input type="checkbox"/> Exhibit L Liability Insurance Increase                          |
| <input type="checkbox"/> Exhibit D-4 Payment - Provisional            | <input checked="" type="checkbox"/> Exhibit M-1a Consultant Certification                |
| <input checked="" type="checkbox"/> Exhibit E-1 Fee - Lump/Fixed/Unit | <input checked="" type="checkbox"/> Exhibit M-1b Agency Official Certification           |
| <input type="checkbox"/> Exhibit E-2 Fee - Specific Rates             | <input checked="" type="checkbox"/> Exhibit M-2 Certification - Primary                  |
| <input checked="" type="checkbox"/> Exhibit F Overhead Cost           | <input checked="" type="checkbox"/> Exhibit M-3 Lobbying Certification                   |
| <input type="checkbox"/> Exhibit G Subcontracted Work                 | <input type="checkbox"/> Exhibit M-4 Pricing Data Certification                          |
| <input type="checkbox"/> Exhibit G-1 Subconsultant Fee                | <input type="checkbox"/> App. 31.910 Supplemental Signature Page                         |

THIS AGREEMENT, made and entered into this \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_, between the Local Agency of City of Union Gap, Washington, hereinafter called the "AGENCY", and the above organization hereinafter called the "CONSULTANT".

**WITNESSETH THAT:**

**WHEREAS**, the AGENCY desires to accomplish the above referenced project, and

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

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

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

**I General Description of Work**

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

**II Scope of Work**

The Scope of Work and projected level of effort required for this PROJECT is detailed in Exhibit "A" attached hereto and by this reference made a part of this AGREEMENT.

**III General Requirements**

All aspects of coordination of the work of this AGREEMENT with outside agencies, groups, or individuals shall receive advance approval by the AGENCY. Necessary contacts and meetings with agencies, groups, and/or individuals shall be coordinated through the AGENCY. The CONSULTANT shall attend coordination, progress and presentation meetings with the AGENCY and/or such Federal, State, Community, City or County officials, groups or individuals as may be requested by the AGENCY. The AGENCY will provide the CONSULTANT sufficient notice prior to meetings requiring CONSULTANT participation. The minimum required hours or days notice shall be agreed to between the AGENCY and the CONSULTANT and shown in Exhibit "A."

The CONSULTANT shall prepare a monthly progress report, in a form approved by the AGENCY, which will outline in written and graphical form the various phases and the order of performance of the work in sufficient detail so that the progress of the work can easily be evaluated.

The CONSULTANT, and each SUBCONSULTANT, shall not discriminate on the basis of race, color, national origin, or sex in the performance of this contract. The CONSULTANT, and each SUBCONSULTANT, shall carry out applicable requirements of 49 CFR Part 26 in the award and administration of USDOT-assisted contracts. Failure by the CONSULTANT to carry out these requirements is a material breach of this AGREEMENT that may result in the termination of this AGREEMENT.

Participation for Disadvantaged Business Enterprises (DBE), if required, per 49 CFR Part 26, or participation of Minority Business Enterprises (MBE), and Women Business Enterprises (WBE), shall be shown on the heading of this AGREEMENT. If D/M/WBE firms are utilized, the amounts authorized to each firm and their certification number will be shown on Exhibit "B" attached hereto and by this reference made a part of this AGREEMENT. If the Prime CONSULTANT is a DBE firm they must comply with the Commercial Useful Function (CUF) regulation outlined in the AGENCY'S "DBE Program Participation Plan". The mandatory DBE participation goals of the AGREEMENT are those established by the WSDOT'S Highway and Local Programs Project Development Engineer in consultation with the AGENCY.

All Reports, PS&E materials, and other data furnished to the CONSULTANT by the AGENCY shall be returned. All electronic files, prepared by the CONSULTANT, must meet the requirements as outlined in Exhibit "C."

All designs, drawings, specifications, documents, and other work products, including all electronic files, prepared by the CONSULTANT prior to completion or termination of this AGREEMENT are instruments of service for this PROJECT, and are the property of the AGENCY. Reuse by the AGENCY or by others, acting through or on behalf of the AGENCY of any such instruments of service, not occurring as a part of this PROJECT, shall be without liability or legal exposure to the CONSULTANT.

#### **IV Time for Beginning and Completion**

The CONSULTANT shall not begin any work under the terms of this AGREEMENT until authorized in writing by the AGENCY.

All work under this AGREEMENT shall be completed by the date shown in the heading of this AGREEMENT under completion date.

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

#### **V Payment Provisions**

The CONSULTANT shall be paid by the AGENCY for completed work and services rendered under this AGREEMENT as provided in Exhibit "D" attached hereto, and by reference made part of this AGREEMENT. Such payment shall be full compensation for work performed or services rendered and for all labor, materials, supplies, equipment, and incidentals necessary to complete the work. The CONSULTANT shall conform to all applicable portions of 48 CFR Part 31.

A post audit may be performed on this AGREEMENT. The need for a post audit will be determined by the State Auditor, WSDOT External Audit Office and/or at the request of the AGENCY'S PROJECT Manager.

#### **VI Sub-Contracting**

The AGENCY permits sub-contracts for those items of work as shown in Exhibit "G" attached hereto and by this reference made part of this AGREEMENT.

Compensation for this sub-consultant work shall be based on the cost factors shown on Exhibit "G."

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

All reimbursable direct labor, overhead, direct non-salary costs and fixed fee costs for the sub-consultant shall be substantiated in the same manner as outlined in Section V. All sub-contracts shall contain all applicable provisions of this AGREEMENT.

With respect to sub-consultant payment, the CONSULTANT shall comply with all applicable sections of the Prompt Payment laws as set forth in RCW 39.04.250 and RCW 39.76.011.

The CONSULTANT shall not sub-contract for the performance of any work under this AGREEMENT without prior written permission of the AGENCY. No permission for sub-contracting shall create, between the AGENCY and sub-contractor, any contract or any other relationship. A DBE certified sub-consultant is required to perform a minimum amount of their sub-contracted agreement that is established by the WSDOT Highways and Local Programs Project Development Engineer in consultation with the AGENCY.

#### **VII Employment**

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

Any and all employees of the CONSULTANT or other persons while engaged in the performance of any work or services required of the CONSULTANT under this AGREEMENT, shall be considered employees of the CONSULTANT only and not of the AGENCY, and any and all claims that may arise under any Workmen's Compensation Act on behalf of said employees or other persons while so engaged, and any and all claims made by a

third party as a consequence of any act or omission on the part of the CONSULTANT'S employees or other persons while so engaged on any of the work or services provided to be rendered herein, shall be the sole obligation and responsibility of the CONSULTANT.

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

### **VIII Nondiscrimination**

During the performance of this contract, the CONSULTANT, for itself, its assignees, and successors in interest agrees to comply with the following laws and regulations:

Title VI of the Civil Rights Act of 1964  
(42 USC Chapter 21 Subchapter V Section 2000d through 2000d-4a)

Federal-aid Highway Act of 1973  
(23 USC Chapter 3 Section 324)

Rehabilitation Act of 1973  
(29 USC Chapter 16 Subchapter V Section 794)

Age Discrimination Act of 1975  
(42 USC Chapter 76 Section 6101 et seq.)

Civil Rights Restoration Act of 1987  
(Public Law 100-259)

American with Disabilities Act of 1990  
(42 USC Chapter 126 Section 12101 et. seq.)

49 CFR Part 21

23 CFR Part 200

RCW 49.60.180

In relation to Title VI of the Civil Rights Act of 1964, the CONSULTANT is bound by the provisions of Exhibit "H" attached hereto and by this reference made part of this AGREEMENT, and shall include the attached Exhibit "H" in every sub-contract, including procurement of materials and leases of equipment, unless exempt by the Regulations or directives issued pursuant thereto.

### **IX Termination of Agreement**

The right is reserved by the AGENCY to terminate this AGREEMENT at any time upon ten (10) days written notice to the CONSULTANT.

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

No payment shall be made for any work completed after ten (10) days following receipt by the CONSULTANT of the Notice to Terminate. If the accumulated payment made to the CONSULTANT prior to Notice of Termination exceeds the total amount that would be due when computed as set forth herein above, then no final payment shall be due and the CONSULTANT shall immediately reimburse the AGENCY for any excess paid.

If the services of the CONSULTANT are terminated by the AGENCY for default on the part of the CONSULTANT, the above formula for payment shall not apply.

In such an event, the amount to be paid shall be determined by the AGENCY with consideration given to the actual costs incurred by the CONSULTANT in performing the work to the date of termination, the amount of work originally required which was satisfactorily completed to date of termination, whether that work is in a form or a type which is usable to the AGENCY at the time of termination, the cost to the AGENCY of employing another firm to complete the work required and the time which may be required to do so, and other factors which affect the value to the AGENCY of the work performed at the time of termination.

Under no circumstances shall payment made under this subsection exceed the amount, which would have been made using the formula set forth above.

If it is determined for any reason that the CONSULTANT was not in default or that the CONSULTANT'S failure to perform is without the CONSULTANT'S or it's employee's default or negligence, the termination shall be deemed to be a termination for the convenience of the AGENCY. In such an event, the CONSULTANT would be reimbursed for actual costs in accordance with the termination for other than default clauses listed previously.

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

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

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

### **X Changes of Work**

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

### **XI Disputes**

Any dispute concerning questions of fact in connection with the work not disposed of by AGREEMENT between the CONSULTANT and the AGENCY shall be referred for determination to the Director of Public Works or AGENCY Engineer, whose decision in the matter shall be final and binding on the parties of this AGREEMENT; provided, however, that if an action is brought challenging the Director of Public Works or AGENCY Engineer's decision, that decision shall be subject to de novo judicial review. If the parties to this AGREEMENT mutually agree, disputes concerning alleged design errors will be conducted under the procedures found in Exhibit "J", and disputes concerning claims will be conducted under the procedures found in Exhibit "K".

### **XII Venue, Applicable Law, and Personal Jurisdiction**

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

### **XIII Legal Relations**

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

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

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

The CONSULTANT shall comply with all applicable sections of the applicable Ethics laws, including RCW 42.23, which is the Code of Ethics for regulating contract interest by municipal officers. The CONSULTANT specifically assumes potential liability for actions brought by the CONSULTANT'S own employees against the AGENCY and, solely for the purpose of this indemnification and defense, the CONSULTANT specifically waives any immunity under the state industrial insurance law, Title 51 RCW.

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

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

#### **Insurance Coverage**

- A. Worker's compensation and employer's liability insurance as required by the STATE.
- B. Commercial general liability and property damage insurance in an aggregate amount not less than two million dollars (\$2,000,000) for bodily injury, including death and property damage. The per occurrence amount shall not exceed one million dollars (\$1,000,000).
- C. Vehicle liability insurance for any automobile used in an amount not less than a one million dollar (\$1,000,000) combined single limit.

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

All insurance shall be obtained from an insurance company authorized to do business in the State of Washington. The CONSULTANT shall submit a verification of insurance as outlined above within fourteen (14) days of the execution of this AGREEMENT to the AGENCY.

No cancellation of the foregoing policies shall be effective without thirty (30) days prior notice to the AGENCY.

The CONSULTANT'S professional liability to the AGENCY shall be limited to the amount payable under this AGREEMENT or one million (\$1,000,000) dollars, whichever is the greater, unless modified by Exhibit "L". In no case shall the CONSULTANT'S professional liability to third parties be limited in any way.

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

#### **XIV Extra Work**

- A. The AGENCY may at any time, by written order, make changes within the general scope of the AGREEMENT in the services to be performed.
- B. If any such change causes an increase or decrease in the estimated cost of, or the time required for, performance of any part of the work under this AGREEMENT, whether or not changed by the order, or otherwise affects any other terms and conditions of the AGREEMENT, the AGENCY shall make an equitable adjustment in the (1) maximum amount payable; (2) delivery or completion schedule, or both; and (3) other affected terms and shall modify the AGREEMENT accordingly.
- C. The CONSULTANT must submit any "request for equitable adjustment", hereafter referred to as "CLAIM", under this clause within thirty (30) days from the date of receipt of the written order. However, if the AGENCY decides that the facts justify it, the AGENCY may receive and act upon a CLAIM submitted before final payment of the AGREEMENT.
- D. Failure to agree to any adjustment shall be a dispute under the Disputes clause. However, nothing in this clause shall excuse the CONSULTANT from proceeding with the AGREEMENT as changed.
- E. Notwithstanding the terms and conditions of paragraphs (A) and (B) above, the maximum amount payable for this AGREEMENT, shall not be increased or considered to be increased except by specific written supplement to this AGREEMENT.

#### **XV Endorsement of Plans**

If applicable, the CONSULTANT shall place their endorsement on all plans, estimates, or any other engineering data furnished by them.

#### **XVI Federal and State Review**

The Federal Highway Administration and the Washington State Department of Transportation shall have the right to participate in the review or examination of the work in progress.

#### **XVII Certification of the Consultant and the Agency**

Attached hereto as Exhibit "M-1(a and b)" are the Certifications of the CONSULTANT and the AGENCY, Exhibit "M-2" Certification Regarding Debarment, Suspension and Other Responsibility Matters - Primary Covered Transactions, Exhibit "M-3" Certification Regarding the Restrictions of the Use of Federal Funds for Lobbying and Exhibit "M-4" Certificate of Current Cost or Pricing Data. Exhibit "M-3" is required only in AGREEMENTS over \$100,000 and Exhibit "M-4" is required only in AGREEMENTS over \$500,000.

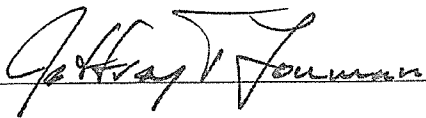
#### **XVIII Complete Agreement**

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

#### **XIX Execution and Acceptance**

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

In witness whereof, the parties hereto have executed this AGREEMENT as of the day and year shown in the "Execution Date" box on page one (1) of this AGREEMENT.

By  By \_\_\_\_\_

Consultant Huibregtse, Louman Associates, Inc. Agency City of Union Gap



**Exhibit A-1  
Scope of Work**

Project No. 13131E

- A. Provide assistance for required documentation and correspondence for funding, environmental (including) Section 106 Report), design review, and estimates to funding and regulatory agencies.
- B. Perform field investigations necessary to design the identified improvements.
- C. Prepare preliminary design, present 60% and 90% design plans to City prior to final plans.
- D. Attend public meetings and/or City Council meetings regarding the project.
- E. On the basis of approved preliminary plans, prepare final design Plans, Specifications and Engineer's estimate of Costs for City review and approval.
- F. Furnish forty (40) copies of Plans and Specifications for bidding (Advertising fees by City).
- G. Answer and supply such information as is requested by prospective bidders, and prepare addenda.
- H. Attend bid opening and participate in the bid opening and bid evaluation process.
- I. Prepare bid tabulation and review bidder's qualifications.

**Documents To Be Furnished By The Consultant**

- A. Required documents of WSDOT for federally funded projects.
- B. Documents required for all environmental permitting required by the project.
- C. 60% plans, 90% plans and specifications, and final PS&E.
- D. Forty (40) copies of Plans and Specifications for bidding (Advertising Fees by City)
- E. Engineer's opinion of probable cost and bid opening tabulation.
- F. Permits by regulatory agencies.
- G. Recommendation of contract award letter.

## Exhibit D-1 Payment (Lump Sum)

The CONSULTANT shall be paid by the AGENCY for completed work and services rendered under this AGREEMENT provided hereinafter. Such payment shall be full compensation for work performed or services rendered and for all labor, materials, supplies, equipment, and incidentals necessary to complete the work specified in Section II, "Scope of Work." The CONSULTANT shall conform to all applicable portions of 48 CFR Part 31. The estimate in support of the lump sum amount is attached hereto as Exhibit "D" and by this reference made part of this AGREEMENT.

- A. Lump Sum Agreement: Payment for all consulting services for this PROJECT shall be on the basis of a lump sum amount as shown in the heading of this AGREEMENT.
  - I. Maximum Total Amount Payable: The Maximum Total Amount Payable by the AGENCY to the CONSULTANT under this AGREEMENT shall not exceed the amount shown in the heading of this AGREEMENT. The Maximum Total Amount Payable is comprised of the Total Amount Authorized, and the Management Reserve Fund. The Maximum Total Amount Payable does not include payment for Extra Work as stipulated in Section XIV, "Extra Work." No minimum amount payable is guaranteed under this AGREEMENT.
- B. Monthly Progress Payments: The CONSULTANT may submit billings to the AGENCY for reimbursement of costs on a monthly basis. To provide a means of verifying the billed salary costs for the CONSULTANT'S employees, the AGENCY may conduct employee interviews. These interviews may consist of recording the names, titles, salary rate, and present duties of those employees performing work on the PROJECT at the time of the interview.
- C. Final Payment: Final Payment of any balance due the CONSULTANT of the gross amount earned will be made promptly upon its verification by the AGENCY after the completion of the work under this AGREEMENT, contingent upon receipt of all PS&E, plans, maps, notes, reports, electronic data and other related documents which are required to be furnished under this AGREEMENT. Acceptance of such Final Payment by the CONSULTANT shall constitute a release of all claims for payment, which the CONSULTANT may have against the AGENCY unless such claims are specifically reserved in writing and transmitted to the AGENCY by the CONSULTANT prior to its acceptance. Said Final Payment shall not, however, be a bar to any claims that the AGENCY may have against the CONSULTANT or to any remedies the AGENCY may pursue with respect to such claims. The payment of any billing will not constitute agreement as to the appropriateness of any item and at the time of final audit, all required adjustments will be made and reflected in a final payment. In the event that such final audit reveals an overpayment to the CONSULTANT, the CONSULTANT will refund such overpayment to the AGENCY within thirty (30) days of notice of the overpayment. Such refund shall not constitute a waiver by the CONSULTANT for any claims relating to the validity of a finding by the AGENCY of overpayment. The CONSULTANT has twenty (20) days after receipt of the final POST AUDIT to begin the appeal process to the AGENCY for audit findings.

- D. Inspection of Cost Records: The CONSULTANT and their sub-consultants shall keep available for inspection by representatives of the AGENCY, STATE and the United States, for a period of three (3) years after receipt of final payment, the cost records and accounts pertaining to this AGREEMENT and all items related to or bearing upon these records with the following exception: if any litigation, claim or audit arising out of, in connection with, or related to this contract is initiated before the expiration of the three (3) year period, the cost records and accounts shall be retained until such litigation, claim, or audit involving the records is completed.

**Exhibit E-1**  
**Consultant Fee Determination - Summary Sheet**  
**(Lump Sum, Cost Plus Fixed Fee, Cost Per Unit of Work)**

**Project:** City of Union Gap - West Ahtanum Road Resurfacing Project

**Direct Salary Cost (DSC):**

<u>Classification</u>	<u>Man Hours</u>		<u>Rate</u>	=	=	<u>Cost</u>
Licensed Principal Engineer	150.0	X	60.00		\$	9,000.00
Licensed Professional Engineer	520.0	X	38.50			20,020.00
Licensed Principal Surveyor	70.0	X	50.00			3,500.00
Licensed Profess. Surveyor	120.0	X	36.00			4,320.00
Project Engineer	120.0	X	36.70			4,404.00
Sr Engineering Technician	150.0	X	24.30			3,645.00
CAD Technician	450.0	X	21.00			9,450.00
Clerical	25.0	X	18.00			450.00
2-Man Survey Crew	110.0	X	57.40			6,314.00
<b>Total DSC</b>						<b>= \$ 61,103.00</b>

**Overhead (OH Cost -- including Salary Additives):**

OH Rate x DSC of 147.17 % x \$ 61,103.00 89,925.29

**Fixed Fee (FF):**

FF Rate x DSC of 35.0 % x \$ 61,103.00 21,386.05

**Reimbursables:**

Itemized 4,082.66

**Subconsultant Costs (See Exhibit G):**

**Grand Total** 176,497.00

Prepared By: Gene Soules, PE

Date: September 11, 2013

**Exhibit F**

**Huibregtse, Louman Associates, Inc.  
Statement of Direct Labor, Fringe Benefits, and General Overhead  
For the Year Ended December 31, 2011**

Description	% of Direct Labor
<b>Direct Labor</b>	
<b>INDIRECT COSTS</b>	
<b>Fringe Benefits</b>	
Vacation, Sick and Holiday	10.75%
Incentive Compensation	22.32%
Retirement Plans	15.35%
Employee Group Insurance	13.89%
Payroll Taxes	13.08%
Other Employee Benefits	0.65%
<b>Total Fringe Benefits</b>	<b>76.05%</b>
<b>General Overhead</b>	
Indirect Labor	27.87%
Accounting Fees	0.64%
Automobile	2.55%
Bank Charges and Processing Fees	0.00%
Computer hardware/software	0.13%
Depreciation and Amortization	2.59%
Dues and Professional Licenses	0.77%
Insurance	6.19%
Leased Equipment	0.66%
Meals Expense	0.25%
Office Supplies and Postage	2.50%
Printing and Reproduction	0.06%
Professional Services	1.62%
Rent and Utilities	13.52%
Repairs and Maintenance	3.91%
Seminars and Prof Education	0.40%
Supplies	0.73%
Taxes and Licenses	7.52%
Telecommunications	1.53%
Travel	0.34%
Direct Costs Recovery	-2.66%
<b>Total General Overhead</b>	<b>71.12%</b>
<b>Total Indirect Costs</b>	<b>147.17%</b>
<b>Overhead Rate</b>	<b>147.17%</b>

## Exhibit H Title VI Assurances

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

1. **Compliance with Regulations:** The CONSULTANT shall comply with the Regulations relative to non-discrimination in federally assisted programs of the AGENCY, Title 49, Code of Federal Regulations, Part 21, as they may be amended from time to time (hereinafter referred to as the "REGULATIONS"), which are herein incorporated by reference and made a part of this AGREEMENT.
2. **Non-discrimination:** The CONSULTANT, with regard to the work performed during the AGREEMENT, shall not discriminate on the grounds of race, color, sex, or national origin in the selection and retention of sub-consultants, including procurement of materials and leases of equipment. The CONSULTANT shall not participate either directly or indirectly in the discrimination prohibited by Section 21.5 of the REGULATIONS, including employment practices when the AGREEMENT covers a program set forth in Appendix B of the REGULATIONS.
3. **Solicitations for Sub-consultants, Including Procurement of Materials and Equipment:** In all solicitations either by competitive bidding or negotiations made by the CONSULTANT for work to be performed under a sub-contract, including procurement of materials or leases of equipment, each potential sub-consultant or supplier shall be notified by the CONSULTANT of the CONSULTANT'S obligations under this AGREEMENT and the REGULATIONS relative to non-discrimination on the grounds of race, color, sex, or national origin.
4. **Information and Reports:** The CONSULTANT shall provide all information and reports required by the REGULATIONS or directives issued pursuant thereto, and shall permit access to its books, records, accounts, other sources of information, and its facilities as may be determined by AGENCY, STATE or the Federal Highway Administration (FHWA) to be pertinent to ascertain compliance with such REGULATIONS, orders and instructions. Where any information required of a CONSULTANT is in the exclusive possession of another who fails or refuses to furnish this information, the CONSULTANT shall so certify to the AGENCY, STATE or the FHWA as appropriate, and shall set forth what efforts it has made to obtain the information.
5. **Sanctions for Non-compliance:** In the event of the CONSULTANT'S non-compliance with the non-discrimination provisions of this AGREEMENT, the AGENCY shall impose such AGREEMENT sanctions as it, the STATE or the FHWA may determine to be appropriate, including, but not limited to:
  - Withholding of payments to the CONSULTANT under the AGREEMENT until the CONSULTANT complies, and/or;
  - Cancellation, termination, or suspension of the AGREEMENT, in whole or in part

6. Incorporation of Provisions: The CONSULTANT shall include the provisions of paragraphs (1) through (5) in every sub-contract, including procurement of materials and leases of equipment, unless exempt by the REGULATIONS, or directives issued pursuant thereto. The CONSULTANT shall take such action with respect to any sub-consultant or procurement as the AGENCY, STATE or FHWA may direct as a means of enforcing such provisions including sanctions for non-compliance.

Provided, however, that in the event a CONSULTANT becomes involved in, or is threatened with, litigation with a sub-consultant or supplier as a result of such direction, the CONSULTANT may request the AGENCY and the STATE enter into such litigation to protect the interests of the AGENCY and the STATE and, in addition, the CONSULTANT may request the United States enter into such litigation to protect the interests of the United States.

## Exhibit J

### Alleged Consultant Design Error Procedures

The purpose of this exhibit is to establish a procedure to determine if a consultant's alleged design error is of a nature that exceeds the accepted standard of care. In addition, it will establish a uniform method for the resolution and/or cost recovery procedures in those instances where the agency believes it has suffered some material damage due to the alleged error by the consultant.

#### Step 1 – Potential Consultant Design Error(s) is Identified by Agency's Project Manager

At the first indication of potential consultant design error(s), the first step in the process is for the Agency's project manager to notify the Director of Public Works or Agency Engineer regarding the potential design error(s). For federally funded projects, the Region Highways and Local Programs Engineer should be informed and involved in these procedures. (Note: The Director of Public Works or Agency Engineer may appoint an agency staff person other than the project manager, who has not been as directly involved in the project, to be responsible for the remaining steps in these procedures.)

#### Step 2 - Project Manager Documents the Alleged Consultant Design Error(s)

After discussion of the alleged design error(s) and the magnitude of the alleged error(s), and with the Director of Public Works or Agency Engineer's concurrence, the project manager obtains more detailed documentation than is normally required on the project. Examples include: all decisions and descriptions of work; photographs, records of labor, materials and equipment.

#### Step 3 – Contact the Consultant Regarding the Alleged Design Error(s)

If it is determined that there is a need to proceed further, the next step in the process is for the project manager to contact the consultant regarding the alleged design error(s) and the magnitude of the alleged error(s). The project manager and other appropriate agency staff should represent the agency and the consultant should be represented by their project manager and any personnel (including sub-consultants) deemed appropriate for the alleged design error(s) issue.

#### Step 4 – Attempt to Resolve Alleged Design Error with Consultant

After the meeting(s) with the consultant have been completed regarding the consultant's alleged design error(s), there are three possible scenarios:

- It is determined via mutual agreement that there is not a consultant design error(s). If this is the case, then the process will not proceed beyond this point.
- It is determined via mutual agreement that a consultant design error(s) occurred. If this is the case, then the Director of Public Works or Agency Engineer, or their representatives, negotiate a settlement with the consultant. The settlement would be paid to the agency or the amount would be reduced from the consultant's agreement with the agency for the services on the project in which the design error took place. The agency is to provide H&LP, through the Region



Local Programs Engineer, a summary of the settlement for review and to make adjustments, if any, as to how the settlement affects federal reimbursements. No further action is required.

- There is not a mutual agreement regarding the alleged consultant design error(s). The consultant may request that the alleged design error(s) issue be forwarded to the Director of Public Works or Agency Engineer for review. If the Director of Public Works or Agency Engineer, after review with their legal counsel, is not able to reach mutual agreement with the consultant, proceed to Step 5.

#### Step 5 – Forward Documents to Highways and Local Programs

For federally funded projects all available information, including costs, should be forwarded through the Region Highways and Local Programs Engineer to H&LP for their review and consultation with the FHWA. H&LP will meet with representatives of the agency and the consultant to review the alleged design error(s), and attempt to find a resolution to the issue. If necessary, H&LP will request assistance from the Attorney General's Office for legal interpretation. H&LP will also identify how the alleged error(s) affects eligibility of project costs for federal reimbursement.

- If mutual agreement is reached, the agency and consultant adjust the scope of work and costs to reflect the agreed upon resolution. H&LP, in consultation with FHWA, will identify the amount of federal participation in the agreed upon resolution of the issue.
- If mutual agreement is not reached, the agency and consultant may seek settlement by arbitration or by litigation.

## Exhibit K

### Consultant Claim Procedures

The purpose of this exhibit is to describe a procedure regarding claim(s) on a consultant agreement. The following procedures should only be utilized on consultant claims greater than \$1,000. If the consultant's claim(s) are a total of \$1,000 or less, it would not be cost effective to proceed through the outlined steps. It is suggested that the Director of Public Works or Agency Engineer negotiate a fair and reasonable price for the consultant's claim(s) that total \$1,000 or less.

This exhibit will outline the procedures to be followed by the consultant and the agency to consider a potential claim by the consultant.

#### Step 1 – Consultant Files a Claim with the Agency Project Manager

If the consultant determines that they were requested to perform additional services that were outside of the agreement's scope of work, they may be entitled to a claim. The first step that must be completed is the request for consideration of the claim to the Agency's project manager.

The consultant's claim must outline the following:

- Summation of hours by classification for each firm that is included in the claim;
- Any correspondence that directed the consultant to perform the additional work;
- Timeframe of the additional work that was outside of the project scope;
- Summary of direct labor dollars, overhead costs, profit and reimbursable costs associated with the additional work; and
- Explanation as to why the consultant believes the additional work was outside of the agreement scope of work.

#### Step 2 – Review by Agency Personnel Regarding the Consultant's Claim for Additional Compensation

After the consultant has completed step 1, the next step in the process is to forward the request to the Agency's project manager. The project manager will review the consultant's claim and will meet with the Director of Public Works or Agency Engineer to determine if the Agency agrees with the claim. If the FHWA is participating in the project's funding, forward a copy of the consultant's claim and the Agency's recommendation for federal participation in the claim to the WSDOT Highways and Local Programs through the Region Local Programs Engineer. If the claim is not eligible for federal participation, payment will need to be from agency funds.

If the Agency project manager, Director of Public Works or Agency Engineer, WSDOT Highways and Local Programs (if applicable), and FHWA (if applicable) agree with the consultant's claim, send a request memo, including backup documentation to the consultant to either supplement the agreement, or create a new agreement for the claim. After the request has been approved, the Agency shall write the supplement and/or new agreement and pay the consultant the amount of the claim. Inform the consultant that the final payment for the agreement is subject to audit. No further action is needed regarding the claim procedures.

If the Agency does not agree with the consultant's claim, proceed to step 3 of the procedures.

### Step 3 – Preparation of Support Documentation Regarding Consultant's Claim(s)

If the Agency does not agree with the consultant's claim, the project manager shall prepare a summary for the Director of Public Works or Agency Engineer that included the following:

- Copy of information supplied by the consultant regarding the claim;
- Agency's summation of hours by classification for each firm that should be included in the claim;
- Any correspondence that directed the consultant to perform the additional work;
- Agency's summary of direct labor dollars, overhead costs, profit and reimbursable costs associated with the additional work;
- Explanation regarding those areas in which the Agency does/does not agree with the consultant's claim(s);
- Explanation to describe what has been instituted to preclude future consultant claim(s); and
- Recommendations to resolve the claim.

### Step 4 – Director of Public Works or Agency Engineer Reviews Consultant Claim and Agency Documentation

The Director of Public Works or Agency Engineer shall review and administratively approve or disapprove the claim, or portions thereof, which may include getting Agency Council or Commission approval (as appropriate to agency dispute resolution procedures). If the project involves federal participation, obtain concurrence from WSDOT Highways and Local Programs and FHWA regarding final settlement of the claim. If the claim is not eligible for federal participation, payment will need to be from agency funds.

### Step 5 – Informing Consultant of Decision Regarding the Claim

The Director of Public Works or Agency Engineer shall notify (in writing) the consultant of their final decision regarding the consultant's claim(s). Include the final dollar amount of the accepted claim(s) and rationale utilized for the decision.

### Step 6 – Preparation of Supplement or New Agreement for the Consultant's Claim(s)

The agency shall write the supplement and/or new agreement and pay the consultant the amount of the claim. Inform the consultant that the final payment for the agreement is subject to audit.

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**Exhibit M-1(a)**  
**Certification Of Consultant**

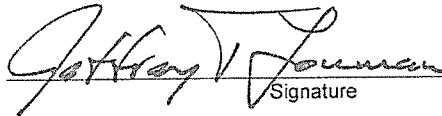
Project No. 13131E  
Local Agency Union Gap

I hereby certify that I am Jeffrey T. Louman and duly authorized representative of the firm of Huibregtse, Louman Associates, Inc. whose address is 2803 River Road, Yakima, WA 98902 and that neither I nor the above firm I here represent has:

- (a) Employed or retained for a commission, percentage, brokerage, contingent fee, or other consideration, any firm or person (other than a bona fide employee working solely for me or the above CONSULTANT) to solicit or secure the AGREEMENT;
- (b) Agreed, as an express or implied condition for obtaining this contract, to employ or retain the services of any firm or person in connection with carrying out this AGREEMENT; or
- (c) Paid, or agreed to pay, to any firm, organization or person (other than a bona fide employee working solely for me or the above CONSULTANT) any fee, contribution, donation, or consideration of any kind for, or in connection with, procuring or carrying out this AGREEMENT; except as hereby expressly stated (if any);

I acknowledge that this certificate is to be available to the Washington State Department of Transportation and the Federal Highway Administration, U.S. Department of Transportation in connection with this AGREEMENT involving participation of Federal-aid highway funds, and is subject to applicable State and Federal laws, both criminal and civil.

12/26/13  
Date

  
Signature

**Exhibit M-1(b)**  
**Certification Of Agency Official**

I hereby certify that I am the AGENCY Official of the Local Agency of City of Union Gap, Washington, and that the consulting firm or its representative has not been required, directly or indirectly as an express or implied condition in connection with obtaining or carrying out this AGREEMENT to:

- (a) Employ or retain, or agree to employ to retain, any firm or person; or
- (b) Pay, or agree to pay, to any firm, person, or organization, any fee, contribution, donation, or consideration of any kind; except as hereby expressly stated (if any):

I acknowledge that this certificate is to be available to the Washington State Department of Transportation and the Federal Highway Administration, U.S. Department of Transportation, in connection with this AGREEMENT involving participation of Federal-aid highway funds, and is subject to applicable State and Federal laws, both criminal and civil.

\_\_\_\_\_  
Date

\_\_\_\_\_  
Signature

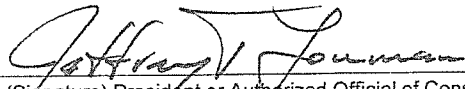
## Exhibit M-2

### Certification Regarding Debarment, Suspension, and Other Responsibility Matters-Primary Covered Transactions

- I. The prospective primary participant certifies to the best of its knowledge and belief, that it and its principals:
- A. Are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions by any federal department or agency;
  - B. Have not within a three-year period preceding this proposal been convicted of or had a civil judgment rendered against them for commission or fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (federal, state, or local) transaction or contract under a public transaction; violation of federal or state antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property;
  - C. Are not presently indicted for or otherwise criminally or civilly charged by a governmental entity (federal, state, or local) with commission of any of the offenses enumerated in paragraph (I) (B). of this certification; and
  - D. Have not within a three (3) year period preceding this application/proposal had one or more public transactions (federal, state, or local) terminated for cause or default.
- II. Where the prospective primary participant is unable to certify to any of the statements in this certification, such prospective participant shall attach an explanation to this proposal.

Consultant (Firm): Huibregtse, Louman Associates, Inc.

12/28/13  
(Date)

  
(Signature) President or Authorized Official of Consultant

**Exhibit M-3**  
**Certification Regarding The Restrictions**  
**of The use of Federal Funds for Lobbying**

The prospective participant certifies, by signing and submitting this bid or proposal, to the best of his or her knowledge and belief, that:

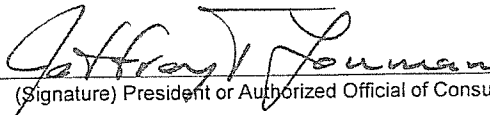
1. No federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of any Federal agency, a member of Congress, an officer or employee of Congress, or an employee of a member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.
2. If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any Federal agency, a member of Congress, an officer or employee of Congress, or an employee of a member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.

This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by Section 1352, Title 31, U.S. Code. Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

The prospective participant also agrees by submitting his or her bid or proposal that he or she shall require that the language of this certification be included in all lower tier subcontracts which exceed \$100,000 and that all such subrecipients shall certify and disclose accordingly.

Consultant (Firm): Huibregtse, Louman Associates, Inc.

12/26/13  
(Date)

  
(Signature) President or Authorized Official of Consultant



## **CITY COUNCIL COMMUNICATION**

**Meeting Date:** January 27, 2014  
**From:** Dennis Henne, Director of Public Works & Community Development  
**Topic/Issue:** Appointment – Transit RFP Council Sub-Committee

---

**SYNOPSIS:** City staff has been directed to advertise a Request for Proposal for the City's Transit contract.

**RECOMMENDATION:** Appoint three Council Sub-committee members to review proposals and make recommendations to the full Council.

**LEGAL REVIEW:**

**FINANCIAL REVIEW:** N/A

**BACKGROUND INFORMATION:**

**ADDITIONAL OPTIONS:** Interview all qualified applicants at a full City Council meeting.

**ATTACHMENTS:** Advertisement – Request for Proposal



## **CITY OF UNION GAP REQUEST FOR PROPOSALS FOR TRANSIT SERVICES**

The City of Union Gap is soliciting Requests for Qualifications and Proposals for bus transit service as now established. Proposals must include fixed routes, fixed schedules, and dial-a-ride services comparable to the service that the City currently receives. Informational materials regarding the current level of service can be obtained from the City of Union Gap by calling Director of Public Works & Community Development Dennis Henne at 509.248.0432.

Proposals must be based on the provision of transit services within the City of Union Gap without any provision for charging a fare. The City of Union Gap believes that smaller buses better meet the City's ridership needs; however, buses must be able to accommodate at least 14 passengers and be fully ADA compliant. Seatbelts and three-point belts are required for dial-a-ride services. All new vehicle equipment purchases on fixed-route buses must have seatbelts for all seats not just the wheel chair location. Dial-a-Ride service shall be provided for all transit service hours plus a five-hour period on Sundays. Proposals should include an explanation of how the level of service needed by the rider ship will be maintained. Proposers will be responsible for providing all equipment, vehicles with the City of Union Gap Transit System logo and wording, manpower, and administration including keeping and providing accurate records, reports, and invoicing the City on a monthly basis. The City retains the right to inspect all system records at any time. The City requires the contractor to provide insurance coverage, The Contractor shall purchase and maintain a certificate of insurance; the contract requires \$5,000,000 CGL and \$5,000,000 CAL. Proposers will be responsible for providing printed schedules updated at least annually, maps, and timetables for the ridership. A separate optional proposal shall provide the cost of outfitting fixed-route buses with GIS to allow web-based tracking of actual bus location. In addition, proposers will be required to periodically analyze their level of service and meet with the City to review service levels and any modifications that might be appropriate for efficiency and quality. Proposers will be responsible for ensuring compliance with all applicable federal and state regulations and reporting requirements such as but not limited to quarterly and annual reports, transit development plan, operator training, and rider safety requirements associated with the provision of transit services within the City. The successful proposer will also be required to provide a representative for the Yakima Valley Conference of Governments Transit Coordinating Committee.

The City of Union Gap assumes no obligation of any kind for expenses incurred by any respondent to this solicitation. The City reserves the right to reject any and all submittals. The State of Washington fair labor practices and non-discrimination policies shall apply. All State and Federal regulations regarding transit service shall apply. Please submit eight (8) bound proposals to: Karen Clifton, Director of Finance and Administration, 107 W. Ahtanum Rd., Union Gap, Washington 98903. Submittals should be clearly marked "Request For Proposals For Transit Services" and submitted no later than 3:00 p.m. February X, 2014.

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Karen Clifton, City Clerk

Publish: Sunday, February X, 2014



## **CITY COUNCIL COMMUNICATION**

**Meeting Date:** January 27<sup>th</sup>, 2014  
**From:** Gregory Cobb, Acting Public Safety Director  
**Topic/Issue:** Resolution – State Patrol Memorandum of Understanding – Statewide Emergency Mobilization

---

**SYNOPSIS:** This agreement provides for the Fire Department to be reimbursed for allowable costs incurred during State Mobilization.

**RECOMMENDATION:** Adopt a Resolution authorizing the City Manager to sign the attached Interagency Agreement between the Washington State Patrol and the Union Gap Fire Department.

**LEGAL REVIEW:**

**FINANCIAL REVIEW:**

**BACKGROUND INFORMATION:** This is a renewal of a pre-existing agreement that expired in 2013.

**ADDITIONAL OPTIONS:**

**ATTACHMENTS:**

1. Resolution
2. Interagency agreement

**CITY OF UNION GAP, WASHINGTON**  
**RESOLUTION NO. \_\_\_\_\_**

A **RESOLUTION** authorizing the City Manager to sign an Interagency Agreement between the Washington State Patrol and the City of Union Gap Fire Department for cost reimbursement related to State Fire Service Mobilization.

**WHEREAS**, pursuant to provisions found in RCW 43.43 State Fire Service Mobilization if the Union Gap Fire Department is deployed and its assets mobilized as part of a recognized State Fire Services Resource Mobilization Plan, then the City may be entitled to cost reimbursement for such reimbursement;

**WHEREAS**, to ensure such reimbursement the City of Union Gap Fire Department must enter into an interagency agreement with the Washington State Patrol;

**WHEREAS**, the City of Union Gap Fire Department has been a participant in such interagency agreement and wishes to renew the agreement at this time:

**NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF UNION GAP, WASHINGTON, HEREBY RESOLVES as follows:**

The City Manager is authorized to sign an Interagency Agreement between the Washington State Patrol and the City of Union Gap Fire Department for cost reimbursement related to State Fire Service Mobilization.

**PASSED** this 27<sup>th</sup> day of January, 2014.

\_\_\_\_\_  
Roger Wentz, Mayor

ATTEST:

APPROVED AS TO FORM:

\_\_\_\_\_  
Karen Clifton, City Clerk

\_\_\_\_\_  
Robert F. Noe, City Attorney

JAY INSLEE  
Governor



JOHN R. BATISTE  
Chief

STATE OF WASHINGTON  
WASHINGTON STATE PATROL

General Administration Building • PO BOX 42602 • Olympia, WA 98504-2602 • (360) 596-4043 • [www.wsp.wa.gov](http://www.wsp.wa.gov)

December 16, 2013

Secretary Jo Collier  
Union Gap Fire Department  
107 W. Ahtanum Road  
Union Gap WA 98903

Dear Ms. Collier:

Subject: WSP Agreement No. C140987GSC, State Fire Mobilization Reimbursement

Enclosed are two originals of an interagency agreement between the Washington State Patrol and your organization to allow reimbursement of fire mobilization costs per the Washington State Fire Services Resource Mobilization Plan. If you anticipate providing career firefighters and/or equipment under the plan, please have an approved representative of your organization sign these originals and return them to the following:

Budget and Fiscal Services  
Washington State Patrol  
PO Box 42602  
Olympia WA 98504-2602

You are required to be registered as a Statewide Payee prior to submitting a request for payment under this Contract. The Washington State Department of Enterprise Services (DES) maintains the Statewide Payee Registration System; to obtain registration materials go to <http://www.des.wa.gov/services/ContractingPurchasing/Business/VendorPay/Pages/default.aspx>.

A fully signed original will be returned to you for your records. Please contact Ms. Pat Hill at (360) 596-4076 or via e-mail at [pat.hill@wsp.wa.gov](mailto:pat.hill@wsp.wa.gov) if you have any questions or concerns regarding this agreement.

Sincerely,

A handwritten signature in cursive script that reads "Patricia Hill".

for:  
Mr. Robert L. Maki, CFE, CGFM  
Budget and Fiscal Services

RLM:pgh  
Enclosures



INTERAGENCY AGREEMENT  
BETWEEN  
STATE OF WASHINGTON  
WASHINGTON STATE PATROL  
AND  
UNION GAP FIRE DEPARTMENT

This Interagency Agreement (Agreement), pursuant to RCW 43.43.960 through RCW 43.43.964 (State Fire Service Mobilization) and Chapter 39.34 RCW (Interlocal Cooperation Act), is made and entered into by and between the Washington State Patrol, hereinafter referred to as "WSP," and the Union Gap Fire Department, a statutorily authorized fire agency within the State of Washington, hereinafter referred to as "Fire Agency."

The purpose of this Agreement is to provide for the reimbursement of allowable Fire Agency costs incurred while its assets are mobilized in accordance with RCW 43.43.960 through RCW 43.43.964 and the Washington State Fire Services Resource Mobilization Plan (Mobilization Plan). The Mobilization Plan and any subsequent versions adopted pursuant to RCW 43.43.962 are incorporated herein by this reference.

Therefore, it is mutually agreed that:

- 1. Mobilization Plan.** The Mobilization Plan provides a process to quickly notify, assemble and deploy fire service personnel and equipment to any local fire jurisdiction in Washington State that has expended all local and mutual aid resources in attempting to manage, mitigate and control an emergency incident or situation for the protection of life and property. If the Fire Agency responds with its available assets to an incident mobilization, both parties shall comply with the procedures detailed in the Mobilization Plan.
- 2. Period of Performance.** The period of performance of this Agreement begins on January 1, 2014 and ends on December 31, 2018 unless terminated sooner as provided herein.
- 3. Billing Procedures.** WSP shall reimburse the Fire Agency upon the receipt of properly executed claim forms submitted by the Fire Agency according to the Mobilization Plan. Claims for payment submitted by the Fire Agency to WSP for costs due and payable under this Agreement shall be paid by WSP if received by WSP within 45 days from the end of each respective fire mobilization. The Fire Agency is required to be registered as a Statewide Payee prior to submitting a request for payment under this Contract. The Washington State Department of Enterprise Services (DES) maintains the Statewide Payee Registration System; to obtain registration materials go to <http://www.des.wa.gov/services/ContractingPurchasing/Business/VendorPay/Pages/default.aspx>.
- 4. Compliance with Civil Rights Laws.** During the period of performance for this Agreement, both parties shall comply with all federal and state nondiscrimination laws.
- 5. Records Maintenance.** Both parties shall maintain books, records, documents and other evidence which sufficiently and properly reflect all direct and indirect costs expended by either party in the performance 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 federal officials so authorized by law. Both parties

shall retain all books, records, documents, and other material relevant to this Agreement for six (6) years after expiration, and the Office of the State Auditor, federal auditors, and any persons duly authorized by the parties shall have full access and the right to examine any of these materials during this period.

6. **Agreement Management.** The work described herein shall be performed under the coordination of Secretary Jo Collier of the Fire Agency, and Assistant State Fire Marshal Paul Perz of WSP, or their successors. They shall provide assistance and guidance to the other party necessary for the performance of this Agreement.
7. **Hold Harmless.** Each party shall defend, protect and hold harmless the other party from and against all claims, suits and/or actions arising from any negligent or intentional act or omission of that party's employees, agents, and/or authorized subcontractor(s) while performing under this Agreement.
8. **Agreement Alterations and Amendments.** This Agreement may be amended by mutual agreement of the parties. Such amendments shall not be binding unless they are in writing and signed by personnel authorized to bind each of the parties.
9. **Termination.** Either party may terminate this Agreement upon thirty (30) calendar days' written notification to the other party. If this Agreement is so terminated, the terminating party shall be liable only for performance in accordance with the terms of this Agreement for performance prior to the effective date of termination.
10. **Appeals of Denied Claims.** In the event that WSP denies payment of claim(s) submitted by the Fire Agency under this Agreement, the Fire Agency may appeal the denial according to the Mobilization Plan. The process contained in the Mobilization Plan is the sole administrative recourse available to the Fire Agency for the appeal of denied claims.
11. **Order of Precedence.** In the event of any inconsistency in the terms of this Agreement, the inconsistency shall be resolved by giving precedence in the following order:
  1. Applicable federal and state statutes and regulations;
  2. Terms and Conditions contained in this Agreement
  3. Any other provisions of the Agreement, whether incorporated by reference or otherwise.
12. **All Writings Contained Herein.** This Agreement contains all the terms and conditions agreed upon by the parties. No other understandings, oral or otherwise, regarding the subject matter of this Agreement shall be deemed to exist or to bind any of the parties hereto.

IN WITNESS WHEREOF, the parties have executed this Agreement.

For the Washington State Patrol:

For the Union Gap Fire Department:

\_\_\_\_\_  
FOR: John R. Batiste, Chief

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Date

\_\_\_\_\_  
Date

APPROVED AS TO FORM BY THE OFFICE OF THE ATTORNEY GENERAL 2/5/2008



## **CITY COUNCIL COMMUNICATION**

**Meeting Date:** January 27<sup>th</sup>, 2014  
**From:** Gregory Cobb, Acting Public Safety Director  
**Topic/Issue:** Resolution – Surplus Vehicles

---

**SYNOPSIS:** The Police Department wishes to declare two vehicles surplus that are no longer needed for Police Department functions. #1-1994 Ford Van with 220,026 miles, VIN 1FBJS31H2RHB72005. #2- 1996 Dodge Van with 41,590 miles, VIN 2B7KB31Z2TK168372.

**RECOMMENDATION:** Approve a Resolution declaring two Police Department vehicles surplus and authorize them to be sold to other governmental agencies or auctioned at the Haverlo's spring auction.

**LEGAL REVIEW:** The City Attorney Prepared the resolution.

**FINANCIAL REVIEW:** N/A

**BACKGROUND INFORMATION:** Both vehicles are passenger vans that were used to transport prisoners to court. One van has 220,026 miles and was due to be declared surplus last year. The second van was purchased from the City of Yakima last year as a replacement. These vehicles are no longer needed due to the contract with the City of Wapato to provide prisoner transport to court.

**ADDITIONAL OPTIONS:**

**ATTACHMENTS:** Resolution

**CITY OF UNION GAP, WASHINGTON**  
**RESOLUTION NO. \_\_\_\_\_**

**RESOLUTION DECLARING VEHICLES SURPLUS AND PROVIDING  
FOR DISPOSITION OF THE SAME**

**WHEREAS**, the City of Union Gap Police Department has determined that it no longer has need for two motor vehicles;

**WHEREAS**, the City of Union Gap wishes to surplus and dispose of the vehicles;

**NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF UNION GAP, WASHINGTON, HEREBY RESOLVES as follows:**

Section 1. The following motor vehicles are hereby declared surplus:

- a. 1994 Ford Van with 220,026 miles, VIN 1FBJS31H2RHB72005.
- b. 1996 Dodge Van with 41,590 miles, VIN 2B7KB31Z2TK168372.

Section 2. The Police Department is authorized to dispose of the above-listed motor vehicles in a commercially reasonable manner through sale to other governmental agencies or through auction at the Haverlo's spring auction. .

**PASSED** this 27<sup>th</sup> day of January, 2014.

\_\_\_\_\_  
Roger Wentz, Mayor

ATTEST:

APPROVED AS TO FORM:

\_\_\_\_\_  
Karen Clifton, City Clerk

\_\_\_\_\_  
Robert F. Noe, City Attorney





## **CITY COUNCIL COMMUNICATION**

**Meeting Date:** January 27<sup>th</sup>, 2014  
**From:** Gregory Cobb, Acting Public Safety Director  
**Topic/Issue:** Council Information - Purchase of new Police Vehicles

---

### **SYNOPSIS:**

Due to an aging fleet and in order to stay on a manageable replacement cycle the Police Department needs to purchase three (3) new police vehicles.

### **RECOMMENDATION:**

Authorize the Police Department to purchase three (3) new police Vehicles in accordance with the approved 2014 budget, not to exceed \$145,000.00.

**LEGAL REVIEW:** N/A

**FINANCIAL REVIEW:** N/A

### **BACKGROUND INFORMATION:**

This was discussed during budget preparation and approved for the 2014 budget.

**ADDITIONAL OPTIONS:**

**ATTACHMENTS:**



## **CITY COUNCIL COMMUNICATION**

**Meeting Date:** January 27, 2014  
**From:** Robert Noe, City Attorney  
**Topic/Issue:** Discussion - Moratorium for Marijuana Collective Gardens and for I-502, Production, Processing, and Retail of Marijuana

---

**SYNOPSIS:** The City previously adopted a moratorium to provide the City with additional time to study and analyze the impacts of permitting collective gardens, producer, processors, and retailers of marijuana within the City and to consider its comprehensive planning and development regulations concerning such land uses. Under state law a City imposing a moratorium must hold a public hearing within 60 days of the passage of the ordinance to determine whether the moratorium should be lifted or whether it should stay in force. The City did not conduct a public hearing within 60 days, so City staff is bringing the moratorium to the Council attention again. Meanwhile, the Washington State Liquor Control Board requested that the Attorney General render an opinion on whether cities can ban producers, processors and retailers and whether cities can impose zoning restrictions on such uses. The Attorney General issued an opinion finding that cities can impose a ban and that cities can impose zoning regulations on such uses. The City's Planning Commission is currently studying the issues and will be making a recommendation to the City Council. A copy of the Attorney General's opinion is provided for the Council's consideration.

**RECOMMENDATION:** Direct the City Attorney to prepare an ordinance imposing a marijuana moratorium and conduct the required public hearing within 60 days of passage.

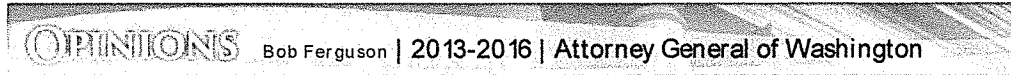
**LEGAL REVIEW:** An Ordinance will be prepared by the City Attorney.

**FINANCIAL REVIEW:** N/A

**BACKGROUND INFORMATION:**

**ADDITIONAL OPTIONS:**

**ATTACHMENTS:** Attorney General's Opinion



STATUTES—INITIATIVE AND  
REFERENDUM—ORDINANCES—COUNTIES—CITIES AND  
TOWNS—PREEMPTION—POLICE POWERS—Whether Statewide  
Initiative Establishing System For Licensing Marijuana Producers,  
Processors, And Retailers Preempts Local Ordinances

1

1. Initiative 502, which establishes a licensing and regulatory system for marijuana producers, processors, and retailers, does not preempt counties, cities, and towns from banning such businesses within their jurisdictions.
2. Local ordinances that do not expressly ban state-licensed marijuana licensees from operating within the jurisdiction but make such operation impractical are valid if they properly exercise the local jurisdiction's police power.

January 16, 2014

The Honorable Sharon Foster  
Chair, Washington State Liquor Control Board  
3000 Pacific Avenue SE  
Olympia, WA 98504-3076

Cite As:  
AGO 2014 No. 2

Dear Chair Foster:

By letter previously acknowledged, you have requested our opinion on the following paraphrased questions:

1. Are local governments preempted by state law from banning the location of a Washington State Liquor Control Board licensed marijuana producer, processor, or retailer within their jurisdiction?
2. May a local government establish land use regulations (in excess of the Initiative 502 buffer and other Liquor Control Board requirements) or business license requirements in a fashion that makes it impractical for a licensed marijuana business to locate within their jurisdiction?

BRIEF  
ANSWERS

1. No. Under Washington law, there is a strong presumption against finding that state law preempts local ordinances. Although Initiative 502 (I-502) establishes a licensing and regulatory system for marijuana producers, processors, and retailers in Washington State, it includes no clear indication that it was intended to preempt local authority to regulate such

[original page 2]

businesses. We therefore conclude that I-502 left in place the normal powers of local governments to regulate within their jurisdictions.

2. Yes. Local governments have broad authority to regulate within their jurisdictions, and nothing in I-502 limits that authority with respect to licensed marijuana businesses.

## BACKGROUND

I-502 was approved by Washington voters on November 6, 2012, became effective 30 days thereafter, and is codified in RCW 69.50. It decriminalized under state law the possession of limited amounts of useable marijuana<sup>[1]</sup> and marijuana-infused products by persons twenty-one years or older. It also decriminalized under state law the production, delivery, distribution, and sale of marijuana, so long as such activities are conducted in accordance with the initiative's provisions and implementing regulations. It amended the implied consent laws to specify that anyone operating a motor vehicle is deemed to have consented to testing for the active chemical in marijuana, and amended the driving under the influence laws to make it a criminal offense to operate a motor vehicle under the influence of certain levels of marijuana.

I-502 also established a detailed licensing program for three categories of marijuana businesses: production, processing, and retail sales. The marijuana producer's license governs the production of marijuana for sale at wholesale to marijuana processors and other marijuana producers. RCW 69.50.325(1). The marijuana processor's license governs the processing, packaging, and labeling of useable marijuana and marijuana-infused products for sale at wholesale to marijuana retailers. RCW 69.50.325(2). The marijuana retailer's license governs the sale of useable marijuana and marijuana-infused products in retail stores. RCW 69.50.325(3).

Applicants for producer, processor, and retail sales licenses must identify the location of the proposed business. RCW 69.50.325(1), (2), (3). This helps ensure compliance with the requirement that "no license may be issued authorizing a marijuana business within one thousand feet of the perimeter of the grounds of any elementary or secondary school, playground, recreation center or facility, child care center, public park, public transit center, or library, or any game arcade admission to which is not restricted to persons aged twenty-one years or older." RCW 69.50.331(8).

Upon receipt of an application for a producer, processor, or retail sales license, the Liquor Control Board must give notice of the application to the appropriate local jurisdiction. RCW 69.50.331(7)(a) (requiring notice to the chief executive officer of the incorporated city or town if the application is for a license within an incorporated city or town, or the county legislative authority if the application is for a license outside the boundaries of incorporated

[original page 3]

cities or towns). The local jurisdiction may file written objections with respect to the applicant or the premises for which the new or renewed license is sought. RCW 69.50.331(7)(b).

The local jurisdictions' written objections must include a statement of all facts upon which the objections are based, and may include a request for a hearing, which the Liquor Control Board may grant at its discretion. RCW 69.50.331(7)(c). The Board must give "substantial weight" to a local jurisdiction's objections based upon chronic illegal activity associated with the applicant's operation of the premises proposed to be licensed, the applicant's operation of any other licensed premises, or the conduct of the applicant's patrons inside or outside the licensed premises. RCW 69.50.331(9). Chronic illegal activity is defined as a pervasive pattern of activity that threatens the public health, safety, and welfare, or an unreasonably high number of citations for driving under the influence associated with the applicant's or licensee's operation of any licensed premises. RCW 69.50.331(9).[2]

In addition to the licensing provisions in statute, I-502 directed the Board to adopt rules establishing the procedures and criteria necessary to supplement the licensing and regulatory system. This includes determining the maximum number of retail outlets that may be licensed in each county, taking into consideration population distribution, security and safety issues, and the provision of adequate access to licensed sources of useable marijuana and marijuana-infused products to discourage purchases from the illegal market. RCW 69.50.345(2). The Board has done so, capping the number of retail licenses in the least populated counties of Columbia County, Ferry County, and Wahkiakum County at one and the number in the most populated county of King County at 61, with a broad range in between. See WAC 314-55-081.

The Board also adopted rules establishing various requirements mandated or authorized by I-502 for locating and operating marijuana businesses on licensed premises, including minimum residency requirements, age restrictions, and background checks for licensees and employees; signage and advertising limitations; requirements for insurance, recordkeeping, reporting, and taxes; and detailed operating plans for security, traceability, employee qualifications and training, and destruction of waste. See generally WAC 314-55.

Additional requirements apply for each license category. Producers must describe plans for transporting products, growing operations, and testing procedures and protocols. WAC 314-55-020(9). Processors must describe plans for transporting products, processing operations, testing procedures and protocols, and packaging and labeling. WAC 314-55-020(9). Finally, retailers must also describe which products will be sold and how they will be displayed, and may only operate between 8 a.m. and 12 midnight. WAC 314-55-020(9), -147.

The rules also make clear that receipt of a license from the Liquor Control Board does not entitle the licensee to locate or operate a marijuana processing, producing, or retail business in violation of local rules or without any necessary approval from local jurisdictions. WAC 314-

[original page 4]

- 55-020(11) provides as follows: "The issuance or approval of a license shall not be construed as a license for, or an approval of, any violations of local rules or ordinances

including, but not limited to: Building and fire codes, zoning ordinances, and business licensing requirements.

## ANALYSIS

Your question acknowledges that local governments have jurisdiction over land use issues like zoning and may exercise the option to issue business licenses. This authority comes from article XI, section 11 of the Washington Constitution, which provides that “[a]ny county, city, town or township may make and enforce within its limits all such local police, sanitary and other regulations as are not in conflict with general laws.” The limitation on this broad local authority requiring that such regulations not be “in conflict with general laws” means that state law can preempt local regulations and render them unconstitutional either by occupying the field of regulation, leaving no room for concurrent local jurisdiction, or by creating a conflict such that state and local laws cannot be harmonized. *Lawson v. City of Pasco*, 168 Wn.2d 675, 679, 230 P.3d 1038 (2010).

Local ordinances are entitled to a presumption of constitutionality. *State v. Kirwin*, 165 Wn.2d 818, 825, 203 P.3d 1044 (2009). Challengers to a local ordinance bear a heavy burden of proving it unconstitutional. *Id.* “Every presumption will be in favor of constitutionality.” *HJS Dev., Inc. v. Pierce County ex rel. Dep’t of Planning & Land Servs.*, 148 Wn.2d 451, 477, 61 P.3d 1141 (2003) (internal quotation marks omitted).

### A. Field Preemption

Field preemption arises when a state regulatory system occupies the entire field of regulation on a particular issue, leaving no room for local regulation. *Lawson*, 168 Wn.2d at 679. Field preemption may be expressly stated or may be implicit in the purposes or facts and circumstances of the state regulatory system. *Id.*

I-502 does not express any indication that the state licensing and operating system preempts the field of marijuana regulation. Although I-502 was structured as a series of amendments to the controlled substances act, which does contain a preemption section, that section makes clear that state law “fully occupies and preempts the entire field of setting penalties for violations of the controlled substances act.” RCW 69.50.608 (emphasis added).[3] It also allows “[c]ities, towns, and counties or other municipalities [to] enact only those laws and

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ordinances relating to controlled substances that are consistent with this chapter.” RCW 69.50.608. Nothing in this language expresses an intent to preempt the entire field of regulating businesses licensed under I-502.

With respect to implied field preemption, the “legislative intent” of an initiative is derived from the collective intent of the people and can be ascertained by material in the official voter’s pamphlet. *Dep’t of Revenue v. Hoppe*, 82 Wn.2d 549, 552, 512 P.2d 1094 (1973); see also *Roe v. TeleTech Customer Care Mgmt., LLC*, 171 Wn.2d 736, 752-53, 257 P.3d 586 (2011). Nothing in the official voter’s pamphlet evidences a collective intent for the state regulatory system to preempt the entire field of marijuana business licensing or operation. *Voters’ Pamphlet 23-30* (2012). Moreover, both your letter and the Liquor Control Board’s rules recognize the authority of local jurisdictions to impose regulations on state licensees. These facts, in

addition to the absence of express intent suggesting otherwise, make clear that I-502 and its implementing regulations do not occupy the entire field of marijuana business regulation.

#### B. Conflict Preemption

Conflict preemption arises “when an ordinance permits what state law forbids or forbids what state law permits.” *Lawson*, 168 Wn.2d at 682. An ordinance is constitutionally invalid if it directly and irreconcilably conflicts with the statute such that the two cannot be harmonized. *Id.*; *Weden v. San Juan County*, 135 Wn.2d 678, 693, 958 P.2d 273 (1998). Because “[e]very presumption will be in favor of constitutionality,” courts make every effort to reconcile state and local law if possible. *HJS Dev.*, 148 Wn.2d at 477 (internal quotation marks omitted). We adopt this same deference to local jurisdictions.

An ordinance banning a particular activity directly and irreconcilably conflicts with state law when state law specifically entitles one to engage in that same activity in circumstances outlawed by the local ordinance. For example, in *Entertainment Industry Coalition v. Tacoma-Pierce County Health Department*, 153 Wn.2d 657, 661-63, 105 P.3d 985 (2005), the state law in effect at the time banned smoking in public places except in designated smoking areas, and specifically authorized owners of certain businesses to designate smoking areas. The state law provided, in relevant part: “A smoking area may be designated in a public place by the owner . . . .” Former RCW 70.160.040(1) (2004), repealed by Laws of 2006, ch. 2, § 7(2) (Initiative Measure 901). The Tacoma-Pierce County Health Department ordinance at issue banned smoking in all public places. The Washington Supreme Court struck down the ordinance as directly and irreconcilably conflicting with state law because it prohibited what the state law authorized: the business owner’s choice whether to authorize a smoking area.

Similarly, in *Parkland Light & Water Co. v. Tacoma-Pierce County Board of Health*, 151 Wn.2d 428, 90 P.3d 37 (2004), the Washington Supreme Court invalidated a Tacoma-Pierce County Health Department ordinance requiring fluoridated water. The state law at issue authorized the water districts to decide whether to fluoridate, saying: “A water district by a

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majority vote of its board of commissioners may fluoridate the water supply system of the water district.” RCW 57.08.012. The Court interpreted this provision as giving water districts the ability to regulate the content and supply of their water systems. *Parkland Light & Water Co.*, 151 Wn.2d at 433. The local health department’s attempt to require fluoridation conflicted with the state law expressly giving that choice to the water districts. As they could not be reconciled, the Court struck down the ordinance as unconstitutional under conflict preemption analysis.

By contrast, Washington courts have consistently upheld local ordinances banning an activity when state law regulates the activity but does not grant an unfettered right or entitlement to engage in that activity. In *Weden v. San Juan County*, the Court upheld the constitutionality of the County’s prohibition on motorized personal watercraft in all marine waters and one lake in San Juan County. The state laws at issue created registration and safety requirements for vessels and prohibited operation of unregistered vessels. The Court rejected the argument that state

regulation of vessels constituted permission to operate vessels anywhere in the state, saying, “[n]owhere in the language of the statute can it be suggested that the statute creates an unabridged right to operate [personal watercraft] in all waters throughout the state.” *Weden*, 135 Wn.2d at 695. The Court further explained that “[r]egistration of a vessel is nothing more than a precondition to operating a boat.” *Id.* “No unconditional right is granted by obtaining such registration.” *Id.* Recognizing that statutes often impose preconditions without granting unrestricted permission to participate in an activity, the Court also noted the following examples: “[p]urchasing a hunting license is a precondition to hunting, but the license certainly does not allow hunting of endangered species or hunting inside the Seattle city limits,” and “[r]eaching the age of 16 is a precondition to driving a car, but reaching 16 does not create an unrestricted right to drive a car however and wherever one desires.” *Id.* at 695 (internal citation omitted).

Relevant here, the dissent in *Weden* argued: “Where a state statute licenses a particular activity, counties may enact reasonable regulations of the licensed activity within their borders but they may not prohibit same outright[,]” and that an ordinance banning the activity “renders the state permit a license to do nothing at all.” *Weden*, 135 Wn.2d at 720, 722 (Sanders, J., dissenting). The majority rejected this approach, characterizing the state law as creating not an unabridged right to operate personal watercraft in the state, but rather a registration requirement that amounted only to a precondition to operating a boat in the state.

In *State ex rel. Schillberg v. Everett District Justice Court*, 92 Wn.2d 106, 594 P.2d 448 (1979), the Washington Supreme Court similarly upheld a local ban on internal combustion motors on certain lakes. The Court explained: “A statute will not be construed as taking away the power of a municipality to legislate unless this intent is clearly and expressly stated.” *Id.* at 108. The Court found no conflict because nothing in the state laws requiring safe operation of vessels either expressly or impliedly provided that vessels would be allowed on all waters of the state.

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The Washington Supreme Court also rejected a conflict preemption challenge to the City of Pasco’s ordinance prohibiting placement of recreational vehicles within mobile home parks. *Lawson*, 168 Wn.2d at 683-84. Although state law regulated rights and duties arising from mobile home tenancies and recognized that such tenancies may include recreational vehicles, the Court reasoned “[t]he statute does not forbid recreational vehicles from being placed in the lots, nor does it create a right enabling their placement.” *Id.* at 683. The state law simply regulated recreational vehicle tenancies, where such tenancies exist, but did not prevent municipalities from deciding whether or not to allow them. *Id.* at 684.

Accordingly, the question whether “an ordinance . . . forbids what state law permits” is more complex than it initially appears. *Lawson*, 168 Wn.2d at 682. The question is not whether state law permits an activity in some places or in some general sense; even “[t]he fact that an activity may be licensed under state law does not lead to the conclusion that it must be permitted under local law.” *Rabon v. City of Seattle*, 135 Wn.2d 278, 292, 957 P.2d 621 (1998) (finding no preemption where state law authorized licensing of “dangerous dogs” while city ordinance forbade ownership of “vicious animals”). Rather, a challenger must meet the heavy burden of proving that state law creates an entitlement to engage in an activity in circumstances outlawed by the local ordinance. For example, the state laws authorizing business



owners to designate smoking areas and water districts to decide whether to fluoridate their water systems amounted to statewide entitlements that local jurisdictions could not take away. But the state laws requiring that vessels be registered and operated safely and regulating recreational vehicles in mobile home tenancies simply contemplated that those activities would occur in some places and established preconditions; they did not, however, override the local jurisdictions' decisions to prohibit such activities.

Here, I-502 authorizes the Liquor Control Board to issue licenses for marijuana producers, processors, and retailers. Whether these licenses amount to an entitlement to engage in such businesses regardless of local law or constitute regulatory preconditions to engaging in such businesses is the key question, and requires a close examination of the statutory language.

RCW 69.50.325 provides, in relevant part:

(1) There shall be a marijuana producer's license to produce marijuana for sale at wholesale to marijuana processors and other marijuana producers, regulated by the state liquor control board and subject to annual renewal. .

..

(2) There shall be a marijuana processor's license to process, package, and label useable marijuana and marijuana-infused products for sale at wholesale to marijuana retailers, regulated by the state liquor control board and subject to annual renewal. . . .

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(3) There shall be a marijuana retailer's license to sell useable marijuana and marijuana-infused products at retail in retail outlets, regulated by the state liquor control board and subject to annual renewal. . . .

RCW 69.50.325(1)-(3). Each of these subsections also includes language providing that activities related to such licenses are not criminal or civil offenses under Washington state law, provided they comply with I-502 and the Board's rules, and that the licenses shall be issued in the name of the applicant and shall specify the location at which the applicant intends to operate. They also establish fees for issuance and renewal and clarify that a separate license is required for each location at which the applicant intends to operate. RCW 69.50.325.

While these provisions clearly authorize the Board to issue licenses for marijuana producers, processors, and retail sales, they lack the definitive sort of language that would be necessary to meet the heavy burden of showing state preemption. They simply state that there "shall be a . . . license" and that engaging in such activities with a license "shall not be a criminal or civil offense under Washington state law." RCW 69.50.325(1). Decriminalizing such activities under state law and imposing restrictions on licensees does not amount to entitling one to engage in such businesses regardless of local law. Given that "every presumption" is in favor of upholding local ordinances (HJS Dev., Inc., 148 Wn.2d at 477), we find no irreconcilable conflict between I-502's licensing system and the ability of local governments to prohibit licensees from operating in their jurisdictions.

We have considered and rejected a number of counterarguments in reaching this conclusion. First, one could argue that the statute, in allowing Board approval of

licenses at specific locations (RCW 69.50.325(1), (2), (3)), assumes that the Board can approve a license at any location in any jurisdiction. This argument proves far too much, however, for it suggests that a license from the Board could override any local zoning ordinance, even one unrelated to I-502. For example, I-502 plainly would not authorize a licensed marijuana retailer to locate in an area where a local jurisdiction's zoning allows no retail stores of any kind. The Board's own rules confirm this: "The issuance or approval of a license shall not be construed as a license for, or an approval of, any violations of local rules or ordinances including, but not limited to: Building and fire codes, zoning ordinances, and business licensing requirements." WAC 314-55-020(11).

Second, one could argue that a local jurisdiction's prohibition on marijuana licensees conflicts with the provision in I-502 authorizing the Board to establish a maximum number of licensed retail outlets in each county. RCW 69.50.345(2); see also RCW 69.50.354. But there is no irreconcilable conflict here, because the Board is allowed to set only a maximum, and nothing in I-502 mandates a minimum number of licensees in any jurisdiction. The drafters of I-502 certainly could have provided for a minimum number of licensees per jurisdiction, which would have been a stronger indicator of preemptive intent, but they did not.

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Third, one could argue that because local jurisdictions are allowed to object to specific license applications and the Board is allowed to override those objections and grant the license anyway (RCW 69.50.331(7), (9)), local jurisdictions cannot have the power to ban licensees altogether. But such a ban can be harmonized with the objection process; while some jurisdictions might want to ban I-502 licensees altogether, others might want to allow them but still object to specific applicants or locations. Indeed, this is the system established under the state liquor statutes, which I-502 copied in many ways. Compare RCW 69.50.331 with RCW 66.24.010 (governing the issuance of marijuana licenses and liquor licenses, respectively, in parallel terms and including provisions for local government input regarding licensure). The state laws governing liquor allow local governments to object to specific applications (RCW 66.24.010), while also expressly authorizing local areas to prohibit the sale of liquor altogether. See generally RCW 66.40. That the liquor opt out statute coexists with the liquor licensing notice and comment process undermines any argument that a local marijuana ban irreconcilably conflicts with the marijuana licensing notice and comment opportunity.

Fourth, RCW 66.40 expressly allows local governments to ban the sale of liquor. Some may argue that by omitting such a provision, I-502's drafters implied an intent to bar local governments from banning the sale of marijuana. Intent to preempt, however, must be "clearly and expressly stated." *State ex rel. Schillberg*, 92 Wn.2d at 108. Moreover, it is important to remember that cities, towns, and counties derive their police power from article XI, section 11 of the Washington Constitution, not from statute. Thus, the relevant question is not whether the initiative provided local jurisdictions with such authority, but whether it removed local jurisdictions' preexisting authority.

Finally, in reaching this conclusion, we are mindful that if a large number of jurisdictions were to ban licensees, it could interfere with the measure's intent to supplant the illegal marijuana market. But this potential consequence is insufficient to overcome the lack of clear preemptive language or intent in the initiative itself. The

drafters of the initiative certainly could have used clear language preempting local bans. They did not. The legislature, or the people by initiative, can address this potential issue if it actually comes to pass.

With respect to your second question, about whether local jurisdictions can impose regulations making it “impractical” for I-502 licensees to locate and operate within their boundaries, the answer depends on whether such regulations constitute a valid exercise of the police power or otherwise conflict with state law. As a general matter, as discussed above, the Washington Constitution provides broad authority for local jurisdictions to regulate within their boundaries and impose land use and business licensing requirements. Ordinances must be a reasonable exercise of a jurisdiction’s police power in order to pass muster under article XI, section 11 of the state constitution. *Weden*, 135 Wn.2d at 700. A law is a reasonable regulation if it promotes public safety, health, or welfare and bears a reasonable and substantial relation to accomplishing the purpose pursued. *Id.* (applying this test to the personal watercraft ordinance); see also *Duckworth v. City of Bonney Lake*, 91 Wn.2d 19, 26, 586 P.2d 860 (1978) (applying this

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test to a zoning ordinance). Assuming local ordinances satisfy this test, and that no other constitutional or statutory basis for a challenge is presented on particular facts, we see no impediment to jurisdictions imposing additional regulatory requirements, although whether a particular ordinance satisfies this standard would of course depend on the specific facts in each case.

We trust that the foregoing will be useful to you.

ROBERT W.  
FERGUSON  
*Attorney  
General*

JESSICA FOGEL  
*Assistant  
Attorney  
General*

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[1] Useable marijuana means “dried marijuana flowers” and does not include marijuana-infused products. RCW 69.50.101(1).

[2] The provision for objections based upon chronic illegal activity is identical to one of the provisions for local jurisdictions to object to the granting or renewal of liquor licenses. RCW 66.24.010(12).

[3] RCW 69.50.608 provides: "The state of Washington fully occupies and preempts the entire field of setting penalties for violations of the controlled substances act. Cities, towns, and counties or other municipalities may enact only those laws and ordinances relating to controlled substances that are consistent with this chapter. Such local ordinances shall have the same penalties as provided for by state law. Local laws and ordinances that are inconsistent with the requirements of state law shall not be enacted and are preempted and repealed, regardless of the nature of the code, charter, or home rule status of the city, town, county, or municipality." The Washington Supreme Court has interpreted this provision as giving local jurisdictions concurrent authority to criminalize drug-related activity. *City of Tacoma v. Luvene*, 118 Wn.2d 826, 835, 827 P.2d 1374 (1992).



## **CITY COUNCIL COMMUNICATION**

**Meeting Date:** January 27, 2014  
**From:** Robert Noe, City Attorney  
**Topic/Issue:** Ordinances - Amendments to Union Gap Municipal Code, Chapter 1.01, Code Adoption.

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**SYNOPSIS:** This is the first of the ordinances amending the Union Gap Municipal Code brought to the Council for consideration. The City commissioned an outside company to review the Municipal Code and identify any changes it thought may be necessary to clean up ambiguities, internal inconsistencies and the like. The City Attorney's office is also conducting a review of the Code and has reviewed the recommended changes. Changes are now proposed for Union Gap Municipal Code Chapter 1.01 Code Adoption.

**RECOMMENDATION:** Pass the proposed ordinances amending provisions of the Union Gap Municipal Code Chapter 1.01.

**LEGAL REVIEW:** The Ordinance was prepared by the City Attorney.

**FINANCIAL REVIEW:** N/A

**BACKGROUND INFORMATION:** The City Attorney's office has been working toward bringing necessary amendments to the Union Gap Municipal Code to the City Council for consideration.

**ADDITIONAL OPTIONS:**

**ATTACHMENTS:** 1. Ordinances (8)

**CITY OF UNION GAP, WASHINGTON  
ORDINANCE NO. \_\_\_\_\_**

AN ORDINANCE amending sections of Union Gap Municipal Code Title 4, Chapter 48, Fireworks.

WHEREAS, the City Attorney's office working in conjunction with the Yakima County District Court, which provides Municipal Court services to the City of Union Gap under contract, has identified certain areas of the Union Gap Municipal Code that require clarification;

WHEREAS, Union Gap Municipal Code Title 4, Chapter 48 currently prohibits certain conduct but is not clear concerning the penalty provision for non-compliance or for a violation;

WHEREAS, it is recommended that the Code be amended to make clear the penalty provisions;

NOW THEREFORE, THE CITY COUNCIL OF THE CITY OF UNION GAP DOES ORDAIN as follows:

**Section 1. Title 4, Chapter 48 Amended.** Certain section of Union Gap Municipal Code 4.48 Fireworks are amended as follows (sections not set forth herein shall remain as codified and shall not be subject to amendment):

4.48.020 – **Unlawful** sale and discharge of fireworks. ~~prohibited.~~

It shall be unlawful for any person to sell, offer to sell, expose for sale, possess with intent to sell, use or discharge any fireworks within the city.

4.48.030 - Permit required for public display of fireworks – **Unlawful public display.**

It is unlawful for any person to hold, conduct or engage in any public display for fireworks within the city without first having obtained and being in possession of a valid permit under the provisions of this chapter.

4.48.110 - Penalty for violations.

Any person violating or failing to comply with the provisions of this chapter is guilty of a misdemeanor, and upon conviction thereof shall be punished **by imprisonment of not more than ninety days, or by a fine in an amount not more than one thousand dollars or both such imprisonment and fine as provided therefore.** ~~In addition, violations of this chapter shall constitute a civil infraction with a civil penalty of two hundred fifty dollars per~~

~~occurrence. Infractions shall be initiated, and may be appealed, under the infraction rules for courts of limited jurisdiction for the Union Gap Municipal Court.~~

**Section 2. Effective Date.**

This amending Ordinance shall take effect and be in force five (5) days after final passage by the City Council and publication.

**ORDAINED** this 27<sup>th</sup> day of January, 2014.

\_\_\_\_\_  
Roger Wentz, Mayor

ATTEST:

APPROVED AS TO FORM:

\_\_\_\_\_  
Karen Clifton, City Clerk

\_\_\_\_\_  
Robert F. Noe, City Attorney

**CITY OF UNION GAP, WASHINGTON**  
**ORDINANCE NO. \_\_\_\_\_**

AN ORDINANCE amending sections of Union Gap Municipal Code Title 5, Chapter 4, Garbage and Rubbish.

WHEREAS, the City Attorney's office working in conjunction with the Yakima County District Court, which provides Municipal Court services to the City of Union Gap under contract, has identified certain areas of the Union Gap Municipal Code that require clarification;

WHEREAS, Union Gap Municipal Code Title 5 Chapter 4 currently prohibits certain conduct but is not clear concerning the penalty provision for non-compliance or for a violation;

WHEREAS, it is recommended that the Code be amended to make clear the penalty provisions;

**NOW THEREFORE, THE CITY COUNCIL OF THE CITY OF UNION GAP DOES ORDAIN as follows:**

**Section 1. Title 5 Amended.** The following sections of Title 5, Chapter 4, Garbage and Rubbish, of the Union Gap Municipal Court are amended as follows:

5.04.020 - Scattering on premises and streets prohibited.

It is unlawful for any person, firm or corporation to throw, place or scatter any rubbish, ashes or garbage over or upon any premises, street or alley, either public or private, or adjacent thereto, and either with or without the intent to later remove or burn, or to suffer or permit from accumulation of such rubbish and garbage any premises owned, occupied or controlled by such person, firm or corporation, to become or remain offensive, unsanitary, unsightly, or unsafe to public health or a hazardous fire. **A violation under this provision is a misdemeanor crime which shall be punished by imprisonment of not more than ninety days, or by a fine in an amount not more than one thousand dollars or both such imprisonment and fine.**

5.04.140 - Tampering with containers prohibited.

It is unlawful for any person other than the person in possession, charge or control of any premises, authorized employees of the town, or contract garbage collectors, to remove or lift the covering of any garbage cans or to tamper with or remove any articles or material whatsoever from the cans. **A violation under this provision is a misdemeanor crime which shall be punished by imprisonment**



**of not more than ninety days, or by a fine in an amount not more than one thousand dollars or both such imprisonment and fine.**

Section 2. New Section 5.40.225 added.

There is hereby added a new section 5.40.225 entitled "Penalties" as follows:

**5.40.225 Penalties.**

**Violation of this chapter shall be misdemeanor crimes where specified which shall be punished by imprisonment of not more than ninety days, or by a fine in an amount not more than one thousand dollars or both such imprisonment and fine. If no specific penalty provision applies violations of this chapter shall be civil non-traffic infraction with a penalty of two hundred fifty dollars.**

**Section 3. Effective Date.**

This amending Ordinance shall take effect and be in force five (5) days after final passage by the City Council and publication.

**ORDAINED** this 27<sup>th</sup> day of January, 2014.

\_\_\_\_\_  
Roger Wentz, Mayor

ATTEST:

APPROVED AS TO FORM:

\_\_\_\_\_  
Karen Clifton, City Clerk

\_\_\_\_\_  
Robert F. Noe, City Attorney

**CITY OF UNION GAP, WASHINGTON**  
**ORDINANCE NO. \_\_\_\_\_**

**AN ORDINANCE** amending sections of Union Gap Municipal Code Chapter 6.04, Dogs.

**WHEREAS**, the City Attorney's office working in conjunction with the Yakima County District Court, which provides Municipal Court services to the City of Union Gap under contract, has identified certain areas of the Union Gap Municipal Code that require clarification;

**WHEREAS**, Union Gap Municipal Code Chapter 6.04 currently prohibits certain conduct but is not clear concerning the penalty provision for non-compliance or for a violation;

**WHEREAS**, the City Attorney's office has also identified areas of the Chapter requiring clarification from an enforcement perspective;

**WHEREAS**, it is recommended that the Code be amended to make clear the penalty provisions;

**NOW THEREFORE, THE CITY COUNCIL OF THE CITY OF UNION GAP DOES ORDAIN as follows:**

**Section 1. Chapter 6.04 Amended.** Union Gap Municipal Code Title 6, Chapter 4, Dogs is amended as follows:

6.04.010 - Definitions.

As used in this chapter, unless the context otherwise indicates the following words shall have the meanings as given:

"At large" means off the premises of the owner and not under the control of the owner or a member of his immediate family, either by leash, cord, chain or otherwise.

"Dog" means both male and female.

"Owner" means any person or persons, firm, association or corporation owning, keeping or harboring a dog.

"Pit bull dog" means any dog over the age of six months known by the owner to be a pit bull terrier. "Pit bull terrier" means any American pit bull terrier, Staffordshire bull terrier, American bulldog or American Staffordshire terrier breed of dog or any mixed breed of dog which contains as an element of its breeding the breed of American pit bull terrier, Staffordshire bull terrier, or American Staffordshire

terrier so as to identifiable as partially of the breed American pit bull terrier, Staffordshire bull terrier, or American Staffordshire terrier.

**“Potentially Dangerous Dog” means any dog that has previously been observed to have displayed to maraud or exhibit vicious tendencies by charging and menacing other animals or persons or any dog that has attempted to bite any other animal or persons.**

6.04.020 - Declared a nuisance if at large.

All dogs running at large in the city are public nuisances, detrimental to property and to the health, peace and welfare of the people of the town, and it shall be the duty of the police department or other person designated by the mayor to impound such dog or dogs, subject to the licensing and impoundment provisions of this chapter.

6.04.030 - Marauding or vicious animal.

Any dog or other animal found to be at large within the city limits, that ~~marauds or~~ exhibits a ~~habitual~~ vicious tendency ~~or has by past record been known to have unlawfully bitten any person~~, or roams at will in a manner likely to be detrimental to the health and welfare of the public, shall be declared a public nuisance, and the chief of police or other person designated by the mayor shall have the authority to impound such animal, subject to the licensing and impoundment provisions of this chapter. **A dog previously identified as potentially dangerous found to be at large within city limits is declared a public nuisance and the chief of police or designee shall have the authority to impound such potentially dangerous dog, subject to the licensing and impoundment provisions of this chapter.** The chief of police shall also have authority to petition municipal court for an order to destroy such animal if considered necessary to preserve the public safety.

6.04.35 - Leash required.

- (a) It is unlawful for the owner or custodian of any dog to cause, permit or allow such dog to roam, run, stray or to be away from the premises of such owner or custodian and to be on any public place, or on any public property, or the private property of another, without invite or permission, in the City of Union Gap, unless such dog, while away from such premises, is controlled by a leash or chain not more than eight feet in length, such control to be exercised by such owner or custodian or other competent and authorized person.
- (b) It is unlawful for the owner or custodian of a potentially dangerous dog, as defined in this chapter, to cause, permit or allow such dog to be off the premises of such custodian or owner unless such dog is (i) under the direct control of an adult person by means of a leash or chain not more than six feet in length and (ii) the dog is muzzled.

- (c) Violation. A violation of the provisions of section, 6.04.035, is a civil infraction with a penalty in the amount of ~~one hundred~~ two hundred fifty dollars (~~\$100.00~~250.00).

6.04.040 - Injured or diseased animals.

Any dog, or other animal, found to be suffering from serious injury or disease at the time it is impounded, shall be humanely destroyed by the officials at the Yakima County humane shelter.

**6.04.045- Dog that bites other animals or persons.**

**It is unlawful for the owner or custodian of any dog to cause, permit, allow or fail to prevent such dog from biting another animal or person when such dog is at any public place, or on any public property, or the private property of another, without invite or permission, in the City of Union Gap. In the event the owner's or custodian's dog is on private property following invitation or permission, or where the dog is on the private property of the owner or custodian of the dog, the owner or custodian must take measures to ensure that the dog does not bite other animals or persons that may be present. Where another animal or person enters upon the private property of the owner or custodian of a dog without invitation or permission of the owner or custodian, the owner or custodian is not liable under this provision if his or her dog bites under such circumstances.**

**A dog that bites another animal or person in violation of this provision shall thereafter be considered a dangerous dog and subject to the dangerous dog provisions under this chapter.**

6.04.050 - Howling and barking.

It is unlawful for any person or business in the city to keep or harbor any dog or other animal which, by frequent or habitual howling, yelping, barking or making of other noises, annoys or disturbs neighbors.

6.04.055 - Maximum number of dogs and/or cats permitted within the city.

Unless a property and its premises has been properly licensed as a kennel pursuant to the city's zoning code and business licensing provisions, the maximum number of dogs, or cats, or a combination of both, is four per property within the city. "Property," as used in this section, means each individual legal lot within the city.

6.04.060 - Violation—Penalty.

- A.** Unless another penalty is prescribed, violations of this chapter shall be a civil infraction with a civil penalty of two hundred fifty dollars (\$250.00), together with court costs and any relevant impoundment and licensing fees. Additionally, the police department or other enforcement personnel

may impound the animal at the owner's cost, subject to the licensing and impoundment provisions of this chapter.

**B.** For a second offense or violation of the same nature involving the same animal owner and the same animal, the violator shall be guilty of a criminal misdemeanor with a maximum of up to ninety (90) days in jail and/or up to a one thousand dollar (\$1,000.00) fine.

#### 6.04.070 - Jumping and barking at pedestrians.

It is unlawful for any person to keep or harbor any dog or animal that frequently or habitually snarls and growls at or snaps or jumps upon or threatens persons lawfully upon public sidewalks, streets, alleys or public places of the city.

#### 6.04.080 - Owner to remove feces—Penalty.

It is unlawful for the owner or keeper of any animal to:

- (a) Leave any public property or private property of another without first removing any feces deposited by his or her animal. "To leave" means to leave the immediate area where the feces were deposited.
- (b) Fail to have in his or her possession the equipment necessary to remove his or her animal's feces when accompanied by said animal on public property or on a public easement.
- (c) Violation of this section is a civil infraction with a fine of ~~one hundred two~~ **hundred fifty** dollars (~~\$100.00~~**250.00**).

#### 6.04.90 - Statutory provisions relating to dangerous dogs.

(a) Statutes Adopted by Reference. The following statutes relating to dangerous dogs are adopted by reference and apply to this section:

(1) RCW 16.08.070, entitled "Dangerous dogs-definitions";

(2) RCW 16.08.090, entitled "Dangerous dogs-requirements for restraint-potentially dangerous dogs-dogs not declared dangerous."

(b) Dangerous Dogs—Certificate of Registration Required—Prerequisites.

(1) It is unlawful for an owner to have a dangerous dog in the city without a certificate of registration issued under RCW 16.08.080. This section and RCW 16.09.090 and 16.08.100 shall not apply to police dogs as defined in RCW 4.24.410.

(2) The animal control authority of the city or county in which an owner has a dangerous dog shall issue a certificate of registration to the owner of such animal if the owner presents to the animal control unit sufficient evidence of:

(A) A proper enclosure to confine a dangerous dog and the posting of the premises with a clearly visible warning sign that there is a dangerous dog on the property. In addition, the owner shall conspicuously display a sign with a warning symbol that informs children of the presence of a dangerous dog;

(B) A surety bond issued by a surety insurer qualified under Chapter 48.28 RCW in a form acceptable to the animal control authority in the sum of at least **two hundred** fifty thousand dollars (\$250,000.00), payable to any person injured by the vicious dog; or

(C) A policy of liability insurance, such as homeowner's insurance, issued by an insurer qualified under Title 48 RCW in the amount of at least fifty thousand dollars (\$50,000.00), insuring the owner for any personal injuries inflicted by the dangerous dog.

(3)(A) If an owner has the dangerous dog in an incorporated area that is serviced by both a city and a county animal control authority, the owner shall obtain a certificate of registration from the city authority;

(B) The annual fee for a dangerous dog certificate of registration shall be twenty-five dollars (\$25.00).

(c) Dangerous Dogs—Confiscation—Conditions—Penalties for Owners of Dogs that Attack.

(1) RCW 16.08.100 is adopted by reference. Violation is a gross misdemeanor.

(2) **Where a dog is impounded pursuant to the provisions of section 6.04.030, the chief of police or the animal control officer has authority to petition the Union Gap municipal court for an order to destroy any previously identified potentially dangerous dog or dangerous dog confiscated under this section. Notice of Impoundment must be provided under section 6.04.120 of this Chapter and an opportunity to contest the petition to destroy the dog must be afforded the owner of the dog.**

6.04.100- Neglect, abuse and cruelty to animals.

(a) The following statutes are adopted by reference:

(1) RCW 16.52.015, entitled "Enforcement-Law enforcement agencies and animal care and control agencies";

(2) RCW 16.52.011 entitled "Definitions-Principles of liability";

(3) RCW 16.52.080 entitled "Transporting or confining in unsafe manner-Penalty";

(4) RCW 16.52.117 entitled "Animal fighting-Owners, trainers, spectators-Exceptions";

(5) RCW 16.52.207 entitled "Animal Cruelty in the second degree";

(b) Any person convicted of any misdemeanor under RCW 16.52.080 shall be punished by a fine of not exceeding one ~~hundred and fifty thousand~~ thousand dollars (~~\$150,000~~1000.00), or by imprisonment in jail not exceeding ~~sixty~~ 90 (~~690~~) days, or both such fine and imprisonment, and shall pay the costs of the prosecution.

(c)(1) The sentence imposed for a misdemeanor or gross misdemeanor violation of RCW 16.52 may be deferred or suspended in accordance with RCW 3.66.067 and 3.66.068, however, the probationary period shall be two years.

(2) In case of multiple misdemeanor or gross misdemeanor convictions under RCW 16.52, the sentences shall be consecutive, however the probationary period shall remain two years.

(3) In addition to the penalties imposed by the court, the court shall order the forfeiture of all animals held by law enforcement or animal care and control authorities under the provisions of this chapter if any one of the animals involved dies as a result of a violation of RCW 16.52 or if the defendant has a prior conviction under RCW 16.52. In other cases the court may enter an order requiring the owner to forfeit the animal if the court deems the animal's treatment to have been severe and likely to reoccur. If forfeiture is ordered, the owner shall be prohibited from owning or caring for any similar animals for a period of two years. The court may delay its decision on forfeiture under this subsection until the end of the probationary period.

(4) In addition to fines and court costs, the defendant, only if convicted or in agreement, shall be liable for reasonable costs incurred pursuant to RCW 16.52 by law enforcement agencies, animal care and control agencies, or authorized private or public entities involved with the care of the animals. Reasonable costs include expenses of the investigation, and the animal's care, euthanization or adoption.

(5) If convicted, the defendant shall also pay a civil penalty of one thousand dollars (\$1,000.00) to the city to prevent cruelty to animals. These funds shall be used to prosecute offenses under this chapter and to care for forfeited animals pending trial.

(6) As a condition of the sentence imposed under RCW 16.52, the court may also order the defendant to participate in an available animal cruelty prevention or education program or obtain available psychological counseling to treat mental health problems contributing to the violation's commission. The defendant shall bear the costs of the program or treatment.

6.04.110- Licensing.

(a) License Required. All dogs previously impounded for any reason, within the city limits must be licensed by the city except:

(1) Dogs whose owners are nonresidents temporarily within the city;

(2) Dogs brought into the city for the purpose of participating in shows, exhibits, or competitions;

(3) Dogs who are specially trained to assist visually impaired, hearing impaired, or otherwise physically disabled persons if the dog is in training or is actually serving as a guide or service dog as defined in Chapter 70.84 RCW, are required to be licensed; however, they are exempt from licensing fees;

(4) Dogs kept and intended for sale by licensed pet stores.

(b) Tags, Fees, Violation and Redemption.

(1) Tags. The police department or other animal control agency designated by the city council shall issue animal licenses consisting of a metal tag with a number corresponding to the number of the application to the applicant. The applicant is required to cause the tag to be attached or fixed to the animal. The tag is not transferable. Absence of the license tag on a dog's collar shall be prima facie evidence that said dog has not been legally licensed.

(2) Fees. The following fees shall be paid for licenses required under this chapter:

(A) Spayed or neutered dogs with a veterinarian's certificate or a signed affidavit (lifetime tags issued): ten dollars (\$10.00); provided, however, the fee for lifetime tags may be waived by the city if an owner of a dog has their animal spayed or neutered during spay/neuter promotional days designated by the animal control authority.

(B) Unspayed or unneutered dogs (annual): thirty dollars (\$30.00).

(C) Licenses shall be valid from January 1st to the following December 31st. For other than first time owners of a specific dog, licenses purchased after April 30th of any year shall be subject to an additional fee of fifteen dollars (\$15.00) for each license.

(3) Violation. Any person who violates this section shall be guilty of a civil infraction ~~and shall pay with~~ a monetary fine of two hundred and fifty dollars and the dog shall be subject to ~~confiscation as follows: first offense, twenty five dollars (\$25.00); second offense, two hundred fifty dollars (\$250.00) and confiscation of the dog.~~ Any owner who fails to respond to a notice of civil infraction as promised, or to appear at a requested hearing, shall be guilty of a misdemeanor and may, upon conviction, be punished by a fine not to exceed one thousand dollars (\$1,000.00) and confinement not to exceed ninety (90) days together with ~~confiscation of the dog.~~ Any person who receives



two infractions for violations of this section within one year and who subsequently violates this section shall be guilty of a misdemeanor and may, upon conviction, be punished by a fine not to exceed ~~two~~ one thousand ~~five hundred~~ dollars (~~\$2,500.00~~1000.00) and confinement not to exceed ninety (90) days, together with confiscation of the dog.

(4) Redemption. Prior to redemption or release from any animal shelter, any dog must be licensed by the city, and a computer chip shall be installed in the dog which enables future identification of the dog. All shelter, licensing, chip, and associated fees shall be paid prior to release of the dog.

6.04.120-- Impoundment - Destruction.

(a) All sick or injured animals shall be impounded when not in the owner's possession and may be humanely destroyed at any time after impounding at the discretion of the animal shelter.

(b) All other impounded animals shall be kept for not less than seventy-two (72) hours. Animals not claimed by their owners within seventy-two (72) hours shall be humanely disposed of, sold, or adopted out by the animal shelter. **If a potentially dangerous dog or dangerous dog has been impounded and there is a petition for its destruction, if an owner does not contest the petition for destruction within seventy-two (72) hours, the owner will be deemed to consent to the destruction and has waived his or her right to contest the destruction and the dog shall be humanely disposed of.**

(c) Notice of impoundment shall be given by the animal shelter in substantially the following manner:

(1) If the animal is wearing a license tag or identicode, or if the identity of the owner is known to or can be readily determined, then as soon as reasonably practicable after impoundment the owner shall be notified by telephone or otherwise of the impoundment and of the redemption procedure provided herein.

(2) If the owner is known but cannot otherwise be notified, then a notice shall be sent by certified mail in substantially the following form:

NOTICE OF IMPOUNDING

DATE \_\_\_\_\_

TO WHOM IT MAY CONCERN: I have this day impounded in the animal shelter at \_\_\_\_\_ Street, an animal described as follows:

Sex \_\_\_\_\_ Color \_\_\_\_\_

Breed \_\_\_\_\_ Approximate age: \_\_\_\_\_ Other identification \_\_\_\_\_

Name of owner: \_\_\_\_\_

Notice is hereby given that unless said animal is claimed and redeemed on or before \_\_\_\_\_ o'clock on the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, the same will be sold or destroyed.

If this box is checked your dog was impounded because it is a potentially dangerous dog or dangerous dog pursuant to section 6.04.030 of the Union Gap Municipal Code and a petition has been made by the Chief of Police, or his or her designee, requesting destruction of the dog. If you wish to contest the request for destruction of your dog, you must file in writing a request for a hearing with the Union Gap Municipal Court within seventy-two (72) hours. At the hearing the Municipal Court judge will consider the facts and circumstances involving the impound of your dog and will render a decision on whether the dog should be destroyed or returned to you.

\_\_\_\_\_  
Police or Animal Control Officer

(3) If the owner is unknown and cannot be readily determined, notice of impoundment shall be posted at the animal shelter, police department, and city hall in substantially the form above.

(d) All impounded animals may be sold, adopted out, or destroyed, in the sole discretion of the animal shelter, when seventy-two (72) hours have elapsed after giving the notice described herein.

**(e) Owners of dogs impounded are responsible for all costs associated with the impound of the animal. In the event a dog is to be redeemed after impound for any reason, the owner must pay all of such costs prior to the dog being returned to the owner.**

(f) The animal shelter shall collect impoundment and licensing fees prior to release of any animal.

**Section 2. Effective Date.**

This amending Ordinance shall take effect and be in force five (5) days after final passage by the City Council and publication.

**ORDAINED** this 27<sup>th</sup> day of January, 2014.

\_\_\_\_\_  
Roger Wentz, Mayor

ATTEST:

APPROVED AS TO FORM:

\_\_\_\_\_  
Karen Clifton, City Clerk

\_\_\_\_\_  
Robert F. Noe, City Attorney

**CITY OF UNION GAP, WASHINGTON**  
**ORDINANCE NO. \_\_\_\_\_**

AN ORDINANCE amending sections of Union Gap Municipal Code Title 8, Public Peace, Safety and Morals.

WHEREAS, the City Attorney's office working in conjunction with the Yakima County District Court, which provides Municipal Court services to the City of Union Gap under contract, has identified certain areas of the Union Gap Municipal Code that require clarification;

WHEREAS, Union Gap Municipal Code Title 8 currently prohibits certain conduct but is not clear concerning the penalty provision for non-compliance or for a violation;

WHEREAS, it is recommended that the Code be amended to make clear the penalty provisions;

NOW THEREFORE, THE CITY COUNCIL OF THE CITY OF UNION GAP DOES ORDAIN as follows:

**Section 1. Title 8 Amended.** The following sections of Title 8, Public Peace, Safety and Morals are amended as follows:

Chapter 8.6, Crimes relating to Persons, section 8.06.070 - Fighting in a public place.

No person shall fight, or encourage others to fight in any public place in the city. A violation under this provision is a misdemeanor crime which shall be punished by imprisonment of not more than ninety days, or by a fine in an amount not more than one thousand dollars or both such imprisonment and fine.

Chapter 8.10, Crimes Relating to Public Morals, section 8.10.060 - Urinating in public.

A person is guilty of urinating in public if that person urinates in any place open to public view. Urinating in public is a misdemeanor ~~punishable by a fine of seventy-five dollars (\$75.00).~~ crime which shall be punished by imprisonment of not more than ninety days, or by a fine in an amount not more than one thousand dollars or both such imprisonment and fine.

Chapter 8.10, Crimes Relating to Public Morals, section 8.10.070 – Lewd conduct – Lewd assault.

(a) Definitions. For purposes of this section, the following definitions shall apply:

(1) "Expressive dance" means any dance which, when considering the context of the entire performance, constitutes an expression of theme, story or ideas, but excluding any dance such as, but not limited to, common barroom-type topless dancing which, when considered in the context of the entire performance is presented primarily as a means of displaying nudity as a sales device or for other exploitation without substantial expression of theme, story or ideas.

(2) "Lewd act" means:

- (A) Touching, caressing or fondling the genitals;
- (B) Exposure of any portion of one's own pubic hair, anus, cleft of the buttocks, genitals, or portion of female breast or breasts below the top of the areola;
- (C) Masturbation;
- (D) Sexual intercourse or simulated sexual intercourse;
- (E) Urination or defecation other than in a toilet or urinal in a restroom.

Provided, however, that the foregoing definition shall not apply to any:

- (i) "Expressive dance" as defined in above;
- (ii) Play, opera, musical or other similar work;
- (iii) Class, seminar or lecture conducted for a bonafide scientific purpose;
- (iv) Nudity within a locker room or other similar facility used for changing clothing in connection with athletic or exercise activities.

(3) "Public place" means:

- (A) Any place open to the public, including public restrooms;
- (B) Any place easily visible from a public thoroughfare or from the property of another; and
- (C) Any vehicle which is itself located in a public place as defined in this section, such that activities inside the vehicle may be observed by a member of the public.

(4) "Lewd assault" means the uninvited touching, or uninvited attempt to touch another person's genitals, pubic area, or buttocks, or the female breast, coupled with an apparent present ability to complete the act, and which is not a first, second, or third degree assault.

(5) "To expose" means:

- (A) To be uncovered; or
- (B) To be covered with a material that is nonopaque, such that the portion of the body prohibited from exposure is substantially visible.

(b) Lewd Conduct Prohibited. No person shall intentionally perform any lewd act (1) in a public place, or (2) in any place under such circumstances as to make it difficult for an unwilling member of the public to avoid exposure.

(c) Lewd Assault Prohibited. No person shall intentionally commit a lewd assault.

(d) Revocation of Business Licenses. If the owner, manager or operator of any premises open to the public intentionally permits any lewd act to occur in public on the premises, such permission shall constitute cause for the revocation of any business license granted or issued by the city for such premises. Revocation shall be accomplished pursuant to applicable city ordinances governing revocation proceedings.

**(e) Lewd Conduct and Lewd Assault Misdemeanor Crimes. A person committing the offense of Lewd Conduct or Lewd Assault is guilty of a gross misdemeanor crime which shall be punished by imprisonment of not more than three hundred and sixty-five days, or by a fine in an amount not more than five thousand dollars or both such imprisonment and fine.**

Chapter 8.12, Miscellaneous Crimes, sections are as follows:

8.12.010 - Conducting business without license.

No person shall carry on or conduct any business, trade or occupation, within the city limits, for which a license is required without the license fee having been paid therefor. **A violation under this provision is a misdemeanor crime which shall be punished by imprisonment of not more than ninety days, or by a fine in an amount not more than one thousand dollars or both such imprisonment and fine.**

8.12.020 - Fire plugs—Tampering.

No person shall open, close, change or interfere with any fire plug or hydrant in the city without proper authority to do so. **A violation under this provision is a misdemeanor crime which shall be punished by imprisonment of not more than ninety days, or by a fine in an amount not more than one thousand dollars or both such imprisonment and fine.**

8.12.030 - Property, interference with intent to annoy.

No person, for the purpose of annoyance or mischief, shall place in any doorway or any sidewalk, street or alley in the city, any box, barrel or other obstruction or thing, or shall remove, carry away, destroy, cut, deface, mark or write upon, or in any manner injure any window, fence, gate, bridge, dwelling house, engine house, building, awning, railing or any other property, public or private, not his own. **A violation under this provision is a misdemeanor crime which shall be**

**punished by imprisonment of not more than ninety days, or by a fine in an amount not more than one thousand dollars or both such imprisonment and fine.**

8.12.050 - Unsanitary premises.

No person shall erect or construct or keep, use or maintain within the town any pen, stable, lot, or place or premises in which cattle, horses or fowls may be confined or kept in such manner as to be nauseous, foul or offensive, or from any cause be an annoyance to the neighborhood, because of being improperly cared for. **A violation under this provision is a misdemeanor crime which shall be punished by imprisonment of not more than ninety days, or by a fine in an amount not more than one thousand dollars or both such imprisonment and fine.**

8.12.060 - Insecure or unsafe premises.

No person shall erect or construct within the town, or shall permit to stand or remain any insecure or unsafe building, stack, wall, chimney, awning, sign or other structure which from its situation, mode of construction or otherwise, is dangerous to person or property. **A violation under this provision is a misdemeanor crime which shall be punished by imprisonment of not more than ninety days, or by a fine in an amount not more than one thousand dollars or both such imprisonment and fine.**

8.12.070 - Dangerous pits and openings.

No person shall keep open any cellar door, pit or vault or other subterranean openings on any highway or sidewalk, or shall suffer the same to be left or kept open, or to be kept in an insecure condition, so that passersby will be in danger of falling into such cellar, pit or vault or other subterraneous opening, or, by any act or omission shall suffer any sidewalk upon, in front of or around the premises occupied by him to become and continue in a condition dangerous to life or limb. **A violation under this provision is a misdemeanor crime which shall be punished by imprisonment of not more than ninety days, or by a fine in an amount not more than one thousand dollars or both such imprisonment and fine.**

8.12.080 - Street—Allowing water to flow upon.

No person shall flow or cause to flow, or permit water to flow from any ditch or lot owned or controlled by said person upon any public street or alley or any other public grounds in the city. **A violation under this provision shall be civil non-traffic infraction with a penalty of two hundred fifty dollars.**

8.12.090 - Street signs—Injury or removal.

No person shall remove, deface, injure or destroy any street or traffic sign, or any sign erected or placed in or adjacent to any street, indicating the name of such street. **A violation under this provision is a misdemeanor crime which shall**

**be punished by imprisonment of not more than ninety days, or by a fine in an amount not more than one thousand dollars or both such imprisonment and fine.**

8.12.110 - Poison—Laying out.

It is unlawful for any person to lay out or expose any kind of poison, or to leave exposed any poisoned food or drink for man, animal or fowl, or any substance or fluid whatever whereon or wherein there is or shall be deposited or mingled, any kind of poison or poisonous or deadly substance or fluid whatsoever, on the premises of another, or in any unenclosed space, or to aid or abet any person in so doing. **A violation under this provision is a gross misdemeanor crime which shall be punished by imprisonment of not more than 365 days, or by a fine in an amount not more than five thousand dollars or both such imprisonment and fine.**

8.12.140 - Unlawful possession of tools and devices.

It is unlawful for any person to make, or mend, or cause to be made or mended, or have in his possession, in the day or nighttime, any engine, tool, machine, device or implement, adapted, designed, or commonly used to trip, cheat, defraud, or operate without the use of money, vending machines, pinball machines or other coin-operated machines, under circumstances evidencing an intent to use or employ, or allow the same to be used or employed, in such operation, or knowing that the same is intended to be so used. The possession thereof except by a mechanic, artificer or tradesman, at and in his established shop or place of business, open to public view, shall be prima facie evidence that such possession was had with intent to use or employ or allow the same to be used or employed in the tripping, cheating, defrauding, or operating such coin-operated devices without the use of money or coins. **A violation under this provision is a misdemeanor crime which shall be punished by imprisonment of not more than ninety days, or by a fine in an amount not more than one thousand dollars or both such imprisonment and fine.**

8.12.150 - Motor vehicle on playground or parkway.

No person shall push, tow, operate or drive a motor vehicle upon the designated playgrounds or parks within the city. **A violation under this provision is a misdemeanor crime which shall be punished by imprisonment of not more than ninety days, or by a fine in an amount not more than one thousand dollars or both such imprisonment and fine.**

8.12.160 - Livestock in playground or parkways.

No person shall lead, ride, picket or otherwise cause a horse or other livestock to enter or remain on any designated playground or parkway within the city. **A violation under this provision is a misdemeanor crime which shall be punished by imprisonment of not more than ninety days, or by a fine in an**

**amount not more than one thousand dollars or both such imprisonment and fine.**

**~~8.12.170 – Fortunetelling.~~**

~~No person shall ask or receive any compensation, gratuity or reward for practicing fortunetelling, palmistry, phrenology, astrology or clairvoyance and kindred subjects.~~

8.12.180 - Soliciting for attorney.

No person shall solicit business for any attorney in, at or around any court or hospital, or at or near the scene of an accident or collision. **A violation under this provision shall be civil non-traffic infraction with a penalty of two hundred fifty dollars.**

8.12.190 - Abandoned refrigeration equipment.

Any person violating any of the provisions in RCW Chapter 9.03, within the city, shall be guilty of a misdemeanor, **which shall be punished by imprisonment of not more than 90 days, or be a fine in an amount not more than one thousand dollars or both such imprisonment and fine.**

8.12.220- Loitering for the purpose of engaging in drug-related activity.

- (a) It is unlawful for any person to loiter in or near any thoroughfare, place open to the public or near any public or private place in a manner and under circumstances manifesting the purpose to engage in drug-related activity contrary to any of the provisions of Chapters 69.41, 69.50 or 69.52 of the Revised Code of Washington.
- (b) No arrest shall be made for a violation of this section unless the arresting officer first affords such person an opportunity to explain such conduct, and no person shall be convicted of violating this section if it is believed by the trier of fact at trial that the explanation given was true and disclosed a lawful purpose.
- (c) Included among the circumstances which may be considered in determining whether such purpose is manifested, but not limited thereto, are:
  - (1) Such person is a known, unlawful drug user, possessor, or seller;
  - (2) It is known that such person has been convicted in any court within this state within a period of two years of any violation involving the use, possession or sale of any of the substances referred to in Chapters 69.41, 69.50 and 69.52 of the Revised Code of Washington, or, within two years, such person has been convicted or any violation of any of the provision of said chapters of the Revised Code of Washington;
  - (3) The area involved is by public repute known to be an area of unlawful drug use and trafficking;



(4) The premises involved are known to have been reported to law enforcement as a place suspected of drug activity pursuant to Chapter 69.52 of the Revised Code of Washington;

(5) Any vehicle involved is known to be registered to a known unlawful drug user, possessor, or seller or for which there is an outstanding warrant for a crime involving drug-related activity;

(6) Such person behaves in such a manner as to raise a reasonable suspicion that he or she is about to engage in or is then engaged in an unlawful drug-related activity;

(7) Such person takes flight upon the appearance of a police officer;

(8) Such person manifestly endeavors to conceal himself or herself or any object that reasonably could be involved in an unlawful drug-related activity;

(9) Such person refuses to identify himself or herself upon the request of an identified police officer.

**A violation under this provision is a misdemeanor crime which shall be punished by imprisonment of not more than ninety days, or by a fine in an amount not more than one thousand dollars or both such imprisonment and fine.**

8.12.230 - Controlled substances.

The following statutes of the state of Washington, including any future amendments and additions thereto, and repeals thereof are adopted by reference:

RCW

69.50.101 Definitions

69.50.102 Drug paraphernalia—Definitions

69.50.204(c)(14) Schedule I—Marijuana

69.50.309 Containers

69.50.401 Prohibited acts: A - penalties

69.50.412 Prohibited acts: E - penalties

69.50.425 Misdemeanor violations—Minimum imprisonment

69.50.505 Seizure and forfeiture

69.50.506 Burden of proof

69.50.509 Search and seizure of controlled substances

**69.50.4014 Possession of forty grams or less of marihuana — Penalty.**

## **Section 2. Effective Date.**

This amending Ordinance shall take effect and be in force five (5) days after final passage by the City Council and publication.

**ORDAINED** this 27<sup>th</sup> day of January, 2014.

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Roger Wentz, Mayor

ATTEST:

APPROVED AS TO FORM:

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Karen Clifton, City Clerk

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Robert F. Noe, City Attorney

**CITY OF UNION GAP, WASHINGTON**  
**ORDINANCE NO. \_\_\_\_\_**

**AN ORDINANCE** amending section 9.32.050 of the Union Gap Municipal Code relating to Arterial Highways and truck routes.

**WHEREAS**, the City Attorney's office working in conjunction with the Yakima County District Court, which provides Municipal Court services to the City of Union Gap under contract, has identified certain areas of the Union Gap Municipal Code that require clarification;

**WHEREAS**, Union Gap Municipal Code section 9.32.050 currently prohibits certain conduct but is not clear concerning the penalty provision for non-compliance or for a violation;

**WHEREAS**, it is recommended that the Code be amended to make clear the penalty provisions;

**NOW THEREFORE, THE CITY COUNCIL OF THE CITY OF UNION GAP DOES ORDAIN** as follows:

**Section 1. Section 9.32.050 Amended.** Section 9.32.050 of the Union Gap Municipal Code is amended to read as follows:

9.32.050 – **Violation of Truck Routes;** Exceptions to Section 9.32.040.

All commercial vehicles, trailers, semi-trailers and combination of vehicles shall travel through or in the town only upon the routes designated in Section 9.32.040. Provided, however, that the police chief, the fire chief, and the public works director, are each hereby given the authority, in case of emergency or necessity, to grant permission to deviate from such routes, and provided further that vehicles proceeding to freight terminals or depots or vehicles making deliveries or being driven to designations off such routes for storage or repair, may deviate from such routes by only the street intersections leading directly to such designations, and such vehicles shall return to the routes from such designations by the most direct way.

The director of streets is hereby directed to erect appropriate signs to designate such truck routes and to mark the course thereof.

The owner and the operator of any vehicle driven over or upon the streets of the town in violation of the terms of this chapter shall each be guilty of a misdemeanor, **which shall be punished by imprisonment of not more than 90 days, or be a fine in an amount not more than one thousand dollars or both such imprisonment and fine.**

**Section 2. Effective Date.**

This amending Ordinance shall take effect and be in force five (5) days after final passage by the City Council and publication.

**ORDAINED** this 27<sup>th</sup> day of January, 2014.

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Roger Wentz, Mayor

ATTEST:

APPROVED AS TO FORM:

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Karen Clifton, City Clerk

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Robert F. Noe, City Attorney

**CITY OF UNION GAP, WASHINGTON**  
**ORDINANCE NO. \_\_\_\_\_**

**AN ORDINANCE** amending sections of Union Gap Municipal Code Title 11, Street and Sidewalks.

**WHEREAS**, the City Attorney's office working in conjunction with the Yakima County District Court, which provides Municipal Court services to the City of Union Gap under contract, has identified certain areas of the Union Gap Municipal Code that require clarification;

**WHEREAS**, Union Gap Municipal Code Title 11 currently prohibits certain conduct but is not clear concerning the penalty provision for non-compliance or for a violation;

**WHEREAS**, it is recommended that the Code be amended to make clear the penalty provisions;

**NOW THEREFORE, THE CITY COUNCIL OF THE CITY OF UNION GAP DOES ORDAIN as follows:**

**Section 1. Title 11 Amended.** The following sections of Title 11, Street and Sidewalks, of the Union Gap Municipal Court are amended as follows:

Chapter 11.08, Sidewalk Obstructions, section 11.08.010 - Snow and ice obstructions.

No person shall cause snow or ice to be placed in any public street, alley, sidewalk or public way; provided, that this section shall not apply to Union Gap town employees performing the regular course of their duties. Violation of this section shall be a civil **non-traffic** infraction with a penalty of ~~one hundred~~ **two hundred fifty** dollars.

Chapter 11.12, Street Intersections, section 11.12.010 - View obstruction—Prohibited.

It is unlawful to install, set out or maintain, or to allow the installation, setting out or maintenance of, or to permit any sign, hedge, trees, shrubbery, natural growth or other obstruction to view on property at any corner formed by intersecting streets when the obstruction is higher than three feet above the level of the center of the adjacent intersection within the area bounded by the centerlines of the adjacent intersecting streets, extending from such point of intersection to points extending along the centerlines eighty feet from the point of intersection and a straight line connecting the latter points. **A violation under this provision is a misdemeanor crime which shall be punished by imprisonment of not more than ninety**

**days, or by a fine in an amount not more than one thousand dollars or both such imprisonment and fine.**

Chapter 11.16, Right of Way or Property Paving, section 11.16.040 - Violation—Penalty.

Any violation of this chapter is a misdemeanor and is punishable by up to ~~two hundred fifty~~ one **thousand** dollars fine and/or ninety days in jail.

Chapter 11.24, Businesses on Rights-of-Way, section 11.24.010 - Prohibited.

(a) No owner, manager or employee of any business shall use any city or public property or right-of-way or sidewalk for purposes of advertising or conducting business or displaying or storing inventory, equipment or other business property. Each applicant for a business license shall sign a statement, on such form as may be furnished by the city, indicating an understanding of and willingness to comply with this section. Failure or refusal to sign the statement will be grounds for denial of the license.

(b) The city shall notify person(s) violating this section to remove all illegally situated property immediately.

(c) In the event the person(s) violating this section does not comply with directives of the city, the city may remove all property remaining on the city or public property or right-of-way or sidewalk and dispose of such property in any practical manner. The person(s) with dominion and control over the property shall be responsible to pay the cost of removing such property.

(d) In addition to any other cost or remedy available to the city, the failure or refusal to comply with this section shall constitute a civil **non-traffic** infraction. The civil penalty shall be two hundred fifty dollars per violation. Each day shall constitute a violation.

Chapter 11.28, Personal Property in Right of Way, section 11.28.050 - Violation—Penalty.

In addition to any other cost, the failure or refusal to remove personal property from the city right-of-way in accordance with this chapter shall be a **civil infraction, a misdemeanor crime which shall be punished by imprisonment of not more than ninety days, or by a fine in an amount not more than one thousand dollars or both such imprisonment and fine.** ~~The civil penalty shall be two hundred fifty dollars per violation. Each day shall constitute a violation.~~

**Section 2. Effective Date.**

This amending Ordinance shall take effect and be in force five (5) days after final passage by the City Council and publication.

**ORDAINED** this 27<sup>th</sup> day of January, 2014.

\_\_\_\_\_  
Roger Wentz, Mayor

ATTEST:

APPROVED AS TO FORM:

\_\_\_\_\_  
Karen Clifton, City Clerk

\_\_\_\_\_  
Robert F. Noe, City Attorney

**CITY OF UNION GAP, WASHINGTON**  
**ORDINANCE NO. \_\_\_\_\_**

AN ORDINANCE amending sections of Union Gap Municipal Code Title 14, chapter 28, Flood Hazard Protection.

WHEREAS, the City Attorney's office working in conjunction with the Yakima County District Court, which provides Municipal Court services to the City of Union Gap under contract, has identified certain areas of the Union Gap Municipal Code that require clarification;

WHEREAS, Union Gap Municipal Code Title 14 currently requires certain conduct but is not clear concerning the penalty provision for non-compliance or for a violation;

WHEREAS, it is recommended that the Code be amended to make clear the penalty provisions;

NOW THEREFORE, THE CITY COUNCIL OF THE CITY OF UNION GAP DOES ORDAIN as follows:

**Section 1. Title 14, Chapter 28 Amended.** The following section of Title 14, Chapter 28, Flood Hazard Protection, is amended as follows:

14.28.040 - Compliance.

No structure or land shall hereafter be constructed, located, extended, converted, or altered without full compliance with the terms of this chapter and other applicable regulations. A violation of this chapter is a misdemeanor crime which shall be punished by imprisonment of not more than ninety days, or by a fine in an amount not more than one thousand dollars or both such imprisonment and fine.

**Section 2. Effective Date.**

This amending Ordinance shall take effect and be in force five (5) days after final passage by the City Council and publication.

ORDAINED this 27<sup>th</sup> day of January, 2014.

\_\_\_\_\_  
Roger Wentz, Mayor

ATTEST:

APPROVED AS TO FORM:

\_\_\_\_\_  
Karen Clifton, City Clerk

\_\_\_\_\_  
Robert F. Noe, City Attorney



**CITY OF UNION GAP, WASHINGTON**  
**ORDINANCE NO. \_\_\_\_\_**

AN ORDINANCE amending section 16.50.011 of the Union Gap Municipal Code relating to Subdivision and compliance.

WHEREAS, the City Attorney's office working in conjunction with the Yakima County District Court, which provides Municipal Court services to the City of Union Gap under contract, has identified certain areas of the Union Gap Municipal Code that require clarification;

WHEREAS, Union Gap Municipal Code section 16.50.010 currently prohibits certain conduct but is not clear concerning the penalty provision for non-compliance or for a violation;

WHEREAS, it is recommended that the Code be amended to make clear the penalty provisions;

NOW THEREFORE, THE CITY COUNCIL OF THE CITY OF UNION GAP DOES ORDAIN as follows:

**Section 1. Section 16.50.010 Amended.** Section 16.50.010 of the Union Gap Municipal Code is amended to read as follows:

16.50.010- Violations—Penalty.

- A. Noncompliance or violation of this title or RCW Chapter 58.17 is grounds for the denial of a development permit, including a building, plumbing and or mechanical permit, access/approach permit and any permit for the physical development or change to a parcel.
- B. No person, firm, corporation, association or agent thereof shall sell, offer for sale, transfer, or lease, either by deed or contract, any land subject to the requirements of short plat approval until a short plat has been approved and filed. Any person who violates any of the short plat provisions of this title shall be guilty of a **gross** misdemeanor ~~and shall be punished by a fine of not more than two hundred fifty dollars (\$250.00) for each violation. Each day such violation continues shall be considered a separate offense, which shall be punished by imprisonment of not more than 365 days, or be a fine in an amount not more than five thousand dollars or both such imprisonment and fine.~~
- C. No person shall sell, offer for sale, lease or transfer any land subject to the requirements of plat approval until a plat has been approved or filed. Any person who violates the plat provisions of this title shall, pursuant to RCW

58.17.300, be guilty of a gross misdemeanor, **which shall be punished by imprisonment of not more than 365 days, or be a fine in an amount not more than five thousand dollars or both such imprisonment and fine;** and each sale, offer for sale, lease or transfer of each separate lot, tract or parcel of land in violation of any provision of this title shall be deemed a separate and distinct offense.

**Section 2. Effective Date.**

This amending Ordinance shall take effect and be in force five (5) days after final passage by the City Council and publication.

**ORDAINED** this 27<sup>th</sup> day of January, 2014.

\_\_\_\_\_  
Roger Wentz, Mayor

ATTEST:

APPROVED AS TO FORM:

\_\_\_\_\_  
Karen Clifton, City Clerk

\_\_\_\_\_  
Robert F. Noe, City Attorney



## **CITY COUNCIL COMMUNICATION**

**Meeting Date:** January 27, 2014  
**From:** Rod Otterness, City Manager  
**Topic / Issue:** Discussion - Transportation Benefit District

---

**SYNOPSIS:** Some communities in Washington have utilized Transportation Benefit Districts to assist in obtaining revenues to complete needed transportation projects. Once a district is created, several tools for obtaining revenues can be used, the most widely used tool is a \$20 vehicle license fee. The City Council has committed the city to downtown redevelopment and other long-term improvements to our transportation network. In addition, staff is looking at the need for additional resources to maintain our existing streets. A Transportation Benefit District is one of the tools the City Council should consider when reviewing the need for additional resources to maintain and improve our transportation infrastructure

**RECOMMENDATION:** Refer to committee further discussion of creating a Transportation Benefit District

**LEGAL REVIEW:** N/A

**FINANCIAL REVIEW:**

**BACKGROUND INFORMATION:** N/A

**ADDITIONAL OPTIONS:** N/A

**ATTACHMENTS:** Example Bylaws and Ordinance establishing vehicle license fee.

**BYLAWS  
OF THE  
GRANDVIEW TRANSPORTATION BENEFIT DISTRICT**

**ARTICLE I  
MEMBERSHIP**

Section 1.1 Membership. Each member of the Grandview City Council shall be an ex officio member of the Board of the District.

**ARTICLE II  
OFFICERS AND COMMITTEES**

Section 2.1 Officers Designated. The officers of the Board shall be a Chair, Vice-Chair, Secretary, and Treasurer. Such other officers and assistant officers as may be deemed necessary may be elected or appointed by the Board. No person may simultaneously hold more than one office. In addition to the powers and duties specified below, the officers shall have such powers and perform such duties as the Board may prescribe.

Section 2.2 Election, Qualification, and Term of Office. The Chair and Vice-Chair shall be elected by the Board from among its members. The Treasurer shall be the City of Grandview Treasurer. The Secretary shall be the City of Grandview Clerk. Except for the Secretary and Treasurer, the officers shall be elected by the Board at the first regular meeting each year, for a one-year term, and each officer shall hold office during said one-year term and until his or her successor is elected. The first officers of the Board shall be elected by the Board at its first meeting following the adoption of these Bylaws. Officers may, at the discretion of the Board, hold their respective offices for successive terms.

Section 2.3 Powers and Duties. The officers of the Grandview Transportation Benefit District ("District") shall have the following duties:

(a) Chair. The Chair shall serve as the ceremonial head of the District and shall preside over all Board meetings. The Chair shall, subject to the control of the Board, exercise general supervision, direction, and control of the business and affairs of the District. On matters decided by the District, unless otherwise required under Interlocal Agreement or by this Organizational Rules, the signature of the Chair alone is sufficient to bind the District. The Chair shall be the District's registered agent for purposes of service of process.

(b) Vice Chair. The Vice Chair shall serve in the absence of the Chair as the ceremonial head of the District and shall preside over Board meetings in the Chair's absence and shall otherwise execute the Chair's powers and duties.

(c) Secretary. The Secretary shall maintain the documents and minutes of the District and shall prepare minutes of all meetings for approval by the Board. The Secretary shall also discharge such other duties as may be prescribed by the District Board of Directors.

(d) Treasurer. The Treasurer shall receive and faithfully keep all funds of the District and deposit the same in such bank or banks as may be designated by the District Board of Directors. The Treasurer shall also discharge such other duties as may be prescribed by the District Board of Directors.

Section 2.4 Establishment of Committees. The Board may, by resolution, designate from among its members one or more committees, each consisting of at least two members, to represent the Board and, where consistent with these Bylaws, the Organizational Rules, GMC 12.30, and Chapter 36.73 RCW, act for and on behalf of the Board. The designation of any such committee and the delegation thereto of authority shall not operate to relieve any member of the Board from any responsibility imposed by law. All actions of the District require the vote of the Board.

Section 2.5 Removal From Office. Upon reasonable prior notice to all Board members of the alleged reasons for dismissal, the Board, by an affirmative vote of the majority of the quorum, may remove any officer of the Board from his or her office whenever in its judgment the best interests of the District will be served thereby. An officer so removed shall continue to serve on the Board.

### **ARTICLE III MEETINGS**

Section 3.1 Regular Board Meetings. Regular Board meetings shall be held on the second Tuesday of each month in the City of Grandview City Council Chambers. At any regular meeting of the Board, any business may be transacted and the Board may exercise all of its powers.

Section 3.2 Special Board Meetings. Subject to the Organizational Rules, special meetings of the Board may be held at any place and at any time whenever called by the Chair or by a majority of the members of the Board.

Section 3.3 Notice of Regular Board Meetings. Subject to the Organizational Rules, no notice of regular meetings shall be required, except for the first regular meeting after any change in the time or place of such meeting

adopted by resolution of the Board as above provided. Notice of such changed, regular meeting shall be given by personal communication over the telephone to each Board member at least 24 hours prior to the time of the meeting or by at least three days' notice by mail, telegram or written communication. If mailed, notice shall be mailed by United States mail, postage prepaid, to the last known address of each Board member. In addition, the District shall routinely provide reasonable notice of such changed meetings to the City of Grandview and to any individual specifically requesting such notice in writing.

Section 3.4 Notice of Special Board Meetings. Notice of all special meetings of the Board shall be given by the Secretary (City Clerk) or by the person or persons calling the special meeting by delivering personally or by mail written notice at least 24 hours prior to the time of the meeting to each Board member, and to each local newspaper of general circulation and to each radio or television station that has requested notice of meeting of the City Council with the City of Grandview as provided in RCW 42.30.080. In addition, the District shall provide notice of special meetings to the Mayor of the City of Grandview and to any individual specifically requesting such notice in writing. The time and place of the special meeting and the business to be transacted must be specified in the notice. Final disposition shall not be taken at a special meeting on any matter not referenced in the notice.

Section 3.5 Waiver of Notice. Notice as provided in Sections 3.3 and 3.4 hereof may be dispensed with as to any member of the Board who, at or prior to the time the meeting convenes, files with the Board of the District a written waiver of notice or who is actually present at the meeting at the time it convenes. Such notice may also be dispensed with as to special meetings called to address an emergency involving injury or damage to persons or property or the likelihood of such injury or damage, where time requirements of such notice would make notice impractical and increase the likelihood or severity of such injury or damage. Notice concerning proposed amendments to Bylaws, and votes on such amendments, may not be waived.

Section 3.6. Procedure. *Robert's Rules of Order* shall be final authority on all questions of procedure and parliamentary law not otherwise provided by ordinance, statute, Organizational Rules or these Bylaws; PROVIDED, that with the concurrence of four (4) members, such rules may be waived or modified. PROVIDED FURTHER, that failure to follow said rules will not in itself constitute sufficient grounds for invalidating any Board action.

Section 3.7. Public Comment. Opportunity for public comment at Board meetings shall be required through a public hearing when the Board considers adoption of (1) its annual plan for service/budget, (2) a material change policy, (3) imposition of any tax, charge or fee, and (4) any response to a material change; PROVIDED, that the Board from time to time may, in its sole discretion, permit public comment regarding additional topics.

Section 3.8. Proxies Prohibited. Votes may be cast at Board meetings only by members of the Board in attendance at the meeting either in person or by electronic means. Voting by proxy shall be prohibited.

#### **ARTICLE IV AMENDMENTS TO BYLAWS**

Section 4.1 Proposals to Amend Bylaws. Any Board member may introduce a proposed amendment to the Bylaws (which may consist of new Bylaws) at any regular meeting, or at any special meeting for which 30 days' advance notice has been given.

Section 4.2 Board Consideration of Proposed Amendments. If notice of a proposed amendment to the Bylaws, and information including the text of the proposed amendment and a statement of its purpose and effect, is provided to members of the Board 15 days prior to any regular Board meeting or any special meeting of which 30 days' advance notice has been given, then the Board may vote on the proposed amendment at the same meeting as the one at which the amendment is introduced. If such notice and information is not so provided, the Board may not vote on the proposed amendment until the next regular Board meeting or special meeting of which 30 days' advance notice has been given and at least 15 days prior to which meeting such notice and information is provided to Board members. Germane amendments to the proposed amendment within the scope of the original amendment will be permitted at the meeting at which the vote is taken.

Section 4.3 Board Approval of Amendments to Bylaws. Resolutions of the District approving amendments to the Bylaws by affirmative vote of a majority of the Board may be implemented at such time as selected by the District in the Resolution without further action. Copies of the all amendments to the Bylaws shall be filed with the Secretary (City Clerk) as public records.

#### **ARTICLE V ADMINISTRATIVE PROVISIONS**

Section 5.1 Books and Records. The District shall keep current and complete books and records of account and shall keep minutes of the proceedings of its Board and its committees. The City Clerk of the City of Grandview shall serve as its Secretary for such purposes.

Section 5.2 Principal Office. The principal office and mailing address of the Grandview Transportation Benefit District shall be located in Grandview, Washington, as specified by resolution.

Section 5.3 Fiscal Year. The Fiscal Year of the District shall begin January 1 and end December 31 of each year, except the first fiscal year which shall run from the date the Organizational Rules were adopted to December 31, 2011.

**ARTICLE VI  
APPROVAL OF BYLAWS**

Approved by Resolution No. 2011-TBD-01 adopted by the Grandview Transportation Benefit District Board of Directors this 28th day of June, 2011.

GRANDVIEW TRANSPORTATION BENEFIT  
DISTRICT

\_\_\_\_\_  
CHAIR

ATTEST:

\_\_\_\_\_  
SECRETARY/CITY CLERK

APPROVED AS TO FORM BY:

\_\_\_\_\_  
CITY ATTORNEY



**GRANDVIEW TRANSPORTATION BENEFIT DISTRICT  
ORDINANCE NO. 2011-TBD-02**

**AN ORDINANCE OF THE GRANDVIEW TRANSPORTATION BENEFIT  
DISTRICT ESTABLISHING AND IMPOSING \$20 OF THE VEHICLE  
LICENSE FEE AUTHORIZED IN RCW 36.73.065 AND RCW 82.80.140,  
AND FIXING A TIME WHEN THE SAME SHALL BECOME EFFECTIVE**

**WHEREAS**, Chapter 36.73 RCW and RCW 35.21.255 authorize the City Council to establish a transportation benefit district within the City's jurisdiction for the purpose of acquiring, constructing, improving, providing, and funding transportation improvements within the district that are consistent with existing state, regional, and local transportation plans and necessitated by existing or reasonably foreseeable congestion levels; and

**WHEREAS**, the City Council of the City of Grandview found it to be in the best interest of the City to establish a citywide Transportation Benefit District for the preservation and maintenance of the City's streets and related infrastructure consistent with Chapter 36.73 RCW, to protect the City's long term investments in that infrastructure, to reduce the risk of transportation facility failures and improve safety, to continue optimal performance of the infrastructure over time, and to avoid more expensive infrastructure replacements in the future; and

**WHEREAS**, in Ordinance No. 2011-9, the City Council of the City of Grandview established a Transportation Benefit District as authorized by RCW 35.21.225 and subject to the provisions of RCW 36.73; and

**WHEREAS**, the Transportation Benefit District includes the entire City of Grandview as the boundaries currently exist or as they may be extended by annexation; and

**WHEREAS**, pursuant to RCW 36.73.030(3), the members of the City Council, acting ex officio and independently, constitute the governing body of the Transportation Benefit District; and

**WHEREAS**, RCW 36.73.065 authorizes a transportation benefit district to impose, by majority vote of the district's governing board, up to \$20 of the vehicle fee authorized in RCW 82.80.140; and

**WHEREAS**, the Board of the City of Grandview Washington Transportation Benefit District finds it in the best interest of the District to establish an annual vehicle fee in the amount of \$20 for the purposes of ongoing transportation improvements that preserve and maintain the transportation infrastructure of the City of Grandview, consistent with Chapter 36.73 RCW;

**NOW, THEREFORE, THE BOARD OF THE CITY OF GRANDVIEW WASHINGTON  
TRANSPORTATION BENEFIT DISTRICT, DO ORDAIN AS FOLLOWS:**

**Section 1. Establishment of Annual Vehicle Fee.** In accordance with the authority granted to the District by RCW 82.80.140 and RCW 36.73.065, as now exist or as are hereafter amended, the City of Grandview Washington Transportation Benefit District establishes and imposes an annual vehicle fee in the amount of twenty dollars per vehicle registered in the district, for each vehicle subject to license tab fees under RCW 46.16.0621, as now exists or as is hereafter is amended, and for each vehicle subject to gross weight fees under RCW 46.16.070, as now exists or as is hereafter amended, with an unladen weight of six thousand pounds or less. The annual vehicle fee shall be collected by the Washington Department of Licensing on qualifying vehicles, as set forth in RCW 82.80.140, as now exists or as is hereafter amended, and Chapters 36.73 and 46.16 RCW, as now exists or as hereafter are amended.

**Section 2. Effective Date.** This ordinance shall take effect five (5) days after passage and publication of an approved summary thereof consisting of the title.

**ADOPTED** by the City of Grandview Transportation Benefit District Board this 28<sup>th</sup> day of June, 2011.

APPROVED:

\_\_\_\_\_  
CHAIR

ATTEST:

\_\_\_\_\_  
SECRETARY/CITY CLERK

APPROVED AS TO FORM:

\_\_\_\_\_  
CITY ATTORNEY

Publication: 06/29/11

Effective: 07/04/11



**CITY COUNCIL COMMUNICATION**

**Meeting Date:** January 27, 2014  
**From:** Rod Otterness, City Manager  
**Topic / Issue:** Ordinance - Salaries for Directors

**SYNOPSIS:** The City Council has approved director position descriptions for the four director positions: Acting Public Safety Director, Director of Public Works and Community Development, Deputy Director of Public Works and Community Development, and Director of Finance and Administration. The Acting Public Safety Director is being compensated pursuant to union contract because he is working in an acting position not a permanent position. I am not recommending changing this or changing his compensation. I am recommending an increase of 4% for the Deputy Director of Public Works and Community Development similar to the COLA increases of last year and this year for union contract positions. I am also recommending a 4% increase for COLA for the Director of Public Works and Community Development and Director of Finance and Administration, and, in addition, I am recommending a \$400 per month increase because of additional responsibilities assigned to these two positions. The amount of pay for each position if this recommendation is approved will be:

	<u>Monthly</u>	<u>Annually</u>	<u>Annually including Longevity</u>
Deputy Director of Public Works and Community Development	\$6605	\$79,260	\$80,449.39
Director of Public Works and Community Development	7005	84,060	87,280.44
Director of Finance and Administration	6249	74,988	77,795.02

**RECOMMENDATION:** Adopt and publish an ordinance amending the 2014 Budget for salary increases.

**LEGAL REVIEW:** N/A

**FINANCIAL REVIEW:** The total cost of the budget amendment will be \$23,322.48.

**BACKGROUND INFORMATION:** N/A

**ADDITIONAL OPTIONS:** Approve different salaries.

- ATTACHMENTS:**
1. Ordinance
  2. Salary Increase Breakdown

**CITY OF UNION GAP, WASHINGTON**  
**ORDINANCE NO. \_\_\_\_\_**

**AN ORDINANCE** setting the salaries for the positions of Deputy Director of Public Works and Community Development, Director of Public Works and Community Development, and Director of Finance and Administration; amending the 2014 Budget to transfer \$20,388.56 from the Current Expense Ending Fund Balance (001.508) to the Current Expense Clerk/Finance and Building/Planning Funds; and to the Water, Sewer, Parks, Transit, and Street Funds; and; authorizing the expenditure of those moneys to pay for the increase top the salaries and associated benefits for the positions of Deputy Director of Public Works and Community Development, Director of Public Works and Community Development, and Director of Finance and Administration.

**WHEREAS**, following restructuring of City department, among the positions created were the Deputy Director of Public Works and Community Development, the Director of Public Works and Community Development, and the Director of Finance and Administration;

**WHEREAS**, it is the desire of the City Administration to increase the compensation for the Deputy Director of Public Works and Community Development by 4% as a COLA; to increase the compensation for the Director of Public Works and Community Development by \$400 in recognition of the additional responsibilities of that position, together with a 4% COLA; and, to increase the compensation for the Director of Finance and Administration by \$400 in recognition of the additional responsibilities of that position, together with a 4% COLA;

**WHEREAS**, in order to implement the increase in compensation for these positions, it is necessary to amend the 2014 Budget to authorize the transfer of funds from the Current Expense Ending Fund Balance (001.508) and authorize expenditure of \$20,388.58 for additional compensation (wages and associated benefits) for the positions of Deputy Director of Public Works and Community Development, Director of Public Works and Community Development, and Director of Finance and Administration;

**NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF UNION GAP DOES ORDAIN as follows:**

**Section 1. Salaries Set.** The monthly **base** salaries for the positions of Deputy Director of Public Works and Community Development, Director of Public

Works and Community Development, and Director or Finance and Administration are set as follows:

Deputy Director of Public Works and Community Development	\$79,260
Director of Public Works and Community Development	\$84,060
Director of Finance and Administration	\$74,988

**Section. 2 2014 Budget Amended.** The 2014 Budget is amended to authorize a transfer of \$20,388.56 from the Current Expense Ending Fund Balance (001.508) to the Current Expense Clerk/Finance Fund; Building/Planning Funds; and to the Water, Sewer, Parks, Transit, and Street Funds to pay for the additional compensation (wages and benefits) for the positions of Deputy Director of Public Works and Community Development, Director of Public Works and Community Development, and Director or Finance and Administration.

**Section 3. Expenditure Authorized.** Authorization is hereby granted to expend an additional \$20,388.56 for additional wage and benefits for the positions of Deputy Director of Public Works and Community Development, Director of Public Works and Community Development, and Director or Finance and Administration from the following funds:

Current Expense-Clerk/Finance (001.514)	\$ 8,890.10
Current Expense-Building (001.524)	2,557.95
Current Expense-Planning (001.558)	2,557.95
Current Expense-Parks (001.576)	465.83
Water (401)	3,074.43
Sewer (403)	2,608.61
Transit (128)	372.67
Street (101)	<u>2,794.94</u>
	\$23,322.48

**ORDAINED** this 27<sup>th</sup> day of January, 2014.

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Roger Wentz, Mayor

ATTEST:

APPROVED AS TO FORM:

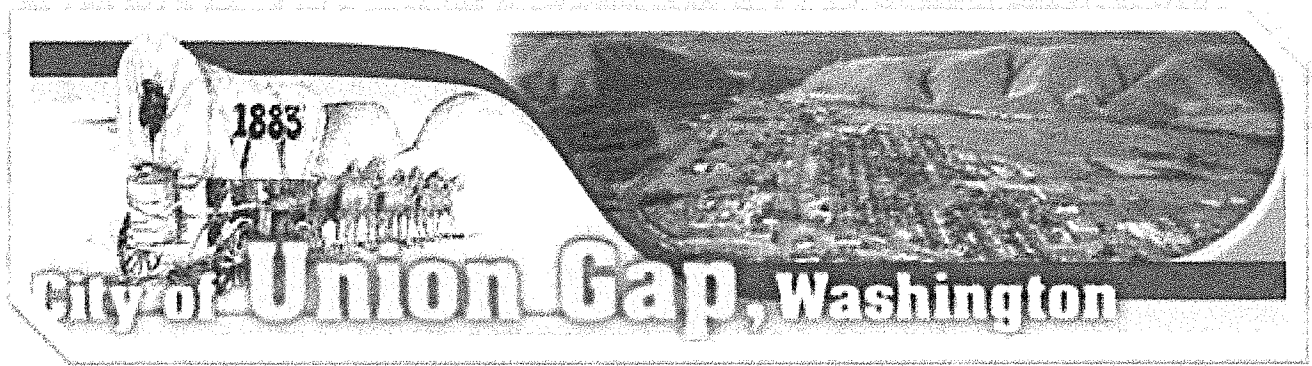
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Karen Clifton, City Clerk

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Robert F. Noe, City Attorney

	<b>Current</b>	<b>With Raise</b>	<b>Difference</b>
Henne			
Wage	79,308.11	87,280.44	7,972.33
Benefits	24,285.90	25,630.03	1,344.13
Spurlock			
Wage	77,355.18	80,449.39	3,094.21
Benefits	34,547.47	36,569.16	2,021.69
Clifton			
Wage	70,187.52	77,795.02	7,607.50
Benefit	36,232.80	37,515.42	1,282.62
<b>Total Budget Amendment</b>			<b>\$23,322.48</b>



## **CITY COUNCIL COMMUNICATION**

**Meeting Date:** January 27, 2014  
**From:** Rod Otterness, City Manager  
**Topic / Issue:** Resolution – Amendment to the Legal Services Contract

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**SYNOPSIS:** An increase was provided for in the City's adopted 2014 Budget to increase the Legal Services Contract with Robert F. Noe, PLLC. from \$11,000 per month to \$11,500 per month.

**RECOMMENDATION:** Adopt a resolution authorizing the City Manager to sign an amendment to the professional services contract with Robert F. Noe, PLLC.

**LEGAL REVIEW:** N/A

**FINANCIAL REVIEW:**

**BACKGROUND INFORMATION:** N/A

**ADDITIONAL OPTIONS:**

**ATTACHMENTS:** 1. Resolution  
2. Amendment to the Legal Services Contract



**CITY OF UNION GAP, WASHINGTON**  
**RESOLUTION NO. \_\_\_\_\_**

**A RESOLUTION** authorizing the City Manager to sign an Amendment to the Professional Services Agreement with Robert F. Noe, PLLC

**WHEREAS**, the City has been using the professional services of Robert F. Noe, PLLC to provide both general City Attorney services and Prosecuting Attorney services;

**WHEREAS**, the City desires to increase the level of compensation under the contract through an amendment to the contract for the reasons stated in the amendment;

**NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF UNION GAP, WASHINGTON, HEREBY RESOLVES as follows:**

The City Manager is authorized to sign an Amendment to the Professional Services Contract with Robert F. Noe, PLLC.

**PASSED** this 27<sup>th</sup> day of January, 2014.

\_\_\_\_\_  
Roger Wentz, Mayor

ATTEST:

APPROVED AS TO FORM:

\_\_\_\_\_  
Karen Clifton, City Clerk

\_\_\_\_\_  
Robert F. Noe, City Attorney

**FIRST AMENDMENT TO PROFESSIONAL SERVICES CONTRACT  
CITY ATTORNEY – LEGAL SERVICES**

The City of Union Gap and Robert F. Noe, PLLC wish to amend Paragraph 3, Compensation, of the Professional Services Contract between the parties dated August 29, 2006 to reflect an increase in compensation from \$11,000 per month to \$11,500 per month.

This increase is provided for in the City's adopted 2014 Budget and is made in recognition of the fact that there has been no increase in the level of compensation under the Professional Services Contract since its inception in 2006. Further, the increase is made in recognition of the increase in prosecutor workload due to the City's contract with Yakima District Court for Municipal Court services, including; the prosecutor must now be present in Court three times a week instead of twice weekly; the prosecution must now generate declarations for filing with all contested infraction matters to accompany police reports; all criminal misdemeanor matters generated by the police department are no longer filed directly with the Court but instead are "referral" filings requiring prosecutor review prior to filing with the Court; and, the prosecution must conduct address searches and then generate declarations concerning such address searches for all criminal matters filed.

Agreed this 27th of January, 2014

CITY OF UNION GAP

Robert F. Noe, PLLC

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Rodney Otterness

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Robert F. Noe



## **CITY COUNCIL COMMUNICATION**

**Meeting Date:** January 27, 2014  
**From:** Director of Finance & Administration  
**Topic/Issue:** Ordinance - 2013 Year-End Budget Adjustment

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**SYNOPSIS:** There were unforeseen expenditures that were not included in the 2013 budget, making the following amendment necessary to the 2013 budget:

- \$99,852.92 from the Current Expense ending fund balance for costs associated with litigation settlements and Municipal Court transition costs.

These expenditures represent approximately 1.5 per-cent of the overall 2013 Current Expense budget.

**RECOMMENDATION:** Adopt and publish an Ordinance amending the 2013 budget due to unforeseen expenditures.

**LEGAL REVIEW:** N/A

**FINANCIAL REVIEW:** There are adequate funds in the Current Expense ending fund balance to cover these costs.

**BACKGROUND INFORMATION**

**ADDITIONAL OPTIONS:**

**ATTACHMENTS:** Ordinance

**CITY OF UNION GAP, WASHINGTON**  
**ORDINANCE NO. \_\_\_\_\_**

**AN ORDINANCE** amending the 2013 budget due to unforeseen expenditures.

**WHEREAS**, there were costs relating to litigation settlements that were not included in the 2013 budget;

**WHEREAS**, there were additional cost associated with and the Municipal Court transition;

**WHEREAS**, the City Council, having been advised of the issues, wishes to amend the 2013 budget;

**NOW THEREFORE, THE CITY COUNCIL OF THE CITY OF UNION GAP DOES ORDAIN as follows:**

**Section 1. 2013 Budget Amended.** \$99,852.92 in increases shall be made to the various funds in the Current Expense budget.

**Section 2. Funds Transferred.** \$99,852.92 shall be transferred from the Current Expense Ending Fund Balance (001.508.00.00) to various accounts within the Current Expense budget to cover unforeseen costs associated with litigation settlements and the Municipal Court transition.

**ORDAINED** this 27<sup>th</sup> day of January 2014.

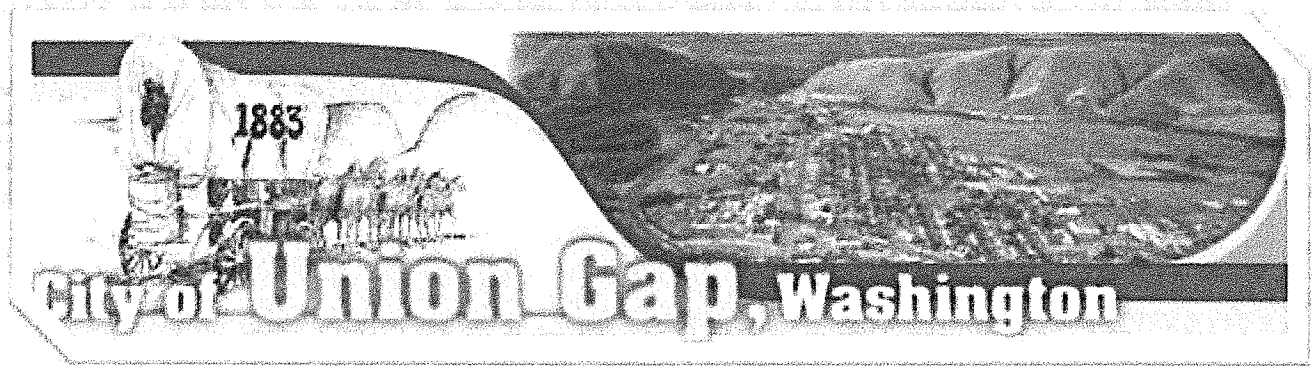
\_\_\_\_\_  
Roger Wentz, Mayor

ATTEST:

APPROVED AS TO FORM:

\_\_\_\_\_  
Karen Clifton, City Clerk

\_\_\_\_\_  
Robert F. Noe, City Attorney



## CITY COUNCIL COMMUNICATION

**Meeting Date:** January 27, 2014  
**From:** Roger Wentz, Mayor  
**Topic / Issue:** Discussion - Council Committees

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**SYNOPSIS:** Council needs to decide the number of committees; the chairs of those committees; and the times and dates that the committees will meet. I recommend that all Council Members serve on all committees so that we all hear the same thing at the same time. The three committees and committee co-chairs I am proposing are:

Public Works and Community Development: Co-Chairs Olson and Butler

Public Safety: Co-Chairs Matson and Carney

Finance and Administration: Co-Chairs Lenz and Murr

I recommend we schedule all committee meetings for the first and third Mondays at 6:00 p.m. asking the Park Board to pick a different time for their meetings as allowed by our municipal code (see attachment). Co-Chairs should work with staff between meetings to set up the agendas and to ensure follow-up.

**RECOMMENDATION:** Approve committees and committee co-chairs

**LEGAL REVIEW:** N/A

**FINANCIAL REVIEW:** N/A

**BACKGROUND INFORMATION:** N/A

**ADDITIONAL OPTIONS:** N/A

**ATTACHMENTS:** Union Gap Municipal Code §10.01.020

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## Chapter 10.01 - BOARD OF PARK COMMISSIONERS

### Sections:

10.01.010 - Board of park commissioners created—Membership—Term.

10.01.020 - Board of park commissioners—Meetings.

10.01.030 - Secretary designated.

10.01.040 - Limited authority.

10.01.050 - Duties.

### **10.01.010 - Board of park commissioners created—Membership—Term.**

There is created a board of park commissioners to serve as an advisory board to the city council, to be appointed by the mayor with majority concurrence of the city council from residents of the city and such other areas as the mayor deems appropriate. The board shall be comprised of five commissioners, who shall serve five-year terms. Any commissioner may be removed at the mayor's discretion with majority concurrence of the city council. Vacancies occurring other than through the expiration of terms shall be filled for the unexpired terms. The term "park board" means the board of park commissioners. No person shall be ineligible to serve as a commissioner by reason of race, religion, sex, color and country of national origin, and no commissioner shall receive any compensation. The board of park commissioners shall have only such powers and authority with respect to the management, supervision and control of the parks and recreational facilities and programs as are granted to it by the city council.

*(Ord. 1407 § 2 (part), 1990)*

### **10.01.020 - Board of park commissioners—Meetings.**

The board of park commissioners shall openly and regularly meet at least one time each month. A majority of the commissioners shall constitute a quorum for the transaction of business. Any action taken by a majority of those present when those present constitute a quorum, at any regular or special meeting of the board, shall be deemed and taken as the action of the board.

*(Ord. 1407 § 2 (part), 1990)*

### **10.01.030 - Secretary designated.**

The board of park commissioners shall designate one of its members to act as secretary without salary.

*(Ord. 1407 § 2 (part), 1990)*

### **10.01.040 - Limited authority.**

The board of park commissioners is an advisory board only, and the city council is not bound to any recommendation, plan or other action of any type taken or adopted by the board.

*(Ord. 1407 § 2 (part), 1990)*

#### **10.01.050 - Duties.**

The board of park commissioners has the following duties:

- (a) The city council may refer to the board, for its recommendation and report, any ordinance, resolution or other proposal relating to the parks of the city, and the board shall promptly report to the council thereon, making such recommendations and giving such counsel as it may deem proper.
- (b) The board shall develop and adopt a long-range parks plan for the maintenance, planning, improvement and development of the parks of the city for a six-year term, including existing parks and proposed acquisitions. The plan shall be submitted to the council as soon as the same is prepared, and shall be updated on an annual basis.
- (c) In addition, the board shall have such other powers and duties as the council may additionally authorize.

*(Ord. 1407 § 2 (part), 1990)*