



City of Cashmere

101 Woodring Street
Cashmere, WA 98815
Ph (509) 782-3513 Fax (509) 782-2840
Website www.cityofcashmere.org

CASHMERE CITY COUNCIL MEETING
MONDAY, MAY 24, 2021 6:00 P.M., CITY HALL

DUE TO THE COVID-19 PANDEMIC AND THE GOVERNOR'S PHASE III RESTRICTONS OF 50% CAPACITY; THE PUBLIC CAN ATTEND IN PERSON, CALL-IN OR LOG-IN TO ZOOM TO PARTICIPATE IN THE CITY COUNCIL MEETING. PLEASE CALL-IN OR LOGIN 5 MINUTES PRIOR TO MEETING.

To Join the Meeting Go To <https://zoom.us>
Meeting ID: 882 719 9871 Passcode: 788276
Audio Only: PH# 1-(253)-215-8782

AGENDA

CALL TO ORDER

ROLL CALL

ANNOUNCEMENTS

PUBLIC COMMENT PERIOD (For Items Not on the Agenda)

APPROVAL OF AGENDA

CONSENT AGENDA

1. Minutes of May 10, 2021 Regular Council Meeting
2. Payroll and Claims Packet Dated May 24, 2021

BUSINESS ITEMS

1. Ordinance No. 1298 regarding Accessory Dwelling Units
2. Ordinance No. 1299 regarding Short Term Rentals
3. Interlocal Cooperative Agreement with Chelan County regarding equipment, labor and materials
4. Franchise Agreement with Chelan County granting a franchise to the City for domestic water and sanitary sewer facilities on County rights-of-way
5. Selection of contractor for the Sherman Reservoir Painting project

PROGRESS REPORTS

ADJOURNMENT

TO ADDRESS THE COUNCIL, PLEASE BE RECOGNIZED BY THE MAYOR AND STATE YOUR NAME WHEN YOU BEGIN YOUR COMMENTS
Americans with Disabilities Act (ADA) accommodations provided upon request (48-hour notice required)

MINUTES OF THE CASHMERE CITY COUNCIL MEETING
MONDAY MAY 10, 2021 AT CASHMERE CITY HALL – In Person and Digital

OPENING

Mayor Jim Fletcher opened the regular City Council meeting via digital conference at 6:00 p.m. at City Hall. City Clerk-Treasurer Kay Jones took minutes.

Due to the Governor’s Phase III restrictions, council meetings can be held in person at 50% capacity, wearing masks and meeting the distancing requirements. Attendees will have the option to meet in person, by phone or digital conference.

ATTENDANCE

	<u>Present</u>	<u>Not Present</u>
Mayor:	Jim Fletcher	
Council:	Daniel Scott Chris Carlson - digital Dave Erickson Jayne Stephenson Derrick Pratt	
Staff:	Kay Jones, Clerk-Treasurer Steve Croci, Director of Operations	Chuck Zimmerman, City Attorney
Public:	Bill Forhan, Cashmere Valley Record - digital	

ANNOUNCEMENTS

Mayor Fletcher announced that the Clerk-Treasurer needs two council members to volunteer to review the annual financial report.

The Mayor announced that May 17th through May 21st is candidate filing week. Three council positions are up for reelection. Councilor Carlson will be running again, Dave Erickson has served for two terms and he said that this is his last term, and Daniel Scott announced that he will be resigning his position on City Council within the next month or two. He is moving out of Cashmere and will not be eligible to serve.

APPROVAL OF AGENDA

MOVED by Councilor Scott and seconded by Councilor Stephenson to approve the agenda as submitted. Motion carried 5-0.

CONSENT AGENDA

Minutes of April 26, 2021 Regular Council Meeting
Payroll and Claims Packet Dated May 10, 2021

Claims Direct Pay and Check #41147 through #41168 totaling \$42,489.32

Payroll Direct Pay and Check #41143 through #41145 totaling \$97,753.72

Manual Check #41146

Ratify language change in Express Employment Professionals Staffing Agreement

MOVED by Councilor Erickson and seconded by Councilor Pratt to approve the items on the Consent Agenda. Motion carried 5-0.

FIRE DEPARTMENT UPDATE

Cashmere Fire Chief Cy Sousley discussed the letter the City received from Fire District No. 6. regarding the idea of consolidating the agencies. Chief Sousley stated that if the Cashmere Fire Department and District No. 6 were to consolidate, there would be a new tax for Cashmere, and he believes there would be a decrease in response time. The Cashmere Fire Department has 24-hour EMS coverage.

The Interagency Agreement for Emergency Medical Aid Services between the City and District No. 6 expired on December 31, 2020. The City is in the process of negotiating a new agreement. The Mayor and Fire Chief are looking at several options including private ambulance services located in or closer to Cashmere or Cashmere transporting and billing for transport. The Mayor and Chief will continue to look at options and negotiate with District No. 6 on an Interagency Agreement for Emergency Medical Aid Services.

APPROVAL OF DRAFT RFP FOR RIVERSIDE CENTER

The Mayor stated that Riverside Center needs to be self-supporting. The Request for Proposals process will enable the City to identify qualified parties to manage the Center. Contracting now will enable the manager to start scheduling future events as we transition out of COVID virus restrictions.

Reopening the Center will allow time for marketing, reservations, operations and maintenance of the Center and rental revenue for maintaining the building until such time as the Council determines alternatives for long term sustainable uses of the facility.

Councilor Erickson suggested leaving the monthly rent amount blank to encourage more respondents and the opportunity to negotiate a rent with more community opportunities.

MOVED by Councilor Scott and seconded by Councilor Carlson to approve the RFP for Riverside Center with the suggested change on leaving the monthly rent amount blank. Motion carried 5-0.

STANDARD PALLET AGREEMENT FOR BRUSH GRINDING AT THE MULCHING CENTER

Wood waste from City operations and yard waste collections are stored at the mulching center off Hinman Road. Standard Pallet has the only bucket grinder in the area capable of grinding tree trunks up to 40 inches in diameter. The City has several large tree trunks that need to be chipped. Grinding the brush and trunks will not exceed \$10,000. The agreement does not include removal of the grindings.

MOVED by Councilor Carlson and seconded by Councilor Pratt to approve the Standard Pallet Agreement for brush grinding in the amount of \$10,000. Motion carried 5-0.

PROGRESS REPORTS

Chelan County is designing Sunset Highway and Director Steve Croci reported that he is working with the engineers on Sunset Highway access control, in the mini mart and gas station area. They are also discussing roadway width and whether to have sidewalk on both sides or just the south. The consensus of the Council was to keep the roadway width the same in the City and not to taper until it reaches the county, and the sidewalk should be on the south side along the businesses. The sidewalk on the north side can be a future project.

City Council Minutes
May 10, 2021

Director Croci reported that he is looking at options to get rid of the piles of grindings at the Mulching Center. He estimates about 1,000 cubic yards.

The Public Works crew is trimming trees on the levee.

ADJOURNMENT

Mayor Fletcher adjourned the meeting at 6:58 p.m.

James Fletcher, Mayor

Attest:

Kay Jones, City Clerk-Treasurer

Staff Summary

Date: 5/19/2021
To: City Council
From: Steve Croci, Director of Operations
RE: Ordinance No. 1298 Accessory Dwelling Unit

City Council indicated the Planning Commission review the topic of accessory dwelling units. The Planning Commission considered comments from City Council and the Mayor (attached) and made one change to item H associated with utility connections. The attached staff report to the Planning Commission provides background information. The planning commission recommends adopting the attached ordinance.

Staff Recommendation:

MOVE to adopt Ordinance No. 1298 regarding accessory dwelling units.

ORDINANCE NO. 1298

AN ORDINANCE OF THE CITY OF CASHMERE, WASHINGTON; REVISING AND ADDING PROVISIONS TO TITLE 17 OF THE CASHMERE MUNICIPAL CODE, REGULATING ACCESSORY DWELLING UNITS; CONTAINING A SEVERABILITY PROVISION; AND SETTING AN EFFECTIVE DATE.

WHEREAS, the City Council and City Planning Commission have studied the issue of accessory dwelling units for several weeks; and

WHEREAS, the Planning Commission has held a public hearing to consider the amendments to Title 17 of the Cashmere Municipal Code as set forth in this Ordinance and recommends approval of this Ordinance to the City Council; and

WHEREAS, the City Council has considered the recommendation of the Planning Commission and concurs with the recommendation of the Planning Commission and finds that adoption of this Ordinance is in the best interest of public health, safety, and welfare of the citizens of the City of Cashmere; now therefore,

THE CITY COUNCIL OF THE CITY OF CASHMERE, WASHINGTON DO ORDAIN AS FOLLOWS:

Section 1. The definition of “Accessory Dwelling” as set forth in Section 17.08.010 of the Cashmere Municipal Code is hereby repealed.

Section 2. An amended definition of “Accessory Dwelling Unit” is hereby added to Section 17.08.010 of the Cashmere Municipal Code to read as follows:

“Accessory Dwelling Unit” means a separate dwelling unit integrated within or attached to a single-family dwelling, or one located as a detached accessory structure located on the same lot as a single-family dwelling.

Section 3. Section 17.18.020 of the Cashmere Municipal Code, the District Use Chart is hereby amended so the existing reference to “Accessory Dwelling” is changed to “Accessory Dwelling Unit” and the District Use Chart designations are amended to read as follows:

17.18.020 District Use Chart.

	SF	SR	AR	MF	P	DB	C/LI	WI
Residential Uses								
Accessory Dwelling Unit	PRM	PRM	PRM	PRM				

Section 4. A new Section 17.58.160 is hereby added to the Cashmere Municipal Code titled "Accessory Dwelling Units" to read as follows:

17.58.160 Accessory Dwelling Units

Accessory dwelling units, as defined in Chapter 17.08, shall be subject to a limited administrative review to determine that the following minimum criteria are met, except accessory dwelling units within the single-family residential zoning district shall be subject to a full administrative review:

A. Only one accessory dwelling unit shall be allowed per building lot or home site in conjunction with a single-family structure, even if such structure is built on more than one platted lot.

B. An accessory dwelling unit may be attached to, created within, or detached from a new or existing primary single-family dwelling unit.

C. The property owner (which shall include the title holder or contract purchaser) shall occupy either the primary dwelling unit or the accessory dwelling unit as their permanent residence for at least six months of the year.

Prior to issuance of a permit the property owner shall record a restrictive covenant with the Chelan County Auditor's office and provide a copy of the recorded covenant to the City. The recorded covenant shall identify the address and legal description of the property and state the following: the property owner resides in either the principal dwelling unit or the accessory dwelling unit for more than six months each year, that the owner will notify any prospective purchaser of the property of the limitations and requirements of this chapter, and that the City permit will be revoked if the accessory dwelling unit at any time fails to meet the requirements of this Section. The recorded document shall run with the land and bind all current and future property owner, and their successors.

D. The accessory dwelling unit will require two off-street parking spaces, in addition to any off-street spaces required for the primary residential structure located on the property.

E. The floor area for the accessory dwelling unit shall in no case exceed 900 square feet, nor be less than 300 square feet, and the accessory dwelling unit shall contain no more than two bedrooms. Additionally, the square footage of the accessory dwelling unit shall be no more than 50 percent of the area of the primary single-family dwelling.

F. An accessory dwelling unit, together with the primary single-family dwelling unit and other accessory buildings or structures located on the same lot, shall conform to all other

provisions of this code, and no variance of yard setback or building lot coverage requirements will be granted.

G. The accessory dwelling unit shall meet the minimum requirements of the International Building Code, International Fire Code, local health district and all other local, state and federal agencies.

H. H. Utility connections for accessory dwelling units are subject to provisions in CMC Title 13 Public Utilities. Shared utility connections will be charged as a duplex.

I. Future subdivision shall require compliance with all applicable provisions of the City Code including, without limitation, minimum lot size and yard area requirements.

J. Conversions of accessory storage structures, including without limitation garages and carports, to accessory dwelling units shall only occur when that existing structure meets the required yard setbacks for a residence, including without limitation the rear and side yard requirements.

K. The design of the accessory dwelling unit shall be consistent with the design of the principal residential structure and shall maintain the style, appearance and character of the principal residential structure, and shall use matching materials, colors, window style, and comparable roof appearance.

L. An accessory dwelling unit may not be rented for a term of less than 30 days.

Section 5. Section 17.72.110 of the Cashmere Municipal Code setting forth minimum conditions for obtaining a Conditional Use Permit for an Accessory Dwelling Unit is hereby repealed.

Section 6. If any section, sentence, clause or phrase of this Ordinance should be held to be invalid or unconstitutional by a court of competent jurisdiction, such invalidity or unconstitutionality shall not affect the validity or constitutionality of any other section, sentence, clause or phrase of this Ordinance.

Section 7. This Ordinance shall take effect and be in full force five (5) days after this Ordinance or a summary thereof consisting of the title is published.

APPROVED:

MAYOR JAMES FLETCHER

ATTEST/AUTHENTICATED:

CITY CLERK, KAY JONES

APPROVED AS TO FORM:
OFFICE OF THE CITY ATTORNEY:

By: _____
CHARLES D. ZIMMERMAN

FILED WITH THE CITY CLERK: _____
PASSED BY THE CITY COUNCIL: _____
PUBLISHED: _____
EFFECTIVE DATE: _____
ORDINANCE NO. _____

Staff Summary

Date: 5/19/2021
To: City Council
From: Steve Croci, Director of Operations
RE: Ordinance No. 1299 Short Term Rental

City Council indicated the Planning Commission review the topic of short term rentals. The attached staff report to the Planning Commission provides background information. The planning commission recommends adopting the attached ordinance.

Staff Recommendation:

MOVE to adopt Ordinance No. 1299 regarding short term rentals.



City of Cashmere

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STAFF REPORT MEMORANDUM

Date: December 2, 2020
To: City Planning Commission
From: Steve Croci – Director of Operations
RE: ZONING CODE REVISIONS – SHORT TERM RENTALS

A. Requested Action

Adoption of amendments to Cashmere Municipal Code (CMC) to Title 17 Zoning for Short Term Rentals (definition, use chart, business license and parking requirements).

The Planning Commission is being asked to review, consider, and make a recommendation to the City Council to approve, approve in part or deny adoption of the proposed Zoning Code and Definition amendments relating to Short-term Rentals.

General Information

The topic was discussed during Planning Commission meetings in the summer and fall 2020.

Planning Commission hearing notification published on: November 25, 2020

Planning Commission hearing on: December 7, 2020

60-day State agency review: February 1, 2021

A short term rental is a residential dwelling unit, or portions thereof, that are rented to overnight guests for fewer than 30 consecutive days. Short term rentals are commonly known as vacation rentals, AirBnbs, and VRBOs.

Current city code does not regulate short term rentals. This zoning code amendment provides a definition and permits the use of a short term rental in the downtown business, commercial/light industrial, and warehouse industrial zones. Short term rentals within these zones must obtain a business license, provide contact information for a property representative, and provide off street parking.

The proposed additions to the Cashmere Municipal Code are shown below.

A new definition is added to Section 17.08.010 to read as follows:

C. Code Review Criteria

The Cashmere Comprehensive Plan identifies goals and policies which support protection of residential zones for residential uses and support commercial uses in commercial, business, and industrial zones.

- Protect existing residential neighborhoods from nonresidential activities. (Residential Goal 2)
Staff Analysis: The proposed amendments limit short term rentals to the commercial and industrial zones, which protects residential neighborhoods.
- Land uses of a commercial or industrial nature shall not be established in residential areas. (Residential Policy 2-1)
Staff Analysis: Short term rentals are of a commercial nature and the proposed amendments limits their use to commercial and industrial zones.
- Maintain and enhance a strong commercial core by encouraging commercial activities to develop in existing commercial locations where public roads/facilities and services have capacity to accommodate high volumes of traffic, parking, and other public needs. (Commercial Goal 1)
Staff Analysis: The commercial core and other commercial and industrial zones provide the services and parking necessary to support short term rentals and has the capacity to accommodate potential increases in demand.
- Maintain existing zoning for commercial uses and protect existing developed commercial use properties from conversion to other uses. (Commercial Policy 1.3)
Staff Analysis: Short term rentals are of a commercial nature and will not convert commercial properties to other uses.

D. Suggested Findings of Fact:

1. Reviewing agencies and the general public were given an opportunity to comment on the proposed amendments.
2. The amendments are consistent with City of Cashmere's Title 14 Development Code Administration.
3. An Environmental Checklist. Pursuant to WAC 197-11 and RCW 43.21C of the State Environmental Policy Act (SEPA), environmental review and a threshold determination was completed, and a Determination of Non-Significance (DNS) was issued on December 9, 2020.
4. The City of Cashmere has adopted the City of Cashmere's Chelan County Comprehensive Plan pursuant to the Growth Management Act (GMA), RCW Chapter 36.70A.

ORDINANCE NO.1299

AN ORDINANCE OF THE CITY OF CASHMERE, WASHINGTON; ADDING AND AMENDING PROVISIONS WITHIN TITLE 17 OF THE CASHMERE MUNICIPAL CODE; REGULATING THE USE OF PROPERTY FOR SHORT TERM RENTALS OF LESS THAN THIRTY DAYS; CONTAINING A SEVERABILITY PROVISION; AND SETTING AN EFFECTIVE DATE.

WHEREAS, the City Council and City Planning Commission have studied the issue of short term rentals for several weeks; and

WHEREAS, the Planning Commission has held a public hearing to consider the amendments to Title 17 to the Cashmere Municipal Code as set forth in this Ordinance and recommends approval of this Ordinance to the City Council; and

WHEREAS, the City Council has considered the recommendation of the Planning Commission and concurs with the recommendation of the Planning Commission and finds that adoption of this Ordinance is in the best interest of public health, safety, and welfare of the citizens of the City of Cashmere; now therefore,

THE CITY COUNCIL OF THE CITY OF CASHMERE, WASHINGTON DO ORDAIN AS FOLLOWS:

Section 1. A new definition is hereby added to Section 17.08.010 of the Cashmere Municipal Code to read as follows:

“Short Term Rental” means a residential dwelling unit, or portions thereof, that are rented to overnight guests for fewer than 30 consecutive days.

Section 2. The District Use Chart set forth in Section 17.18.020 of the Cashmere Municipal Code is hereby amended to add “Short Term Rental” under “Commercial Uses” as set forth in the table below:

17.18.020 District Use Chart.

	SF	SR	AR	MF	P	DB	C/LI	WI
Commercial Uses								
Short Term Rental						PRM	PRM	PRM

Section 3. A new Section 17.58.170 is hereby added to the Cashmere Municipal Code to read as follows:

17.58.170 Short Term Rentals

A. Where authorized pursuant to the District Use Chart set forth in Section 17.18.020, Short Term Rentals may operate provided they obtain a business license pursuant to Chapter 5.04 of the Cashmere Municipal Code, which license identifies a property representative by address, telephone number, and email address who will be available to respond to complaints and emergencies.

B. All Short Term Rentals shall maintain off street parking as required pursuant to the table set forth in Section 17.54.030 (B).

Section 4. The off street parking table set forth in Sub-Section (B) of Section 17.54.030 of the Cashmere Municipal Code is hereby amended to add the following under the "Commercial" category in the table:

Property Use	Required Parking Spaces	
Commercial		
Short Term Rental	Per Dwelling Unit	1
	Plus for each bedroom over 2 bedrooms within each dwelling unit	1

Section 5. If any section, sentence, clause or phrase of this Ordinance should be held to be invalid or unconstitutional by a court of competent jurisdiction, such invalidity or unconstitutionality shall not affect the validity or constitutionality of any other section, sentence, clause or phrase of this Ordinance.

Section 6. This Ordinance shall take effect and be in full force five (5) days after this Ordinance or a summary thereof consisting of the title is published.

APPROVED:

MAYOR JAMES FLETCHER

ATTEST/AUTHENTICATED:

CITY CLERK, KAY JONES

APPROVED AS TO FORM:
OFFICE OF THE CITY ATTORNEY:

By: _____
CHARLES D. ZIMMERMAN

FILED WITH THE CITY CLERK: _____
PASSED BY THE CITY COUNCIL: _____
PUBLISHED: _____
EFFECTIVE DATE: _____
ORDINANCE NO. _____

Staff Summary

Date: 5/19/2021
To: City Council
From: Steve Croci, Director of Operations
RE: Chelan County Cooperative Interlocal Agreement

The purpose of this Agreement with Chelan County is to provide equipment, labor and materials to each other on a reimbursable basis, when available, for road construction, maintenance, repairs and for facilities support.

Staff Recommendation:

MOVE to approve the Interlocal Agreement and authorize Mayor to sign documents.

Return Address:

Chelan County Public Works
316 Washington Street, Suite 402
Wenatchee, WA 98801

The information contained in this boxed section is for recording purposes only pursuant to RCW 36.18 and RCW 65.04, and is not to be relied upon for any other purpose, and shall not affect the intent of the warranty contained in the document itself.

Document Title: Interlocal Cooperative Agreement
Grantor(s): City of Cashmere
Grantee(s): Chelan County
Legal Description: N/A
Assessor's Tax Parcel ID: N/A

Filed with the Auditor pursuant to RCW 39.34.040

**INTERLOCAL COOPERATIVE AGREEMENT
BETWEEN THE CITY OF CASHMERE AND CHELAN COUNTY**

RE: Equipment, Labor and Materials

THIS AGREEMENT is made on the date of last execution below in duplicate original by and between the City of Cashmere("City") and Chelan County ("County").

WHEREAS, the parties are political subdivisions of the State of Washington; and

WHEREAS, the parties have the authority to construct, maintain and repair their roads, streets, and related facilities within their respective jurisdictions and from time-to-time require the use of expensive, specialized equipment; and

WHEREAS, the parties enter into this Agreement under the authority of RCW Chapter 39.34 and each party has taken appropriate action to authorize this Agreement as required by RCW 39.34.030(2); and

WHEREAS, the parties find this Agreement to be mutually beneficial.

NOW, THEREFORE, in consideration of the premises and promises, terms and conditions set forth below, it is hereby agreed as follows:

**ARTICLE I
PURPOSE**

1.01 Purpose

The purpose of this Agreement is to set forth the terms and conditions under which the parties will provide equipment, labor and materials to each other on a reimbursable basis, and when available, for road construction, maintenance, repairs and for facilities support. The party supplying equipment, labor and materials is designated as the "Provider." The party requesting and/or using the equipment, labor and materials is designated as the "User."

**ARTICLE II
EQUIPMENT, LABOR AND MATERIALS TO BE FURNISHED**

2.01 Equipment Furnished.

Each party agrees to furnish equipment, labor and materials as may be requested by the other party, so long as such equipment is owned by the Provider and available for use, on the following terms and conditions:

A. Request for Rental.

The User shall provide reasonable notice to the Provider requesting equipment, including the proposed dates when the equipment shall be picked up and returned. Each request for equipment shall be in a writing submitted by the User's Administrator to the Provider's Administrator. Each request shall specify the requested equipment, labor and/or material, the location of the work, and other information relevant to the request. Upon receipt of a request, the Provider shall respond within five (5) business days. In cases of emergency or unforeseen circumstance necessitating prompt action, the request and approval may be done orally, but must be confirmed in writing within 72 hours after the oral request and approval.

B. Transportation of Equipment.

The User shall be responsible for all transportation of the equipment and shall pick up and return the equipment to the location where such equipment is stored by the Provider.

C. Equipment Care, Maintenance, and Security.

The User shall be responsible for the proper care, maintenance and security of the equipment until the equipment is returned to the Provider.

D. Equipment Operators.

The User shall permit the equipment to be used only by properly trained and supervised operators. The Provider may require, in its sole discretion, that only Provider's personnel operate certain equipment. In doing so, Provider shall be deemed an independent contractor and Provider's employees shall not be deemed employees of the User. The Provider's operator shall perform under the general direction and control of the User but shall retain full control of the manner and means of using the equipment.

E. Pre-rental Inspection.

The Parties shall jointly inspect furnished equipment at the time of the rental and shall make note of any defect or problem. The User accepts all furnished equipment AS IS and waives any and all claims against the Provider resulting from the condition of the equipment; except if such equipment is provided with an operator and the physical and/or mechanical damages result from the operator's acts or omissions. The User's Administrator, or his or her designee, shall promptly provide the Provider with a written receipt for equipment received for rental. Email shall be considered a written receipt.

F. Equipment Furnished "As Is".

The User accepts all furnished equipment AS IS and waives any and all claims against the Provider resulting from the condition of the equipment.

G. Equipment Use.

Except as otherwise agreed in writing by the Administrators, equipment designed or used by a Provider for a specific purpose may not be used by the User for any other use without written approval of the Provider's Administrator. For example, a vector truck used for stormwater facility maintenance may not be used for work on sanitary or industrial sewage lines or facilities.

H. Post-rental Inspection.

Upon the User returning equipment, the User and Provider shall jointly inspect, identify, and document any change in the condition of the equipment which exceeds normal wear and tear. Disputed equipment damage or problems should be documented. The Provider's Administrator, or his or her designee, shall promptly provide the User with a written receipt for returned equipment. Email shall be considered a written receipt.

I. Equipment Damage.

The User shall be responsible for all physical and mechanical damages and losses to the equipment during use, storage and transportation of the Provider's equipment, unless such equipment is provided with an operator and the physical and/or mechanical damages result from the operator's acts or omissions.

J. Equipment Return.

The User shall return the equipment on or before the proposed return date, unless the Provider agrees to extend use of the equipment: provided, that in the event an emergency shall arise requiring use of the equipment by the Provider, the User shall return the equipment as directed by the Provider.

ARTICLE III ADMINISTRATION

3.01 Administrators.

The parties shall each designate one Administrator responsible for the administration of this Agreement. The contact information for each Administrator is as follows:

Director/County Engineer
Chelan County Public Works Department
316 Washington Street, Suite 402
Wenatchee, WA 98801
(509) 667-6415

Director of Operations
City of Cashmere
101 Woodring Avenue
Cashmere, WA 98815
(509) 782-3513

The Administrators shall have full powers to act on behalf of his or her respective party for the purposes authorized in this Agreement.

ARTICLE IV DURATION AND TERMINATION OF AGREEMENT

4.01 Duration.

This Agreement shall be effective only upon execution by the parties and filing with the County Auditor pursuant to RCW 39.34.030. This Agreement shall continue indefinitely until terminated as set forth in Article 4.02.

4.02 Termination.

This Agreement shall continue until terminated by either party by providing thirty (30) days prior written notice of termination to the other party.

**ARTICLE V
REIMBURSEMENT TO PROVIDER**

5.01 Equipment.

The User shall reimburse the Provider for furnished equipment based on the Provider's published equipment rental rate. The fuel tanks of furnished equipment shall be full when furnished and shall be full when returned by the User. If the equipment fuel tanks are not full when the equipment is returned, the User shall pay for fuel usage based upon the Provider's then current fuel price per gallon.

5.02 Labor.

The User shall reimburse the Provider for the actual cost of all labor of equipment operators provided to the User. The actual cost of labor shall include the then current hourly rate of the employee providing services, plus all FICA, Medicare, PERS, workmen's compensation, unemployment, leave and holiday accruals, group health insurance premiums and all other employee benefits and employer taxes.

5.03 Administrative Services Fee.

In addition to equipment rental rates, labor reimbursement and fuel charges, the User shall pay the Provider an amount equal to ten percent (10%) of such charges as reimbursement of direct and indirect administrative, accounting and clerical services.

5.04 Payment to Provider.

The Provider shall provide the User with a certified statement of all equipment rental, labor fuel charges and administrative services fees within ten (10) days after return of equipment. The User shall pay the amount due to the Provider within thirty (30) days.

**ARTICLE VI
INDEMNITY**

6.01 Claims.

The User shall indemnify, defend and hold the Provider, its departments, elected and appointed officials, employees, and agents, harmless from and against any and all claims, damages, losses and expenses for any bodily injury, sickness, disease, or death, or any damage to or destruction of property, including the loss of use resulting therefrom, resulting from the User's use, storage and transportation of the equipment furnished by the Provider, unless caused by the sole negligence of the Provider, its departments, elected and appointed officials, employees, and/or agents. This indemnification obligation of the User shall not be limited in any way by the application of any workmen's compensation acts, disability benefit acts or other employee benefit acts and the User expressly waives the protection afforded by such laws.

In the event of any and all claims, damages, losses and expenses for any bodily injury, sickness, disease, or death, or any damage to or destruction of property, including the loss of use resulting therefrom, resulting from the concurrent negligence of the User and Provider, the parties shall be liable to the extent of their respective proportionate negligence.

The foregoing indemnification obligations of the User are a material inducement to the parties to enter into this Agreement and have been mutually negotiated.

Chelan County initials acknowledge indemnity terms _____

City of Cashmere initials acknowledge indemnity terms _____

ARTICLE VII PERFORMANCE OF AGREEMENT

7.01 Compliance with All Laws.

Each party shall comply with all federal, state and local laws, rules, regulations and ordinances applicable to the performance of this Agreement, including without limitation all those pertaining to wages and hours, confidentiality, disabilities and discrimination.

7.02 Maintenance and Audit of Records.

Each party shall maintain books, records, documents and other materials relevant to its performance under this Agreement. These records shall be subject to inspection, review and audit by either party or its designee, and the Washington State Auditor's Office. Each party shall retain all such books, records, documents and other materials for six (6) years following the termination of this Agreement.

7.03 On-Site Inspections.

Either party or its designee may evaluate the performance of this Agreement through on-site inspection to determine whether performance is in compliance with the standards set forth in this Agreement, and in compliance with federal, state and local laws, rules, regulations and ordinances concerning this Agreement or its implementation.

7.04 Improper Influence.

Each party agrees, warrants and represents that it did not and will not employ, retain or contract with any person or entity on a contingent compensation basis for the purpose of seeking, obtaining, maintaining or extending this Agreement. Each party agrees, warrants and represents that no gratuity whatsoever has been or will offered or conferred with a view towards obtaining, maintaining or extending this Agreement.

7.05 Conflict of Interest.

The elected and appointed officials and employees of the parties shall not have any personal interest, direct or indirect, which gives rise to a conflict of interest concerning this Agreement or its implementation.

**ARTICLE VIII
DISPUTES**

8.01 Time.

Time is of the essence of this Agreement.

8.02 Waiver Limited.

A waiver of any term or condition of this Agreement must be in writing and signed by the party. Any express or implied waiver of a term or condition of this Agreement shall apply only to the specific act, occurrence or omission and shall not constitute a waiver as to any other term or condition or future act, occurrence or omission.

8.03 Dispute Resolution.

In the event a dispute arises under this Agreement, the Administrators shall promptly meet in person to negotiate resolution of the dispute. An attempt at such dispute resolution shall be a prerequisite to the filing of any litigation concerning the dispute. Refusal or failure of one party to participate in dispute resolution shall constitute a waiver of this requirement.

8.04 Attorney's Fees.

If any legal action or other proceeding is brought for the enforcement of this Agreement, or because of an alleged dispute, breach, default, or misrepresentation in connection with any of the provisions of this Agreement, each party shall pay its own attorney's fees and other costs incurred in that action, arbitration or proceeding.

8.05 Governing Law and Venue.

This Agreement shall be governed exclusively by the laws of the State of Washington. Venue shall be in a court of competent jurisdiction for Chelan County, State of Washington.

**ARTICLE IX
GENERAL PROVISIONS**

9.01 Assignment.

Neither party may assign its rights or delegate its duties under this Agreement, whether by assignment, further, subcontract or other means. Any such attempted assignment or delegation shall be void and shall constitute a material breach of this Agreement.

9.02 Modification.

This Agreement may not be amended, supplemented or otherwise modified unless expressly set forth in a written agreement signed by the parties following approval by each party's legislative authority.

9.03 Invalid Provisions.

The invalidity or unenforceability of any particular term or provision of this Agreement shall not affect the validity or enforceability of any other term or provision and this Agreement shall be construed in all respects as if such invalid or unenforceable term or provision was omitted.

9.04 Entire Agreement.

This Agreement constitutes the entire agreement between the parties. There are no understandings or agreements between the parties concerning the subject matters addressed in this Agreement other than those set forth in this Agreement. No other statement, representation or promise has been made to induce either party to enter into this Agreement.

9.05 Filing and State Approval.

Pursuant to RCW 39.34.040, this Agreement shall be filed with the County Auditor prior to its entry into force. This Agreement is not required to be submitted to a state or agency for approval under RCW 39.34.050.

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Agreed this _____ day of _____ 2021.

CITY OF CASHMERE

By: _____
JAMES FLETCHER, Mayor

ATTEST: KAY JONES

City Clerk

APPROVED AS TO FORM:

Attorney for the City of Cashmere

Agreed this _____ day of _____ 2021 at Wenatchee, Washington.

CHELAN COUNTY, WASHINGTON
BOARD OF COUNTY COMMISSIONERS

BOB BUGERT, Chairman

KEVIN OVERBAY, Commissioner

TIFFANY GERING, Commissioner

ATTEST: CARLYE BAITY

Clerk of the Board

APPROVED AS TO FORM:

ROBERT W. SEALBY
Deputy Prosecuting Attorney

Dated: _____

Staff Summary

Date: 5/19/2021
To: City Council
From: Steve Croci, Director of Operations
RE: Chelan County Franchise Agreement

This franchise agreement with Chelan County is to allow construction and maintenance of domestic water distribution pipelines and sanitary sewer system facilities on county rights-of-way in the area of the City of Cashmere Urban Growth Area (UGA).

Staff Recommendation:

MOVE to approve the agreement and authorize Mayor to sign documents.

Return Address:

Penny Goehner
Chelan County Public Works
316 Washington Street, Suite 402
Wenatchee, WA 98801

The information contained in this boxed section is for recording purposes only pursuant to RCW 36.18 and RCW 65.04, and is not to be relied upon for any other purpose, and shall not affect the intent of the warranty contained in the document itself.

Document Title: Franchise Agreement
Grantor(s): City of Cashmere
Grantee(s): Chelan County
Legal Description: N/A
Assessor's Tax Parcel ID: N/A

Filed with the Auditor pursuant to RCW 39.34.040

**BOARD OF COUNTY COMMISSIONERS
CHELAN COUNTY, WASHINGTON**

RESOLUTION NO. 2021- ____

**GRANTING A FRANCHISE TO THE CITY OF CASHMERE
FOR DOMESTIC WATER AND SANITARY SEWER FACILITIES
ON COUNTY RIGHTS-OF-WAY**

WHEREAS, the Chapter 36.55 of the Revised Code of Washington authorizes the Board of County Commissioners to grant franchises to persons or private or municipal corporations to use the right-of-way of county roads for construction and maintenance of waterworks, gas pipes, telephone, telegraph, and electric lines, sewers and other such facilities;

WHEREAS, the City of Cashmere has submitted a franchise application for the construction, operation, and maintenance of domestic water distribution pipelines and sanitary sewer system facilities in county right-of-way as required by Chapter 8.25 Chelan County Code (CCC); and

WHEREAS, after due notice, the Board of County Commissioners held a public hearing on City of Cashmere's application, to hear public comment and consider whether to grant the requested construction, operation, and maintenance of domestic water distribution pipelines and sanitary sewer system facilities franchise to the City of Cashmere; and

WHEREAS, a franchise is a legislative authorization to use county road rights-of-way and actual construction and maintenance activities in the county road rights-of-way will be subject to administratively approved right-of-way permits after review of specific plans.

NOW, THEREFORE, BE IT RESOLVED:

Section 1

The City of Cashmere is granted a franchise to construct and maintain its operation, and maintenance of domestic water distribution pipelines and sanitary sewer system facilities on county rights-of-way in the area of the City of Cashmere Urban Growth Area (UGA) as set forth in Appendix A, which is attached hereto and incorporated by this reference.

Section 2

Within sixty (60) days after the passage and approval of this franchise resolution by the Board of County Commissioners, the City of Cashmere may accept this franchise by filing with the Clerk of the Board an unconditional written acceptance of this franchise, together with the accompaniments specified in Section 3 below. Failure of the City of Cashmere to so accept the franchise within said period of time shall be deemed a rejection of this franchise by the City of Cashmere, and the rights and privileges granted by the franchise shall automatically, after the expiration of the sixty (60) period, cease and terminate, unless the time period is extended by resolution duly passed for that purpose.

Section 3

The franchise granted by this resolution shall take effect, if at all, on the _____ day of _____ 2021 (the "Effective Date"), if all of the following conditions have then been fully met:

- (i) a minimum of ten (10) days have passed since the Board of County Commissioners executed this franchise resolution; and
- (ii) the City of Cashmere executes the acceptance page of this franchise resolution and returns the same to the Clerk of the Board; and
- (iii) the City of Cashmere presents to the County acceptable evidence of insurance and performance security as required in Attachment A; and
- (iv) the City of Cashmere applicable costs and fees as set forth in Chelan County Code 8.90.020, Section IX-Utility Permits and Franchises.

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RESOLUTION APPROVED this ____ day of _____, 2021 in Wenatchee, Washington.

BOARD OF COUNTY COMMISSIONERS
CHELAN COUNTY, WASHINGTON

BOB BUGERT, Chairman

KEVIN OVERBAY, Commissioner

TIFFANY GERING, Commissioner

ATTEST: CARLYE BAITY

Clerk of the Board

Date: _____

ACCEPTANCE BY CITY:

The provisions of the franchise granted by this franchise resolution are agreed to and hereby accepted as evidenced by the authorized signature below. By accepting this franchise, City of Cashmere, a Washington municipal corporation, covenants and agrees to perform and be bound by each and all the terms and conditions imposed by the Chelan County Code and by this franchise resolution.

Dated: _____, 2021

CITY OF CASHMERE

By: _____

Printed Name: James Fletcher

Title: Mayor

CERTIFICATION OF COMPLIANCE WITH CONDITIONS
AND EFFECTIVE DATE:

I certify that I have received confirmation that: (1) the City of Cashmere returned a signed copy of this franchise to the Board of County commissioners within the time provided in Section 2 of this franchise resolution; (2) the City of Cashmere presented to the County acceptable evidence of insurance and security as required in the Attached Appendix A to the franchise resolution; and (3) the City of Cashmere has paid all applicable costs and fees as set forth in the Attached Appendix A to this franchise resolution.

Dated this _____ day of _____, 2021

By:

Clerk of the Board
Chelan County Commissioners

APPENDIX “A”

TO RESOLUTION NO. 2021-_____

GRANTING A FRANCHISE TO THE CITY OF CASHMERE FOR DOMESTIC WATER AND SANITARY SEWER FACILITIES ON COUNTY RIGHTS-OF-WAY

SECTION 1 Grant of Franchise

For a period of twenty-five (25) years and subject to the terms and conditions of this Agreement, the Board of County Commissioners for Chelan County, State of Washington, hereby grants to the City of Cashmere, its successors and assigns, a non-exclusive franchise to construct, extend, operate, repair and maintain its domestic water distribution and sanitary sewer system in, upon, under, across, along and over the County road rights-of-way within its current Urban Growth Area in unincorporated Chelan County.

SECTION 2 Definitions

The following definitions are provided for the sole purpose of proper interpretation and administration of this resolution:

“**Appurtenance(s)**” means equipment and/or accessories which are a necessary part of the City’s Facilities.

“**City**” means the City of Cashmere, a Municipal Corporation in Chelan County, State of Washington. When referencing work performed in the County right-of-way, including restoration, or disturbance of, obstruction of, or interference with the County right-of-way, “City” shall include the City’s contractors and any customers or other third parties performing any activity in the right-of-way on behalf of or instead of the City, or with the City’s knowledge, acquiescence, or authorization.

“**Commission**” refers to the Board of County Commissioners for Chelan County acting in its official capacity.

“**County**” means Chelan County, Washington, a municipal corporation under the laws of the State of Washington.

“**County Engineer**” means the Chelan County Engineer.

“**Director**” means the Chelan County Public Works Director.

“**Facilities**” or “**System**” or “**Works**” means the City’s system of domestic water distribution and sanitary sewerage pipelines and appurtenance(s) located within County road rights-of-way in the Franchise Area, including water pipe mains, valves, laterals and necessary sanitary sewage collection mains, and fixtures appurtenant thereto, for collection

treatment, disposal, and treatment of domestic, commercial, and industrial wastewater in accordance with federal and state regulations.

“Franchise” Means an occupancy and use document granted by the County required for occupancy of road rights-of-way in accordance with RCW 36.55, RCW 80.32, and County Code.

“Franchise Area” Means the area in which the City’s facilities exists and occupy County right of way, as shown in Exhibit 1.

“MUTCD” means the Manual of Uniform Traffic Control Devices, including amended editions or a successor.

“Permitted Use” means the City’s irrigation water distribution facilities located within the Franchise Area.

“Pothole” means to expose a utility by mechanical or vacuum excavation in order to visually verify its location.

“Right-of-way” means land, property, or property interest (e.g., an easement), usually in a strip, acquired for or devoted to transportation purposes and as a utility corridor. “Right-of-way” includes any County road.

“Road” or **“Roadway”** means a street, road, or other public way, including shoulders, designated for the purpose of vehicular traffic. As used herein, these terms refer only to those roads or roadways in which the County has an actual interest within the Franchise Area.

“UGA” means the current Urban Growth Area for the City of Cashmere.

SECTION 3 Permits, Plans, Specifications

3.1 County Requirements

The City covenants that in consideration for the rights and privileges granted by this Franchise, all work performed by the City on County right-of-way shall conform to all County requirements in effect at the time that work is performed. These County requirements include, but are not limited to, the County Code regarding utilities on rights-of-way and disturbing county roads, county road cut repair standards and requirements, and MUTCD traffic control requirements.

3.2 Permits for Work in the Right-of-Way

The City has the right, privilege, and authority to enter the County right-of-way for the purpose of operating, maintaining, repairing, or constructing its Facilities, on the condition that prior to commencing any work on a County right-of-way the City obtains and complies

fully with all required federal, state, and County permits required for such work.

3.3 County Permits for Work in the Right-of-Way

Notice shall be given one-week prior for any and all work within the County right-of-way. Applications for permits for work requiring pavement cuts in County right-of-way shall be presented to the Public Works Department, which may require copies of plans, blueprints, cross-sections, or further detailing of work to be done. Permits shall be granted at no cost to the City. In an emergency, the City may perform emergency repairs in County right-of-way without prior notice to the County, but shall without delay provide verbal notice to the County followed as soon as feasible by a written notice and application. The City shall comply with all terms, conditions, standards and insurance coverages which may be required under the terms of the permit(s). The City shall comply with the following requirements, whether or not stated in any permit:

- A. Any work done by the City will include necessary paving, patching, grading, and any other reasonable necessary repair or restoration to the County right-of-way. All repairs shall be done to the satisfaction of the County Engineer at the City's expense.
- B. All of City's equipment which is used in the operation, maintenance, repair, or construction of the City's Facilities and which is located within the County road rights-of-way shall be considered to be part of the City's System and shall be the City's responsibility.
- C. All permits for the operation, maintenance, repair or construction of said System shall be applied for and given in the name of the City, who will be responsible for all work done under the permit.
- D. The City shall provide copies of all plans and specifications to the County at no cost to the County.
- E. City shall abide by all terms and conditions of permits issued by the County, shall perform all work consistent with all permit provisions, and shall be responsible for traffic management during the performance of any work undertaken in the right of way.
- F. The City shall pay an annual franchise fee of **\$1,500.00** for the right to maintain its water and sewer system in the County right-of-way and to cover the County's costs related to issuance of required permits for work in the right-of-way; provided, that each year the County may adjust the franchise fee. The franchise fee may be adjusted effective on the first day of May of each year based on the change in the Consumer Price Index (CPI-U) for the U.S. cities average published by the Department of Labor Statistics for the previous calendar year. Once the Consumer Price Index (CPI-U) for the North Central Washington area is established, the County reserves the right

to use it in place of the U.S. Cities average. These annual rate changes shall be adopted by the Board of Chelan County Commissioners prior to becoming effective.

- G. Traffic control for work completed in the right-of-way shall be in accordance with the Manual of Uniform Traffic Control Devices, (MUTCD).
- H. Except as may otherwise be agreed in writing between the parties, the City shall post financial assurance for the estimated amount for repairs and shall pay all other required County fees before any permit may be issued to allow the City to disturb any County Right of Way.
- I. If work done under this Franchise interferes in any way with the drainage of the County Road, the City shall wholly and at its own expense make such provision as the County Engineer may direct to take care of such drainage.
- J. All work by the City shall be done to the satisfaction of the County Engineer in accordance with the most recent repair standards adopted by the County.
- K. On completion of any work by the City, all rubbish and debris shall be immediately removed and the roadway and roadside shall be left substantially in the condition it was in prior to the work.

SECTION 4 Undergrounding; Shared Excavations

4.1 Location of Facilities

The City's Facilities shall be located to minimize the need for later adjustment or relocation to accommodate future roadway improvements and to permit access to servicing such City's Facilities with minimum interference with roadway traffic and with other utilities. Where existing utility facilities are in place, new or relocated City's Facilities shall be installed compatible with the existing installations. Locations of new or relocated City's Facilities within county rights-of-way shall be approved in writing by County Engineer prior to installation.

4.2 Undergrounding

The City acknowledges that the County desires to promote a policy of undergrounding of facilities within the Franchise Area. To the extent feasible, the City's Facilities shall be located underground in conformity with county codes, laws, regulations, agency orders, and industry standards.

4.3 Shared Excavations

The City acknowledges that the County desires to promote a policy of coordination and cooperation among franchisees in the right-of-way and agrees to make a good-faith effort to coordinate and share excavations with other franchisees with facilities in the vicinity of proposed excavation upon such terms as may be agreed between franchisees and satisfactory to the County; provided that such sharing of excavations shall not interfere with, hinder, or delay any County construction project or maintenance.

4.4 Coordinating Design

The City shall consult with the County and with other franchise holders in the City's project area as early as feasible in City's project planning to coordinate the design and the timing of the work of any of City's projects affecting the County or any other franchise holder in the Franchise Area.

SECTION 5 Maintenance of City Facilities

5.1 Maintenance

The City shall, at its sole expense, maintain its Facilities and Works located within County right-of-way in a condition reasonably satisfactory to the County.

5.2 City's Property in the Right-of-Way

The County will not assume responsibility for damage to the City's property and various objects that are placed in County right-of-way, except to the extent caused by the negligence or willful misconduct of the County. The City will maintain its above-ground facilities within the County right-of-way so as not to unreasonably interfere with County's maintenance of its right-of-way nor the free and safe passage of traffic.

SECTION 6 Record of Location of City Facilities; Emergency Management Plan; Hazardous Conditions

6.1 Record of Location of Facilities

The City shall maintain full, current and complete records showing the exact location, and size of its Facilities and Works in the County right-of-way. These records shall be subject to inspection at reasonable times by the proper officials and agents of the County, and a copy of these records shall be furnished to the County upon request.

6.2 Emergency Management Plan

The City shall prepare, file, and keep updated with the County an emergency management plan for responding to any emergency condition related to its Works and affecting the County right-of-way. The City's plan shall designate responsible officials and emergency

24-hour on-call personnel and the procedures to be followed when responding to such emergency.

6.2.1 Emergency Contact Information for City:

24-Hour Contact Number: 509 782-3513
Contact Name or Title: After Hours Personnel

6.2.2 Emergency Contact Information for County:

24-Hour Contact Number: (509 663-9911)
Contact Name: RiverCom 911

6.2.3 After being notified of an emergency, the City shall cooperate with the County and make every effort to respond as quickly as practical with action to minimize damage and to secure life e health and safety of the public.

6.3 **Hazardous Conditions**

6.3.1 Whenever any condition or operation caused by any activity undertaken by the City pursuant to this Agreement becomes a hazard to life and limb, endangers property or public resources, or adversely affects the safety, use, or stability of a public way or drainage channel, the County Engineer shall notify the City in writing of the property upon which the condition or operation is located, or other person or agent in control of said property, and direct them to repair or eliminate such condition or operation within the period specified therein so as to eliminate the hazard and be in conformance with the requirements of this Franchise.

6.3.2 Should the County Engineer have reasonable cause to believe that a situation is so adverse as to preclude written notice, the County Engineer may take the measures necessary to eliminate the hazardous situation, provided that he/she shall first make a reasonable effort to notify the City before acting. If the City creates or causes the hazardous situation, the City shall be responsible for the payment of any reasonable costs incurred by the County to eliminate the hazard. If costs are incurred and the hazardous situation has been created in conjunction with or as a result of an operation for which a bond has been posted pursuant to any County authorization, the County Engineer shall have the authority to forfeit the bond or other security to recover the costs incurred. Notwithstanding the foregoing, the County shall give the City advance written notice of the County's intention to seek forfeiture of a bond and documentation of the amount that is due for elimination of the hazard. If the County still has not received payment thirty (30) days after the date of the City's receipt of such notice, the County may access the bond upon ten (10) days' prior written notice to the City.

SECTION 7. Restoration of County Right-of-Way

7.1 Restoration of Right-of-Way

After the City performs work in, on, upon, over, under, across, along, or adjacent to County road right-of-way, the City is responsible for and shall leave the County right-of-way in at least as good a condition as the right-of-way was before any City work was done and in compliance with current laws and regulations. In the event of any excavation through a paved public property, the City shall restore the paved area per the most current Chelan County Road Cut Repair Standards or as agreed upon by the County Engineer. Restoration under these circumstances shall be at the City's sole expense. All work shall be done to in full compliance with the requirements of the Americans with Disabilities Act of 1990 (ADA), as amended.

7.2 Failure to Restore Right-of Way

If the City, its agents or its contractors, fails to restore any County road right-of-way to the reasonable satisfaction of the County Engineer, the County may, after 20 days written notice make such repairs or restorations as are necessary to return the County road rights-of-way to their pre-work condition, except if in the reasonable opinion of the County Engineer, the City's deficient restoration causes an emergency situation resulting in an immediate hazard to public safety, health, or property, the County may repair the deficiency without prior notice to the City. The County shall provide oral notice followed by written notice immediately following such emergency repair. The City shall be responsible for reimbursing the County for any and all costs and expenses incurred by the County to correct any deficiency in the City's restoration of the right-of-way, whether with notice as set out above or on an emergency basis. Upon the County's presentation of an itemized bill for repair or restoration, including the costs of labor and equipment, the City shall pay the bill within 90 days. If the County brings suit upon the City's failure to pay for repair and restoration, and if judgment in such a suit is entered in favor of the County, then City shall pay all of the actual costs, including interest from the date the bill was presented, disbursements, and reasonable attorneys' fees and litigation-related costs incurred.

SECTION 8 Survey Markers and Monuments

8.1 Reference Points

Before the City performs any work under this Agreement, the City shall establish two or more reference marks to all monuments and markers of every nature relating to subdivisions, plats, rights of way, and all other surveys within the City's work areas. The reference points shall be located so that they will not be disturbed during any of the City's operations under this Franchise. The method of referencing monuments or other markers or points shall be approved by the County Surveyor before placement.

8.2 Survey Markers and Monuments

The City is responsible, to comply with requirements for RCW 58.04.015, RCW 58.09.130, and WAC 332.120.010 - .070. The City shall, at its sole expense, obtain permits related to survey markers and monuments, engage licensed surveyors to perform survey work required by state law, and in compliance with state law and permits, replace all markers or monuments lost, destroyed, disturbed during any City construction or other City work.

SECTION 9 Hazardous Wastes, Substances

The City agrees that it will not negligently or intentionally cause the release of any hazardous substance, waste, or pollutant or contaminant (as defined by applicable law) into or upon any County right-of-way in violation of any state or federal law with respect thereto. The City shall notify the County and the State Department of Ecology in writing of any such illegal release. The City shall be completely liable for any and all consequences of such illegal release, including liability under any federal or state statute or at common law. The City shall indemnify and hold the County harmless, as provided in Section 18, from any and all liability resulting from such an illegal release and shall have full responsibility for completely cleaning up, as required by any government agency, any and all contamination from such release. The County shall be entitled to full contribution for all costs incurred by it as the result of any release of such materials by the City in violation of any state or federal law. Upon any such illegal release of a hazardous substance by the City, the County may give immediate notice of termination of this Agreement, or take whatever steps it deems appropriate to cure the consequences of any such release, all at the expense of the City, but only if the City does not promptly take corrective action after receiving written notice from the County Engineer.

SECTION 10 Relocation or Removal of City's Facilities

10.1 Relocation or Removal of City Facilities or Works

Whenever necessary for the construction, repair, improvement, alteration, or relocation of all or any portion of a County road as determined by the County Engineer, or if the County Engineer shall determine that the removal, relocation, or alteration of any or all facilities from County right-of-way is necessary, incidental, or convenient to the construction, repair, improvement, alteration, or relocation of any County road or other County facility, the City shall, at its sole expense, upon 180-days' notice by the County, lower, raise, change, relocate, reconstruct, or remove any and all such City facilities from the County right-of-way as may be required to conform to the plans for work contemplated or ordered by the County. If relocation and/or removal of the City's facilities is necessary but 180 days' notice is not feasible, the County shall provide the City with such notice as soon as reasonably practicable. All such changes, reconstruction, or relocation by the City shall be done in such manner as will cause the least interference with the County's performance and operations in the maintenance of its road.

10.2 Alternate Design

An alternative design may only be implemented upon the County Engineer's approval of the alternative as an acceptable design and safety equivalent to the County's design.

10.3 Failure to Relocate or Remove Facilities

Upon failure, neglect, or refusal of the City to perform any change, removal, relaying, or relocating of any facilities required of the City by this Franchise, the County may undertake and perform such requirement and the cost and expense thereof shall be immediately repaid to the County by the City. The City shall be financially responsible for delay costs incurred by the County or its Contractors due to the City's failure to relocate or remove City facilities within the timeframe described above. The City will be billed in writing for any delay costs and shall pay all delay costs within 30 days of receiving the written billing.

SECTION 11 County's Road Work; Coordinating Design; Excavating and Blasting

11.1 County's Right to Do Road Work

This Franchise does not prevent or prohibit the County from constructing, altering, relocating, maintaining, or using any County right-of-way covered by this Franchise. The County retains full power to make all changes, relocations, repair, maintenance, construction or improvements as it may deem fit. The right to operate, maintain, repair and construct City's Facilities granted by this Franchise, does not preclude the County, its agents or contractors from blasting, grading, or doing other road work contiguous to, in the vicinity of or likely to affect, the City's facilities or works and appurtenances in, upon, under, across, along and over county right-of-way. If requested during the construction phase of a County project, the City may be required to pothole its facilities to determine if conflicts exist. Once this request is made by the County, the City has five (5) days to complete the pothole or provide other utility location information to the County. If other forms of utility location information is provided, other than direct potholing, does not satisfy the County, the five (5) day window will continue to be in force. If the location information is not received within five (5) days, the City may be financially responsible for delay costs incurred by the County or its Contractors.

11.2 Coordinating Design

During the design phase of construction projects involving relocation of facilities, the County will consult with the City to coordinate design. Upon the County's request, the City shall locate its facilities during this time to facilitate the coordination. This may include the requirement to pothole at locations specified by the County. These potholes shall be completed within twenty (20) working days from the original request, either by email or letter.

11.3 Notice of Blasting or Excavating Work

The County will give the City seventy-two (72) hours' notice prior to County's conduct of blasting, or of excavation exceeding a depth of two (2) feet, in the portion of right-of-way in which the City's facilities are located. The requirement of prior notice shall be waived for blasting or excavation undertaken to protect public health or safety in emergency or hazardous conditions, however, if the circumstances permit, the County will endeavor to give the City as much prior notice as reasonably possible. Notwithstanding the foregoing, immediately following such activity, the County must notify the City orally and followed promptly by written notice, that the County entered the right-of-way and describe the actions taken by the County to mitigate or resolve the emergency or hazardous condition.

SECTION 12 Third Party Facilities

12.1 Agreement is Not Exclusive

This Agreement shall not be deemed or held to prohibit the County from granting rights of like or other nature to other public or private entities or utilities, nor shall it prevent or limit County from using its roads, rights-of-way, or public places, nor affect the County's right to full control and supervision over all or part of them, none of which is hereby surrendered.

12.2 Location of City's Facilities and Works

The City's Facilities and Works shall be located to minimize the need for later adjustment or relocation to accommodate future roadway improvements and to permit access to servicing such Facilities and Works with minimum interference with roadway traffic and utilities. Where existing facilities are in place, new or relocated facilities shall be compatible with the existing installations. Locations of new or relocated facilities within the right of way shall be approved in writing by the County prior to installation.

SECTION 13 Binding Effect and Assignment

13.1 Binding Effect

All of the provisions, conditions, regulations and requirements herein contained shall be binding upon the City, its successors and assigns, and all privileges as well as all obligations and liabilities of the City shall inure to its successors and assigns equally as if they were specifically mentioned in this Agreement.

13.2 Assignment or Transfer

The City may assign or transfer this Agreement with prior written consent of the County. Such consent to assign shall not be unreasonably withheld, conditioned or delayed. No assignment or transfer by the City shall be effective unless the City's assignee accepts all rights, conditions, terms, provisions, and responsibilities contained within the Agreement. The County may condition its approval of the assignment upon the assignee's acceptance

of new or modified terms of the Agreement. If the County's consent is given and the Agreement is assigned, a copy of the assignment shall be filed with the County Auditor and the assignee shall be responsible for such filing costs. Any assignment or delegation in violation of this Section is null and void.

SECTION 14 Failure to Comply with Franchise Terms; Modification and/or Revocation; Notice; Annexation

14.1 Dispute Resolution

Prior to the County exercising authority provided in Sections 14.2, 14.3, and 14.4, the parties will attempt in good faith to resolve any dispute or claim arising out of or in relation to this Franchise Agreement through negotiations between a director of each of the parties with authority to settle the relevant dispute. If the dispute cannot be settled within fourteen (14) days from the date on which either party has served written notice on the other of the dispute then the parties are free to avail themselves of any other remedy at law or in equity. Performance of this Franchise Agreement shall continue during negotiation proceedings.

14.2 Failure of City to Comply with Franchise Terms

If the City shall violate or fail to comply with any of the terms, conditions or responsibilities of this Franchise through neglect or failure to obey or comply with any notice given the City under the provisions of this franchise, the Commission may revoke, amend, alter, change or supplement this Franchise.

14.3 Notice of Intent to Modify

If the City, its successors or assigns, shall violate or fail to comply with any of the terms, conditions or stipulations or any modifications of this Franchise through neglect or failure to obey or comply with any notice given the City under the provisions of this Franchise, either the County Engineer or the Commission may notify the City of the County's intent to amend, alter, change or supplement this franchise. Chelan County shall give to the City thirty (30) days' written notice of its intention to amend, alter, change or supplement this Franchise, during which period the City shall have the opportunity to remedy the failure to comply.

14.4 Notice of Intent to Revoke

If Chelan County intends to revoke the Franchise, the City will be given written notification. A public hearing shall be scheduled within ninety (90) days following the notification. The decision to revoke this Franchise will become effective ninety (90) days following the public hearing if the Commission finds the revocation to be in the public interest.

14.5 Annexation

If the County's right-of-way or portion thereof, is annexed or condemned, the County's successor shall be subject to the City's occupancy to the extent allowed by law.

SECTION 15 Breach

15.1 Breach

Except as otherwise provided for in this Agreement, and upon written notice, either party in default of the terms and conditions of this Agreement will have thirty (30) days to cure the default. A party is not considered to be in breach of this Franchise if the party commences to cure the default within the thirty (30) day period and diligently and in good faith continues to cure default. If any default exists after the applicable cure period, the non-defaulting party may, without prejudice to any other rights or remedies at law or in equity or under this Agreement, terminate this Franchise.

15.2 Waiver of Breach

A party's failure to enforce, or election to not enforce, any provision of this Agreement does not constitute a waiver of its right to enforce that provision or any other provisions of this Agreement.

SECTION 16 Renewal; Extension; Abandonment of Facilities or Works

16.1 Renewal

If the City elects to renew this Agreement, the City shall submit written application/notice to the County at least one hundred twenty (120) days prior to the franchise expiration date.

16.2 Extension Pending Renewal

If the City initiates a renewal of this Agreement, the County may, at its sole discretion, extend the term of the Agreement for up to one year.

16.3 City's Abandonment of Facilities; Render Safe or Remove

If the City decides to discontinue use of and abandons any of its facilities or Works, or if the County reasonably determines that the City has discontinued using and abandoned any of its facilities or Works, the City shall, at its sole cost and as directed by the County Engineer, render the facilities safe and remove any lines, wires, pipes, or remove the entire facilities or Works, or portions thereof as directed by the County Engineer. If the City fails to comply with the County Engineer's direction, the County shall have the right, at the City's sole expense, to render safe or remove any of the City's lines, wires, pipes, facilities, or portions of facilities or Works as is reasonably necessary for the public's health, welfare, safety, or convenience including, but not limited to, the safe operation of County roads, the

safe operation of the facilities of franchise or permit holders, or for the construction, renewing, altering, or improving of any County right-of-way, or for the installation of lines and/or facilities of franchise or permit holders.

SECTION 17 Other Activities Regulated Chelan County Code

This Agreement does not authorize the City to engage in any other activities regulated by Chelan County Code or by any other agreement. If the City desires to engage in any such other activities, the City must first obtain from the County a separate agreement.

SECTION 18 Hold Harmless and Indemnity

18.1 Hold Harmless and Indemnity

The City, its successors and assigns, agree to hold the County, its elected and appointed officials, officers, and employees, harmless from all claims, demands, damages, expenses or suits that: (1) arise out of or are incident to any negligence by the City, its agents, contractors or employees in the use of County right-of-way pursuant to this Agreement or (2) are caused by the breach of any conditions of this Agreement by the City, its officers, agents, contractors or employees. Nothing herein shall require the City to indemnify and hold harmless the County, its elected and appointed officials, officers, and employees from claims, demands, damages, expenses or suits based solely on the conduct or negligence of the County, its elected and appointed officials, officers, employees and contractors and provided further that if the claims, demands, damages, expenses or suits are caused by or result from concurrent negligence of the City, its officials, agents, contractors or employees and/or any person whomsoever, in connection with the City's, its officials, assigns, agents, contractors' or employee's or the County, its elected and appointed officials, officers, employees and contractors, the indemnity provisions provided herein shall be valid and enforceable to the extent of the City's negligence or the negligence of the Grantee's agents, employees or contractors.

18.2 Limitation on County Liability

City, on behalf of its assigns, agents, licensees, contractors and employees, agrees to waive any claims for losses, expenses, damages or lost revenues incurred by it or its agents', contractors', licensees', employees' or customers' construction, installation, maintenance, operation, use, or occupancy of the right-of-way or in exercise of this Franchise against the County, its elected and appointed officials, officers, and employees except the reasonable costs of repair to property resulting from the negligent injury or damage to City's property by the County, its elected and appointed officials, officers, employees or contractors. Administration of this Franchise shall not be construed to create the basis for any liability on the part of County, its appointed and elected officials, officers, and employees, for any injury or damage from the failure of City to comply with the provisions of this Franchise; by reason of any plan, schedule, or specification review, inspection, notice and order, permission, or other approval or consent by County; for any action or inaction thereof authorized or done in connection with the implementation or enforcement of this Franchise

by County, or for the accuracy of plans submitted to County. If at any time County vacates any right-of-way covered by this Franchise, County shall not be held liable for any damages or loss to City by reason of such vacation.

18.3 Section 18 Provisions Survive Transfer, Assignment, or Termination of Agreement

The provisions of this Section 18 shall survive the transfer, assignment, or termination of this Agreement.

SECTION 19 Insurance

19.1 Coverage Required

City shall obtain and maintain general comprehensive liability insurance on a per occurrence basis naming the County as an additional insured with limits no less than three million dollars (\$3,000,000.00) for each occurrence of bodily injury liability or property damage liability and shall provide the County with certificates of said insurance. The coverage amounts set forth may be met by a combination of underlying and umbrella policies so long as in combination the limits equal or exceed those stated. The amounts listed in this paragraph shall not constitute any limitation of liability. The City shall initially, and annually thereafter, provide County with proof of the required insurance. Failure to obtain the required insurance policy or lapse of insurance coverage shall be a basis for revocation of this Franchise.

19.2 County as Additional Insured

All of the insurance required by this Agreement shall be endorsed to include the County as an additional insured and shall stipulate that the insurance afforded by the City's policy (s) shall be primary insurance and that any insurance, self-insured retention, deductibles, or risk retention trusts maintained or participated in by the parties shall be excess and not contributory to insurance required. All liability insurance policies will be endorsed to show this additional coverage.

19.3 Self-Insurance

In lieu of the insurance requirements set forth above, the City may self-insure against such risks in such amounts as are consistent with good utility practice and the per occurrence minimum of \$3,000,000.00. Grantee shall provide the County with a self-insurance letter as evidence that Grantee maintains a satisfactory self-insurance program.

SECTION 20 Non-discrimination

In all hiring or employment made possible or resulting from this Agreement, there shall be no discrimination against any employee or applicant for employment because of sex, sexual orientation, age, race, color, religion, ancestry, national origin, marital status or the presence of any sensory, mental, or physical handicap, unless based upon a bona fide occupational

qualification, and this requirement shall apply to but not be limited to the following: employment, advertising, lay-off or termination, rates of pay or other forms of compensation, and selection for training, including apprenticeship. No person shall be denied, or subjected to discrimination in receipt of the benefit of any services or activities made possible by or resulting from this Agreement on the grounds of sex, sexual orientation, race, color, religion, ancestry, national origin, age except, minimum age and retirement provisions, marital status, or the presence of any sensory, mental, or physical handicap. Any violation of this provision shall be considered a violation of a material provision of this Agreement and shall be grounds for cancellation, termination, or suspension in whole or in part, of the Agreement by County.

SECTION 21 Governing Law and Venue

This Franchise shall be governed by the laws of the State of Washington and that any lawsuit regarding this Agreement must be brought in the Superior Court for Chelan County, Washington, or in the case of a federal action, in the United States City Court for the Eastern City of Washington at Spokane, Washington. In the event action is taken to enforce the terms of this franchise, then each party shall be responsible for its own attorney's fees and costs.

SECTION 22 Acceptance of Terms and Conditions

Full acceptance and execution of Agreement is a condition precedent to it taking effect.

SECTION 23 Compliance with Laws

The City shall comply with applicable federal, state, and local laws, codes, and regulations, as now may be in force or as may be further enacted or amended, including, but not limited to, the State Environmental Policy Act and Chelan County Code.

SECTION 24 Notice and Contact Information

24.1 Notice

Except as provided in the following section, notice (other than legal process) provided for in this Agreement shall be sent via certified mail, return receipt requested, or delivered personally with notice deemed given upon receipt or first refusal and shall delivered be sent to the following addresses:

To County:

County Engineer
Chelan County Public Works Department
316 Washington Street, Suite 402
Wenatchee, WA 98801
Phone: 509.667.6415
Fax: 509.667.6250

With a copy to:

Board of Chelan County Commissioners
400 Douglas Street, Suite 201
Wenatchee, WA 98801
Attn: Clerk of the Board
Phone: 509.667.6215
Fax: 509.667.6599

To City:

City of Cashmere
Attn: Mayor
101 Woodring Street
Cashmere, WA 98815

24.2 Notice by Alternate Method

If agreed in writing by the parties' designated representatives identified in Section 24.1, notice (other than legal process) provided for in this Agreement may alternatively be delivered via facsimile (fax) or email to the receiving party's representative.

24.3 Contact Information To Be Kept Current

Each party shall promptly provide notice to the other of any change in address and/or other changes of contact information for its representative.

SECTION 25 Miscellaneous

25.1 Amendment

This Franchise may be amended only by written instrument, executed by both parties, which specifically states that it is an amendment to this Franchise.

25.2 Exhibits

The attached Exhibit 1 is incorporated by reference.

25.3 Entire Agreement

This Franchise, including the attached Exhibit 1, contains the entire agreement of the parties.

25.4 Severability

This Franchise gives effect to purposes and uses which are consistent with economical and efficient services rendered in the public interest. If any section, subsection, paragraph, sentence, clause, phrase, or provision of this Franchise or its application is determined to be invalid by a court of law, then the remaining provisions of this Franchise shall continue and remain valid unless the dominant purpose of the Franchise would be prevented or the public interest is no longer served.

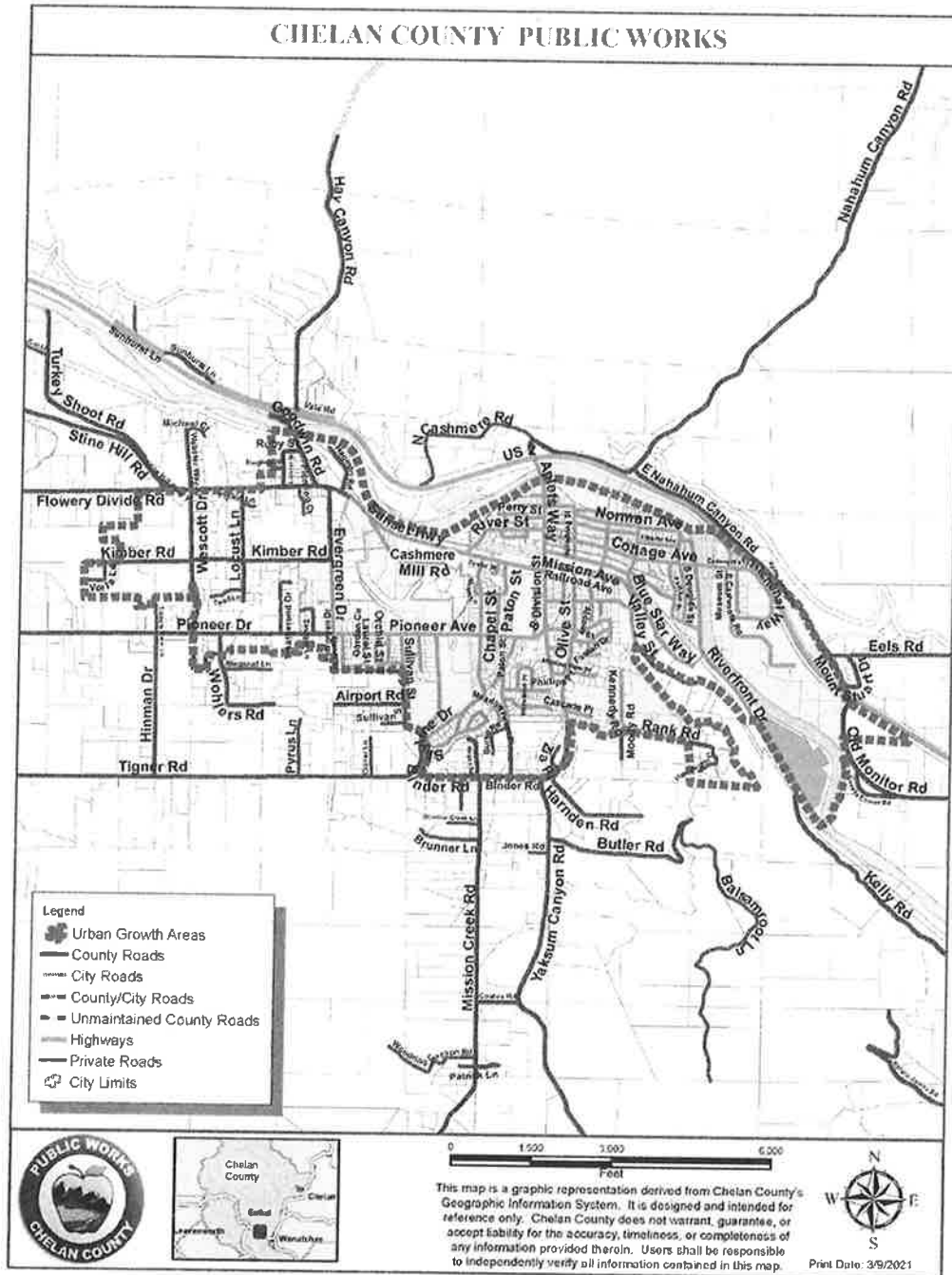
25.5 Franchise Compensation

The County reserves the right to require the City to pay franchise compensation to the County in exchange for the right of the City to use the County right of way. Any franchise compensation required to be paid is in addition to and not a substitute for or in lieu of any franchise administrative fee or franchise application fee.

SECTION 26 Effective Date

This Franchise shall be in full force and effect from the date of recording with the office of the Chelan County Auditor after acceptance and full execution by the parties.

Exhibit 1 FRANCHISE BOUNDARIES



Staff Summary

Date: 5/19/2021
To: City Council
From: Steve Croci, Director of Operations
RE: Sherman Reservoir Painting Project

The City requested MRSC Small Works Roster bids to clean, prepare, prime and paint Sherman Reservoir. The City received 11 bids. Clean Line Finishes was the low bidder at \$2,707.50.

Total Bid Amount	Business Name
\$23,690.63	Cascade Industrial Services LLC
\$2,707.50	Clean Line Finishes
\$19,494.00	Columbia Industrial Coatings
\$16,245.00	Extreme Coatings
\$23,826.00	HCI Industrial & Marine Coatings
\$11,041.18	K&K Construction
\$37,905.00	Long Painting Company
\$40,417.56	Masonry Restoration Consulting
\$12,671.10	Mattila Paintings Inc
\$27,724.00	Montes Construction
\$9,205.50	Rhizor's Painting LLC
\$8,659.00	VP Peri Painting Company

Staff Recommendation:

MOVE to select Clean Line Finishes to clean, prepare, prime and paint Sherman Reservoir and authorize Mayor to sign documents.
