



**CITY COUNCIL
MEETING AGENDA**

Online via Zoom

or

In Person at

Tumwater City Hall

555 Israel Rd. SW

Tumwater, WA 98501

Tuesday, January 04, 2022

7:00 PM

- 1. Roll Call**
- 2. Flag Salute**
- 3. Special Items:**
 - a. Swearing-in Ceremony for 2022 Elected Officials Washington Supreme Court Chief Justice González
- 4. Public Comment:** (for discussion of items not having a public hearing on tonight's agenda)
- 5. Consent Calendar:**
 - [a.](#) Approval of Minutes: City Council, December 7, 2021
 - [b.](#) Payment of Vouchers (Troy Niemeyer)
 - [c.](#) Pioneer Park Restoration Grant Agreement (Meridith Greer)
 - [d.](#) Andersen Water Right Agreement (Dan Smith)
 - [e.](#) Resolution No. R2022-001; Ratifying and Reaffirming Emergency Actions in Response to the Declared Emergency Related to Novel Coronavirus (COVID-19) (John Doan)
 - [f.](#) Regional Fire Authority Planning Consultant Contract with The Athena Group (John Doan)
 - [g.](#) 2022 Lewis County Jail Interlocal Agreement Amendment (Jon Weiks)
- 6. Public Hearings: None**
- 7. Council Considerations:**
 - [a.](#) Election of Mayor Pro Tem (John Doan)
- 8. Committee Reports**
 - a. Public Health and Safety Committee (Leatta Dahlhoff)
 - b. General Government Committee (Debbie Sullivan)
 - c. Public Works Committee (Eileen Swarthout)
 - d. Budget and Finance Committee (Debbie Sullivan)

9. Mayor/City Administrator's Report

10. Councilmember Reports

11. Adjourn

Remote Meeting Information

To comply with Governor Inslee's Proclamation 20-28, the Tumwater City Council meetings will be conducted remotely, not in-person, using a web-based platform. The public will have telephone and online access to all meetings.

The City of Tumwater broadcasts and livestreams City Council meetings on cable television and the internet. Council meetings can be viewed on Comcast Channel 26 or on the TCMedia website.

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<https://tcmedia.org/stream.php>, select "Watch, Streaming Now, Channel 26."

OR

Go to <http://www.zoom.us/join> and enter the **Webinar ID** 848 0593 7298 and **Passcode** 097124.

Listen by Telephone

Call (253) 215-8782, listen for the prompts and enter the **Webinar ID** 848 0593 7298 and **Passcode** 097124.

Public and Written Comment

Register by 6:45 p.m. the day of the meeting to provide public comment using the web-based meeting platform: https://us02web.zoom.us/webinar/register/WN_DTAOrji9R-OMrjKAAj7-8Q

After registering, you will receive a confirmation email with a login to join the online meeting.

As an alternative, prior to the meeting, the public may submit comments by sending an email to council@ci.tumwater.wa.us, no later than 5:00 p.m. on the day of the meeting. Comments are submitted directly to the Mayor and City Councilmembers and will not be read individually into the record of the meeting.

Post Meeting

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<https://tcmedia.org/channels.php>

Accommodations

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CONVENE: 7:00 p.m.

PRESENT: Mayor Pete Kmet and Councilmembers Joan Cathey, Leatta Dahlhoff, Eileen Swarthout, Michael Althausen, Angela Jefferson, Debbie Sullivan, and Charlie Schneider.

Staff: City Administrator John Doan, City Attorney Karen Kirkpatrick, Finance Director Troy Niemeyer, Fire Chief Brian Hurley, Parks and Recreation Director Chuck Denney, Water Resources and Sustainability Director Dan Smith, Fire Captain Josh Stewart, Communications Manager Ann Cook, Firefighter Evan Hagen, and City Clerk Melody Valiant.

SPECIAL ITEMS:

2021 FIREFIGHTER OF THE YEAR: Fire Chief Hurley reported 2020 and 2021 were challenging years for many in the community. City employees faced stressful challenges both at work and at home. Fire Department employees have performed exceptionally and continue to deliver fire and emergency medical services under challenging circumstances.

Fire Chief Hurley recognized Firefighter Evan Hagen as the City of Tumwater's Firefighter of the Year. Firefighter Hagen, a graduate from Tumwater High School, received his bachelor's degree in athletic training and fitness management and worked as a physical therapy assistant and an assistant athletic trainer at St. Martin's University. Firefighter Hagen has increased the level of physical fitness of fire department employees and is an active member of the department's Safety Committee. Firefighter Hagen is training to become a member of the Thurston County Special Operations Rescue Team.

Fire Captain Stewart reported he nominated Firefighter Hagen as Firefighter of the Year as he embodies what all firefighters strive to achieve. Since becoming a Firefighter with the Tumwater Fire Department in 2018, Firefighter Hagen has been very motivated and has served as one of the department's most dedicated Firefighters.

Fire Chief Hurley presented Firefighter Hagen with the Firefighter of the Year plaque and an encased United States Flag donated by Bill McLaughlin. The flag has been flown over the US capitol and the Washington State capitol.

Firefighter Hagen thanked Fire Chief Hurley and Fire Captain Stewart for the honor and recognition. He introduced his wife and children.

PUBLIC COMMENT: **Debra Boes, 1524 Durby Lane, Tumwater**, expressed concerns about the City's proposed public works maintenance facility off 79th Avenue. She referred to the five neighborhoods surrounding the proposed facility, which

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will be negatively affected by the new facility. The maintenance facility will not be a quiet operation as there will be constant vehicle backup alarms and other public works operations creating noise in the neighborhood. Over the last several years, rock and sand have been stored at the Old Trails arena. The neighborhood has been rattled with constant dumping and loading of the materials and constant beeping of trucks. Residents are awakened at night by diesel trucks and loader trucks. Daytime is miserable for neighbors trying to enjoy their yard or their home during constant noise. She asked the Council to consider another location for the maintenance facility because of the impacts to the neighborhood. If the facility is constructed in the neighborhood, the City will receive calls complaining about the noise. She asked the Council not to locate the facility in neighborhoods and consider other locations, such as 88th Avenue, 93rd Avenue, or on the west side of the airport. She questioned why the current maintenance facility could not be considered. More traffic along 79th Avenue will cause more congestion and increase danger to families, children, and bicyclists. The City of Tumwater sent a questionnaire to the neighborhood about the type of development preferred in the area. She questioned how many residents responded that they would like to have a maintenance shop located in the neighborhood. The Council should do the right thing for their constituents.

Mayor Kmet advised that as the City moves forward on the project, additional outreach to the community is planned. He lives approximately one block from the City's former public works facility, which was located in a residential neighborhood. He did not experience any significant impacts caused by the facility. The existing maintenance facility located behind City Hall is unable to accommodate existing and future capacity.

Lisa Ceazan, resident of Thurston County, thanked the Council for conducting a public hearing on the Port of Olympia development agreement with the City of Tumwater. The Council respectfully and patiently listened to all comments, which amplified democracy and action, something that can no longer be taken for granted. She only hopes that the Port of Olympia remembers its obligation to democracy and to the citizens and begins to act in a transparent, accountable, and responsive manner. The Council should reject the Port's proposed development agreement. The City has every right to expect a respectful partner that acknowledges the needs of the Tumwater community. The Council has the right to ask that the Port of Olympia work with the City to accept the proposed amendments. The City has the right to expect all promises made for economic benefits and environmental mitigation be substantiated contractually and with solid, realistic, and honest evidence. Even better, the City should remind the Port of Olympia of their joint obligation for environmentally sustainable development and following the New Market Industrial Campus (NMIC) Master Plan. The City should rezone the NMIC to ban large warehouses in District 4. According to recent publications, big corporations are driving the train on climate change

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mitigation and adaptation. The Port and Panattoni are not on the train as they are sitting and mobilized on the tracks. They will be left behind and so will Tumwater if this and similar projects are allowed to advance.

Carla Wulfsberg, 709 North 7th Avenue NW, Tumwater, referred to the development agreement with the Port of Olympia and the amendments proposed by the City of Tumwater. Recently, Port Commissioner Joe Downing rejected continuing discussions of the City's amendments in spite of Commissioner Zita's urgent request that the Commission show respect for Tumwater and at least discuss the revisions. Port Commissioner McGregor sided with Commissioner Downing. She asked how the document can be described as a "development agreement" when one party (Port) rejects any further discussion or compromise. Frankly, it is not good government. It is the worst kind of governing in her opinion as working together to reach a compromise is what good governing is all about. Good governing is lacking in leaders today at all levels of government, to include the Port of Olympia. She urged the Council to press the Port of Olympia to compromise. At the recent public hearing, 38 of the 40 speakers were opposed to the Port's development for very good reasons. Two speakers who spoke in support of the development were misguided in their belief that it would provide much needed revenue for Tumwater schools; however, there has been no independent market study or analysis for the Panattoni development to substantiate the Port's revenue projections. In fact, at the Port's worksession, John Martin, the Port's consultant, stated that the worst kind of investment is a speculative investment without a market study. Bad investments come from build it and they will come. That is exactly the practice the Port pursued previously and now has an empty warehouse in Lacey that is accumulating debt. She asked how another empty warehouse would benefit Tumwater, as there is an empty warehouse in Tumwater off 88th Avenue. Several new mega warehouses are under development in Tumwater along Kimmie Street. Tumwater has historically lost much with the most significant loss caused by the construction of Interstate 5 through the center of the City in the late 1950s. Logging larger urban forests is another great loss that generations will feel in decades to come. Another loss could be the contamination of the City's drinking water. If the Port refuses to compromise, she asked that the Council rezone District 3 to restrict large warehouses. The City Council has the power to protect quality of life, urban forests, schools, and the City's neighborhoods.

Aimee DeNey reported as a resident of Thurston County, she is an educator, business owner, and a doctoral student and is very concerned and disappointed to be constantly hearing about ongoing development projects on forestland in Tumwater. Everyone is facing a catastrophic global climate crisis and everyone is responsible for righting the wrongs of the present and of the past. Clearing land and building industrial complexes is irresponsible and outdated policy. World leaders have failed to make any real progress beyond lip service to reversing the climate crisis requiring drastic changes that clearly need to

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happen at the local level. The Council has stepped up as leaders of the community during a very difficult time. She encouraged the Council to use its power and make change within the City. She asked about the entity profiting from the development within the City because it is certainly not the people, the environment, nor the future legacy of our children. She suggested the City does not need to generate more wealth and more of the same business as usual because the community needs change in priorities towards a healthier and safer future.

Sue Danver said she recently learned about details of a problematic aquifer matter and believes that after Tumwater's sincere but unsuccessful effort to have the Port of Olympia adopt Mayor Kmet's version of the Interlocal Agreement (ILA), she supports Commissioner Zita's recommendation forwarded to the City earlier in the day. Tumwater is taking too great a risk in the contamination of its aquifer for very little benefit with the Port of Olympia's version of the ILA. She cited a warehouse aquifer quagmire in Lacey that could occur in Tumwater's future. Currently, Lacey has extensive warehousing that continues to expand. The final caveat of a recent Lacey experience is that before granting a permit for a deep injection well, the responsible jurisdiction must ensure the area of the warehouse development is not contaminated. In Lacey, a private developer plans to develop a large warehouse with impervious surface creating more runoff than usual. As part of the regiment for such a large warehouse, baseline data is collected in advance within the City of Lacey. The data determines whether any existing contamination is present in the aquifer. The requirement also protects the developer. Unfortunately, in this case, construction was allowed to begin before monitoring data had been collected and trichloroethylene (TC) was identified on the site. TC mobilizes in water. The contamination is localized in Lacey with Lacey's groundwater considered safe. The situation has become complicated and now involves the Department of Ecology and remediation, which will become more costly. Tumwater may have limited the size of warehouses within the ILA, but it has not eliminated the entire buildout, which means developing and creating impervious surface will be the equivalent of many large warehouses.

E. J. Zita, Port of Olympia Commissioner, said she is speaking as a citizen. She supports Mayor Kmet's proposed changes to the development agreement and was hopeful Tumwater's high standards might help the Port develop the NMIC with less damage and fewer long-term costs; however, the Port Commission recently confirmed moving forward without collaborating with the City of Tumwater. The Commission declined to consider the Mayor's suggested improvements and there is no guarantee the Port will terminate Kimmie Street, clean up bark waste, construct a promised public trail, or otherwise protect the Tumwater community from the worst impacts of Panattoni's mega warehouses. There is also no guarantee that Port development of NMIC District 4 will provide any of the financial benefits.

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The Port has a history of making promises that do not pan out. She referred to examples she provided in her written comments to the Council. The examples illustrate cautions that were provided by financial experts during the Council's public hearing. The bottom line is that Tumwater cannot count on Port development to provide the jobs, taxes, or other benefits it promises. The Port has no market study, feasibility study, and no independent financial analysis for the Panattoni plan, and the Port declines to use the Draft Master plan for the NMIC created over three years with extensive input from experts and the Tumwater community at great public expense. The Port and Panattoni's logging of Tumwater's largest urban forests for industrial development near the Bush Wellfield, Bush Middle School, and in a high groundwater area is fraught with risks. At the public hearing, hydrologists, public health experts, and other scientists testified about the risks of drinking water contamination, carcinogenic diesel emissions, climate impacts, and more if Panattoni develops as envisioned. She urged the Council to change zoning to protect the community and reinstate the ban on large warehouses in NMIC District 4. She and her neighborhood previously worked with the City Council to impose a ban under the belief that the vulnerable area would be protected. However, it is not protected anymore. She asked the Council to require environmentally sustainable development in the area. The Port should follow the NMIC Master Plan that prioritizes development along District 1 off Tumwater Boulevard and not in the urban forest. The benefits of retaining the urban forest in the face of the accelerating climate crisis far outweighs short-term lures of uncertain economic gain from the Port and Panattoni. The community is counting on the Tumwater City Council to protect the community.

Walt Jorgensen, 823 North Street, Tumwater, commented that Panattoni and the Port have attempted to run roughshod over the City of Tumwater's land use regulations and environmental protections. He advised the Council as a Tumwater resident, property owner, and taxpayer to terminate the current carnival proposal and counterproposals and simply dismiss any propositions that have been made to date. Instead, the Council should pursue another course after the first of the year starting with ensuring Tumwater does its job as a regulator and let the Port and Panattoni as aspiring developers, know what the rules are including the all-important provisions of cumulative impacts - a consideration strenuously emphasized by the Federal Aviation Administration. To evaluate all cumulative impacts, all impacts of a development are considered in totality and within the same timeframe. A provision in FAA Order 5050.4A states that in determining whether an environmental impact statement is required for a proposed federal action, it is necessary to consider the overall cumulative impact of the proposed action and the consequences of subsequent related actions. It further states that cumulative impact is the impact on the environment, which results from the incremental impact of the action when added to other past, present, and reasonably foreseeable future actions regardless of what agency (federal or

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nonfederal) or person undertakes such other actions. Cumulative impacts can result from individually minor but collectively significant actions taking place over a period of time. Mr. Jorgensen stressed the importance of visual public participation and urged the Council to consider visual display of meeting attendees during future virtual meetings. He asked the Council to protect the City.

Barack Gale asked the Council to change the zoning. He is currently reading the book titled, *Braiding Sweetgrass* by Robin Wall Kimmerer. The book conveys how the factual objective approach of science can be enriched by the ancient knowledge of the indigenous people. He shared an audio clip of one of the short stories in the book that speaks to the importance of never taking more than needed. He questioned how many square feet is too much to take from a living forest and although Tumwater residents may have plenty to eat this winter, he questioned whether residents would have plenty of clear water to drink and air to breathe. He asked about the disadvantaged communities that are suffering more disproportionately from every action that harms the earth today. He hopes and prays that the Council is considering those questions.

Jim Lazar said he is frankly aghast at the arrogant response of the Port of Olympia to the consideration by the City of Tumwater for an alternate development agreement. He suspects that most of the Council are equally aghast. He recommended the City Council adopt a development moratorium for the NMIC. A development moratorium is a strong step and would convey to the Port of Olympia that the City is in charge of its own destiny. It requires a super majority of five members and expires in six months but can be renewed as needed. It stops the clock and provides time to give serious thought to the future of that area. It must be done at this time to be effective. Tumwater learned over a decade ago that waiting does not work for a moratorium. The gap of time between announcement for consideration of a moratorium and the actual meeting to consider the moratorium, affords time for a developer to submit an application and vest rights. The language is simple for the Tumwater City Council to adopt a development moratorium pursuant to RCW 36.70.A.390 for the new market properties surrounding the airport to be effective until June 7, 2022. During the moratorium, the Council should review zoning and development regulations and consider improvements that will protect forest cover in the region including the Department of Ecology's 65.10.0 Low Impact Development Standards.

Connie Campbell said she was encouraged by the Council's openness before and after the public testimony at the November 30, 2021 meeting. Since her testimony, her position remains unchanged and she feels more strongly based on comments by others who have testified. The City does not need gigantic warehouses on that property. The City needs to retain all mature trees to the extent possible. It takes considerably more years than the earth has according

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to climate crisis reports, for new seedlings to be helpful with carbon emissions. The Council needs a hydrogeologic assessment and a full environmental impact study completed. She questioned whether the short-term gain of revenue is worth it if the City is sued by individuals who could be severely impacted. Many concerns were conveyed about the impacts of the proposed development on nearby residents located in the Salmon Creek Basin Neighborhood Association. There were concerns that the Port of Olympia is acting in violation of its own master plan. A new Port Commissioner has a clear conflict of interest with the plan. She does not understand why the Tumwater City Council, who appears to be supportive of environmental concerns, act as if it does not have the power to change the outcome. She challenged the Council to reconsider, as now is the time to act as everyone is living in a climate emergency. She encouraged the Council to rise to the challenge to find ways for this deal to be stopped or modified. One way is too clearly spell out in paragraph 7.6 under sustainable development the property shall incorporate sustainable development principles instead of considering. If the Council is unable to stop the proposal, she encouraged the Council to delay the development until the proper environmental impact study and hydrogeologic assessment is completed.

Charlotte Persons, 903 Glass Avenue NE, Olympia, referred to Councilmember Althausen's response to public comments on the interlocal agreement with the Port. He stated that approving some form of the ILA is Tumwater's only way to exercise some control over the development of the NMIC. However, as the Council has heard, the current ILA offers many problems and in response, the Council and the Mayor drafted a proposal to address some of the concerns. Only two incentives are available to Tumwater of a very unhealthy multiuse path along I-5 and 10 acres for a community center at an unsuitable location. The project is vaguely outlined and covers a period of 12 to 20 years depending on how long it requires to finalize the Brush Prairie Habitat Conservation Plan. There is no campus-wide plan for stormwater management to protect the City's wells. However, the Council's options are not just rejecting or approving a bad deal, the Council has other options as recommended by Mr. Lazar. The Council could impose a moratorium immediately to provide the City with more time. Ms. Zita spoke to the option of a rezone. She urged the Council to consider either option because the Port of Olympia Commission refused to schedule any time on future agendas to discuss the proposal from the Mayor. On December 13, 2021, the Port of Olympia Commission is considering the Panattoni lease option. Either a moratorium or rezone might appear to be extreme; however, at this point, just rejecting the current version of the ILA will not prevent Panattoni from filing a permit application for its first building. The Council's only effective responses are an injunction, a moratorium, or rezoning.

**CONSENT
CALENDAR:**

- a. Approval of Minutes: City Council Joint Tumwater School District Meeting, October 7, 2021

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- b. Approval of Minutes: City Council, November 16, 2021
- c. Payment of Vouchers
- d. Advisory Board Reappointment of Simon Tee to the Civil Service Commission, Appointment of Shane Harrington to Board of Parks and Recreation Commissioners, Jeremy Barclay to the Historic Preservation Commission, Grace Edwards to the Planning Commission and Joel Hecker to the Tree Board
- e. Legislative Agenda
- f. Resolution No. R2021-017, 2022 Fee Resolution
- g. Ordinance No. O2021-024, 2022 Salary Schedule
- h. Ordinance No. O2021-022, 2021-2022 Budget 2nd Amendment
- i. Sapp Road Ten Hour Closure

MOTION:

Councilmember Dahlhoff moved, seconded by Councilmember Swarthout, to approve the consent calendar as published. Motion carried.

Mayor Kmet reviewed the items approved on the consent calendar. New appointees to the City's boards and commissions provided self-introduction.

**COUNCIL
CONSIDERATIONS:**

**LOTT PURCHASE AND
SALE AGREEMENT:**

Director Niemeyer presented the LOTT Purchase and Sale Agreement for a house located off Henderson Boulevard. The City of Tumwater entered into an interlocal agreement with the LOTT Clean Water Alliance and adopted a special disposition policy to enable the City to donate the house to provide affordable housing. The purchase price is \$200,000. The purchase will be through one-time grant funds from the American Rescue Plan Act. Following approval of the purchase, staff will connect the house to water and sewer and complete some minor repairs prior to donation of the property to Homes First. The request is to authorize Mayor Pro Tem Cathey to sign the LOTT Purchase and Sale Agreement.

Mayor Kmet said he deferred signature of the agreement to Mayor Pro Tem Cathey as he serves on the LOTT Clean Water Alliance Board of Directors.

Councilmember Cathey asked about the location of the nearest transit route serving the area of the home. Mayor Kmet advised that at this time, no transit routes are available along Henderson Boulevard; however, Homes First was advised of an opportunity afforded through Intercity Transit to apply for a van through the agency's Surplus Van Program. Many of the clients of Homes First also have vehicles.

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MOTION:

Councilmember Althaus moved, seconded by Councilmember Schneider, to authorize the Mayor Pro Tem to sign the LOTT Purchase and Sale Agreement. Motion carried unanimously.

**TEMPORARY ACCESS
EASEMENT
AGREEMENT:**

Director Denney reported the request is approval of a no-cost easement to provide access through Tumwater Development, LLC property at the former brewery site. The easement area is located between the LOTT property and the Boston Street gate and includes the northeast bank of the Deschutes River and the single lane roadway from Boston Street to the Capitol Boulevard Bridge. The easement would provide the City with the ability to enter/exit the properties in the valley for special event parking, construction and improvement projects, planning for future recreation facilities, trails, and environmental mitigation and improvements. The temporary access easement agreement is effective from December 2021 to March 2022 to afford time for staff to evaluate the site for future use benefitting the community.

Councilmember Cathey shared her environmental concerns about the potential of increasing vehicular traffic close to Tumwater Falls and the Deschutes River. Director Denney responded that the roadway is narrow and is approximately 25 feet wide at the widest point between the wall of the existing building and the barrier above the river. He does not foresee the area ever converting to a City street; however, the area provides access for special events and for emergency access. Staff normally access the valley from the LOTT gate at E Street; however, the proposed access offers staff another option to access the valley that is not congested with traffic during special events. Councilmember Cathey said her concern surrounds an incremental increase in vehicle traffic abutting an environmentally sensitive area.

Mayor Kmet clarified that currently, no public access is available along a portion of the riverbank. Tumwater Development LLC officials have offered the easement to the City, which is also part of a discussion between the company and the Department of Ecology to resolve some obligations for spill cleanup. The offer presented an opportunity for the City to afford a way to evaluate the area for potential environmental testing, as it is located downstream of the former brewery operation.

Following additional information from the Mayor, Councilmember Cathey emphasized the importance of the proposal as an environmental issue and dependent upon the outcome, it is important to consider that traffic would drive over a riverbank. It is important to protect the river and riparian areas.

Councilmember Althaus asked about the benefits the City receives during the three-month period of the agreement. Director Denney said staff plans to explore options for trail connections to the valley, options for continued use of the access for special events, possible discussions on the reconstruction of the warehouse that may require access from the site, and in conjunction with

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the Water Resources and Sustainability Department, consider options for improving and stabilizing the riverbank. Additionally, the area has historical significance and provides some potential to work with the Olympia Tumwater Foundation to highlight the history of the site and how it affected the development of Tumwater.

MOTION:

Councilmember Jefferson moved, seconded by Councilmember Dahlhoff, to approve the Temporary Access Easement Agreement with Tumwater Development LLC. Motion carried unanimously.

**RESOLUTION NO.
R2021-021,
DEVELOPMENT
AGREEMENT WITH
PORT OF OLYMPIA
FOR NMIC:**

City Administrator Doan reported the proposed development agreement pertains to 200 acres zoned Airport Related Industrial allowing a range of industrial aviation office and commercial development compatible with the airport. Zoning was created in 1995 and amended in 2018 to create the current warehouse distribution regulations following several years of work with the City's Planning Commission and the Council. The land is owned by the Port of Olympia and development of the land encumbers specific restrictions by the Federal Aviation Administration (FAA) requiring land use to be related to the functional or financial operations of the airport. References to the master plan pertain to the draft of the New Market Industrial Campus Master Plan developed by the Port of Olympia. The plan was never officially adopted by the Port Commission.

The proposed lease option is a concept plan between the Port of Olympia and Panattoni, a national development company outlining how the property could be developed. The plan is not a development proposal with any specific projects identified with the exceptions the Port has committed to honor. They include preservation of a large stand of trees at the southern end of the property near Bush Middle School, exclusion of the school district bus lot located in the middle of the property, and an emphasis on tree retention at the northern property line between the property and the hotels near Interstate 5 and along Center Street. Additionally, the Secretary of State is constructing a new library/archives building on the corner of Tumwater Boulevard and Center Street.

A development agreement typically covers those instances where a developer and a city want to share costs or exchange other value or mutual benefit. The exchange of value or mutual benefit is an important aspect of the agreement. The development agreement defines the specific provisions related to future development, such as certain development regulations, timing of development, infrastructure, or funding. The City of Tumwater has typically used development agreements as they relate to the timing of infrastructure and development or how infrastructure is completed through shared funding between the City and a developer.

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In terms of the proposed development agreement, the Port's benefit encumbered in the agreement is consistency of zoning for 10 years. The City's benefit is land for a community center, land for a trail, and an overall tree mitigation strategy with some locations identified as the south end, north end, and along Center Street. Conversely, a lot-by-lot development scheme might not offer the same level of tree mitigation.

The development agreement is not intended to prevent development of Port property, it does not change zoning, it does not void the Port of Olympia's lease option agreement with Panattoni, it does not prevent the removal of trees as the City has a tree protection ordinance that would apply to any development proposal, and it does not change any City standards or processes, or prevent future changes to standards or requirements other than zoning, which cannot change for 10 years (Mayor's proposed version). The proposed development agreement does not apply to a specific project.

The development process administered by the City for any project does not involve the City Council to include the permit review process. However, the ongoing community discussion has evolved to a specific development proposal. The City's development process begins with the Council's adoption of a City Comprehensive Plan that includes zoning regulations and provisions applicable to new development. The Comprehensive Plan sets the direction of development within the City. The City's regulations, zoning, and design guidelines guide the development process. Property owners and developers enter into a relationship to explore development of a property. Applicants then meet with staff to initiate development review and review development requirements, e.g. zoning, SEPA, infrastructure improvements, fees, and scheduling. Concerns addressed by the community involving traffic impacts, stormwater management, and protection of City wells all need to be addressed; however, it is not possible without an actual application submitted to the City.

City Administrator Doan identified the City's numerous development regulations that apply to all development proposals. He outlined the issues addressed by the City pertaining to the development agreement. Early in the process, concerns were addressed about the size of buildings, removal of major tree stands, and stormwater management. Those issues have been ongoing during conversations with the Port of Olympia over the last 18 months.

The Mayor's proposal, built on the Port's proposal, limits vesting to Title 18, the zoning chapter within the municipal code. The Port has insisted that vesting provisions should be broader beyond Title 18. The Mayor's proposal clarifies that it is not the City's intent to use the non-vested regulations as a way to block development proposals. The Mayor's proposal clarified some ambiguity in the Port's proposal involving the specificity for closing Kimmie Street, timing of closure, and the area of closure. The Mayor's proposal

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modified the timing of the trail construction to correspond with 50% of the development as opposed to a 10-year period. The Mayor's proposal clarified some timeframes for the community center lease and requires removal of bark waste prior to redevelopment. Additionally, the lower two-thirds area of the log yard was not included in the Panattoni lease agreement. The tenant was notified by the Port of Olympia that the lease would not be extended and the Port has indicated a desire to expand the lease with Panattoni to include that property. As a former log yard, the property is covered with bark waste. The Mayor's proposal includes a commitment by the Port of Olympia to remove all log waste in conjunction with redevelopment of the property.

City Administrator Doan addressed questions and comments pertaining to cumulative analysis. Many regulations articulate authority or when cumulative analysis might be required. Development review affords two avenues for cumulative analysis. One is through regulatory requirements (SEPA) and the second is technical analysis to identify potential impacts of a project.

Options available to the Council is adoption of the proposed resolution as presented, which includes the Mayor's proposed alternative, propose substantive changes and direct staff to prepare a new alternative development agreement, postpone action to a certain date, postpone with no date designated, or accept the Port of Olympia's withdrawal of its proposal and take no action. The Council could also consider amending the agreement without substantially changing the agreement.

Councilmember Althaus commented that much of the community concerns surround stormwater. He asked how stormwater is addressed for larger buildings and additional information regarding injection wells. Director Smith explained how stormwater regulations are applied to a development proposal, regardless of the size of the building. The beginning point is ground disturbing activity and the size of the footprint. The City's drainage manual is comprehensive with standards, regulations, and analyses required of the development dependent upon the size of the building and the land use. In those instances where the manual cannot address a specific issue, the Department of Ecology and other state agency coordination and analyses occurs to ensure groundwater or surface water would not be degraded by the proposal. The City's stormwater manual was updated in 2018 and the minimum development square footage that requires a comprehensive review is 5,000 square feet. The applicant is required to complete the City's checklists to ensure environmental protections are in place for both groundwater and surface water discharges.

Director Smith displayed an illustration of an underground infiltration trench with an oil/grit chamber as one of numerous options available for management of stormwater for commercial and industrial uses. The systems are designed

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to handle stormwater entering the facility, with stormwater flowing into a treatment facility (oil/grit chamber), with cleaned water discharged to an infiltration galley. Another stormwater management tool is a retention pond where stormwater enters a pond for infiltration treatment.

Director Smith described in detail the City's oversight of stormwater discharge, illicit discharge, accidental spills, and critical areas plans and requirements.

Councilmember Althausen asked how the City's regulations interact with wellhead protection or whether other standards coexist to protect the City's drinking wells. Director Smith explained that all the various reports, tests, and analysis required for the stormwater drainage manual for stormwater design center on the location of where wellfields exist within the proposed development area, to include any critical areas. Additionally, the City's wellhead protection ordinance restricts various land uses or quantities of specific type of materials within the City's wellhead protection areas.

Mayor Kmet cited the closing of a gas station off Capitol Boulevard because it posed a threat and was located within the City's Palermo wellhead protection area.

Director Smith responded to questions about deep injection wells and explained that any proposal for a deep injection well within the City would automatically trigger an in-depth review by staff. A deep injection well is a category of infiltration facilities, along with other Underground Injection Control (UIC) wells, that could include a catch basin not connected to an outfall pipe, an underground trench with a pipe, or a system that is deeper than the largest surface dimension of a catch basin system. It is important to delineate specific proposals and whether they are classified as a UIC. All UICs are required to be registered by the Department of Ecology because of subsurface infiltration capacity. UICs are not an open pond and all UICs have covers, such as a slotted drainpipe, covered by dirt, or covered by a building. A number of studies completed over the last 20 years as a result of flooding in the Salmon Creek Basin involved close work with the City and Thurston County to develop groundwater standards to limit impacts to neighboring properties. The City's high groundwater standards are more stringent than the state's infiltration standards as the City requires hydrogeologic mounding analysis to determine whether groundwater levels would increase the property boundaries by six inches or more based on *known* high groundwater levels versus *seasonal* high groundwater levels. If they exceed that standard, the developer must reconfigure its stormwater system or shrink site development plans. The City's high groundwater standards would be challenging for placement of any UICs in the proposed development area due to the known high groundwater that exists in the area. A development proposal is necessary

**TUMWATER CITY COUNCIL MEETING
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to enable staff to examine the stormwater proposal and identify the nexus with high groundwater levels.

Councilmember Schneider asked whether the suggestion to enact a moratorium is an option the Council could consider. City Administrator Doan explained that the Council does not have an ordinance to take such an action at this time. Prior to enacting a moratorium, an ordinance would be necessary to include a set of findings and other requirements to support the action. Staff would need several weeks to up to a month to prepare an ordinance and draft findings.

Councilmember Schneider questioned whether it would be possible to implement a moratorium by the first of the year. Mayor Kmet responded that the City has not received any development proposal to undergo a feasibility review. For an applicant to become vested, a complete development application would need to be submitted with fees. The preliminary discussion concerning a proposal near International Wood Products has not resulted in any contact with staff to review the feasibility of a development proposal. Additionally, the City's Habitat Conservation Plan has not been completed and adopted, which creates another roadblock, as any development proposal would require gopher mitigation. Should the Council elect to pursue a moratorium, adequate time is available to develop an ordinance that would be defensible.

Councilmember Schneider thanked the Mayor for the clarification and reiterated his concern that the issue has been a topic of discussion for 18 months and as conversations have occurred, the Council indicated the process afforded plenty of time. However, it appears now is the 11th hour to pass a resolution, which appears to lack substance in terms of the possibility of the Port of Olympia ignoring the resolution. Mayor Kmet responded that his recommendation is to move the resolution forward even though the current Port Commission is not interested in negotiating with the City. In January, a new Commission will be seated and the proposed resolution could be reconsidered because the proposal is reasonable in spite of the Port's outright rejection. Should the new Port Commission elect not to consider the City's proposal, the Council has the option of revisiting next steps.

Councilmember Jefferson commented that the Council is pursuing a discussion with the community, which has provided feedback to the Council on expectations for development of the area. Since the Port has rejected the Mayor's proposal, the Council should move forward to determine how the area should be redeveloped based on concerns surrounding the retention of trees, stormwater management, and potential land uses. She recommended not taking any action until the Council agrees on how the City should move forward for development of the area.

**TUMWATER CITY COUNCIL MEETING
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Councilmember Dahlhoff spoke to the obligation of the Council as the delegates and trustees of the residents of Tumwater and those who work in the City. She would prefer to develop a solution for the community and supports moving forward to approve the Mayor's proposed resolution to the Port of Olympia Commission and let the Commission respond to the proposal. The next step would be based on the Commission's action and if not accepted, the Council could move forward with the possibility of adopting a moratorium or other options.

Councilmember Cathey agreed the Council has not considered how the area should develop. The Council is divided in terms of supporting or not supporting more warehouses in the City. The Council has not had a conversation as to the type of preferred development for the area. She also does not understand why the Council is not acknowledging that the Port has not been honest and does not want to negotiate with the Council based on comments conveyed during the recent Commission meeting. The comments spoke to the Commission not wishing to collaborate with the City Council. Sending another proposal to a Commission that does not want to collaborate would not change the situation. She questioned the outcome if the Council postponed action with no time certain.

City Administrator Doan advised that the property is zoned regardless of any future action. The 200 acres are zoned Airport Related Industrial. The Port could submit a proposal to develop the property. Those regulations apply today. The Council embarked in a conversation about a development agreement to gain some value for the City (land for a community center and public use trail) and clarify the application of some regulations in exchange for some amount of vesting of regulations. Absent the development agreement by either party, the Port could proceed with development of the property under current zoning and City regulations.

Councilmember Cathey said the Port Commission rejected the Mayor's proposal outright at its last meeting. She believes part of that rejection is because the Port does not want to enter into an agreement with a change in vesting. The result is a stalemate between the parties. In response, it appears the Council is pursuing another similar action of forwarding another proposal. She questioned whether a development moratorium is a general blanket that can apply across the area or would it only apply to a development agreement. City Administrator Doan advised that the Council could place an interim control on the 200 acres; however, the Council would need to clarify whether the action is to prevent any type of development, whether it is specific to square footage limitations or the type of land use. During the period of interim control, the Council would explore the long-term resolution while also specifying what type of development might be possible during that period.

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Councilmembers shared their opinions and beliefs on a variety of issues pertaining to the Port's rejection of the Mayor's proposed changes to the development agreement and what they envision for development of the 200 acres of Port-owned property. The Council acknowledged the community's concerns for retaining trees, management of stormwater, and the types of desired development. Mayor Kmet pointed out that the Council has not formally submitted the City's proposal to the Port of Olympia. Many general discussions between the City and the Port have occurred about the agreement, but the Council has not formally acted on forwarding an agreement to the Port Commission.

Councilmember Althaus commented about the Port Commission not acknowledging the Council's concerns. One of the fundamental issues discussed during over the last 18 months were the different aspects of importance to the Council whether it was tree retention or ensuring other conditions such as SEPA or design guidelines were enforced. City staff has done a tremendous job in communicating the Council's priorities to the Port, and at each step along the way, the Port Commission has ignored the Council's concerns. It is important to state officially the minimum standards the Council expects to be achieved if the Port desires to develop the parcels.

MOTION:

Councilmember Dahlhoff moved, seconded by Councilmember Sullivan, to adopt Resolution No. R2021-021, Development Agreement with Port of Olympia for NMIC.

Discussion ensued on the Council's goal to promote economic development and good paying jobs while mindful of environmental impacts. The Council agreed the intent is not to oppose development but that more discussion is warranted on the type of development desired for the area. The goal is to support the community, protect the environment, and negotiate an honest and respectful agreement between the City and the Port.

MOTION:

Motion carried. Councilmembers Cathey and Schneider opposed.

Mayor Kmet encouraged the Council to consider next steps and pursue a positive discussion with the Port of Olympia and the community. He thanked community members for conveying their concerns.

**COMMITTEE
REPORTS:**

**PUBLIC WORKS:
*Eileen Swarthout***

The next meeting is scheduled on Thursday, December 9, 2021 at 1 p.m. to review the 2020 Sustainability Report and consider the Pioneer Park Restoration Grant and the Anderson Water Right Agreement.

**TUMWATER CITY COUNCIL MEETING
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**GENERAL
GOVERNMENT:**
Debbie Sullivan

The committee is scheduled to meet on Wednesday, December 8, 2021 at 3 p.m. to review Ordinance No. O2021-019, Emergency Shelter and Housing and receive a status update on the Thurston Climate Mitigation Plan Phases 3 and 4.

HEALTH & SAFETY:
Leatta Dahlhoff

The December meeting has been cancelled. The next meeting scheduled on Tuesday, January 11, 2022 includes an update on the Code Enforcement Program.

**BUDGET AND
FINANCE:**
Pete Kmet

At its last meeting on November 23, 2021, the committee reviewed financing options for the new public works maintenance facility.

**MAYOR/CITY
ADMINISTRATOR'S
REPORT:**

Mayor Kmet shared a video clip of King 5 TV's broadcast of the City's effort to highlight the history's brewing history and Governor Inslee's visit to the old historic Olympia Brewery Building built between 1905 and 1906 to help support funding efforts to rehabilitate the historic building. Mayor Kmet reported a letter was forwarded to the Governor following the visit with a request for funding for restoration of the old brewhouse and for work underway at the Craft District.

City Administrator Doan reported that traditionally the City of Tumwater has supported families in need during Christmas. Previously, the City worked with the school district to receive feedback from families on needs and gifts. The City compiled tags for each child and posted the tags in various locations in the community to solicit gifts for the families and children. This year, the City collaborated with the Tumwater Education Foundation to sponsor the program. Tags are available at City Hall, Tumwater Police Department, and at Trail Dragger Coffee off Capitol Boulevard and Tumwater Boulevard. Gifts are due on Friday, December 10, 2021 to afford time to process and distribute the gifts to children and families.

Between December 12 through December 17, 2021 from 6 p.m. and 8 p.m. Santa will be available at various locations in the community to include elementary schools and at the Park at the Preserve. The City's annual Tree Lighting event is scheduled on Saturday, December 11, 2021 from 1 p.m. to 5:30 p.m. at City Hall. Everyone is encouraged to bring a can of food for donation to the food bank. The event will feature crafts, school choirs, and lighting the Christmas tree.

City Administrator Doan requested action to cancel the Council's December 21, 2021 meeting.

MOTION:

Councilmember Sullivan moved, seconded by Councilmember Dahlhoff, to cancel the December 21, 2021 Tumwater City Council meeting. Motion carried unanimously.

**TUMWATER CITY COUNCIL MEETING
MINUTES OF VIRTUAL MEETING
December 7, 2021 Page 18**

**COUNCILMEMBER
REPORTS:**

Charlie Schneider:

Councilmember Schneider reported on his attendance to the Bush event at the Capitol on Friday, November 19, 2021. The event honored the Bush family and their contributions to the region. Approximately 80 people attended the event.

Councilmember Schneider attended the Thurston Economic Development Council Expo on December 2, 2021. The all-day event included breakout sessions. He attended the session on naturally made and naturally located products with panelists representing Harmony Soapworks, Tyler Shellfish, and Holy Land Organics. The second session featured information on craft brewing.

Debbie Sullivan:

Councilmember Sullivan and Mayor Kmet attended a First Night of Hanukkah celebration at Swantown Marina, sponsored by Jewish community members residing in Tumwater. Participants also were able to tour Swantown Marina.

At the December 1, 2021 Intercity Transit Authority meeting, eight new members were appointed to the Citizens Advisory Committee. The Authority granted 14 vans to local non-profits as part of the agency's Van Surplus Program.

At the last Thurston Regional Planning Council meeting, members received a briefing on the new Washington State Department of Transportation's building in Lacey. Several retiring members of the Council were recognized for their service.

Michael Althausen:

The next meeting of the Joint Animal Services Commission is on December 20, 2021. The agenda includes action on the 2022 budget. Councilmember Althausen said he anticipates a small increase in the City's annual assessment based on the draft budget.

Councilmember Althausen plans to attend in conjunction with Councilmember Cathey, the next meeting of the Regional Housing Council on Wednesday, December 8, 2021.

Eileen Swarthout:

Tumwater HOPES is planning a holiday event on Wednesday, December 8, 2022 at the ASHHO Cultural Community and Job Training Center.

Joan Cathey:

Councilmember Cathey plans to attend three committee meetings on Wednesday, December 8, 2021.

**TUMWATER CITY COUNCIL MEETING
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Councilmember Cathey thanked Mayor Kmet for his leadership and for his fairness by enabling the Council to express their opinions. Mayor Kmet has been a great leader for both the Council and for the City of Tumwater.

Mayor Kmet thanked Councilmember Cathey. Although he will miss participating in meetings, the makeup of the Council will be capable of moving the City to the next level.

Angela Jefferson:

At the last Thurston County Emergency Medical Services Council meeting, members received a briefing from officials representing Concierge Care Advisors, a free referral agency for seniors. Members discussed the Governor's vaccine mandate. To date, minimum impact has been experienced by EMS with employees able to provide service effectively. Members discussed Medic One surge capacity, which is expected to lessen in the near term. Local hospital waiting times for hospital beds have lessened as well.

Councilmember Jefferson attended the South Sound Military Communities Partnership breakfast at the Eagles Pride Golf Club. The meeting featured a briefing from several Joint Base Lewis-McChord commanders on the local high cost of living and how it has affected military members and their families. High housing costs are beginning to affect service members. As more military members move off base, many military families are experiencing food insecurity because of the additional expenses for transportation to the base. She inquired about options for sponsoring a food bank on base and contacted numerous officials about the potential of sponsoring a mobile food bank. She encountered some roadblocks but plans to continue efforts. She encouraged community members who need food to contact the Thurston County Food Bank.

Councilmember Jefferson thanked Mayor Kmet for his leadership.

Leatta Dahlhoff:

Councilmember Dahlhoff said most of her meetings are later in the month.

She acknowledged Mayor Kmet by quoting Dr. Seuss, "Today you are You, that is truer than true. There is no one alive who is Youer than You."

ADJOURNMENT:

With there being no further business, Mayor Kmet adjourned the meeting at 9:47 p.m.

Prepared by Puget Sound Meeting Services, psmsoly@earthlink.net

TO: City Council
 FROM: Troy Niemeyer, Finance Director
 DATE: January 4, 2022
 SUBJECT: Payment of Vouchers

1) Recommended Action:

Staff is seeking City Council ratification of the payment of vouchers 168157 to 168238 in the amount of \$557,357.66 dated December 3, 2021 and electronic payments 901267 to 901279 in the amount of \$108,528.86; and payment of vouchers 168239 to 168323 in the amount of \$276,513.95 dated December 10, 2021 and electronic payments 901280 to 901281 in the amount of \$3,643.28; and payment of vouchers 168324 to 168412 in the amount of \$210,449.56 dated December 17, 2021 and electronic payments 901282 to 901289 in the amount of \$56,067.89; and payment of vouchers 168413 to 168471 in the amount of \$437,650.65 dated December 23, 2021, electronic payments 901290 to 9013.6 in the amount of \$170,019.82, and wire payments of \$356,779.25.

2) Background:

The City pays vendors monthly for purchases approved by all departments. The Finance Director has reviewed and released the payments as certified on the attached Exhibit(s). The full voucher listings are available by request to the Assistant Finance Director. The most significant payments* were:

Vendor	\$	Description
Washington Center for the Performing Arts	25,000.00	Capital Improvements
Granite Construction Company	44,232.75	Payment #4, work from September.
Thurston County	50,000.00	Thompson Judgement
Tumwater School district #33	24,980.00	Nov Impact fees collected

* Includes vouchers in excess of \$20,000, excluding routine utility payments.

3) Policy Support:

- Strategic Goals and Priorities: Fiscally responsible and develop sustainable financial strategies.
 - Vision Mission Beliefs-Excellence: Efficient stewards of public resources, building public trust through transparency.
-

4) Alternatives:

- ☐ Ratify the vouchers as proposed.
- ☐ Develop an alternative voucher review and approval process.

5) Fiscal Notes:

The vouchers are for appropriated expenditures in the respective funds and departments.

6) Attachments:

- A. Exhibit A – Payment of Vouchers – Review and Approval
- B. Exhibit B – Payment of Vouchers – Review and Approval
- C. Exhibit C – Payment of Vouchers – Review and Approval
- D. Exhibit D – Payment of Vouchers – Review and Approval

EXHIBIT "A"

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 herein and that the claim is a just, due and unpaid obligation against the City of Tumwater, and that I am authorized to authenticate and certify to said claim.

Voucher/Check Nos 168157 through 168238 in the amount of \$557,357.66
Electronic payment No 901267 through 901279 in the amount of \$108,528.86



Finance Director

Checks dated 12/03/2021

EXHIBIT "B"

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 herein and that the claim is a just, due and unpaid obligation against the City of Tumwater, and that I am authorized to authenticate and certify to said claim.

Voucher/Check Nos 168239 through 168323 in the amount of \$276,516.95
Electronic payment No 901280 through 901281 in the amount of \$3,643.28



Finance Director

Checks dated 12/10/2021

EXHIBIT "C"

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 herein and that the claim is a just, due and unpaid obligation against the City of Tumwater, and that I am authorized to authenticate and certify to said claim.

Voucher/Check Nos 168324 through 168412 in the amount of \$210,449.56
Electronic payment No 901282 through 901289 in the amount of \$56,067.89
Wire payments of \$0,000.00



Finance Director

Checks dated 12/17/2021

EXHIBIT "D"

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 herein and that the claim is a just, due and unpaid obligation against the City of Tumwater, and that I am authorized to authenticate and certify to said claim.

Voucher/Check Nos 168413 through 168471 in the amount of \$437,650.65
Electronic payment No 901290 through 901306 in the amount of \$170,019.82
Wire payments of \$356,779.25



Finance Director

Checks dated 12/23/2021

TO: City Council
FROM: Meredith Greer, Water Resources Educator
DATE: January 4, 2022
SUBJECT: Pioneer Park Restoration Grant Agreement

1) Recommended Action:

Staff requests City Council make a motion authorizing the Mayor to sign the Pioneer Park Restoration Grant Agreement, which will enable the City to acquire the necessary funding to complete a riparian restoration project at Pioneer Park to improve water quality and salmonid health. The agreement was recommended for approval by the Public Works Committee at their December 9, 2021 meeting.

2) Background:

Part of the southwest portion of Pioneer Park's shoreline is rapidly eroding away, washing approximately 2,380 cubic yards of fine sediment every year into the Deschutes River, which is home to a critical stock of coho salmon. In addition to high levels of fine sediment, the Deschutes River also has high water temperatures in the area due in part to very little shade along the stretch of river, a target of the recent Total Maximum Daily Load regulatory program to improve water quality. The City of Tumwater received grant funding from the Department of Ecology to design, permit, and construct a riparian restoration project to stabilize the slope and improve habitat conditions along that stretch of the Deschutes River.

3) Policy Support:

Strategic Priority F - Be a Leader in Environmental Sustainability, specifically

- Enhance salmon runs

4) Alternatives:

☐ Request changes to the proposed grant agreement.

5) Fiscal Notes:

This project is anticipated to cost \$450,781.33 to complete. The City received \$338,086.00 from the Department of Ecology's Water Quality Combined Funding Program and the Storm Drain Fund will pay the remainder of this work. An amount of \$175,000 has been allocated to SD-3 Deschutes Habitat Restoration Projects in the 2020-2026 Capital Facilities Plan.

6) Attachments:

A. Pioneer Park Restoration Grant Application Agreement



Agreement WQC-2022-Tumwat-00092

WATER QUALITY COMBINED FINANCIAL ASSISTANCE AGREEMENT

BETWEEN THE STATE OF WASHINGTON DEPARTMENT OF ECOLOGY

AND

THE CITY OF TUMWATER

This is a binding Agreement entered into by and between the State of Washington, Department of Ecology, hereinafter referred to as "ECOLOGY" and the CITY OF TUMWATER hereinafter referred to as the "RECIPIENT" to carry out with the provided funds, the activities described herein.

GENERAL INFORMATION

Project Title:	Pioneer Park Restoration
Total Cost:	\$ 450,781.33
Total Eligible Cost:	\$ 450,781.33
Ecology Share:	\$ 338,086.00
Recipient Share:	\$ 112,695.33
The Effective Date of this Agreement is:	10/15/2021
The Expiration Date of this Agreement is no later than:	10/14/2024
Project Type:	Nonpoint Source Activity

Project Short Description: (500 character limit, includes spaces)

The RECIPIENT will design and construct a riparian restoration project along the Deschutes River at River Mile 2.0, which is impaired for bacteria, temperature, and dissolved oxygen. The RECIPIENT will stabilize a 1,000-foot section of eroding bank and increase channel complexity to reduce erosion. The RECIPIENT will also plant 0.86 acres of riparian buffer along 375 feet of the stabilized right bank to reduce stream temperature and bacteria and increase dissolved oxygen.

Project Long Description

The RECIPIENT will design and construct a riparian restoration project to stabilize the slope and improve riparian conditions along the Deschutes River at River Mile 2.0, located in Pioneer Park. Numerous studies have shown the Deschutes River, which has critical stocks of coho salmon, suffers from poor water quality. The project site has been identified in the Deschutes River TMDL as needing a 46 percent reduction in fine sediment loading. The site currently contributes over 2,380 cubic yards of fine sediment every year to the Deschutes River. In addition, the site has been identified as needing an over 50 percent increase in shading,

Agreement No: WQC-2022-Tumwat-00092
Project Title: Pioneer Park Restoration
Recipient Name: The City of Tumwater

highlighting the need for substantial riparian restoration work along this reach. This project will address these pollution problems by reducing sediment inputs caused by accelerated erosion, reducing water temperature by re-establishing the shade provided by native riparian forest, and restoring aquatic habitat by increasing in-stream complexity within the project area.

Work for this project began in 2010, with conceptual designs including hydraulic modeling, geomorphic assessments, topographic survey data, and public use surveys. In 2014, the South Puget Sound Salmon Enhancement Group (SPSSEG) received a Salmon Recovery Funding Board grant (#14-1405) from the Washington State Recreation and Conservation Office (RCO). The outcome of that grant was a preliminary design report for bank stabilization, riparian zone establishment along 1,000 linear feet of bank, increased channel complexity using large woody debris and rock barbs, and directed water into the main channel during low flows to help protect swimmers and tubers. In the four years since the preliminary designs were originally conceived, the river has changed dramatically. On average, the Deschutes River channel through Pioneer Park migrates 9.4 feet per year. Due to this large change, the core plans from the preliminary designs are no longer functional. This proposal will update the preliminary designs to better fit current river conditions, increase the riparian corridor width to at least 100 feet, complete permitting, and construct the project.

Overall Goal (1,000 character limit, includes spaces)

The goal of this grant is to update designs, complete permitting, and finish construction of components of the Pioneer Park Restoration project design to improve water quality in the Deschutes River. Once constructed, this project will decrease mobilization of fine sediments, 2,380 cubic yards of which are currently entering the system every year. The project will re-establish native riparian forest to improve impaired riparian conditions and lower summer water temperatures. All while maintaining a safe environment for boaters, tubers, swimmers, and other users of the Deschutes River and Pioneer Park.

Agreement No: WQC-2022-Tumwat-00092
Project Title: Pioneer Park Restoration
Recipient Name: The City of Tumwater

RECIPIENT INFORMATION

Organization Name: The City of Tumwater
Mailing Address: 555 Israel Road SW, Tumwater, Washington 98501

Physical Address: 555 Israel Road SW, Tumwater, Washington 98501

Organization Email: WaterResources@ci.tumwater.wa.us

Contacts

Project Manager	Meridith Greer Water Resources Educator 555 Israel Road SW, Tumwater, Washington, 98501 Email: mgreer@ci.tumwater.wa.us Phone: (360) 754-4148
Authorized Signatory	Pete Kmet Mayor 555 Israel Road SW, Tumwater, Washington, 98501 Email: pkmet@ci.tumwater.wa.us Phone: (360) 754-4140,
Billing Contact	Dan Smith Director, Water Resources and Sustainability 555 Israel Road SW, Tumwater, Washington, 98501 Email: desmith@ci.tumwater.wa.us Phone: (360) 754-4140, (360) 754-4142

Agreement No: WQC-2022-Tumwat-00092
Project Title: Pioneer Park Restoration
Recipient Name: The City of Tumwater

ECOLOGY INFORMATION

Mailing Address: Department of Ecology
Water Quality
PO BOX 47600
Olympia, WA 98504-7600

Physical Address: Department of Ecology
300 Desmond Drive SE
Lacey, WA 98503

Contacts

Project Manager	Leanne Whitesell PO Box 47775 Olympia, WA 98504-7775 Email: leaw461@ecy.wa.gov Phone: (360) 407-6295
Financial Manager	Laurie Webster PO Box 47775 Olympia, WA 98504-7775 Email: lcon461@ecy.wa.gov Phone: (360) 407-6542
Technical Advisor	Tony Whiley PO Box 47600 Olympia, WA 98504-7600 Email: twhi461@ecy.wa.gov Phone: (360) 407-7241

Agreement No: WQC-2022-Tumwat-00092
Project Title: Pioneer Park Restoration
Recipient Name: The City of Tumwater

AUTHORIZING SIGNATURES

RECIPIENT agrees to furnish the necessary personnel, equipment, materials, services, and otherwise do all things necessary for or incidental to the performance of work as set forth in the Scope of Work.

RECIPIENT agrees to read, understand, and accept all information contained within this entire Agreement. Furthermore, RECIPIENT acknowledges that they have reviewed the terms and conditions of this Agreement, Scope of Work, attachments, all incorporated or referenced documents, as well as all applicable laws, statutes, rules, regulations, and guidelines mentioned in this agreement.

This Agreement contains the entire understanding between the parties, and there are no other understandings or representations other than as set forth, or incorporated by reference, herein.

This Agreement shall be subject to the written approval of Ecology's authorized representative and shall not be binding until so approved.

The signatories to this Agreement represent that they have the authority to execute this Agreement.

Washington State Department of Ecology

The City of Tumwater

Vincent McGowen, P.E. Date
Water Quality Program Manager

Pete Kmet Date
Mayor

Agreement No: WQC-2022-Tumwat-00092
 Project Title: Pioneer Park Restoration
 Recipient Name: The City of Tumwater

SCOPE OF WORK

Task Number: 1

Task Cost: \$ 5,000.00

Task Title: Grant and Loan Administration

Task Description:

- A. The RECIPIENT shall carry out all work necessary to meet ECOLOGY grant or loan administration requirements. Responsibilities include, but are not limited to: maintenance of project records; submittal of requests for reimbursement and corresponding backup documentation; progress reports; an EAGL (Ecology Administration of Grants and Loans) recipient closeout report; and a two-page Final Report (including photos, if applicable). In the event that the RECIPIENT elects to use a contractor to complete project elements, the RECIPIENT shall retain responsibility for the oversight and management of this funding agreement.
- B. The RECIPIENT shall keep documentation that demonstrates the project is in compliance with applicable procurement, contracting, and interlocal agreement requirements; permitting requirements, including application for, receipt of, and compliance with all required permits, licenses, easements, or property rights necessary for the project; and submittal of required performance items. This documentation shall be made available to ECOLOGY upon request.
- C. The RECIPIENT shall maintain effective communication with ECOLOGY and maintain up-to-date staff contact information in the EAGL system. The RECIPIENT shall carry out this project in accordance with any completion dates outlined in this agreement.

Task Goal Statement:

Properly managed and fully documented project that meets ECOLOGY's grant and loan administrative requirements.

Task Expected Outcome:

- Timely and complete submittal of requests for reimbursement, quarterly progress reports, Recipient Closeout Report, and two-page Outcome Summary Report.
- Properly maintained project documentation.

Recipient Task Coordinator: Meridith Greer

Grant and Loan Administration Deliverables

Number	Description	Due Date (leave blank)
1.1	Progress Reports that include descriptions of work accomplished, project challenges, and changes in the project schedule. Submitted at least quarterly.	
1.2	Recipient Closeout Report (EAGL Form).	
1.3	Two-page Outcome Summary Report.	

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 Project Title: Pioneer Park Restoration
 Recipient Name: The City of Tumwater

SCOPE OF WORK

Task Number: 2

Task Cost: \$ 49,627.71

Task Title: Design Plans, Specifications and Permitting

- A. The RECIPIENT will develop a project Design Package. Projects must be designed in accordance with the SFY22 Funding Guidelines and the WDFW Stream Habitat Restoration Guidelines. Project must be reviewed and accepted in writing by ECOLOGY to be eligible for reimbursement. The RECIPIENT will upload a digital copy of the items listed below to EAGL for ECOLOGY review. Ecology review may take up to 45 days. Reduce design figures to 11x17 inches in size and ensure they are legible.
1. Design Report. Develop design report in accordance with Nonpoint Design Deliverables guidance provided by the ECOLOGY Project Manager (PM). Submit to ECOLOGY for 45-day review. The RECIPIENT agrees to respond to ECOLOGY comments. The RECIPIENT must receive an Ecology Design Report Acceptance Letter prior to proceeding to 90 Percent design. Design elements will include a plan to meet the Deschutes River TMDL goals of reducing fine sediment by 46 percent (1,095 cubic feet/year) and increasing shade by 50 percent along approximately 1,000 linear feet of stream channel in the Deschutes River (River Mile 2.0). The design may include one riffle, multiple constructed rock/boulder barbs, and revegetating the stabilized bank using soil wraps to be seeded and planted with willow stakes.
 2. 90 Percent Design Package. At a minimum, this package must include 90 percent plans, specifications, engineer's opinion of cost including a schedule of eligible costs, project construction schedule, and bid insert provided by the ECOLOGY PM. The RECIPIENT agrees to respond to ECOLOGY comments. The RECIPIENT must receive an Ecology 90 Percent Design Acceptance Letter prior to proceeding to Final Design.
 3. The RECIPIENT will submit a digital copy of the Final Bid Package to ECOLOGY for review and acceptance prior to advertising the project. The Final Bid Package includes: project plans, specifications, engineer's opinion of cost including a schedule of eligible costs, and project construction schedule.
- B. The RECIPIENT will complete the following planning activities and submit all required documents to the ECOLOGY PM for review and approval, and upload to EAGL, prior to signatures (where required), and beginning work:
1. An Ecology Cultural Resources Review Form and an Inadvertent Discovery Plan (IDP) for each project site. The RECIPIENT will not initiate any work on the project site until consultation is completed and a written notice to proceed is received from ECOLOGY.
 2. All permitting and State Environmental Policy Act (SEPA) required by federal, state, and local laws and ordinances and documentation that these requirements have been met.
 3. A Riparian Planting and Maintenance Plan for all work implemented using a template approved by the ECOLOGY PM. This Plan will include maintenance and monitoring of installed riparian vegetation short-term (5-year minimum) and long-term (10-year minimum) activities after implementation. The RECIPIENT will update and submit the Final Plan after implementation (as needed).

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 Recipient Name: The City of Tumwater

4. An ECOLOGY BMP Approval Form. The form will include, or be submitted with, all site-specific plans/designs, maps, and other supporting documents.

Task Goal Statement:

The RECIPIENT will complete all planning, design, environmental review, and permitting tasks related to the project. The RECIPIENT will also submit the associated deliverables to ECOLOGY and respond to ECOLOGY comments in a timely manner.

Task Expected Outcome:

The project will meet the appropriate planning, design, environmental review, and permitting requirements set forth by ECOLOGY design standards, and all other applicable federal, state, and local laws and regulations.

Recipient Task Coordinator: Meridith Greer

Design Plans, Specifications and Bid Package Deliverables

Number	Description	Due Date (leave blank)
2.1	Contract documents. Upload to EAGL and notify ECOLOGY when upload is complete.	
2.2	Cultural resource review requirements. Submit the Ecology Cultural Resources Review Form and any supplemental cultural resource documentation, including surveys, to the ECOLOGY PM. Upload an Inadvertent Discovery Plan for each site to EAGL, prior to project installation. Do not upload any other cultural resource related documents to EAGL.	
2.3	Required permitting. Upload documentation to EAGL for each site that shows all permit requirements are met for each site, prior to project installation.	January 31, 2023
2.4	Riparian Planting Plan. Upload an approved, signed plan to EAGL for each site, prior to project installation.	
2.5	Maintenance Plan. Submit draft plan to ECOLOGY PM for review and approval prior to implementation. Upload Final Stewardship Plan to EAGL after implementation.	
2.6	BMP Approval Form. Complete and submit to ECOLOGY PM for each implementation site with associated site plans, maps, and supporting documentation. Upload an approved, signed copy to EAGL, prior to BMP installation.	
2.7	Design Report. Upload to EAGL and notify ECOLOGY when upload is complete.	
2.8	Responses to ECOLOGY Design Report comments. Upload to EAGL and notify ECOLOGY when upload is complete.	
2.9	ECOLOGY Design Report Acceptance Letter. Upload to EAGL and notify ECOLOGY when upload is complete.	

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 Project Title: Pioneer Park Restoration
 Recipient Name: The City of Tumwater

2.10	90 Percent Design Package. Upload to EAGL and notify ECOLOGY when complete.	
2.11	Responses to ECOLOGY 90 Percent Design Package comments. Upload to EAGL and notify ECOLOGY when upload is complete.	
2.12	ECOLOGY 90 Percent Design Acceptance Letter. Upload to EAGL and notify ECOLOGY when upload is complete.	
2.13	Final Bid Package. Upload to EAGL and notify ECOLOGY when upload is complete.	
2.14	Responses to ECOLOGY Final Bid Package comments. Upload to EAGL and notify ECOLOGY when upload is complete.	April 23, 2023
2.15	Ecology Final Bid Package Acceptance Letter. Upload to EAGL and notify ECOLOGY when upload is complete.	

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 Project Title: Pioneer Park Restoration
 Recipient Name: The City of Tumwater

SCOPE OF WORK

Task Number: 3

Task Cost: \$ 14,875.54

Task Title: Construction Management

Task Description:

- A. The RECIPIENT will provide construction oversight and management of the project.
- B. The RECIPIENT will submit a detailed Construction Quality Assurance Plan (CQAP) to ECOLOGY for review and acceptance before the start of construction. This plan must describe how the RECIPIENT will perform adequate and competent construction oversight. Once accepted by Ecology, upload to EAGL.
- C. The RECIPIENT will conduct a pre-construction conference meeting and invite ECOLOGY to attend.
- D. The RECIPIENT will submit an updated project schedule and cost estimate to ECOLOGY within 30 days of the start of construction. The RECIPIENT will revise and/or update the project schedule whenever major changes occur and at a minimum of every three months. The RECIPIENT will submit the updated schedule to ECOLOGY with the quarterly report. When changes in the construction schedule affect previous cost estimates, the RECIPIENT must submit revised cost estimates to ECOLOGY.
- E. Prior to execution, the RECIPIENT will submit in writing any eligible change orders that deviate from ECOLOGY-accepted plans and specifications for ECOLOGY review and acceptance. ECOLOGY must review and accept all change orders that affect grant eligible activities prior to implementation, and all other change orders for technical merit. Change orders are to be signed by the contractor, the engineer (if appropriate), and the RECIPIENT prior to submittal to ECOLOGY for acceptance.
- F. Upon completion of construction, the RECIPIENT will provide to ECOLOGY:
 1. A Nonpoint Construction Completion Form signed by a professional engineer indicating that the project was completed in accordance with the plans and specifications.
 2. A GIS-compatible project area in shapefile, geodatabase file, or ECOLOGY-approved equivalent.
 3. Complete the Section 319 Load Reduction Reporting form in EAGL at project closeout for all best management practices (BMPs) installed as a result of this agreement.

Task Goal Statement:

The RECIPIENT will oversee and manage construction of the project, communicate with ECOLOGY in a timely fashion, and provide ECOLOGY with all required and requested documentation.

Task Expected Outcome:

The project will be constructed on schedule and in accordance with the ECOLOGY-approved plans and specifications, while adhering to construction best management practices, the Construction Quality Assurance Project Plan, and all other applicable regulation.

Recipient Task Coordinator: Meredith Greer

Construction Management Deliverables

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 Recipient Name: The City of Tumwater

Number	Description	Due Date (leave blank)
3.1	Copy of signed and dated construction contract. Upload to EAGL and notify ECOLOGY PM upon completion.	
3.2	Construction Quality Assurance Plan. Upload to EAGL and notify ECOLOGY PM upon completion.	May 2023
3.3	Updated Project Schedule. Upload to EAGL and notify ECOLOGY PM upon completion.	
3.4	Revised schedule and cost estimates when changes in construction occur. Upload to EAGL and notify ECOLOGY.	
3.5	Upload Change Order(s) to EAGL and notify ECOLOGY.	
3.6	Complete Construction Completion Form and upload to EAGL. Notify ECOLOGY when complete.	
3.7	Upload Project Area Shapefile (.zip) or ECOLOGY-approved equivalent for GIS-compatible project area data.	
3.8	Complete the 319 Load Reduction Reporting Form in EAGL at project closeout.	

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 Project Title: Pioneer Park Restoration
 Recipient Name: The City of Tumwater

SCOPE OF WORK

Task Number: 4

Task Cost: \$ 381,277.08

Task Title: Streambank Stabilization and Buffer Restoration

Task Description:

- A. The RECIPIENT will, in accordance with ECOLOGY-accepted plans and specifications (Task 2), ensure complete construction of the project.
- B. The RECIPIENT will provide timely and complete construction progress reports and associated photographs in quarterly reporting.
- C. The RECIPIENT will establish construction access and staging areas, traffic controls, and construction erosion/water pollution control measures per ECOLOGY-accepted plans and specifications.
- D. The RECIPIENT will stabilize approximately 1,000 linear feet of stream channel in the Deschutes River (River Mile 2.0) to reduce sediment loading, and provide increased channel complexity to improve aquatic habitat. The RECIPIENT will implement the design, as approved by Ecology, which may include one riffle, numerous constructed rock/boulder barbs, and revegetation of the stabilized bank using soil wraps to be seeded and planted with willow stakes.
- E. The RECIPIENT will restore approximately 0.86 acres of riparian buffer along 375 feet of the Deschutes River to reduce stream temperature in accordance with the requirements found in Appendix J of the SFY2022 Funding Guidelines. The RECIPIENT will preserve all existing native vegetation (outside of the active project footprint and access areas) along the Deschutes River within the project boundary. The RECIPIENT will employ infill planting to augment sparse areas of existing native vegetation and restore project footprint and access areas.
- F. The RECIPIENT will conduct project effectiveness monitoring and provide appropriate maintenance in accordance with the Riparian Planting and Maintenance Plan. The RECIPIENT will report the outcomes of planting toward meeting objectives in progress reports and the Recipient Close Out Report (RCOR, Task 1).
- G. The RECIPIENT will install temporary signage during construction and permanent signage after construction that informs the public that Ecology funded the project.

Task Goal Statement:

This RECIPIENT will stabilize the eroding Deschutes River bank within the project area, restore native riparian vegetation, and provide increased channel complexity. This will reduce sediment inputs, increase shade to lower stream temperatures, and improve aquatic habitat.

Task Expected Outcome:

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 Recipient Name: The City of Tumwater

- Install riffle(s) and/or constructing rock/boulder barbs, or other stabilization methods in accordance with Ecology approved designs.
- Revegetate a 100-foot riparian buffer along 375 feet of the right side of the stream.

Recipient Task Coordinator: Dan Smith

Channel Stabilization and Buffer Implementation Deliverables

Number	Description	Due Date (leave blank)
4.1	Riparian buffer implementation. Conduct invasive weeds control and plant native trees and shrubs along 375 linear stream feet of the Deschutes River, forming a 100-foot wide riparian buffer. Report progress in PRPRs, and report results in the Recipient Closeout Report (RCOR, Task 1).	
4.2	Vegetation monitoring and maintenance. Provide effectiveness monitoring and maintenance to achieve objectives (percent survival, sediment retention, or other), in accordance with Riparian Planting and Maintenance Plan. Provide results in progress reports and final metrics in the Recipient Closeout Report (RCOR, Task 1).	
4.3	Restore stream bank and channel. Install stream stabilizing elements such as riffle(s), rock barbs, or large woody debris along 1,000 feet of channel, in accordance with approved Final Design Package. Include before and after photos and summary of metrics in progress reports and Recipient Closeout Report (RCOR, Task 1).	

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 Recipient Name: The City of Tumwater

BUDGET SUMMARY

Funding Distribution

Funding Title: Centennial
 Funding Type: Grant
 Funding Effective Date: 10/15/2021
 Funding Expiration Date: 10/14/2024
 Funding Source: Centennial

Recipient Match %: 25
 InKind Interlocal Allowed: Yes
 InKind Other Allowed: No
 Is this Funding Distribution used to match a federal grant? No

Indirect Rate: 0%

Scope of Work Budget Summary	Recipient Share	Ecology Share	Task Total
1. Grant and Loan Administration	\$1,250.00	\$3,750.00	\$5,000.00
2. Design Plans, Specifications, and Permitting	\$12,406.93	\$37,220.78	\$49,627.71
3. Construction Management	\$3,718.89	\$11,156.65	\$14,875.54
4. Channel Stabilization and Buffer Imp.	\$95,319.51	\$285,958.57	\$381,278.08
Total	\$112,695.33	\$338,086.00	\$450,781.33

Funding Distribution Name	Recipient Match	Recipient Share	Ecology Share	Total
Centennial	25%	\$ 112,695.33	\$ 338,086.00	\$ 450,781.33
Total		\$ 112,695.33	\$ 338,086.00	\$ 450,781.33

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Recipient Name: The City of Tumwater

TERMS AND CONDITIONS

Note to Recipient: Please read the full Terms and Conditions in The [SFY2022 Funding Guidelines, Appendix F](#). Any questions should be discussed with your Ecology Project Team during negotiation, prior to signature.

AGREEMENT SPECIFIC TERMS AND CONDITIONS

N/A

SPECIAL TERMS AND CONDITIONS

SECTION 1 – DEFINITIONS

Section 2 – Conditions for All Water Quality Combined Funding

General Terms and Conditions for All Ecology Grants and Loans

Appendix F: WQP/Ecology Terms and Conditions

WQP Special Terms and Conditions

Section 1: Definitions

Unless otherwise provided, the following terms will have the respective meanings for all purposes of this agreement:

“Administration Charge” means a charge established in accordance with Chapter 90.50A RCW and Chapter 173-98 WAC, to be used to pay Ecology’s cost to administer the State Revolving Fund by placing a percentage of the interest earned in an Administrative Charge Account.

“Administrative Requirements” means the effective edition of ECOLOGY's Administrative Requirements for Recipients of Ecology Grants and Loans at the signing of this agreement.

“Annual Debt Service” for any calendar year means for any applicable bonds or loans including the loan, all interest plus all principal due on such bonds or loans in such year.

“Average Annual Debt Service” means, at the time of calculation, the sum of the Annual Debt Service for the remaining years of the loan to the last scheduled maturity of the loan divided by the number of those years.

“Acquisition” means the purchase or receipt of a donation of fee or less than fee interests in real property. These interests include, but are not limited to, conservation easements, access/trail easements, covenants, water rights, leases, and mineral rights.

“Centennial Clean Water Program” means the state program funded from various state sources.

“Contract Documents” means the contract between the RECIPIENT and the construction contractor for construction of the project.

“Cost Effective Analysis” means a comparison of the relative cost-efficiencies of two or more potential ways of solving a water quality problem as described in Chapter 173-98-730 WAC.

“Defease” or “Defeasance” means the setting aside in escrow or other special fund or account of sufficient investments and money dedicated to pay all principal of and interest on all or a portion of an obligation as it comes due.

“Effective Date” means the earliest date on which eligible costs may be incurred.

“Effective Interest Rate” means the total interest rate established by Ecology that includes the Administrative Charge.

“Estimated Loan Amount” means the initial amount of funds loaned to the RECIPIENT.

“Estimated Loan Repayment Schedule” means the schedule of loan repayments over the term

of the loan based on the Estimated Loan Amount.

“Equivalency” means projects designated by ECOLOGY to meet additional federal requirements.

“Expiration Date” means the latest date on which eligible costs may be incurred.

“Final Accrued Interest” means the interest accrued beginning with the first disbursement of funds to the RECIPIENT through such time as the loan is officially closed out and a final loan repayment schedule is issued.

“Final Loan Amount” means all principal of and interest on the loan from the Project Start Date through the Project Completion Date.

“Final Loan Repayment Schedule” means the schedule of loan repayments over the term of the loan based on the Final Loan Amount.

“Forgivable Principal” means the portion of a loan that is not required to be paid back by the borrower.

“General Obligation Debt” means an obligation of the RECIPIENT secured by annual ad valorem taxes levied by the RECIPIENT and by the full faith, credit, and resources of the RECIPIENT.

“General Obligation Payable from Special Assessments Debt” means an obligation of the RECIPIENT secured by a valid general obligation of the Recipient payable from special assessments to be imposed within the constitutional and statutory tax limitations provided by law without a vote of the electors of the RECIPIENT on all of the taxable property within the boundaries of the RECIPIENT.

“Gross Revenue” means all of the earnings and revenues received by the RECIPIENT from the maintenance and operation of the Utility and all earnings from the investment of money on deposit in the Loan Fund, except (i) Utility Local Improvement Districts (ULID) Assessments, (ii) government grants, (iii) RECIPIENT taxes, (iv) principal proceeds of bonds and other obligations, or (v) earnings or proceeds (A) from any investments in a trust, Defeasance, or escrow fund created to Defeasance or refund Utility obligations or (B) in an obligation redemption fund or account other than the Loan Fund until commingled with other earnings and revenues of the Utility or (C) held in a special account for the purpose of paying a rebate to the United States Government under the Internal Revenue Code.

“Guidelines” means the ECOLOGY's Funding Guidelines that correlate to the State Fiscal Year in which the project is funded.

“Initiation of Operation Date” means the actual date the Water Pollution Control Facility financed with proceeds of the loan begins to operate for its intended purpose.

“Loan” means the Washington State Water Pollution Control Revolving Fund Loan or Centennial Clean Water Fund (Centennial) Loan made pursuant to this loan agreement.

“Loan Amount” means either an Estimated Loan Amount or a Final Loan Amount, as applicable.

“Loan Fund” means the special fund created by the RECIPIENT for the repayment of the principal of and interest on the loan.

“Loan Security” means the mechanism by which the RECIPIENT pledges to repay the loan.

“Loan Term” means the repayment period of the loan.

“Maintenance and Operation Expense” means all reasonable expenses incurred by the RECIPIENT in causing the Utility to be operated and maintained in good repair, working order, and condition including payments to other parties, but will not include any depreciation or RECIPIENT levied taxes or payments to the RECIPIENT in lieu of taxes.

“Net Revenue” means the Gross Revenue less the Maintenance and Operation Expense.

“Original Engineer’s Estimate” means the engineer’s estimate of construction costs included with bid documents.

“Principal and Interest Account” means, for a loan that constitutes Revenue-Secured Debt, the account created in the loan fund to be first used to repay the principal of and interest on the loan.

“Project” means the project described in this agreement.

“Project Completion Date” means the date specified in the agreement on which the Scope of Work will be fully completed. This term is only used in loan agreements.

“Project Schedule” means that schedule for the project specified in the agreement.

“Revenue-Secured Debt” means an obligation of the RECIPIENT secured by a pledge of the revenue of a utility and one not a general obligation of the RECIPIENT.

“Reserve Account” means, for a loan that constitutes a Revenue Secured Debt and if specifically identified as a term and condition of the funding agreement, the account of that name created in the loan fund to secure the payment of the principal of and interest on the loan.

“Risk-Based Determination” means an approach to sub-recipient monitoring and oversight based on risk factors associated to a RECIPIENT or project.

“Scope of Work” means the tasks and activities constituting the project.

“Section 319” means the section of the Clean Water Act that provides funding to address nonpoint sources of water pollution.

“Senior Lien Obligations” means all revenue bonds and other obligations of the RECIPIENT outstanding on the date of execution of this loan agreement (or subsequently issued on a parity therewith, including refunding obligations) or issued after the date of execution of this loan agreement having a claim or lien on the Gross Revenue of the Utility prior and superior to the claim or lien of the loan, subject only to Maintenance and Operation Expense.

“State Water Pollution Control Revolving Fund (Revolving Fund)” means the water pollution control revolving fund established by Chapter 90.50A.020 RCW.

“Termination Date” means the effective date of ECOLOGY’s termination of the agreement.

“Termination Payment Date” means the date on which the RECIPIENT is required to repay to ECOLOGY any outstanding balance of the loan and all accrued interest.

“Total Eligible Project Cost” means the sum of all costs associated with a water quality project that have been determined to be eligible for ECOLOGY grant or loan funding, including any required recipient match.

“Total Project Cost” means the sum of all costs associated with a water quality project, including costs that are not eligible for ECOLOGY grant or loan funding.

“ULID” means any utility local improvement district of the RECIPIENT created for the acquisition or construction of additions to and extensions and betterments of the Utility.

“ULID Assessments” means all assessments levied and collected in any ULID. Such assessments are pledged to be paid into the Loan Fund (less any prepaid assessments permitted by law to be paid into a construction fund or account). ULID Assessments will include principal installments and any interest or penalties which may be due.

“Utility” means the sewer system, stormwater system, or the combined water and sewer system of the RECIPIENT, the Net Revenue of which is pledged to pay and secure the loan.

Section 2: The Following Conditions Apply to All Recipients of Water Quality Combined Financial Assistance Funding.

The Water Quality Financial Assistance Funding Guidelines are included in this agreement by reference and are available on ECOLOGY’s Water Quality Program website.

A. Architectural and Engineering Services: The RECIPIENT certifies by signing this agreement that the requirements of Chapter 39.80 RCW, “Contracts for Architectural and Engineering Services,” have been, or shall be, met in procuring qualified architectural/engineering services. The RECIPIENT shall identify and separate eligible and ineligible costs in the final architectural/engineering services contract and submit a copy of the contract to ECOLOGY.

B. Acquisition: The following provisions shall be in force only if the project described in this agreement is an acquisition project:

a. Evidence of Land Value and Title. The RECIPIENT shall submit documentation of the cost of the property rights and the type of ownership interest that has been acquired.

b. Legal Description of Real Property Rights Acquired. The legal description of the real property rights purchased with funding assistance provided through this agreement (and protected by a recorded conveyance of rights to the State of Washington) shall be incorporated into the

agreement before final payment.

c. Conveyance of Rights to the State of Washington. Upon purchase of real property rights (both fee simple and lesser interests), the RECIPIENT shall execute the document necessary to convey certain rights and responsibilities to ECOLOGY, on behalf of the State of Washington. The documents required will depend on the project type, the real property rights being acquired, and whether or not those rights are being acquired in perpetuity (see options below). The RECIPIENT shall use language provided by ECOLOGY, to record the executed document in the County where the real property lies, and to provide a copy of the recorded document to ECOLOGY.

Documentation Options:

1. Deed of Right. The Deed of Right conveys to the people of the state of Washington the right to preserve, protect, and/or use the property for public purposes consistent with the fund source. RECIPIENTS shall use this document when acquiring real property rights that include the underlying land. This document may also be applicable for those easements where the RECIPIENT has acquired a perpetual easement for public purposes. The RECIPIENT must obtain ECOLOGY approval on the draft language prior to executing the deed of right.

2. Assignment of Rights. The Assignment of Rights document transfers certain rights such as access and enforcement to ECOLOGY. The RECIPIENT shall use this document when an easement or lease is being acquired for water quality and habitat conservation. The Assignment of Rights requires the signature of the underlying landowner and must be incorporated by reference in the easement document.

3. Easements and Leases. The RECIPIENT may incorporate required language from the Deed of Right or Assignment of Rights directly into the easement or lease document, thereby eliminating the requirement for a separate document. Language will depend on the situation; therefore, the RECIPIENT must obtain ECOLOGY approval on the draft language prior to executing the easement or lease.

d. Real Property Acquisition and Relocation Assistance.

1. Federal Acquisition Policies. See Section 4 of this agreement for requirements specific to Section 319 and SRF funded projects.

2. State Acquisition Policies. When state funds are part of this agreement, the RECIPIENT agrees to comply with the terms and conditions of the Uniform Relocation Assistance and Real Property Acquisition Policy of the State of Washington, Chapter 8.26 RCW, and Chapter 468-100 WAC.

3. Housing and Relocation. In the event that housing and relocation costs, as required by federal law set out in subsection (1) above and/or state law set out in subsection (2) above, are involved in the execution of this project, the RECIPIENT agrees to provide any housing and relocation assistance required.

e. Hazardous Substances.

1. Certification. The RECIPIENT shall inspect, investigate, and conduct an environmental audit of the proposed acquisition site for the presence of hazardous substances, as defined in RCW 70.105D.020(10), and certify:

i. No hazardous substances were found on the site, or

ii. Any hazardous substances found have been treated and/or disposed of in compliance with applicable state and federal laws, and the site is deemed “clean.”

2. Responsibility. Nothing in this provision alters the RECIPIENT's duties and liabilities regarding hazardous substances as set forth in RCW 70.105D.

3. Hold Harmless. The RECIPIENT will defend, protect and hold harmless ECOLOGY and any and all of its employees and/or agents, from and against any and all liability, cost (including but not limited to all costs of defense and attorneys' fees) and any and all loss of any nature from any and all claims or suits resulting from the presence of, or the release or threatened release of, hazardous substances on the property the RECIPIENT is acquiring.

f. Restriction On Conversion Of Real Property And/Or Facilities To Other Uses

The RECIPIENT shall not at any time convert any real property (including any interest therein) or facility acquired, developed, maintained, renovated, and/or restored pursuant to this agreement to uses other than those purposes for which funds were approved without prior approval of ECOLOGY. For acquisition projects that are term limited, such as one involving a lease or a term-limited restoration, renovation or development project or easement, this restriction on conversion shall apply only for the length of the term, unless otherwise provided in written documents or required by applicable state or federal law. In such case, the restriction applies to such projects for the length of the term specified by the lease, easement, deed, or landowner agreement.

C. Best Management Practices (BMP) Implementation: If the RECIPIENT installs BMPs that are not approved by ECOLOGY prior to installation, the RECIPIENT assumes the risk that part or all of the reimbursement for that activity may be delayed or ineligible. For more details regarding BMP Implementation, please reference the Water Quality Financial Assistance Funding Guidelines available on ECOLOGY's Water Quality Program funding website.

D. Electronic Fund Transfers: Payment will be issued through Washington State's Office of Financial Management's Statewide Payee Desk. To receive payment you must register as a statewide vendor by submitting a [statewide vendor registration form and an IRS W-9 form](#)⁸². If you have questions about the vendor registration process or electronic fund transfers, you can contact Statewide Payee Help Desk at (360) 407-8180 or email PayeeRegistration@ofm.wa.gov.

E. Equipment Purchase: Equipment purchases over \$5,000 and not included in the scope of

⁸² <https://ofm.wa.gov/it-systems/statewide-vendorpayee-services>

work or the Ecology approved construction plans and specifications, must be pre-approved by ECOLOGY's project manager before purchase. All equipment purchases over \$5,000 and not included in a contract for work being completed on the funded project, must also be reported on the Equipment Purchase Report in EAGL.

F. Funding Recognition: The RECIPIENT must inform the public about ECOLOGY or any EPA (see Section 3.B for Section 319 funded or Section 5.E for SRF funded projects) funding participation in this project through the use of project signs, acknowledgement in published materials, reports, the news media, websites, or other public announcements. Projects addressing site-specific locations must utilize appropriately sized and weather-resistant signs. Sign logos are available from ECOLOGY's Financial Manager upon request.

G. Growth Management Planning: The RECIPIENT certifies by signing this agreement that it is in compliance with the requirements of Chapter 36.70A RCW, "Growth Management Planning by Selected Counties and Cities." If the status of compliance changes, either through RECIPIENT or legislative action, the RECIPIENT shall notify ECOLOGY in writing of this change within 30 days.

H. Interlocal: The RECIPIENT certifies by signing this agreement that all negotiated interlocal agreements necessary for the project are, or shall be, consistent with the terms of this agreement and Chapter 39.34 RCW, "Interlocal Cooperation Act." The RECIPIENT shall submit a copy of each interlocal agreement necessary for the project to ECOLOGY upon request.

I. Lobbying and Litigation: Costs incurred for the purposes of lobbying or litigation are not eligible for funding under this agreement.

J. Post Project Assessment Survey: The RECIPIENT agrees to participate in a brief survey regarding the key project results or water quality project outcomes and the status of long-term environmental results or goals from the project approximately three years after project completion. A representative from ECOLOGY's Water Quality Program may contact the RECIPIENT to request this data. ECOLOGY may also conduct site interviews and inspections, and may otherwise evaluate the project, as part of this assessment.

K. Project Status Evaluation: ECOLOGY may evaluate the status of this project 18 months from the effective date of this agreement. ECOLOGY's Project Manager and Financial Manager will meet with the RECIPIENT to review spending trends, completion of outcome measures, and overall project administration and performance. If the RECIPIENT fails to make satisfactory progress toward achieving project outcomes, ECOLOGY may change the scope of work, reduce grant funds, or increase oversight measures.

L. Technical Assistance: Technical assistance for agriculture activities provided under the terms of this agreement shall be consistent with the current U.S. Natural Resource Conservation Service ("NRCS") Field Office Technical Guide for Washington State and specific requirements outlined in the Water Quality Funding Guidelines. Technical assistance, proposed practices, or project designs that do not meet these standards may be eligible if approved in writing by ECOLOGY.

Section 3: The Following Conditions Apply to Section 319 and Centennial Clean Water Funded Projects Being Used to Match Section 319 Funds Only.

The RECIPIENT must submit the following documents to ECOLOGY before this agreement is signed by ECOLOGY:

1. Federal Funding Accountability and Transparency Act (FFATA) Form, available on the Water Quality Program website. (This form is used for Section 319 funds only)

2. "Section 319 Initial Data Reporting" form in EAGL.

A. Data Reporting: The RECIPIENT must complete the "Section 319 Initial Data Reporting" form in EAGL before this agreement can be signed by Ecology. This form is used to gather general information about the project for EPA.

B. Funding Recognition and Outreach: In addition to Section 2.F. of these Special Terms and Conditions, the RECIPIENT shall provide signage that informs the public that the project is funded by EPA. The signage shall contain the EPA logo and follow [usage requirements](#)⁸³. To obtain the appropriate EPA logo or seal graphic file, the RECIPIENT may send a request to their Ecology Financial Manager.

To increase public awareness of projects serving communities where English is not the predominant language, RECIPIENTS are encouraged to provide their outreach strategies communication in non-English languages. Translation costs for this purpose are allowable, provided the costs are reasonable. (Applies to both the Section 319 funded projects and the Centennial match projects)

The RECIPIENT shall use the following paragraph in all reports, documents, and signage developed under this agreement: (Applies to Section 319 funded projects only)

"This project has been funded wholly or in part by the United States Environmental Protection Agency under an assistance agreement to the Washington State Department of Ecology. The contents of this document do not necessarily reflect the views and policies of the Environmental Protection Agency, nor does the mention of trade names or commercial products constitute endorsement or recommendation for use."

C. Load Reduction Reporting: The RECIPIENT shall complete the "Section 319 Annual Load Reduction Reporting" form in EAGL by January 15 of each year and at project close-out. ECOLOGY may hold reimbursements until the RECIPIENT has completed the form. This form is used to gather information on best management practices (BMPs) installed and associated pollutant load reductions that were funded as a part of this project.

D. Time Extension: The RECIPIENT may request a one-time extension for up to 12 months. However, the time extension cannot exceed the time limitation established in EPA's assistance

⁸³ <http://www2.epa.gov/stylebook/using-epa-seal-and-logo>

agreement. In the event a time extension is requested and approved by ECOLOGY, the RECIPIENT must complete all eligible work performed under this agreement by the expiration date. (For Section 319 funded projects only)

Section 4: The Following Conditions Apply to Section 319 and State Revolving Fund (SRF) Loan Funded Projects Only.

A. Accounting Standards: The RECIPIENT shall maintain accurate records and accounts for the project (PROJECT Records) in accordance with Generally Accepted Accounting Principles (GAAP) as issued by the Governmental Accounting Standards Board (GASB), including standards related to the reporting of infrastructure assets or in accordance with the standards in Chapter 43.09.200 RCW “Local Government Accounting – Uniform System of Accounting.”

B. Acquisitions: Section 319 and SRF Equivalency project RECIPIENTS shall comply with the terms and conditions of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, 84 Stat. 1894 (1970)--Public Law 91-646, as amended by the Surface Transportation and Uniform Relocation Assistance Act, PL 100-17-1987, and applicable regulations and procedures of the federal agency implementing that Act.

C. Audit Requirements: In accordance with 2 CFR 200.501(a), the RECIPIENT agrees to obtain a single audit from an independent auditor, if their organization expends \$750,000 or more in total Federal funds in their fiscal year. The RECIPIENT must submit the form SF-SAC and a Single Audit Report Package within 9 months of the end of the fiscal year or 30 days after receiving the report from an independent auditor. The SF-SAC and a Single Audit Report Package MUST be submitted using the [Federal Audit Clearinghouse’s Internet Data Entry System](#)⁸⁴. For complete information on how to accomplish the single audit submission, go to the [Federal Audit Clearinghouse Web site](#)⁸⁵.

D. Archaeological Resources and Historic Properties (Section 106): The RECIPIENT shall comply with the additional requirements under section 106 of the National Historic Preservation Act (NHPA, 36 CFR 800).

E. Data Universal Numbering System (DUNS) and Central Contractor Registration (CCR) Requirements: RECIPIENTS shall have a DUNS number. Unless exempted from this requirement under 2 CFR 25.110, the RECIPIENT must ensure that their organization’s information in the [System for Award Management \(SAM\)](#)⁸⁶ is kept current through project closeout. This requires that the RECIPIENT reviews and updates the information at least annually after the initial registration, and more frequently if information changes.

F. Disadvantaged Business Enterprise (DBE): General Compliance, 40 CFR, Part 33. The RECIPIENT agrees to comply with the requirements of the Environmental Protection Agency’s Program for Utilization of Small, Minority, and Women’s Business Enterprises (MBE/WBE)

⁸⁴ <https://harvester.census.gov/fac/collect/ddeindex.html>

⁸⁵ <http://harvester.census.gov/fac>

⁸⁶ <https://www.sam.gov/>

40CFR, Part 33 in procurement under this agreement.

Six Good Faith Efforts, 40 CFR, Part 33, Subpart C. The RECIPIENT agrees to make the following good faith efforts whenever procuring construction, equipment, services, and supplies under this agreement. Records documenting compliance with the following six good faith efforts shall be retained:

- 1) Ensure Disadvantaged Business Enterprises are made aware of contracting opportunities to the fullest extent practicable through outreach and recruitment activities. For Indian Tribal, State and Local and Government RECIPIENTS, this shall include placing Disadvantaged Business Enterprises on solicitation lists and soliciting them whenever they are potential sources.
- 2) Make information on forthcoming opportunities available to Disadvantaged Business Enterprises and arrange time frames for contracts and establish delivery schedules, where the requirements permit, in a way that encourages and facilitates participation by Disadvantaged Business Enterprises in the competitive process. This includes, whenever possible, posting solicitations for bids or proposals for a minimum of thirty (30) calendar days before the bid or proposal closing date.
- 3) Consider, in the contracting process, whether firms competing for large contracts could subcontract with Disadvantaged Business Enterprises. For Indian Tribal, State, and Local Government RECIPIENTS, this shall include dividing total requirements when economically feasible into smaller tasks or quantities to permit maximum participation by Disadvantaged Business Enterprises in the competitive process.
- 4) Encourage contracting with a consortium of Disadvantaged Business Enterprises when a contract is too large for one of these firms to handle individually.
- 5) Use services and assistance of the Small Business Administration and the Minority Business Development Agency of the Department of Commerce.
- 6) If the prime contractor awards subcontracts, require the prime contractor to take the five good faith efforts steps in paragraphs 1 through 5 above.

The RECIPIENT agrees to submit ECOLOGY's Contractor Participation Report Form D with each payment request.

Contract Administration Provisions, 40 CFR, Section 33.302. The RECIPIENT agrees to comply with the contract administration provisions of 40 CFR, Section 33.302.

Non-discrimination Provision. The RECIPIENT shall not discriminate on the basis of race, color, national origin or sex in the performance of this agreement. The RECIPIENT shall carry out applicable requirements of 40 CFR Part 33 in the award and administration of contracts awarded under EPA financial assistance agreements. Failure by the RECIPIENT to carry out these requirements is a material breach of this agreement which may result in the termination of this contract or other legally available remedies.

This does not preclude the RECIPIENT from enacting broader nondiscrimination protections.

The RECIPIENT shall comply with all federal and state nondiscrimination laws, including but not limited to, Title VI and VII of the Civil Rights Act of 1964, Section 504 of the Rehabilitation Act of 1973, Title IX of the Education Amendments of 1972, the Age Discrimination Act of 1975, and Chapter 49.60 RCW, Washington's Law Against Discrimination, and 42 U.S.C. 12101 et seq, the Americans with Disabilities Act (ADA).

In the event of the RECIPIENT's noncompliance or refusal to comply with any applicable nondiscrimination law, regulation, or policy, this agreement may be rescinded, canceled, or terminated in whole or in part and the RECIPIENT may be declared ineligible for further funding from ECOLOGY. The RECIPIENT shall, however, be given a reasonable time in which to cure this noncompliance.

The RECIPIENT shall include the following terms and conditions in contracts with all contractors, subcontractors, engineers, vendors, and any other entity for work or services pertaining to this agreement.

"The Contractor will not discriminate on the basis of race, color, national origin or sex in the performance of this Contract. The Contractor will carry out applicable requirements of 40 CFR Part 33 in the award and administration of contracts awarded under Environmental Protection Agency financial agreements. Failure by the Contractor to carry out these requirements is a material breach of this Contract which may result in termination of this Contract or other legally available remedies."

Bidder List, 40 CFR, Section 33.501(b) and (c). The RECIPIENT agrees to create and maintain a bidders list. The bidders list shall include the following information for all firms that bid or quote on prime contracts, or bid or quote subcontracts, including both MBE/WBEs and non-MBE/WBEs.

1. Entity's name with point of contact
2. Entity's mailing address, telephone number, and e-mail address
3. The procurement on which the entity bid or quoted, and when
4. Entity's status as an MBE/WBE or non-MBE/WBE

G. Electronic and information Technology (EIT) Accessibility: RECIPIENTS shall ensure that loan funds provided under this agreement for costs in the development or purchase of EIT systems or products provide individuals with disabilities reasonable accommodations and an equal and effective opportunity to benefit from or participate in a program, including those offered through electronic and information technology as per Section 504 of the Rehabilitation Act, codified in 40 CFR Part 7. Systems or products funded under this agreement must be designed to meet the diverse needs of users without barriers or diminished function or quality. Systems shall include usability features or functions that accommodate the needs of persons with disabilities, including those who use assistive technology.

H. Hotel-Motel Fire Safety Act: The RECIPIENT shall ensure that all space for conferences, meetings, conventions or training seminars funded in whole or in part with federal funds complies with the protection and control guidelines of the Hotel and Motel Fire Safety Act (15 USC 2225a, PL 101-391, as amended). Recipients may search the [Hotel-Motel National Master List](#)⁸⁷ to see if a property is in compliance, or to find other information about the Act. Pursuant to 15 USC 2225a.

I. Trafficking In Persons: The RECIPIENT and RECIPIENT employees that are private entities shall not engage in forms of trafficking in persons during the period of time this agreement is effective. This includes, but is not limited to, the procurement of a commercial sex act or forced labor. The RECIPIENT shall notify ECOLOGY immediately of any information received from any source alleging a violation under this provision.

Section 5: The Following Conditions Apply to State Revolving Fund (SRF) Loan Funded Projects Only.

The RECIPIENT must submit the following documents/forms to ECOLOGY before this agreement is signed by ECOLOGY:

1. Financial Capability Assessment Documentation
 2. Opinion of RECIPIENT's Legal Council
 3. Authorizing Ordinance or Resolution
 4. Federal Funding Accountability and Transparency Act (FFATA) Form (Required for SRF Equivalency projects only)
 5. CWSRF Federal Reporting Information form available in EAGL
 6. Fiscal Sustainability Plan (Asset Management) Certification Form in EAGL (Only required if the project includes construction of a wastewater or stormwater facility construction)
 7. Cost and Effectiveness Analysis Certification Form in EAGL (Required for all projects receiving SRF Loan funding)
 8. State Environmental Review Process (SERP) Documentation (Required for facility projects only)
- A. Alteration and Eligibility of Project: During the term of this agreement, the RECIPIENT (1) shall not materially alter the design or structural character of the project without the prior written approval of ECOLOGY and (2) shall take no action which would adversely affect the eligibility of the project as defined by applicable funding program rules and state statutes, or which would cause a violation of any covenant, condition, or provision herein.

B. American Iron and Steel (Buy American): This loan provision applies to projects for the

⁸⁷ <http://www.usfa.dhs.gov/applications/hotel/>

construction, alteration, maintenance, or repair of a “treatment works” as defined in the Federal Water Pollution Control Act (33 USC 1381 et seq.) The RECIPIENT shall ensure that all iron and steel products used in the project are produced in the United States. Iron and Steel products means the following products made primarily of iron or steel: lined or unlined pipes and fittings, manhole covers and other municipal castings, hydrants, tanks, flanges, pipe clamps and restraints, valves, structural steel, reinforced precast concrete, and construction materials. The RECIPIENT may request waiver from this requirement from the Administrator of the Environmental Protection Agency. The RECIPIENT must coordinate all waiver requests through ECOLOGY. This provision does not apply if the engineering plans and specifications for the project were approved by ECOLOGY prior to January 17, 2014. ECOLOGY reserves the right to request documentation of RECIPIENT’S compliance with this provision.

C. Authority of RECIPIENT: This agreement is authorized by the Constitution and laws of the state of Washington, including the RECIPIENT’S authority, and by the RECIPIENT pursuant to the authorizing ordinance or resolution. The RECIPIENT shall submit a copy of the authorizing ordinance or resolution to the ECOLOGY Financial Manager before this agreement shall be signed by ECOLOGY.

D. Equivalency Projects: (For designated equivalency projects only)

1. The RECIPIENT must procure architectural and engineering services in accordance with the federal requirements in [Chapter 11 of Title 40, U.S.C.](#)⁸⁸.

E. Fiscal Sustainability Plan Certification: The RECIPIENT shall submit a completed Fiscal Sustainability Plan Certification before this agreement is signed by ECOLOGY. The Fiscal Sustainability Plan Certification is available from the ECOLOGY Financial Manager or on the Water Quality Program website.

F. Funding Recognition and Outreach: In addition to Section 2.F of these Terms and Conditions, the RECIPIENT agrees to comply with the [EPA SRF Signage Guidance](#)⁸⁹ in order to enhance public awareness of EPA assistance agreements nationwide.

G. Insurance: The RECIPIENT shall at all times carry fire and extended insurance coverage, public liability, and property damage, and such other forms of insurance with responsible insurers and policies payable to the RECIPIENT on such of the buildings, equipment, works, plants, facilities, and properties of the Utility as are ordinarily carried by municipal or privately-owned utilities engaged in the operation of like systems, and against such claims for damages as are ordinarily carried by municipal or privately-owned utilities engaged in the operation of like systems, or it shall self-insure or participate in an insurance pool or pools with reserves adequate, in the reasonable judgment of the RECIPIENT, to protect it against loss.

H. Litigation Authority: No litigation is now pending, or to the RECIPIENT’S knowledge, threatened, seeking to restrain, or enjoin:

⁸⁸ www.gpo.gov/fdsys/pkg/USCODE-2011-title40/pdf/USCODE-2011-title40-subtitleI-chap11.pdf

⁸⁹ <http://www.ecy.wa.gov/programs/wq/funding/FundPrgrms/CWSRF/SignageGuidanceJune2015.pdf>

- (i) the execution of this agreement; or
- (ii) the fixing or collection of the revenues, rates, and charges or the formation of the ULID and the levy and collection of ULID Assessments therein pledged to pay the principal of and interest on the loan (for revenue secured lien obligations); or
- (iii) the levy and collection of the taxes pledged to pay the principal of and interest on the loan (for general obligation-secured loans and general obligation payable from special-assessment-secured loans); or
- (iv) in any manner questioning the proceedings and authority under which the agreement, the loan, or the project are authorized. Neither the corporate existence, or boundaries of the RECIPIENT nor the title of its present officers to their respective offices is being contested. No authority or proceeding for the execution of this agreement has been repealed, revoked, or rescinded.

I. Loan Interest Rate and Terms: This loan agreement shall remain in effect until the date of final repayment of the loan, unless terminated earlier according to the provisions herein.

When the Project Completion Date has occurred, ECOLOGY and the RECIPIENT shall execute an amendment to this loan agreement which details the final loan amount (Final Loan Amount), and ECOLOGY shall prepare a final loan repayment schedule. The Final Loan Amount shall be the combined total of actual disbursements made on the loan and all accrued interest to the computation date.

The Estimated Loan Amount and the Final Loan Amount (in either case, as applicable, a "Loan Amount") shall bear interest based on the interest rate identified in this agreement as the "Effective Interest Rate," per annum, calculated on the basis of a 365-day year. Interest on the Estimated Loan Amount shall accrue from and be compounded monthly based on the date that each payment is mailed to the RECIPIENT. The Final Loan Amount shall be repaid in equal installments, semiannually, over the term of this loan "Loan Term" as outlined in this agreement.

J. Loan Repayment:

Sources of Loan Repayment

1. Nature of RECIPIENT's Obligation. The obligation of the RECIPIENT to repay the loan from the sources identified below and to perform and observe all other agreements and obligations on its part, contained herein, shall be absolute and unconditional, and shall not be subject to diminution by setoff, counterclaim, or abatement of any kind. To secure the repayment of the loan from ECOLOGY, the RECIPIENT agrees to comply with all of the covenants, agreements, and attachments contained herein.
2. For General Obligation. This loan is a General Obligation Debt of the RECIPIENT.
3. For General Obligation Payable from Special Assessments. This loan is a General Obligation

Debt of the RECIPIENT payable from special assessments to be imposed within the constitutional and statutory tax limitations provided by law without a vote of the electors of the RECIPIENT on all of the taxable property within the boundaries of the RECIPIENT.

4. For Revenue-Secured: Lien Position. This loan is a Revenue-Secured Debt of the RECIPIENT's Utility. This loan shall constitute a lien and charge upon the Net Revenue junior and subordinate to the lien and charge upon such Net Revenue of any Senior Lien Obligations.

In addition, if this loan is also secured by Utility Local Improvement Districts (ULID) Assessments, this loan shall constitute a lien upon ULID Assessments in the ULID prior and superior to any other charges whatsoever.

5. Other Sources of Repayment. The RECIPIENT may repay any portion of the loan from any funds legally available to it.

6. Defeasance of the Loan. So long as ECOLOGY shall hold this loan, the RECIPIENT shall not be entitled to, and shall not affect, an economic Defeasance of the loan. The RECIPIENT shall not advance refund the loan.

If the RECIPIENT defeases or advance refunds the loan, it shall be required to use the proceeds thereof immediately upon their receipt, together with other available RECIPIENT funds, to repay both of the following:

(i) The Loan Amount with interest

(ii) Any other obligations of the RECIPIENT to ECOLOGY under this agreement, unless in its sole discretion ECOLOGY finds that repayment from those additional sources would not be in the public interest.

Failure to repay the Loan Amount plus interest within the time specified in ECOLOGY's notice to make such repayment shall incur Late Charges and shall be treated as a Loan Default.

7. Refinancing or Early Repayment of the Project. So long as ECOLOGY shall hold this loan, the RECIPIENT shall give ECOLOGY thirty days written notice if the RECIPIENT intends to refinance or make early repayment of the loan.

Method and Conditions on Repayments

1. Semiannual Payments. Notwithstanding any other provision of this agreement, the first semiannual payment of principal and interest on this loan shall be due and payable no later than one year after the project completion date or initiation of operation date, whichever comes first.

Thereafter, equal payments shall be due every six months.

If the due date for any semiannual payment falls on a Saturday, Sunday, or designated holiday for Washington State agencies, the payment shall be due on the next business day for Washington State agencies.

Payments shall be mailed to:
 Department of Ecology
 Cashiering Unit
 P.O. Box 47611
 Olympia WA 98504-7611

In lieu of mailing payments, electronic fund transfers can be arranged by working with ECOLOGY's Financial Manager.

No change to the amount of the semiannual principal and interest payments shall be made without a mutually signed amendment to this agreement. The RECIPIENT shall continue to make semiannual payments based on this agreement until the amendment is effective, at which time the RECIPIENT's payments shall be made pursuant to the amended agreement.

2. Late Charges. If any amount of the Final Loan Amount or any other amount owed to ECOLOGY pursuant to this agreement remains unpaid after it becomes due and payable, ECOLOGY may assess a late charge. The late charge shall be one percent per month on the past due amount starting on the date the debt becomes past due and until it is paid in full.

3. Repayment Limitations. Repayment of the loan is subject to the following additional limitations, among others: those on defeasance, refinancing and advance refunding, termination, and default and recovery of payments.

4. Prepayment of Loan. So long as ECOLOGY shall hold this loan, the RECIPIENT may prepay the entire unpaid principal balance of and accrued interest on the loan or any portion of the remaining unpaid principal balance of the Loan Amount. Any prepayments on the loan shall be applied first to any accrued interest due and then to the outstanding principal balance of the Loan Amount. If the RECIPIENT elects to prepay the entire remaining unpaid balance and accrued interest, the RECIPIENT shall first contact ECOLOGY's Revenue/Receivable Manager of the Fiscal Office.

K. Loan Security

Due Regard: For loans secured with a Revenue Obligation: The RECIPIENT shall exercise due regard for Maintenance and Operation Expense and the debt service requirements of the Senior Lien Obligations and any other outstanding obligations pledging the Gross Revenue of the Utility, and it has not obligated itself to set aside and pay into the loan Fund a greater amount of the Gross Revenue of the Utility than, in its judgment, shall be available over and above such Maintenance and Operation Expense and those debt service requirements.

Where collecting adequate gross utility revenue requires connecting additional users, the RECIPIENT shall require the sewer system connections necessary to meet debt obligations and expected operation and maintenance expenses.

Levy and Collection of Taxes (if used to secure the repayment of the loan): For so long as the loan is outstanding, the RECIPIENT irrevocably pledges to include in its budget and levy taxes annually within the constitutional and statutory tax limitations provided by law without a vote

of its electors on all of the taxable property within the boundaries of the RECIPIENT in an amount sufficient, together with other money legally available and to be used therefore, to pay when due the principal of and interest on the loan, and the full faith, credit and resources of the RECIPIENT are pledged irrevocably for the annual levy and collection of those taxes and the prompt payment of that principal and interest.

Not an Excess Indebtedness: For loans secured with a general obligation pledge or a general obligation pledge on special assessments: The RECIPIENT agrees that this agreement and the loan to be made do not create an indebtedness of the RECIPIENT in excess of any constitutional or statutory limitations.

Pledge of Net Revenue and ULID Assessments in the ULID (if used to secure the repayment of this loan): For so long as the loan is outstanding, the RECIPIENT irrevocably pledges the Net Revenue of the Utility, including applicable ULID Assessments in the ULID, to pay when due the principal of and interest on the loan.

Utility Local Improvement District (ULID) Assessment Collection (if used to secure the repayment of the loan): All ULID Assessments in the ULID shall be paid into the Loan Fund and used to pay the principal of and interest on the loan.

L. Maintenance and Operation of a Funded Utility: The RECIPIENT shall, at all times, maintain and keep the funded Utility in good repair, working order, and condition.

M. Opinion of RECIPIENT's Legal Counsel: The RECIPIENT must submit an "Opinion of Legal Counsel to the RECIPIENT" to ECOLOGY before this agreement will be signed. ECOLOGY will provide the form.

N. Prevailing Wage (Davis-Bacon Act): The RECIPIENT agrees, by signing this agreement, to comply with the Davis-Bacon Act prevailing wage requirements. This applies to the construction, alteration, and repair of treatment works carried out, in whole or in part, with assistance made available by the State Revolving Fund as authorized by Section 513, title VI of the Federal Water Pollution Control Act (33 U.S.C. 1372). Laborers and mechanics employed by contractors and subcontractors shall be paid wages not less often than once a week and at rates not less than those prevailing on projects of a character similar in the locality as determined by the Secretary of Labor.

The RECIPIENT shall obtain the wage determination for the area in which the project is located prior to issuing requests for bids, proposals, quotes or other methods for soliciting contracts (solicitation). These wage determinations shall be incorporated into solicitations and any subsequent contracts. The RECIPIENT shall ensure that the required EPA contract language regarding Davis-Bacon Wages is in all contracts and sub contracts in excess of \$2,000. The RECIPIENT shall maintain records sufficient to document compliance with the Davis-Bacon Act, and make such records available for review upon request.

The RECIPIENT also agrees, by signing this agreement, to comply with State Prevailing Wages on Public Works, Chapter 39.12 RCW, as applicable. Compliance may include the determination

whether the project involves “public work” and inclusion of the applicable prevailing wage rates in the bid specifications and contracts. The RECIPIENT agrees to maintain records sufficient to evidence compliance with Chapter 39.12 RCW, and make such records available for review upon request.

O. Progress Reports: RECIPIENTS funded with State Revolving Fund Loan or Forgivable Principal shall include the following verification statement in the “General Comments” text box of each progress report.

“We verify that we are in compliance with all the requirements as outlined in our funding agreement(s) with the Department of Ecology. This includes but is not limited to:

- The Davis-Bacon Act, 29 CFR (If applicable)
- Washington State Prevailing Wage Rate, Chapter 39.12 RCW (Pertaining to all recipients)
- The Disadvantaged Business Enterprise (DBE), 40 CFR, Part 33”

P. Representations and Warranties: The RECIPIENT represents and warrants to ECOLOGY as follows:

Application: Material Information. All information and materials submitted by the RECIPIENT to ECOLOGY in connection with its loan application were, when made, and are, as of the date the RECIPIENT signs this agreement, true and correct. There is no material adverse information relating to the RECIPIENT, the project, the loan, or this agreement known to the RECIPIENT, which has not been disclosed in writing to ECOLOGY.

Existence; Authority. It is a duly formed and legally existing municipal corporation or political subdivision of the state of Washington or a federally recognized Indian Tribe. It has full corporate power and authority to execute, deliver, and perform all of its obligations under this agreement and to undertake the project identified herein.

Certification. Each payment request shall constitute a certification by the RECIPIENT to the effect that all representations and warranties made in this loan agreement remain true as of the date of the request and that no adverse developments, affecting the financial condition of the RECIPIENT or its ability to complete the project or to repay the principal of or interest on the loan, have occurred since the date of this loan agreement. Any changes in the RECIPIENT’s financial condition shall be disclosed in writing to ECOLOGY by the RECIPIENT in its request for payment.

Q. Sale or Disposition of Funded Utility: The RECIPIENT shall not sell, transfer, or otherwise dispose of any of the works, plant, properties, facilities, or other part of the funded Utility or any real or personal property comprising a part of the funded Utility unless:

1. The facilities or property transferred are not material to the operation of the funded Utility, or have become unserviceable, inadequate, obsolete, or unfit to be used in the operation of the funded Utility or are no longer necessary, material, or useful to the operation of the funded

Utility; or

2. The aggregate depreciated cost value of the facilities or property being transferred in any fiscal year comprises no more than three percent of the total assets of the funded Utility; or

3. The RECIPIENT receives from the transferee an amount equal to an amount which will be in the same proportion to the net amount of Senior Lien Obligations and this LOAN then outstanding (defined as the total amount outstanding less the amount of cash and investments in the bond and loan funds securing such debt) as the Gross Revenue of the funded Utility from the portion of the funded Utility sold or disposed of for the preceding year bears to the total Gross Revenue for that period.

4. Expressed written agreement by the ECOLOGY-.

The proceeds of any transfer under this paragraph must be used (1) to redeem promptly, or irrevocably set aside for the redemption of, Senior Lien Obligations and to redeem promptly the loan, and (2) to provide for part of the cost of additions to and betterments and extensions of the Utility.

R. Sewer-Use Ordinance or Resolution for Funded Wastewater Facility Projects: If not already in existence, the RECIPIENT shall adopt and shall enforce a sewer-use ordinance or resolution. Such ordinance or resolution shall be submitted to ECOLOGY upon request.

The sewer use ordinance must include provisions to:

- 1) Prohibit the introduction of toxic or hazardous wastes into the RECIPIENT's sewer system.
- 2) Prohibit inflow of stormwater into separated sewer systems.
- 3) Require that new sewers and connections be properly designed and constructed.

S. Termination and Default:

Termination and Default Events

1. For Insufficient ECOLOGY or RECIPIENT Funds. ECOLOGY may terminate this loan agreement for insufficient ECOLOGY or RECIPIENT funds.

2. For Failure to Commence Work. ECOLOGY may terminate this loan agreement for failure of the RECIPIENT to commence project work.

3. Past Due Payments. The RECIPIENT shall be in default of its obligations under this loan agreement when any loan repayment becomes 60 days past due.

4. Other Cause. The obligation of ECOLOGY to the RECIPIENT is contingent upon satisfactory performance in full by the RECIPIENT of all of its obligations under this loan agreement. The RECIPIENT shall be in default of its obligations under this loan agreement if, in the opinion of ECOLOGY, the RECIPIENT has unjustifiably failed to perform any obligation required of it by this

loan agreement.

Procedures for Termination. If this loan agreement is terminated prior to project completion, ECOLOGY shall provide to the RECIPIENT a written notice of termination at least five working days prior to the effective date of termination (the "Termination Date"). The written notice of termination by the ECOLOGY shall specify the Termination Date and, when applicable, the date by which the RECIPIENT must repay any outstanding balance of the loan and all accrued interest (the "Termination Payment Date").

Termination and Default Remedies

No Further Payments. On and after the Termination Date, or in the event of a default event, ECOLOGY may, at its sole discretion, withdraw the loan and make no further payments under this agreement.

Repayment Demand. In response to an ECOLOGY initiated termination event, or in response to a loan default event, ECOLOGY may at its sole discretion demand that the RECIPIENT repay the outstanding balance of the Loan Amount and all accrued interest.

Interest after Repayment Demand. From the time that ECOLOGY demands repayment of funds, amounts owed by the RECIPIENT to ECOLOGY shall accrue additional interest at the rate of one percent per month, or fraction thereof.

Accelerate Repayments. In the event of a default, ECOLOGY may, in its sole discretion, declare the principal of and interest on the loan immediately due and payable, subject to the prior lien and charge of any outstanding Senior Lien Obligation upon the Net Revenue. That is, the loan is not subject to acceleration so long as any Senior Lien Obligations are outstanding. Repayments not made immediately upon such acceleration will incur Late Charges.

Late Charges. All amounts due to ECOLOGY and not paid by the RECIPIENT by the Termination Payment Date or after acceleration following a default event, as applicable, shall incur late charges.

Intercept State Funds. In the event of a default event and in accordance with Chapter 90.50A.060 RCW, "Defaults," any state funds otherwise due to the RECIPIENT may, at ECOLOGY's sole discretion, be withheld and applied to the repayment of the loan.

Property to ECOLOGY. In the event of a default event and at the option of ECOLOGY, any personal property (equipment) acquired under this agreement may, in ECOLOGY's sole discretion, become ECOLOGY's property. In that circumstance, ECOLOGY shall reduce the RECIPIENT's liability to repay money by an amount reflecting the fair value of such property.

Documents and Materials. If this agreement is terminated, all finished or unfinished documents, data studies, surveys, drawings, maps, models, photographs, and reports or other materials prepared by the RECIPIENT shall, at the option of ECOLOGY, become ECOLOGY property. The RECIPIENT shall be entitled to receive just and equitable compensation for any satisfactory work completed on such documents and other materials.

Collection and Enforcement Actions. In the event of a default event, the state of Washington reserves the right to take any actions it deems necessary to collect the amounts due, or to become due, or to enforce the performance and observance of any obligation by the RECIPIENT, under this agreement.

Fees and Expenses. In any action to enforce the provisions of this agreement, reasonable fees and expenses of attorneys and other reasonable expenses (including, without limitation, the reasonably allocated costs of legal staff) shall be awarded to the prevailing party as that term is defined in Chapter 4.84.330 RCW.

Damages. Notwithstanding ECOLOGY's exercise of any or all of the termination or default remedies provided in this agreement, the RECIPIENT shall not be relieved of any liability to ECOLOGY for damages sustained by ECOLOGY and/or the state of Washington because of any breach of this agreement by the RECIPIENT. ECOLOGY may withhold payments for the purpose of setoff until such time as the exact amount of damages due ECOLOGY from the RECIPIENT is determined.

T. User-Charge System for Funded Utilities: The RECIPIENT certifies that it has the legal authority to establish and implement a user-charge system and shall adopt a system of user-charges to assure that each user of the funded utility shall pay its proportionate share of the cost of operation and maintenance, including replacement during the design life of the project. The user-charge system will include provisions for a connection charge.

In addition, the RECIPIENT shall regularly evaluate the user-charge system, at least annually, to ensure the system provides adequate revenues necessary to operate and maintain the funded utility, to establish reserves to pay for replacement, and to repay the loan.

Ecology General Terms and Conditions per 7-1-2019 Version

Administrative Requirements

RECIPIENT shall follow the [Administrative Requirements for Recipients of Ecology Grants and Loans – EAGL Edition](#)⁹⁰.

RECIPIENT shall complete all activities funded by this Agreement and be fully responsible for the proper management of all funds and resources made available under this Agreement.

RECIPIENT agrees to take complete responsibility for all actions taken under this Agreement, including ensuring all subgrantees and contractors comply with the terms and conditions of this Agreement. ECOLOGY reserves the right to request proof of compliance by subgrantees and contractors.

RECIPIENT's activities under this Agreement shall be subject to the review and approval by ECOLOGY for the extent and character of all work and services.

⁹⁰ <https://fortress.wa.gov/ecy/publications/SummaryPages/1701004.html>

Amendments and Modifications

This Agreement may be altered, amended, or waived only by a written amendment executed by both parties. No subsequent modification(s) or amendment(s) of this Agreement will be of any force or effect unless in writing and signed by authorized representatives of both parties. ECOLOGY and the RECIPIENT may change their respective staff contacts and administrative information without the concurrence of either party.

Accessibility Requirements for Covered Technology

The RECIPIENT must comply with the Washington State Office of the Chief Information Officer, [OCIO Policy no. 188, Accessibility](#)⁹¹ as it relates to “covered technology.” This requirement applies to all products supplied under the agreement, providing equal access to information technology by individuals with disabilities, including and not limited to web sites/pages, web-based applications, software systems, video and audio content, and electronic documents intended for publishing on Ecology’s public web site.

Archaeological and Cultural Resources

RECIPIENT shall take reasonable action to avoid, minimize, or mitigate adverse effects to archeological and historic resources. The RECIPIENT must agree to hold harmless the State of Washington in relation to any claim related to historical or cultural artifacts discovered, disturbed, or damaged due to the RECIPIENT’s project funded under this Agreement. RECIPIENT shall:

Contact the ECOLOGY Program issuing the grant or loan to discuss any Cultural Resources requirements for their project:

For capital construction projects or land acquisitions for capital construction projects, if required, comply with Governor Executive Order 05-05, Archaeology and Cultural Resources.

For projects with any federal involvement, if required, comply with the National Historic Preservation Act.

Any cultural resources federal or state requirements must be completed prior to the start of any work on the project site.

If required by the ECOLOGY Program, submit an Inadvertent Discovery Plan (IDP) to ECOLOGY prior to implementing any project that involves ground disturbing activities. ECOLOGY will provide the IDP form.

RECIPIENT shall:

Keep the IDP at the project site.

⁹¹<https://ocio.wa.gov/policy/accessibility>

Make the IDP readily available to anyone working at the project site.

Discuss the IDP with staff and contractors working at the project site.

Implement the IDP when cultural resources or human remains are found at the project site.

If any archeological or historic resources are found while conducting work under this Agreement:

Immediately stop work and notify the ECOLOGY Program, the Department of Archaeology and Historic Preservation at (360) 586-3064, any affected Tribe, and the local government.

If any human remains are found while conducting work under this Agreement:

Immediately stop work and notify the local Law Enforcement Agency or Medical Examiner/Coroner's Office, and then the ECOLOGY Program.

Comply with RCW 27.53, RCW 27.44.055, and RCW 68.50.645, and all other applicable local, state, and federal laws protecting cultural resources and human remains.

Assignment

No right or claim of the RECIPIENT arising under this Agreement shall be transferred or assigned by the RECIPIENT.

Communication

RECIPIENT shall make every effort to maintain effective communications with the RECIPIENT's designees, ECOLOGY, all affected local, state, or federal jurisdictions, and any interested individuals or groups.

Compensation

Any work performed prior to effective date of this Agreement will be at the sole expense and risk of the RECIPIENT. ECOLOGY must sign the Agreement before any payment requests can be submitted.

Payments will be made on a reimbursable basis for approved and completed work as specified in this Agreement.

RECIPIENT is responsible to determine if costs are eligible. Any questions regarding eligibility should be clarified with ECOLOGY prior to incurring costs. Costs that are conditionally eligible require approval by ECOLOGY prior to expenditure.

RECIPIENT shall not invoice more than once per month unless agreed on by ECOLOGY.

ECOLOGY will not process payment requests without the proper reimbursement forms,

Progress Report and supporting documentation. ECOLOGY will provide instructions for

submitting payment requests.

ECOLOGY will pay the RECIPIENT thirty (30) days after receipt of a properly completed request for payment.

RECIPIENT will receive payment through Washington State's Office of Financial Management's Statewide Payee Desk. To receive payment you must register as a statewide vendor by submitting a [statewide vendor registration form and an IRS W-9 form](#)⁹². If you have questions about the vendor registration process, you can contact Statewide Payee Help Desk at (360) 407-8180 or email PayeeRegistration@ofm.wa.gov.

ECOLOGY may, at its sole discretion, withhold payments claimed by the RECIPIENT if the RECIPIENT fails to satisfactorily comply with any term or condition of this Agreement.

Monies withheld by ECOLOGY may be paid to the RECIPIENT when the work described herein, or a portion thereof, has been completed if, at ECOLOGY's sole discretion, such payment is reasonable and approved according to this Agreement, as appropriate, or upon completion of an audit as specified herein.

RECIPIENT must submit within thirty (30) days after the expiration date of this Agreement, all financial, performance, and other reports required by this agreement. Failure to comply may result in delayed reimbursement.

Compliance With All Laws

RECIPIENT agrees to comply fully with all applicable federal, state and local laws, orders, regulations, and permits related to this Agreement, including but not limited to:

RECIPIENT agrees to comply with all applicable laws, regulations, and policies of the United States and the State of Washington which affect wages and job safety.

RECIPIENT agrees to be bound by all applicable federal and state laws, regulations, and policies against discrimination.

RECIPIENT certifies full compliance with all applicable state industrial insurance requirements.

RECIPIENT agrees to secure and provide assurance to ECOLOGY that all the necessary approvals and permits required by authorities having jurisdiction over the project are obtained. RECIPIENT must include time in their project timeline for the permit and approval processes.

ECOLOGY shall have the right to immediately terminate for cause this Agreement as provided herein if the RECIPIENT fails to comply with above requirements.

If any provision of this Agreement violates any statute or rule of law of the state of Washington, it is considered modified to conform to that statute or rule of law.

⁹²<https://ofm.wa.gov/it-systems/statewide-vendorpayee-services>

Conflict of Interest

RECIPIENT and ECOLOGY agree that any officer, member, agent, or employee, who exercises any function or responsibility in the review, approval, or carrying out of this Agreement, shall not have any personal or financial interest, direct or indirect, nor affect the interest of any corporation, partnership, or association in which he/she is a part, in this Agreement or the proceeds thereof.

Contracting for Goods and Services

RECIPIENT may contract to buy goods or services related to its performance under this Agreement. RECIPIENT shall award all contracts for construction, purchase of goods, equipment, services, and professional architectural and engineering services through a competitive process, if required by State law. RECIPIENT is required to follow procurement procedures that ensure legal, fair, and open competition.

RECIPIENT must have a standard procurement process or follow current state procurement procedures. RECIPIENT may be required to provide written certification that they have followed their standard procurement procedures and applicable state law in awarding contracts under this Agreement.

ECOLOGY reserves the right to inspect and request copies of all procurement documentation, and review procurement practices related to this Agreement. Any costs incurred as a result of procurement practices not in compliance with state procurement law or the RECIPIENT's normal procedures may be disallowed at ECOLOGY's sole discretion.

Disputes

When there is a dispute with regard to the extent and character of the work, or any other matter related to this Agreement the determination of ECOLOGY will govern, although the RECIPIENT shall have the right to appeal decisions as provided for below:

RECIPIENT notifies the funding program of an appeal request.

Appeal request must be in writing and state the disputed issue(s).

RECIPIENT has the opportunity to be heard and offer evidence in support of its appeal.

ECOLOGY reviews the RECIPIENT's appeal.

ECOLOGY sends a written answer within ten (10) business days, unless more time is needed, after concluding the review.

The decision of ECOLOGY from an appeal will be final and conclusive, unless within thirty (30) days from the date of such decision, the RECIPIENT furnishes to the Director of ECOLOGY a written appeal. The decision of the Director or duly authorized representative will be final and

conclusive.

The parties agree that this dispute process will precede any action in a judicial or quasi-judicial tribunal.

Appeals of the Director's decision will be brought in the Superior Court of Thurston County. Review of the Director's decision will not be taken to Environmental and Land Use Hearings Office.

Pending final decision of a dispute, the RECIPIENT agrees to proceed diligently with the performance of this Agreement and in accordance with the decision rendered.

Nothing in this Agreement will be construed to limit the parties' choice of another mutually acceptable method, in addition to the dispute resolution procedure outlined above.

Environmental Data Standards

RECIPIENT shall prepare a Quality Assurance Project Plan (QAPP) for a project that collects or uses environmental measurement data. RECIPIENTS unsure about whether a QAPP is required for their project shall contact the ECOLOGY Program issuing the grant or loan. If a QAPP is required, the RECIPIENT shall:

Use ECOLOGY's QAPP Template/Checklist provided by the ECOLOGY, unless ECOLOGY Quality Assurance (QA) officer or the Program QA coordinator instructs otherwise.

Follow ECOLOGY's Guidelines for Preparing Quality Assurance Project Plans for Environmental Studies, July 2004 (Ecology Publication No. 04-03-030).

Submit the QAPP to ECOLOGY for review and approval before the start of the work.

RECIPIENT shall submit environmental data that was collected on a project to ECOLOGY using the Environmental Information Management system (EIM), unless the ECOLOGY Program instructs otherwise. The RECIPIENT must confirm with ECOLOGY that complete and correct data was successfully loaded into EIM, find [instructions here](#)⁹³.

RECIPIENT shall follow ECOLOGY's data standards when Geographic Information System (GIS) data is collected and processed. [Guidelines for Creating and Accessing GIS Data](#)⁹⁴ are available. RECIPIENT, when requested by ECOLOGY, shall provide copies to ECOLOGY of all final GIS data layers, imagery, related tables, raw data collection files, map products, and all metadata and project documentation.

Governing Law

This Agreement will be governed by the laws of the State of Washington, and the venue of any action brought hereunder will be in the Superior Court of Thurston County.

⁹³ <http://www.ecy.wa.gov/eim>

⁹⁴ <https://ecology.wa.gov/Research-Data/Data-resources/Geographic-Information-Systems-GIS/Standards>

Indemnification

ECOLOGY will in no way be held responsible for payment of salaries, consultant's fees, and other costs related to the project described herein, except as provided in the Scope of Work.

To the extent that the Constitution and laws of the State of Washington permit, each party will indemnify and hold the other harmless from and against any liability for any or all injuries to persons or property arising from the negligent act or omission of that party or that party's agents or employees arising out of this Agreement.

Independent Status

The employees, volunteers, or agents of each party who are engaged in the performance of this Agreement will continue to be employees, volunteers, or agents of that party and will not for any purpose be employees, volunteers, or agents of the other party.

Kickbacks

RECIPIENT is prohibited from inducing by any means any person employed or otherwise involved in this Agreement to give up any part of the compensation to which he/she is otherwise entitled to or receive any fee, commission, or gift in return for award of a subcontract hereunder.

Minority and Women's Business Enterprises (MWBE)

RECIPIENT is encouraged to solicit and recruit, to the extent possible, certified minority-owned (MBE) and women-owned (WBE) businesses in purchases and contracts initiated under this Agreement.

Contract awards or rejections cannot be made based on MWBE participation; however, the RECIPIENT is encouraged to take the following actions, when possible, in any procurement under this Agreement:

Include qualified minority and women's businesses on solicitation lists whenever they are potential sources of goods or services.

Divide the total requirements, when economically feasible, into smaller tasks or quantities, to permit maximum participation by qualified minority and women's businesses.

Establish delivery schedules, where work requirements permit, which will encourage participation of qualified minority and women's businesses.

Use the services and assistance of the Washington State Office of Minority and Women's Business Enterprises (OMWBE) (866-208-1064) and the Office of Minority Business Enterprises of the U.S. Department of Commerce, as appropriate.

Order of Precedence

In the event of inconsistency in this Agreement, unless otherwise provided herein, the inconsistency shall be resolved by giving precedence in the following order: (a) applicable federal and state statutes and regulations; (b) The Agreement; (c) Scope of Work; (d) Special Terms and Conditions; (e) Any provisions or terms incorporated herein by reference, including the "Administrative Requirements for Recipients of Ecology Grants and Loans"; (f) Ecology Funding Program Guidelines; and (g) General Terms and Conditions.

Presentation and Promotional Materials

ECOLOGY reserves the right to approve RECIPIENT's communication documents and materials related to the fulfillment of this Agreement:

If requested, RECIPIENT shall provide a draft copy to ECOLOGY for review and approval ten (10) business days prior to production and distribution.

RECIPIENT shall include time for ECOLOGY's review and approval process in their project timeline.

If requested, RECIPIENT shall provide ECOLOGY two (2) final copies and an electronic copy of any tangible products developed.

Copies include any printed materials, and all tangible products developed such as brochures, manuals, pamphlets, videos, audio tapes, CDs, curriculum, posters, media announcements, or gadgets with a message, such as a refrigerator magnet, and any online communications, such as web pages, blogs, and twitter campaigns. If it is not practical to provide a copy, then the RECIPIENT shall provide a description (photographs, drawings, printouts, etc.) that best represents the item.

Any communications intended for public distribution that uses ECOLOGY's logo shall comply with ECOLOGY's graphic requirements and any additional requirements specified in this Agreement. Before the use of ECOLOGY's logo contact ECOLOGY for guidelines.

RECIPIENT shall acknowledge in the communications that funding was provided by ECOLOGY.

Progress Reporting

RECIPIENT must satisfactorily demonstrate the timely use of funds by submitting payment requests and progress reports to ECOLOGY. ECOLOGY reserves the right to amend or terminate this Agreement if the RECIPIENT does not document timely use of funds.

RECIPIENT must submit a progress report with each payment request. Payment requests will not be processed without a progress report. ECOLOGY will define the elements and frequency of progress reports.

RECIPIENT shall use ECOLOGY's provided progress report format.

Quarterly progress reports will cover the periods from January 1 through March 31, April 1 through June 30, July 1 through September 30, and October 1 through December 31. Reports shall be submitted within thirty (30) days after the end of the quarter being reported.

RECIPIENT must submit within thirty (30) days of the expiration date of the project, unless an extension has been approved by ECOLOGY, all financial, performance, and other reports required by the agreement and funding program guidelines. RECIPIENT shall use the ECOLOGY provided closeout report format.

Property Rights

Copyrights and Patents. When the RECIPIENT creates any copyrightable materials or invents any patentable property under this Agreement, the RECIPIENT may copyright or patent the same but ECOLOGY retains a royalty free, nonexclusive, and irrevocable license to reproduce, publish, recover, or otherwise use the material(s) or property, and to authorize others to use the same for federal, state, or local government purposes.

Publications. When the RECIPIENT or persons employed by the RECIPIENT use or publish ECOLOGY information; present papers, lectures, or seminars involving information supplied by ECOLOGY; or use logos, reports, maps, or other data in printed reports, signs, brochures, pamphlets, etc., appropriate credit shall be given to ECOLOGY.

Presentation and Promotional Materials. ECOLOGY shall have the right to use or reproduce any printed or graphic materials produced in fulfillment of this Agreement, in any manner ECOLOGY deems appropriate. ECOLOGY shall acknowledge the RECIPIENT as the sole copyright owner in every use or reproduction of the materials.

Tangible Property Rights. ECOLOGY's current edition of "Administrative Requirements for Recipients of Ecology Grants and Loans," shall control the use and disposition of all real and personal property purchased wholly or in part with funds furnished by ECOLOGY in the absence of state and federal statutes, regulations, or policies to the contrary, or upon specific instructions with respect thereto in this Agreement.

Personal Property Furnished by ECOLOGY. When ECOLOGY provides personal property directly to the RECIPIENT for use in performance of the project, it shall be returned to ECOLOGY prior to final payment by ECOLOGY. If said property is lost, stolen, or damaged while in the RECIPIENT's possession, then ECOLOGY shall be reimbursed in cash or by setoff by the RECIPIENT for the fair market value of such property.

Acquisition Projects. The following provisions shall apply if the project covered by this Agreement includes funds for the acquisition of land or facilities:

RECIPIENT shall establish that the cost is fair value and reasonable prior to disbursement of funds provided for in this Agreement.

RECIPIENT shall provide satisfactory evidence of title or ability to acquire title for each parcel prior to disbursement of funds provided by this Agreement. Such evidence may include title

insurance policies, Torrens certificates, or abstracts, and attorney's opinions establishing that the land is free from any impediment, lien, or claim which would impair the uses intended by this Agreement.

Conversions. Regardless of the Agreement expiration date, the RECIPIENT shall not at any time convert any equipment, property, or facility acquired or developed under this Agreement to uses other than those for which assistance was originally approved without prior written approval of ECOLOGY. Such approval may be conditioned upon payment to ECOLOGY of that portion of the proceeds of the sale, lease, or other conversion or encumbrance which monies granted pursuant to this Agreement bear to the total acquisition, purchase, or construction costs of such property.

Records, Audits, and Inspections

RECIPIENT shall maintain complete program and financial records relating to this Agreement, including any engineering documentation and field inspection reports of all construction work accomplished.

All records shall:

Be kept in a manner which provides an audit trail for all expenditures.

Be kept in a common file to facilitate audits and inspections.

Clearly indicate total receipts and expenditures related to this Agreement.

Be open for audit or inspection by ECOLOGY, or by any duly authorized audit representative of the State of Washington, for a period of at least three (3) years after the final grant payment or loan repayment, or any dispute resolution hereunder.

RECIPIENT shall provide clarification and make necessary adjustments if any audits or inspections identify discrepancies in the records.

ECOLOGY reserves the right to audit, or have a designated third party audit, applicable records to ensure that the state has been properly invoiced. Any remedies and penalties allowed by law to recover monies determined owed will be enforced. Repetitive instances of incorrect invoicing or inadequate records may be considered cause for termination.

All work performed under this Agreement and any property and equipment purchased shall be made available to ECOLOGY and to any authorized state, federal or local representative for inspection at any time during the course of this Agreement and for at least three (3) years following grant or loan termination or dispute resolution hereunder.

RECIPIENT shall provide right of access to ECOLOGY, or any other authorized representative, at all reasonable times, in order to monitor and evaluate performance, compliance, and any other conditions under this Agreement.

Recovery of Funds

The right of the RECIPIENT to retain monies received as reimbursement payments is contingent upon satisfactory performance of this Agreement and completion of the work described in the Scope of Work.

All payments to the RECIPIENT are subject to approval and audit by ECOLOGY, and any unauthorized expenditure(s) or unallowable cost charged to this Agreement shall be refunded to ECOLOGY by the RECIPIENT.

RECIPIENT shall refund to ECOLOGY the full amount of any erroneous payment or overpayment under this Agreement.

RECIPIENT shall refund by check payable to ECOLOGY the amount of any such reduction of payments or repayments within thirty (30) days of a written notice. Interest will accrue at the rate of twelve percent (12%) per year from the time ECOLOGY demands repayment of funds.

Any property acquired under this Agreement, at the option of ECOLOGY, may become ECOLOGY's property and the RECIPIENT's liability to repay monies will be reduced by an amount reflecting the fair value of such property.

Severability

If any provision of this Agreement or any provision of any document incorporated by reference shall be held invalid, such invalidity shall not affect the other provisions of this Agreement which can be given effect without the invalid provision, and to this end the provisions of this Agreement are declared to be severable.

State Environmental Policy Act (SEPA)

RECIPIENT must demonstrate to ECOLOGY's satisfaction that compliance with the requirements of the State Environmental Policy Act (Chapter 43.21C RCW and Chapter 197-11 WAC) have been or will be met. Any reimbursements are subject to this provision.

Suspension

When in the best interest of ECOLOGY, ECOLOGY may at any time, and without cause, suspend this Agreement or any portion thereof for a temporary period by written notice from ECOLOGY to the RECIPIENT. RECIPIENT shall resume performance on the next business day following the suspension period unless another day is specified by ECOLOGY.

Sustainable Practices

In order to sustain Washington's natural resources and ecosystems, the RECIPIENT is fully

Appendix F: WQP/Ecology Terms and Conditions

encouraged to implement sustainable practices and to purchase environmentally preferable products under this Agreement.

Sustainable practices may include such activities as: use of clean energy, use of double-sided printing, hosting low impact meetings, and setting up recycling and composting programs.

Purchasing may include such items as: sustainably produced products and services, EPEAT registered computers and imaging equipment, independently certified green cleaning products, remanufactured toner cartridges, products with reduced packaging, office products that are refillable, rechargeable, and recyclable, 100% post-consumer recycled paper, and toxic free products.

For more suggestions visit ECOLOGY's web page, [Green Purchasing](#)⁹⁵.

Termination

For Cause

ECOLOGY may terminate for cause this Agreement with a seven (7) calendar days prior written notification to the RECIPIENT, at the sole discretion of ECOLOGY, for failing to perform an Agreement requirement or for a material breach of any term or condition. If this Agreement is so terminated, the parties shall be liable only for performance rendered or costs incurred in accordance with the terms of this Agreement prior to the effective date of termination.

Failure to Commence Work. ECOLOGY reserves the right to terminate this Agreement if RECIPIENT fails to commence work on the project funded within four (4) months after the effective date of this Agreement, or by any date mutually agreed upon in writing for commencement of work, or the time period defined within the Scope of Work.

Non-Performance. The obligation of ECOLOGY to the RECIPIENT is contingent upon satisfactory performance by the RECIPIENT of all of its obligations under this Agreement. In the event the RECIPIENT unjustifiably fails, in the opinion of ECOLOGY, to perform any obligation required of it by this Agreement, ECOLOGY may refuse to pay any further funds, terminate in whole or in part this Agreement, and exercise any other rights under this Agreement.

Despite the above, the RECIPIENT shall not be relieved of any liability to ECOLOGY for damages sustained by ECOLOGY and the State of Washington because of any breach of this Agreement by the RECIPIENT. ECOLOGY may withhold payments for the purpose of setoff until such time as the exact amount of damages due ECOLOGY from the RECIPIENT is determined.

For Convenience

ECOLOGY may terminate for convenience this Agreement, in whole or in part, for any reason when it is the best interest of ECOLOGY, with a thirty (30) calendar days prior written notification to the RECIPIENT, except as noted below. If this Agreement is so terminated, the parties shall be liable only for performance rendered or costs incurred in accordance with the terms of this Agreement prior to the effective date of termination.

⁹⁵ <https://ecology.wa.gov/Regulations-Permits/Guidance-technical-assistance/Sustainable-purchasing>

Non-Allocation of Funds. ECOLOGY's ability to make payments is contingent on availability of funding. In the event funding from state, federal or other sources is withdrawn, reduced, or limited in any way after the effective date and prior to the completion or expiration date of this Agreement, ECOLOGY, at its sole discretion, may elect to terminate the Agreement, in whole or part, or renegotiate the Agreement, subject to new funding limitations or conditions. ECOLOGY may also elect to suspend performance of the Agreement until ECOLOGY determines the funding insufficiency is resolved. ECOLOGY may exercise any of these options with no notification or restrictions, although ECOLOGY will make a reasonable attempt to provide notice.

In the event of termination or suspension, ECOLOGY will reimburse eligible costs incurred by the RECIPIENT through the effective date of termination or suspension. Reimbursed costs must be agreed to by ECOLOGY and the RECIPIENT. In no event shall ECOLOGY's reimbursement exceed ECOLOGY's total responsibility under the agreement and any amendments.

If payments have been discontinued by ECOLOGY due to unavailable funds, the RECIPIENT shall not be obligated to repay monies which had been paid to the RECIPIENT prior to such termination.

RECIPIENT's obligation to continue or complete the work described in this Agreement shall be contingent upon availability of funds by the RECIPIENT's governing body.

By Mutual Agreement

ECOLOGY and the RECIPIENT may terminate this Agreement, in whole or in part, at any time, by mutual written agreement.

In Event of Termination

All finished or unfinished documents, data studies, surveys, drawings, maps, models, photographs, reports or other materials prepared by the RECIPIENT under this Agreement, at the option of ECOLOGY, will become property of ECOLOGY and the RECIPIENT shall be entitled to receive just and equitable compensation for any satisfactory work completed on such documents and other materials.

Nothing contained herein shall preclude ECOLOGY from demanding repayment of all funds paid to the RECIPIENT in accordance with Recovery of Funds, identified herein.

Third Party Beneficiary

RECIPIENT shall ensure that in all subcontracts entered into by the RECIPIENT pursuant to this Agreement, the state of Washington is named as an express third party beneficiary of such subcontracts with full rights as such.

Waiver

Waiver of a default or breach of any provision of this Agreement is not a waiver of any
Appendix F: WQP/Ecology Terms and Conditions

subsequent default or breach, and will not be construed as a modification of the terms of this Agreement unless stated as such in writing by the authorized representative of ECOLOGY.

TO: City Council
FROM: Dan Smith, Water Resources & Sustainability Director
DATE: January 4, 2022
SUBJECT: Andersen Water Right Agreement

1) Recommended Action:

Staff requests City Council make a motion authorizing the Mayor to sign the Water Right Purchase and Sale Agreement with Andersen Water LLC. The Agreement was recommended for approval by the Public Works Committee at their December 9, 2021, meeting.

2) Background:

In 2019, Andersen Water LLC informed the Washington State Department of Health and the City of Tumwater that they were ceasing operations as a water service provider to the Velkommen Mobile Home Park. Over the last year, the City has negotiated the transfer of service for the customers of Andersen Water LLC and acquisition of the water rights for service to its existing customers.

The water right, 12 acre-feet, and 100 gallons per minute, is sufficient to supply the on-going needs of the transitioning customers. The City has not yet determined where the water rights will be transferred.

3) Policy Support:

Strategic Priority F - Be a Leader in Environmental Sustainability.

4) Alternatives:

☐ There are no identified alternatives that will provide a greater benefit to the City.

5) Fiscal Notes:

Acquisition of the water rights will cost \$27,500.00, funded by the Drinking Water Utility.

6) Attachments:

A. Water Right Purchase & Sale And Conveyance Agreement by and Between City of Tumwater and Andersen Water LLC

**WATER RIGHT PURCHASE AND SALE AND CONVEYANCE AGREEMENT
BY AND BETWEEN
CITY OF TUMWATER AND ANDERSEN WATER LLC**

THIS AGREEMENT, dated this _____ day of _____, 2021, is entered into by and between the City of Tumwater (“CITY”) and Andersen Water, LLC (“OWNER”), separately “PARTY” and collectively “PARTIES”.

RECITALS:

- A. The OWNER is a Washington Limited Liability Company that owns the Andersen Water System, a Group A water system (DOH ID# 04308R) (“ANDERSEN WATER SYSTEM”).
- B. The OWNER owns water rights that have been put to beneficial use by the ANDERSEN WATER SYSTEM for municipal water supply purposes as defined in RCW 90.03.015(4), specifically, Water Right Certificates No. G2-24079 and G2-24924 (“WATER RIGHTS”), which WATER RIGHTS are more particularly described in Exhibit A attached hereto and incorporated by reference herein.
- C. The CITY is a municipal corporation organized under the laws of the State of Washington.
- D. The CITY operates a Group A water system (DOH ID# 89700) (“CITY WATER SYSTEM”), whose service area includes the area served by the ANDERSEN WATER SYSTEM.
- E. The OWNER has notified the Washington State Department of Health of its intention to cease operations of the ANDERSEN WATER SYSTEM, a copy of which notice is attached hereto as Exhibit B and incorporated by reference herein.
- F. The ANDERSEN WATER SYSTEM is served by two public water supply wells authorized under the WATER RIGHTS located on Thurston County Tax Parcel No. 12704330101 (the “ANDERSEN WATER SYSTEM WELLS”). A third permit exempt well also exists on Thurston County Tax Parcel No. 12704330101 (the “EXEMPT WELL”). The ANDERSEN WATER SYSTEM WELLS and the

EXEMPT WELL are sometimes collectively referred to herein as the “EXISTING WELLS.”

- G. The ANDERSEN WATER SYSTEM, through the ANDERSEN WATER SYSTEM WELLS, currently provides water service to the Velkommen Mobile Home Park located at 2535 70th Avenue SW, Tumwater, WA and identified by Thurston County Tax Parcel No. 31560000100 owned by Tumwater 70th Ave LLC (the “MHP PROPERTY”). The owner of MHP PROPERTY is currently pursuing connection of the MHP PROPERTY to water service through the CITY.
- H. The ANDERSEN WATER SYSTEM, through the ANDERSEN WATER SYSTEM WELLS, also currently provides water service to two single family residential connections located on Thurston County Tax Parcel Nos. 12704330101 and 12704430801. The EXEMPT WELL provides water service to an additional single family residential connection located on Thurston County Tax Parcel Nos. 12704330101.
- I. The OWNER wishes to convey WATER RIGHTS to the CITY, subject to the terms and conditions set forth herein.
- J. The CITY wishes to acquire WATER RIGHTS from the OWNER to meet the needs of the CITY WATER SYSTEM.
- K. The CITY Council approved the purchase of the WATER RIGHTS at their meeting on _____ [date].

NOW, THEREFORE, in consideration of the terms, covenants, and conditions contained herein, the sufficiency of which is hereby acknowledged, the PARTIES mutually agree as follows:

1. **WATER RIGHTS INFORMATION**

The OWNER will provide to the CITY information reasonably requested by the CITY relating to WATER RIGHTS and other information that the OWNER believes may be useful in the evaluation of the WATER RIGHTS. In addition to written documentation, the OWNER will provide to the CITY its recollections and verbal information as to the history of water use and WATER RIGHTS, to the best of its recollection and belief. The OWNER understands that the CITY may need additional information after closing to support planning and permitting associated with the WATER RIGHTS; OWNER agrees to provide additional information reasonably requested by the CITY following conveyance of the WATER RIGHTS.

2. CONVEYANCE OF WATER RIGHTS

- a. At the CITY's request, the OWNER agrees to convey all of its interests in WATER RIGHTS, without limitation, to the CITY by Statutory Warranty Deed at closing.
- b. Closing shall be on a date agreed to by the PARTIES at the offices of Thurston County Title, Olympia Branch, 105 East 8th Avenue, Olympia, Washington 98501 or at the offices of Cascadia Law Group PLLC, 606 Columbia Street NW, Suite 212, Olympia, Washington 98501, or such other or differing locations as agreed by the PARTIES.
- c. The CITY agrees to pay any fees associated with closing.
- d. The CITY will prepare and submit documents and pay for recording as necessary with the Thurston County Auditor's Office.
- e. Closing shall occur no later than 30 days after the later occurring of the following events:
 - i. Execution of this AGREEMENT; or
 - ii. Connection of the MHP property to water service through the CITY.

3. CONSIDERATION FOR CONVEYANCE OF WATER RIGHTS

- a. At closing, the CITY will pay to the OWNER \$27,500 in a lump sum by warrant issued by the CITY.
- b. The CITY agrees to pay taxes due, if any, associated with conveyance of WATER RIGHTS.

4. LIMITATIONS, CONDITIONS AND RESERVATIONS

- a. Water Rights Only. For the avoidance of doubt, this AGREEMENT pertains only to the WATER RIGHTS. Nothing in this AGREEMENT is intended to or should be construed as agreeing to convey any interest in the existing water supply wells, pump houses, water system, or other real or personal property associated with the ANDERSEN WATER SYSTEM, or otherwise.
- b. Obligations Conditioned on MHP PROPERTY Disconnection. OWNER'S obligation to convey the WATER RIGHTS to the CITY and proceed with CLOSING shall be conditioned on connection of the MHP PROPERTY to the CITY WATER SYSTEM and disconnection from the ANDERSEN WATER SYSTEM.

Reserved Well Rights. The PARTIES recognize and acknowledge that the owners of Thurston County Tax Parcel Nos. 12704330101 and 12704430801 intend to or may intend to continue to rely on the EXISTING WELLS for water service associated with the three existing connections located on those parcels, and the PARTIES consent to the same. It is the PARTIES' understanding that such EXISTING WELLS following closing are intended to be exercised under the permit exemption authorized by RCW 90.44.050 as permit exempt wells, subject to any contrary determination by ECOLOGY.

5. REPRESENTATIONS AND WARRANTIES

The OWNER hereby makes the following representations and warranties to the CITY, and such warranties shall be applicable and in full force and effect throughout the entire Term of this AGREEMENT and shall survive the closing, that to the best of OWNER'S knowledge and belief:

- a. There is no suit, action, or arbitration, or legal or other proceedings or governmental investigation pending that affects the WATER RIGHTS or that would interfere with the OWNER'S ability to enter into this transaction, and to consummate the same;
- b. The OWNER has the authority to enter into this AGREEMENT and to consummate the transaction contemplated herein;
- c. The OWNER represents that during the period this AGREEMENT is in force, the OWNER has not entered into and will not enter into any other agreement, lease, contract or other obligation regarding the WATER RIGHTS other than this AGREEMENT, and that title to the WATER RIGHTS is and shall remain free and clear of any claims or encumbrances arising by, through, or under the OWNER, provided that the continued use of the EXISTING WELLS described in Section 4(c) above is acknowledged by the PARTIES and such use shall not constitute any breach of this representation and warranty.

If any representation or warranty of the OWNER is hereafter found to be untrue or incorrect, the OWNER shall refund all monies paid to the OWNER by the CITY.

6. TERM; TERMINATION

- a. This AGREEMENT shall commence upon the date of mutual execution (the "EFFECTIVE DATE") and shall continue in force until closing, unless earlier terminated pursuant to the terms hereof, or by written agreement of the PARTIES.
- b. In the event of such termination, this AGREEMENT shall be deemed null and void and all further performance by the PARTIES under this AGREEMENT will be excused.

7. HOLD HARMLESS AND INDEMNIFICATION

- a. The OWNER shall indemnify and hold the CITY and its agents, employees, elected officials and/or officers, harmless from, and shall process and defend at its own expense any and all claims, demands, suits, at law or equity, actions, penalties, losses, damages, or costs, of whatsoever kind or nature, brought against the CITY arising out of, in connection with, or incident to the following:
 - i. The OWNER's performance of its duties and obligations under this AGREEMENT;
 - ii. The OWNER's failure to perform any required aspect of its duties and obligations under this AGREEMENT.

In the event, however, that such claims referred to above are caused by or result from the concurrent negligence of the CITY, its agents, employees, and/or officers, this indemnity provision shall be valid and enforceable only to the extent of the negligence of the CITY; and provided further, that nothing herein shall require the OWNER to hold harmless or defend the CITY, its agents, employees, elected officials and/or officers from any claims arising from the sole negligence of the CITY, its agents, employees, and/or officers. The provisions of this section shall survive the expiration or termination of this AGREEMENT.

- b. The CITY shall indemnify and hold the OWNER and its agents, employees, and/or officers, harmless from, and shall process and defend at its own expense any and all claims, demands, suits, at law or equity, actions, penalties, losses, damages, or costs, of whatsoever kind or nature, brought against the OWNER arising out of, in connection with, or incident to the following:
 - i. The CITY's performance of its duties and obligations under this AGREEMENT;
 - ii. The CITY's failure to perform any required aspect of its duties and obligations under this AGREEMENT.

In the event, however, that such claims referred to above are caused by or result from the concurrent negligence of the OWNER, its agents, employees, and/or officers, this indemnity provision shall be valid and enforceable only to the extent of the negligence of the CITY; and provided further, that nothing herein shall require the CITY to hold harmless or defend the OWNER, its agents, employees and/or officers from any claims arising from the sole negligence of the OWNER, its agents, employees, and/or officers. The provisions of this section shall survive the expiration or termination of this AGREEMENT.

8. ASSIGNMENT OR DELEGATION

The OWNER shall not assign rights or delegate duties under this AGREEMENT or any portion of this AGREEMENT without the written consent of the CITY, which consent shall not be unreasonably withheld.

9. CHANGES AND TERMINATION

Either PARTY may request changes to this AGREEMENT; however, no change or addition to this AGREEMENT shall be valid or binding upon either PARTY unless such change or addition be in a writing signed by the PARTIES. Any such amendments shall be attached to and made part of this AGREEMENT.

10. NOTICE

Notice provided for in this AGREEMENT shall be delivered in person or sent by Certified U.S. Mail to the address provided in this AGREEMENT or to the last known mailing address.

CITY: City of Tumwater
Attn: Dan Smith, Director, Water Resources and Sustainability
555 Israel Road SW
Tumwater, WA 98501
Telephone: (360) 754-4140

OWNER: Andersen Water, LLC
Attn: Jim Andersen
5710 McLane Creek Ct. SW
Olympia, WA 98512
Telephone: (360) 790-5129

11. ATTORNEYS FEES AND COSTS

If any legal proceeding is brought by either PARTY against other PARTY for the enforcement of this AGREEMENT, or because of a dispute, breach, default, or misrepresentation in connection with any of the provisions of this AGREEMENT, the prevailing PARTY shall be entitled to recover from the other PARTY reasonable attorney's fees and other costs incurred in that action or proceeding in addition to any other relief to which such PARTY may be entitled.

12. JURISDICTION AND VENUE

This AGREEMENT has been and shall be construed as having been made and delivered within the State of Washington and it is agreed by each PARTY hereto that this AGREEMENT shall be governed by laws of the State of Washington, both as to interpretation and performance.

Any action of law, suit in equity, or judicial proceeding for the enforcement of this AGREEMENT or any provisions thereof shall be instituted and maintained in a court of competent jurisdiction in Thurston County, Washington.

13. SEVERABILITY

If any part, term or provision of this AGREEMENT is held by a court of competent jurisdiction to be illegal, void or unenforceable, the validity of the remaining provisions shall not be affected; the rights and obligations of the PARTIES shall be construed and enforced as if this AGREEMENT did not contain the particular provision held to be invalid; and this AGREEMENT shall be deemed modified to conform to such holding.

14. ENTIRE AGREEMENT

The PARTIES agree that this AGREEMENT is the complete expression of the terms hereto and any oral representations or understandings not incorporated herein are excluded.

15. TIME OF THE ESSENCE

The PARTIES recognize that time is of the essence in the performance of the provisions of this AGREEMENT.

16. FAILURE OF PERFORMANCE

Failure to comply with any of the provisions stated herein shall constitute material breach of contract and cause for termination. It is agreed by the PARTIES that the forgiveness of the nonperformance of any provision of this AGREEMENT does not constitute waiver of the other provisions of this AGREEMENT.

17. GOOD FAITH EFFORTS BY BOTH PARTIES

The OWNER and the CITY agree to make efforts to perform under the terms of this AGREEMENT in good faith and in a timely manner.

IN WITNESS WHEREOF, the PARTIES hereto have caused this AGREEMENT to be executed on the day and year first written above,

By:

ANDERSEN WATER, LLC

Name

Title

Address:

STATE OF WASHINGTON

COUNTY OF THURSTON

I certify that I know or have satisfactory evidence that _____(name) is the person who appeared before me, and said person acknowledged that (he/she) signed this instrument, on oath stated that (he/she) was authorized to execute the instrument and acknowledged it as the _____(title) of _____(company) to be the free and voluntary act of such party for the uses and purposes mentioned in the instrument.

Dated:_____

Notary Public in and for the State of Washington,
My appointment expires:_____.

CITY OF TUMWATER
555 Israel Road SW
Tumwater, WA 98501

PETE KMET, Mayor

ATTEST:

Melody Valiant, City Clerk

APPROVED AS TO FORM:

Karen Kirkpatrick, City Attorney

TO: City Council
 FROM: John Doan, City Administrator
 DATE: January 4, 2022
 SUBJECT: Resolution No. R2022-001; Ratifying and Reaffirming Emergency Actions in Response to the Declared Emergency Related to Novel Coronavirus (COVID-19)

1) Recommended Action:

Make a motion authorizing the Mayor to sign Resolution No. R2022-001, ratifying and reaffirming emergency actions in response to the declared emergency related to Novel Coronavirus (COVID-19).

2) Background:

The City declared an emergency on March 17, 2020, related to Novel Coronavirus. In response and pursuant to the declared emergency and orders from the Governor, the Mayor took certain actions to protect the public and employees, including but not limited to the closure of facilities, cancellation of meetings and events, cancellation of classes and programs, creation of additional leave for employees, changes to accounting policies, and allowances for utility bills and B&O tax payments. Since the approval of Resolution R2020-010, there have been three ratifications (Resolution R2020-010 on April 7, 2020; Resolution R2020-017 on July 21, 2020; and R2020-027 on December 1, 2020). With the election of a new Mayor and Councilmembers, it is necessary to have those emergency powers and orders ratified by Mayor Sullivan, which is what Resolution R2022-001 accomplishes. There are no new powers or orders contained therein. As drafted, the resolution requires a unanimous vote.

3) Policy Support:

Our Mission:

In active partnership with our community, we provide courageous leadership and essential municipal services to cultivate a prosperous economy, a healthy natural environment, vibrant neighborhoods, and a supportive social fabric.

Strategic Priorities and Goals 2021-2026

Refine and Sustain a Great Organization: Promote Employee Safety

4) Alternatives:

☐ Do not authorize Resolution No. R2022-001

5) Fiscal Notes:

There is no fiscal impact associated with authorizing this resolution. The City has received federal and state funding to cover some costs associated with the emergency.

6) Attachments:

A. Resolution No. R2022-001

RESOLUTION NO. R2022-001

A RESOLUTION of the City Council of the City of Tumwater, Washington, ratifying and reaffirming emergency actions in response to the declared emergency related to Novel Coronavirus (COVID-19) as provided herein.

WHEREAS, following U.S., state and county declaration of emergency, the Tumwater City Council adopted Resolution NO. R2020-008 on March 17, 2020, declaring a local emergency related to COVID-19 and invoking emergency powers and authority; and

WHEREAS, Resolution No. R2020-008 authorizes the City to incur obligations necessary to combat COVID-19 to protect the health and safety of persons and property and provide emergency assistance to the victims of the emergency; and

WHEREAS, the City Council finds that COVID-19 constitutes an emergency as defined by RCW 35A.34.140 and TMC 3.36.035; and

WHEREAS, on April 7, 2020, the City Council passed Resolution R2020-010 ratifying emergency actions taken since the passage of Resolution R2020-008; and

WHEREAS, on July 21, 2020, the City Council passed Resolution R2020-017 ratifying emergency actions taken since the passage of Resolution R2020-010; and

WHEREAS, on December 1, 2020, the City Council passed Resolution R2020-027 ratifying emergency actions taken since the passage of Resolution R2020-017; and

WHEREAS, a local emergency continues to exist in the City of Tumwater and the state continues to operate under emergency orders; and

WHEREAS, the City has elected a new Mayor and Councilmember effective January 1, 2022, necessitating that the newly elected officials ratify Resolutions R2020-008, R2020-010, R2020-017 and R2020-027.

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF TUMWATER AS FOLLOWS:

Section 1. Ratification. Any and all acts, whether specifically identified herein or not, undertaken by the Mayor and City staff consistent with Resolution

R2020-008, declaring a local emergency related to COVID-19, ratified by Resolutions R2020-010, R2020-017 and R2020-027, and those additional or revised actions taken prior to the effective date of this Resolution R2022-001 are ratified and approved.

Any act consistent with the authority and prior to the effective date of this Resolution is hereby ratified and affirmed.

Section 2. The City Council declares that a local emergency continues to exist in the City of Tumwater and Resolution R2020-008 remains in effect until rescinded in writing.

Section 3. Severability. The provisions of this Resolution are declared separate and severable. The invalidity of any clause, sentence, paragraph, subdivision, section, or portion of this Resolution or the invalidity of the application thereof to any person or circumstance, shall not affect the validity of the remainder of the Resolution, or the validity of its application to other persons or circumstances.

Section 4. Effective Date. This Resolution shall become effective immediately upon adoption and signature as provided by law.

RESOLVED this _____ day of January, 2022.

CITY OF TUMWATER

Debbie Sullivan, Mayor

ATTEST:

Melody Valiant, City Clerk

APPROVED AS TO FORM:

Karen Kirkpatrick, City Attorney

Resolution No. R2022-001 Page 2 of 2

TO: City Council
FROM: John Doan, City Administrator
DATE: January 4, 2022
SUBJECT: Regional Fire Authority Planning Consultant Contract with The Athena Group

1) Recommended Action:

Authorize the Mayor to sign the Service Provider Agreement with The Athena Group to support and facilitate the work of the Regional Fire Authority Planning Committee up to \$120,000.

2) Background:

The City entered into an interlocal agreement with the City of Olympia in May 2021 to explore the potential of a Regional Fire Authority between the two jurisdictions. A committee of elected officials, department leadership, and IAFF representatives was appointed. In order to support and facilitate the work of the Planning Committee, the City of Tumwater as the lead agency, solicited proposals to do this work. The Committee concurs that the team assembled by The Athena Group is the best qualified to do this work. Attached is the proposal from the Athena Group and the proposed contract. Athena is a local facilitation and consulting firm and they will be supplemented with subject matter experts on fire regionalization and finance.

3) Policy Support:

Strategic Priorities and Goals 2021-2026

Provide and Sustain Quality Public Safety Services: Explore regional fire and emergency medical services

4) Alternatives:

☐ Do not pursue this agreement.

5) Fiscal Notes:

The costs for this work are being shared with the City of Olympia. Although the contract is for \$99,900.00, staff is requesting additional authority for up to \$120,000 to cover additional consulting work that may be identified in the process.

6) Attachments:

- A. Athena Group Proposal
- B. Service Provider Agreement with The Athena Group



The Athena Group
112 4th Ave E, Suite 200
Olympia, WA 98501
P: (360) 754-1954
F: (360) 252-6555
info@athenaplace.com
www.athenaplace.com

December 3, 2021

RFA Planning Committee
c/o City of Tumwater
555 Israel Road SW
Tumwater, WA 98501
(360) 754-4120

Dear Committee Members:

It has recently come to our attention that the Cities of Olympia and Tumwater have released a request for qualifications for consultants to facilitate and support the work of the Regional Fire Authority Planning Committee.

We are pleased to introduce our team of consultants who are highly qualified to do this work. Our facilitator, Karen Meyer, has worked with local government public policy makers and health equity assessments for over 18 years and is a seasoned facilitator and project manager. Karen Reed and Bill Cushman are leading experts in Washington state for their knowledge and skill sets in planning, facilitating, and implementing regional fire authorities.

Following you will find our qualifications, high level scope of work, and estimated cost for the project, based on our current understanding and assumptions. If you are interested in working with us, we would of course want to refine the scope and budget to meet your needs before contracting. Please let us know if there is more detailed information you need to make your decision.

Thank you for this opportunity to provide you with our qualifications. Please feel free to contact me directly with any questions at (360) 754-1954 x115 or faitht@athenaplace.com, or you can contact our main point of contact Karen Meyer at (360) 808-8875 or karenm@athenaplace.com.

Sincerely,

Faith Trimble, Founder and Partner
The Athena Group

1. The Athena Group

The Athena Group, LLC is a Washington-based consulting firm that **cultivates the capacity for transformational change** in individuals, systems and society so that everyone has what they need to thrive. Our main lines of business are individual/leadership development, organization development, and community engagement. We integrate equity in all that we do whether its coaching, training, strategic planning, assessments, program evaluations, process improvements or community-based planning.

We are a high-impact consultancy working on some of the most pressing issues of our time, like affordable housing and homelessness, racial equity, early learning, economic justice, and mobility. We have eighteen partners and access to over fifty consultants with 20+ years of experience and a proven track record of results, such that our clients tend to be repeat customers and or referrals. Since inception, The Athena Group has served over 250 organizations in over 600 contracts, primarily state and local governments, along with business and community-based clients.

We are a licensed limited liability company headquartered on the traditional territories of the Coast Salish people, specifically the Nisqually and Squaxin Island people – otherwise known as Olympia, WA. We are a woman-owned small business licensed to do business in Washington, Oregon, Colorado, and Hawaii with certified Disadvantaged Business Enterprise (DBE), Small Business Enterprise (SBE), and Woman-Owned Business Enterprise (WBE) status.

2. Proposed Team and Experience

We are proposing a team consisting of three individuals with 25+ years of experience with facilitation, project management, local government and/or regional fire authorities. Copies of relevant work samples and references can be provided upon request.

Karen Meyer, Project Manager, Facilitation Lead

Karen Meyer (she/her) brings over 25 years of experience in community planning, public health, and project management. She has experience and expertise in designing and conducting community health needs assessments, with recent experience focused on equity assessments.

Karen has specific expertise in mixed methods research, including internal organizational self-assessment and a wide range of participatory processes to maintain a community-centered focus. As a part of both her professional and personal experience, Karen has worked to integrate diversity, equity and inclusion into systems and processes in both the public, public policy and non-profit sectors. She has worked with marginalized groups including black, indigenous, people of color, people with disabilities, seniors, LGBTQIA, various faith communities, unhoused, and youth. She has also worked with elected officials at both the town, city and county level on issues of public health and planning.

Karen is trained in and holds a certificate in Community Based Participatory Research (CBPR) from University of Michigan and has implemented CBPR approaches in multiple settings and with multiple populations. This work includes training and experience in facilitation, including meeting design. She also holds a Bachelor's degree in Urban Studies and Master's degree in Urban Planning, both from California State Polytechnic University.

Bill Cushman, Financial Analysis

Bill Cushman (he/him) began his association with municipal finance fifty years ago armed with a degree in English Literature from the University of Washington. Retiring after 30 distinguished years' of service with the City of Everett, Bill was recruited by the largest fire district in Washington, Snohomish County

Fire District 1, where he oversaw financial matters for 15 more years. In this role, Bill developed strategic financial planning models that allowed the Fire Commissioners and the Fire Administrative to work in concert to develop long-range financial and organizational programs with a high level of confidence that their common goals would be met with success. In addition, he prepared financial plans and documents that resulted in the creation of the South Snohomish County Regional Fire Authority, a consolidation of SnoCo FD1, the City of Lynnwood, and the City of Edmonds to bring the program to a successful voter-approved completion in 2019.

Since then, Bill has provided the financial documentation that brought the City of Monroe and Fire District 3 and Fire District 7 into a merger that was followed by the additional merger with Fire District 8 and the City of Lake Stevens, creating a new agency, Snohomish Regional Fire and Rescue. Other agencies that have benefitted from Bill's financial models include North County Regional Fire Authority, City of Arlington, City of Mill Creek, City of Kenmore, City of Bothell, Woodinville Fire, Northshore Fire, City of Marysville, Marysville Fire, City of Brier, and about 30 more municipal corporations.

Most recently, he has worked with:

- Whatcom County Fire District 21 with goal setting and financial planning and the setting of fire tax levies
- The City of Mill Creek with seeking alternative service provisions with a neighboring fire authority
- Lewis County Fire 6 with establishing a strategic budgeting process
- The City of Tukwila to provide financial modelling and fiscal planning as the City negotiates either a contract or annexation with either Renton RFA or Puget Sound RFA.

Karen Reed, Subject Matter Expert

Karen Reed (she/her) has worked with cities, counties and other local governments in Washington for over 35 years. Her consulting practice focuses on public process facilitation, strategic planning, and facilitating the development of interlocal agreements among multiple government agencies. Karen began her career practicing municipal law in Seattle. She then joined the City of Bellevue where she worked as Assistant City Manager handling the city's intergovernmental work for several years. She later worked in King County leading a major restructuring of the parks division and budget policy work. She launched her consulting practice in 2003.

Karen's recent projects include:

- Facilitating the creation of a regional fire authority combining the Lynnwood Fire Department and Snohomish County Fire District 1.
- Facilitating the annexation of the City of Arlington into North County Regional Fire Authority.
- Facilitating a community task force for the City of Tukwila charged with recommending options for the future of fire/EMS service.
- Facilitating initial discussions between the City of Everett and Fire District 4 (Snohomish) exploring the possibility of creating a regional fire authority.
- Facilitating the merger of the two communications dispatch agencies in Snohomish County.
- Facilitating ongoing annexation discussions between South Snohomish County RFA and the City of Mill Creek.

Karen has a law degree from Stanford University and a B.A. in economics and public policy from Pomona College.

3. Scope of Services

Task 1: Facilitation

Karen Meyer, guided by subject matter expert Karen Reed, will design, and facilitate meetings and the work of the City of Olympia and City of Tumwater RFA Planning Committee.

Consultant's tasks shall include developing a work plan for the Committee, developing Committee meeting agendas, providing strategic advice, reviewing, and editing materials prepared by staff, developing, and presenting materials related to governance issues, facilitating Committee meetings, facilitation staff team meetings in preparation for Committee meetings, finalizing draft meeting summaries prepared by staff designated by the Client. Consultant will participate in regular staff team meetings developing agendas and facilitating those meetings as needed.

We are estimating a total of 358 hours for facilitation and subject matter expert guidance. Hour estimates by task include:

- **Start-up work** (kick-off meeting, 13 interviews, drafting workplan, charter, etc.) - 38 hours
- **10 Monthly Planning Committee meetings** (Design, prep and facilitation) 26 hours per month for 10 months - 260 hours
- **3 sub-committee meetings** - 1 meeting each with sub-group of Planning Committee, Committee Chairs and city staff (Design, prep and facilitation) - 30 hours
- **2 council/commission briefings** (Prep and facilitation) - 8 hours
- **Other staff support as needed** - 22 hours

Task 2: Fiscal Analysis

Bill Cushman will lead the financial analysis, which includes a comprehensive strategic financial planning and organizational outlook plan. This estimated hours to complete this work is 86 hours, and includes the following modules:

Strategic Financial Planning Model: This comprehensive model captures the current financial condition of the agency, its total streams of revenue, its complete array of labor and operating costs, and its contributions to various reserve accounts. The planning horizon of the forecast model is seven years, while its focus serves to align the resources of the agency with a concurrent vision of the future for the mutual benefit of the public organization and its constituents.

Executive Summary: This model captures from the various sub-models all the key points and high-level data that are of particular importance to Commissioners, City Council members, Mayors and City Managers, and other executives and stakeholders of the municipal corporation.

Assessed Value Outlook: This module looks back over the history of assessed values and the trends that lend themselves to a view of future property values upon which property tax revenues are totally dependent.

Property Tax: This module offers a comprehensive outlook that will calculate future property taxes for that agency based on the insertion of the agency's current and foreseen assessed values. Additionally, the model will incorporate features to calculate and display the effects of levy lid lift elections or the recapture of dormant banked capacity revenues. The model will extend six years into the future and will be updated annually to extend its purview by one additional year.

Apparatus Replacement: This module will identify the apparatus inventory of the agency and calculate the cost of replacing existing, or newly acquiring additional, apparatus over a twenty-year cycle. The

model will recognize annual or periodic cash contributions into the apparatus reserve, or recognize the infusion of bond proceeds used to acquire apparatus. The election of councilmanic bonds will also generate a debt service schedule to be incorporated into the annual cashflow.

Equipment Replacement: This module will identify the equipment inventory of the agency and calculate the cost of replacing existing, or newly acquiring additional, equipment over a twenty-year cycle. The model will recognize annual or periodic cash contributions into the equipment reserve, or recognize the infusion of bond proceeds used to acquire equipment. The election of councilmanic bonds will also generate a debt service schedule to be incorporated into the annual cashflow.

Facilities and Project Report: This module will identify the facilities inventory of the agency and calculate the cost of replacing existing, or newly acquiring additional, facilities over a twenty-year cycle. The model will recognize annual or periodic cash contributions into the facilities and projects reserve, or recognize the infusion of bond proceeds used to acquire facilities or undertake small capital projects. The election of councilmanic bonds will also generate a debt service schedule to be incorporated into the annual cashflow.

Retirement Payout Planning Report: This module will allow the agency to build a cost projection of the financial reserves that will accumulate to offset the retirement payout liabilities that accrue as employees accumulate unpaid sick leave and vacation hours near the end of their active service.

Debt Service Planning Report: This module identifies the cashflow associated with the issuance and repayment of bonds issued for the replacement or acquisition of apparatus, equipment, and facilities in support of fire and EMS services.

Other Custom Models and Reports: The TORFA PC will have the opportunity to propose the development of custom models and reports that may be of interest.

CIP Index Report: The TORFA PC will receive a report on the latest CIP-W showing the rate of inflation. The data goes back to 1984 and continues to be updated every 60 days with the release of the CPI-W index for the Seattle-Tacoma area from the Bureau of Labor Statistics.

3. Schedule

We are assuming the project will begin in December 2021 and end in April 2023. Most of our work will occur December 2021-October 2022, working through the issues list outlined below. After the RFA plan is complete in the fall of 2022, our work will decrease but will still be available to facilitate the monthly RFA meetings.

RFA Issues List

Over-arching issues	Key Operational Issues	Key Financing Issues
Governance	Labor Issues	

	Timeline	Over-arching Issues
A	Dec. '21 - Jan. '22	Problem/Need Statement
B	Feb. - Dec. '22	Operational Efficiencies and other benefits that can be secured through the RFA
C		Overall Schedule and Work Plan
D		Public Outreach Plan during development of RFA Plan
E		Communications Plan
F		Overall Project and Election costs, allocation
G		Public Education Plan (Post RFA Plan Adoption through Election)
H		Transition Plan (Post Election through effective date)
		Structure, Services, Staffing, Financing Issues
1	Jan. - Apr. '23	Proposed RFA Boundaries
2		RFA Name

3		Service Start Date, Levy Start Date
4		What Services will the RFA Provide? <ul style="list-style-type: none"> ○ Ambulance services ○ ALS Transport ○ Fire Marshal and inspection services ○ Contracts to serve other agencies
5		Governance: Board structure <ul style="list-style-type: none"> ○ Values / Principles ○ Legal Options / What have others done? ○ Anticipated Role/Status of District 21 & 4 after RFA created
6		RFA Standards of Cover/Service Levels
7		Interlocal Service Agreements <ul style="list-style-type: none"> ○ Services provided by other agencies (regional dispatch, emergency management) <ul style="list-style-type: none"> ● Assignment to RFA ● Assets/liabilities transferred to RFA or retained? ● Valuation at transfer for purposes of audit
8		Services provided to other agencies—continue/assign?
9		Service from third parties -- ability to assign
10		Facilities – transferred to RFA, leased, or retained? Valuation
11		Apparatus / Equipment – transferred to RFA, leased, or retained? Valuation
12		RFA Staffing Levels <ul style="list-style-type: none"> ○ Existing staff transferred to RFA ○ Employee Salary assumptions ○ Employee Benefits Assumptions
13		Labor Management Issues <ul style="list-style-type: none"> ○ Bargaining Units status/implications for salary/benefits/schedules
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19			Existing District/City Reserves -- transfer/disposition
20			7-year financial plan <ul style="list-style-type: none"> ○ Target Cash Level Policies/ Initial Capitalization / Minimum Cash balances ○ How frequently will levy lid lifts be required to sustain service levels? ○ Inflation Assumptions on all costs ○ Capital (facilities, apparatus) cost assumptions ○ Starting funding rates/structures (fire levy, EMS, benefit charge)

Issues List Prepared by Karen Reed Consulting, LLC

4. Hourly Rate and Proposed Cost

Rates

Consultant will bill at a blended rate of \$225 per hour plus actual out of pocket expenses at cost (none presently anticipated).

Proposed Cost and Assumptions

The estimated cost of the above scope of work is up to and not to exceed \$100,000 (estimated 444 hours x \$225/hour).

Tasks		Hours	Total Cost
Task 1	Facilitation and Project Management	358	\$80,550
Task 2	Fiscal Analysis	86	\$19,350
Total Hours and Project Value		444	\$99,900

Our scope and budget assume the Client will cover the costs of the following activities outside of this contract:

- Legal counsel in support of the project
- A communications consultant or staff to guide public outreach during the RFA Plan development, as well as for the public education campaign and messaging should the Client determine to place an RFA measure on the ballot.
- Administrative support and community organizing including meeting scheduling, publication of public notices, compiling minutes, and organizing public involvement.
- Access to staff who can provide necessary financial data as requested.

Consultant will not provide legal services or legal advice to the Client.

**CITY OF TUMWATER
SERVICE PROVIDER AGREEMENT**

Regional Fire Authority Planning

THIS AGREEMENT is made and entered into in duplicate this _____ day of _____, 2022, by and between the CITY OF TUMWATER, a Washington municipal corporation, hereinafter referred to as the “CITY”, and THE ATHENA GROUP, a Washington corporation, hereinafter referred to as the “SERVICE PROVIDER”.

WITNESSETH:

WHEREAS, the CITY desires to have certain services and/or tasks performed as set forth below requiring specialized skills and other supportive capabilities; and

WHEREAS, sufficient CITY resources are not available to provide such services; and

WHEREAS, the SERVICE PROVIDER represents that the SERVICE PROVIDER is qualified and possesses sufficient skills and the necessary capabilities, including technical expertise, where required, to perform the services and/or tasks set forth in this Agreement.

NOW, THEREFORE, in consideration of the terms, conditions, covenants, and performance contained herein, the parties hereto agree as follows:

1. SCOPE OF SERVICES.

The SERVICE PROVIDER shall perform such services and accomplish such tasks, including the furnishing of all materials and equipment necessary for full performance thereof, as are identified and designated as SERVICE PROVIDER responsibilities throughout this Agreement and as detailed in Exhibit “A” Scope of Services attached hereto and incorporated herein (the “Project”).

2. TERM.

The Project shall begin no earlier than January 1, 2022 and shall be completed no later than December 31, 2023. This Agreement may be extended for additional periods of time upon mutual written agreement of the parties.

3. TERMINATION.

Prior to the expiration of the Term, this Agreement may be terminated immediately, with or without cause, by the CITY.

4. COMPENSATION AND METHOD OF PAYMENT.

A. Payments for services provided hereunder shall be made following the performance of such services, unless otherwise permitted by law and approved in writing by the CITY.

B. No payment shall be made for any service rendered by the SERVICE PROVIDER except for services identified and set forth in this Agreement.

C. The CITY shall pay the SERVICE PROVIDER for work performed under this Agreement a total sum not to exceed Ninety-Nine Thousand Nine Hundred and No/100 Dollars (\$99,900.00) as spelled out in Exhibit "A", the Scope to Services.

D. Upon execution of this Agreement, the SERVICE PROVIDER must submit IRS Form W-9 Request for Taxpayer Identification Number (TIN) and Certification unless a current Form W-9 is already on file with the CITY.

E. The SERVICE PROVIDER shall submit an invoice to the CITY for services rendered during the contract period. The CITY shall initiate authorization for payment after receipt of said invoice and shall make payment to the SERVICE PROVIDER within approximately thirty (30) days thereafter.

F. When subcontracting services or purchasing goods from third parties, as identified and approved in this Agreement, the SERVICE PROVIDER must submit written documentation establishing that the goods and/or services have been provided and the third party has been paid in order to receive payment for such goods and/or services.

G. Invoices may be submitted immediately following performance of services, but in no event shall an invoice be submitted more than twenty (20) business days following the end of the contract term or the end of the calendar year, whichever is earlier.

5. INDEPENDENT CONTRACTOR RELATIONSHIP.

A. The parties intend that an independent contractor relationship will be created by this Agreement. Subject to paragraphs herein, the

implementation of services pursuant to this Agreement will lie solely within the discretion of the SERVICE PROVIDER. No agent, employee, servant or representative of the SERVICE PROVIDER shall be deemed to be an employee, agent, servant or representative of the CITY for any purpose, and the employees of the SERVICE PROVIDER are not entitled to any of the benefits the CITY provides for its employees. The SERVICE PROVIDER will be solely and entirely responsible for its acts and for the acts of its agents, employees, servants, subcontractors or representatives during the performance of this Agreement.

B. In the performance of the services herein contemplated the SERVICE PROVIDER is an independent contractor with the authority to control and direct the performance of the details of the work; however, the results of the work contemplated herein must meet the approval of the CITY and shall be subject to the CITY'S general rights of inspection and review to secure the satisfactory completion thereof.

C. As an independent contractor, the SERVICE PROVIDER shall be responsible for the reporting and payment of all applicable local, state, and federal taxes.

D. It is recognized that the SERVICE PROVIDER may or will be performing services during the Term for other parties; provided, however, that such performance of other services shall not conflict with or interfere with the SERVICE PROVIDER'S ability to perform the services. The SERVICE PROVIDER agrees to resolve any such conflicts of interest in favor of the CITY.

6. SERVICE PROVIDER EMPLOYEES/AGENTS.

The CITY may at its sole discretion require the SERVICE PROVIDER to remove an employee, agent or servant from employment on this Project. The SERVICE PROVIDER may however employ that individual on other non-CITY related projects.

7. HOLD HARMLESS INDEMNIFICATION.

A. SERVICE PROVIDER Indemnification. The SERVICE PROVIDER agrees to indemnify, defend and hold the CITY, its elected officials, officers, employees, agents, and volunteers harmless from any and all claims, demands, losses, actions and liabilities (including costs and all attorney fees) to or by any and all persons or entities, including, without limitation, their respective agents, licensees, or representatives, arising from, resulting from, or connected with this Agreement to the extent caused by the negligent acts, errors or omissions of the SERVICE PROVIDER, its partners, shareholders, agents, employees, or by the SERVICE PROVIDER'S breach of this Agreement. The SERVICE PROVIDER

expressly waives any immunity that may be granted to it under the Washington State Industrial Insurance Act, Title 51 RCW. The SERVICE PROVIDER'S indemnification shall not be limited in any way by any limitation on the amount of damages, compensation or benefits payable to or by any third party under workers' compensation acts, disability benefit acts or any other benefit acts or programs. This waiver has been mutually negotiated by the parties.

B. CITY Indemnification. The CITY agrees to indemnify, defend and hold the SERVICE PROVIDER, its officers, directors, shareholders, partners, employees, and agents harmless from any and all claims, demands, losses, actions and liabilities (including costs and attorney fees) to or by any and all persons or entities, including without limitation, their respective agents, licensees, or representatives, arising from, resulting from or connected with this Agreement to the extent solely caused by the negligent acts, errors, or omissions of the CITY, its employees or agents. No liability shall attach to the CITY by reason of entering into this Agreement except as expressly provided herein.

C. Survival. The provisions of this Section shall survive the expiration or termination of this Agreement with respect to any event occurring prior to such expiration or termination.

8. INSURANCE.

A. The SERVICE PROVIDER shall procure and maintain for the duration of the Agreement, insurance against claims for injuries to persons or damage to property which may arise from or in connection with the performance of the work hereunder by the SERVICE PROVIDER, their agents, representatives, employees or subcontractors.

B. The SERVICE PROVIDER shall provide a Certificate of Insurance evidencing:

1. Automobile Liability insurance with limits no less than \$1,000,000 combined single limit per accident for bodily injury and property damage.

2. Commercial General Liability insurance written on an occurrence basis with limits no less than \$2,000,000 combined single limit per occurrence and \$2,000,000 aggregate for personal injury, bodily injury and property damage. Coverage shall include but not be limited to: blanket contractual; products/completed operations; broad form property damage; explosion, collapse and underground (XCU) if applicable; and employer's liability.

3. Professional Liability insurance written on a claims made basis with limits of no less than \$1,000,000 per claim, and \$2,000,000 policy aggregate limit.

C. The CITY shall be named as an additional insured on the insurance policy, as respect to work performed by or on behalf of the SERVICE PROVIDER and a copy of the endorsement naming the CITY as additional insured shall be attached to the Certificate of Insurance. The CITY reserves the right to request certified copies of any required policies.

D. The SERVICE PROVIDER'S insurance shall contain a clause stating that coverage shall apply separately to each insured against whom claim is made or suit is brought, except with respects to the limits of the insurer's liability.

E. Any payment of deductible or self-insured retention shall be the sole responsibility of the SERVICE PROVIDER.

F. The SERVICE PROVIDER'S insurance shall be primary insurance as respect to the CITY and the CITY shall be given written notice of any cancellation, suspension or material change in coverage within two (2) business days of SERVICE PROVIDER'S receipt of such notice.

9. TREATMENT OF ASSETS.

Title to all property furnished by the CITY shall remain in the name of the CITY and the CITY shall become the owner of the work product and other documents, if any, prepared by the SERVICE PROVIDER pursuant to this Agreement.

10. COMPLIANCE WITH LAWS.

A. The SERVICE PROVIDER, in the performance of this Agreement, shall comply with all applicable federal, state or local laws and ordinances, including being licensed to do business in the City of Tumwater by obtaining a Tumwater business license and any additional regulations for licensing, certification and operation of facilities, programs and accreditation, and licensing of individuals, and any other standards or criteria as described in this Agreement to assure quality of services.

B. The SERVICE PROVIDER specifically agrees to pay any applicable CITY business and occupation (B&O) taxes which may be due on account of this Agreement.

11. NONDISCRIMINATION.

A. The CITY is an equal opportunity employer.

B. Nondiscrimination in Employment. In the performance of this Agreement, the SERVICE PROVIDER will not discriminate against any employee or applicant for employment on the grounds of race, creed, religion, color, national origin, citizenship or immigration status, families with children status, sex, marital status, honorably discharged veteran or military status, the presence of any sensory, mental, or physical disability or the use of a trained dog guide or service animal by a person with a disability, sexual orientation, genetic information, age or other basis prohibited by state or federal law; provided that the prohibition against discrimination in employment because of disability shall not apply if the particular disability prevents the proper performance of the particular worker involved. Such action shall include, but not be limited to: employment, upgrading, demotion or transfers, recruitment or recruitment advertising, layoff or termination, rates of pay or other forms of compensation, and programs for training including apprenticeships. "Race" is inclusive of traits historically associated or perceived to be associated with race including, but not limited to, hair texture and protective hairstyles. For purposes of this subsection, "protective hairstyles" includes, but is not limited to, such hairstyles as afros, braids, locks, and twists. It is not an unfair practice when a distinction or differential treatment on the basis of citizenship or immigration status is authorized by federal or state law, regulation, rule or government contract.

C. Nondiscrimination in Services. The SERVICE PROVIDER will not discriminate against any recipient of any services or benefits provided for in this Agreement on the grounds of race, creed, religion, color, national origin, citizenship or immigration status, families with children status, sex, marital status, honorably discharged veteran or military status, the presence of any sensory, mental or physical disability or the use of a trained dog guide or service animal by a person with a disability, sexual orientation, genetic information, age or other basis prohibited by state or federal law. "Race" is inclusive of traits historically associated or perceived to be associated with race including, but not limited to, hair texture and protective hairstyles. For purposes of this subsection, "protective hairstyles" includes, but is not limited to, such hairstyles as afros, braids, locks, and twists. It is not an unfair practice when a distinction or differential treatment on the basis of citizenship or immigration status is authorized by federal or state law, regulation, rule or government contract.

D. If any assignment and/or subcontract have been authorized by the CITY, said assignment or subcontract shall include appropriate safeguards against discrimination. The SERVICE PROVIDER shall take such action as may be required to ensure full compliance with the provisions in the immediately preceding paragraphs herein.

E. Nondiscrimination in Benefits. Pursuant to Tumwater Municipal Code (TMC) Chapter 3.46, the SERVICE PROVIDER shall provide employee benefits or an equivalent sum to the domestic partners of their employees involved in the SERVICE PROVIDER'S operations applicable to this Agreement if such benefits are provided to employees' spouses as more particularly set forth in Chapter 3.46 of the TMC, a copy of which is attached hereto if applicable as Exhibit B.

12. ASSIGNMENT/SUBCONTRACTING.

A. The SERVICE PROVIDER shall not assign its performance under this Agreement or any portion of this Agreement without the written consent of the CITY, and it is further agreed that said consent must be sought in writing by the SERVICE PROVIDER not less than thirty (30) days prior to the date of any proposed assignment. The CITY reserves the right to reject without cause any such assignment.

B. Any work or services assigned hereunder shall be subject to each provision of this Agreement and proper bidding procedures where applicable as set forth in local, state and/or federal statutes, ordinances and guidelines.

C. Any technical service subcontract not listed in this Agreement, must have express advance approval by the CITY.

13. NON-APPROPRIATION OF FUNDS.

If sufficient funds are not appropriated or allocated for payment under this Agreement for any future fiscal period, the CITY will not be obligated to make payments for services or amounts incurred after the end of the current fiscal period, and this Agreement will terminate upon the completion of all remaining services for which funds are allocated. No penalty or expense shall accrue to the CITY in the event this provision applies.

14. CHANGES.

Either party may request changes to the Scope of Services and performance to be provided hereunder, however, no change or addition to this Agreement shall be valid or binding upon either party unless such change or addition be in writing and signed by both parties. Such amendments shall be attached to and made part of this Agreement.

15. MAINTENANCE AND INSPECTION OF RECORDS.

A. The SERVICE PROVIDER at such times and in such forms as the CITY may require, shall furnish to the CITY such statements, records, reports, data, and information as the CITY may request pertaining to matters covered by this Agreement.

B. The SERVICE PROVIDER shall maintain books, records and documents, which sufficiently and properly reflect all direct and indirect costs related to the performance of this Agreement and shall maintain such accounting procedures and practices as may be necessary to assure proper accounting of all funds paid pursuant to this Agreement. These records shall be subject at all reasonable times to inspection, review, or audit, by the CITY, its authorized representative, the State Auditor, or other governmental officials authorized by law to monitor this Agreement.

C. To ensure the CITY'S compliance with the Public Records Act, RCW 42.56, the SERVICE PROVIDER shall retain all books, records, documents and other material relevant to this agreement, for six (6) years after its expiration. The SERVICE PROVIDER agrees that the CITY or its designee shall have full access and right to examine any of said materials at all reasonable times during said period.

16. POLITICAL ACTIVITY PROHIBITED.

None of the funds, materials, property or services provided directly or indirectly under the Agreement shall be used for any partisan political activity, or to further the election or defeat of any candidate for public office.

17. PROHIBITED INTEREST.

No member, officer, or employee of the CITY shall have any interest, direct or indirect, in this Agreement or the proceeds thereof.

18. NOTICE.

Notice provided for in this Agreement shall be sent by certified mail to the addresses designated for the parties on the signature page of this Agreement.

19. ATTORNEYS FEES AND COSTS.

If any legal proceeding is brought for the enforcement of this Agreement, or because of a dispute, breach, default, or misrepresentation in connection with any of the provisions of this Agreement, the prevailing party shall be entitled to recover from the other party, in addition to any other relief to which such party may be entitled, reasonable attorney's fees and other costs incurred in that action or proceeding.

20. JURISDICTION AND VENUE.

A. This Agreement has been and shall be construed as having been made and delivered within the State of Washington. It is agreed by each party hereto that this Agreement shall be governed by laws of the State of Washington, both as to interpretation and performance.

B. Any action of law, suit in equity, or judicial proceeding for the enforcement of this Agreement or any provisions thereof shall be instituted and maintained in the superior court of Thurston County, Washington.

21. SEVERABILITY.

A. If, for any reason, any part, term or provision of this Agreement is held by a court of the United States to be illegal, void or unenforceable, the validity of the remaining provisions shall not be affected, and the rights and obligations of the parties shall be construed and enforced as if the Agreement did not contain the particular provision held to be invalid.

B. If it should appear that any provision hereof is in conflict with any statutory provision of the State of Washington, said provision which may conflict therewith shall be deemed inoperative and null and void insofar as it may be in conflict therewith, and shall be deemed modified to conform to such statutory provisions.

22. ENTIRE AGREEMENT.

The parties agree that this Agreement is the complete expression of the terms hereto and any oral representations or understandings not incorporated herein are excluded. Further, any modification of this Agreement shall be in writing and signed by both parties. Failure to comply with any of the provisions stated herein shall constitute material breach of contract and cause for termination. Both parties recognize time is of the essence in the performance of the provisions of this Agreement. It is also agreed by the parties that the forgiveness of the nonperformance of any provision of this Agreement does not constitute a waiver of the provisions of this Agreement. This Agreement may be executed in any number of counterparts, which counterparts shall collectively constitute the entire Agreement.

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IN WITNESS WHEREOF the parties hereto have caused this Agreement to be executed the day and year first hereinabove written.

CITY:

CITY OF TUMWATER
555 Israel Road SW
Tumwater, WA 98501

SERVICE PROVIDER:

THE ATHENA GROUP

Address: 112 4th Avenue E, Suite 200
City/State/Zip: Olympia, WA 98501
Tax ID #: 46-3407964
Phone Number: (360) 754-1954

Debbie Sullivan
Mayor

Signature (Notarized – see below)
Printed Name: Faith Trimble
Title: Founder and Partner

ATTEST:

Melody Valiant, City Clerk

APPROVED AS TO FORM:

Karen Kirkpatrick, City Attorney

STATE OF WASHINGTON

COUNTY OF THURSTON

I certify that I know or have satisfactory evidence that _____(name) is the person who appeared before me, and said person acknowledged that (he/she) signed this instrument, on oath stated that (he/she) was authorized to execute the instrument and acknowledged it as the _____(title) of _____(company) to be the free and voluntary act of such party for the uses and purposes mentioned in the instrument.

Dated:_____

Notary Public in and for the State of Washington,
My appointment expires:_____

3. Scope of Services

Task 1: Facilitation

Karen Meyer, guided by subject matter expert Karen Reed, will design, and facilitate meetings and the work of the City of Olympia and City of Tumwater RFA Planning Committee.

Consultant's tasks shall include developing a work plan for the Committee, developing Committee meeting agendas, providing strategic advice, reviewing, and editing materials prepared by staff, developing, and presenting materials related to governance issues, facilitating Committee meetings, facilitation staff team meetings in preparation for Committee meetings, finalizing draft meeting summaries prepared by staff designated by the Client. Consultant will participate in regular staff team meetings developing agendas and facilitating those meetings as needed.

We are estimating a total of 358 hours for facilitation and subject matter expert guidance. Hour estimates by task include:

- **Start-up work** (kick-off meeting, 13 interviews, drafting workplan, charter, etc.) - 38 hours
- **10 Monthly Planning Committee meetings** (Design, prep and facilitation) 26 hours per month for 10 months - 260 hours
- **3 sub-committee meetings** - 1 meeting each with sub-group of Planning Committee, Committee Chairs and city staff (Design, prep and facilitation) - 30 hours
- **2 council/commission briefings** (Prep and facilitation) - 8 hours
- **Other staff support as needed** - 22 hours

Task 2: Fiscal Analysis

Bill Cushman will lead the financial analysis, which includes a comprehensive strategic financial planning and organizational outlook plan. This estimated hours to complete this work is 86 hours, and includes the following modules:

Strategic Financial Planning Model: This comprehensive model captures the current financial condition of the agency, its total streams of revenue, its complete array of labor and operating costs, and its contributions to various reserve accounts. The planning horizon of the forecast model is seven years, while its focus serves to align the resources of the agency with a concurrent vision of the future for the mutual benefit of the public organization and its constituents.

Executive Summary: This model captures from the various sub-models all the key points and high-level data that are of particular importance to Commissioners, City Council members, Mayors and City Managers, and other executives and stakeholders of the municipal corporation.

Assessed Value Outlook: This module looks back over the history of assessed values and the trends that lend themselves to a view of future property values upon which property tax revenues are totally dependent.

Property Tax: This module offers a comprehensive outlook that will calculate future property taxes for that agency based on the insertion of the agency's current and foreseen assessed values. Additionally, the model will incorporate features to calculate and display the effects of levy lid lift elections or the recapture of dormant banked capacity revenues. The model will extend six years into the future and will be updated annually to extend its purview by one additional year.

Apparatus Replacement: This module will identify the apparatus inventory of the agency and calculate the cost of replacing existing, or newly acquiring additional, apparatus over a twenty-year cycle. The

model will recognize annual or periodic cash contributions into the apparatus reserve, or recognize the infusion of bond proceeds used to acquire apparatus. The election of councilmanic bonds will also generate a debt service schedule to be incorporated into the annual cashflow.

Equipment Replacement: This module will identify the equipment inventory of the agency and calculate the cost of replacing existing, or newly acquiring additional, equipment over a twenty-year cycle. The model will recognize annual or periodic cash contributions into the equipment reserve, or recognize the infusion of bond proceeds used to acquire equipment. The election of councilmanic bonds will also generate a debt service schedule to be incorporated into the annual cashflow.

Facilities and Project Report: This module will identify the facilities inventory of the agency and calculate the cost of replacing existing, or newly acquiring additional, facilities over a twenty-year cycle. The model will recognize annual or periodic cash contributions into the facilities and projects reserve, or recognize the infusion of bond proceeds used to acquire facilities or undertake small capital projects. The election of councilmanic bonds will also generate a debt service schedule to be incorporated into the annual cashflow.

Retirement Payout Planning Report: This module will allow the agency to build a cost projection of the financial reserves that will accumulate to offset the retirement payout liabilities that accrue as employees accumulate unpaid sick leave and vacation hours near the end of their active service.

Debt Service Planning Report: This module identifies the cashflow associated with the issuance and repayment of bonds issued for the replacement or acquisition of apparatus, equipment, and facilities in support of fire and EMS services.

Other Custom Models and Reports: The TORFA PC will have the opportunity to propose the development of custom models and reports that may be of interest.

CIP Index Report: The TORFA PC will receive a report on the latest CIP-W showing the rate of inflation. The data goes back to 1984 and continues to be updated every 60 days with the release of the CPI-W index for the Seattle-Tacoma area from the Bureau of Labor Statistics.

3. Schedule

We are assuming the project will begin in December 2021 and end in April 2023. Most of our work will occur December 2021-October 2022, working through the issues list outlined below. After the RFA plan is complete in the fall of 2022, our work will decrease but will still be available to facilitate the monthly RFA meetings.

RFA Issues List

Over-arching issues	Key Operational Issues	Key Financing Issues
Governance	Labor Issues	

	Timeline	Over-arching Issues
A	Dec. '21 - Jan. '22	Problem/Need Statement
B	Feb. - Dec. '22	Operational Efficiencies and other benefits that can be secured through the RFA
C		Overall Schedule and Work Plan
D		Public Outreach Plan during development of RFA Plan
E		Communications Plan
F		Overall Project and Election costs, allocation
G		Public Education Plan (Post RFA Plan Adoption through Election)
H		Transition Plan (Post Election through effective date)
		Structure, Services, Staffing, Financing Issues
1	Jan. - Apr. '23	Proposed RFA Boundaries
2		RFA Name

3		Service Start Date, Levy Start Date
4		<p>What Services will the RFA Provide?</p> <ul style="list-style-type: none"> ○ Ambulance services ○ ALS Transport ○ Fire Marshal and inspection services ○ Contracts to serve other agencies
5		<p>Governance: Board structure</p> <ul style="list-style-type: none"> ○ Values / Principles ○ Legal Options / What have others done? ○ Anticipated Role/Status of District 21 & 4 after RFA created
6		RFA Standards of Cover/Service Levels
7		<p>Interlocal Service Agreements</p> <ul style="list-style-type: none"> ○ Services provided by other agencies (regional dispatch, emergency management) <ul style="list-style-type: none"> ● Assignment to RFA ● Assets/liabilities transferred to RFA or retained? ● Valuation at transfer for purposes of audit
8		Services provided to other agencies—continue/assign?
9		Service from third parties -- ability to assign
10		Facilities – transferred to RFA, leased, or retained? Valuation
11		Apparatus / Equipment – transferred to RFA, leased, or retained? Valuation
12		<p>RFA Staffing Levels</p> <ul style="list-style-type: none"> ○ Existing staff transferred to RFA ○ Employee Salary assumptions ○ Employee Benefits Assumptions
13		<p>Labor Management Issues</p> <ul style="list-style-type: none"> ○ Bargaining Units status/implications for salary/benefits/schedules
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Issues List Prepared by Karen Reed Consulting, LLC

4. Hourly Rate and Proposed Cost

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- Access to staff who can provide necessary financial data as requested.

Consultant will not provide legal services or legal advice to the Client.

Chapter 3.46

CITY CONTRACTS – NONDISCRIMINATION IN BENEFITS

Sections:

- 3.46.010 Definitions.
- 3.46.020 Nondiscrimination in benefits.
- 3.46.030 Limitations.
- 3.46.040 Powers and duties of the city administrator.
- 3.46.050 Appeals.
- 3.46.060 Effective date.

3.46.010 Definitions.

For the purpose of this chapter:

- A. “Contract” means a contract for public works, consulting, or supplies, material, equipment or services estimated to cost \$50,000 or more;
- B. “Contract awarding authority” means the city officer, department, commission, employee, or board authorized to enter into or to administer contracts on behalf of the city;
- C. “Domestic partner” means any person who is registered with his/her employer as a domestic partner or, in the absence of such employer-provided registry, is registered as a domestic partner with a governmental body pursuant to state or local law authorizing such registration. Any internal employer registry of domestic partnership must comply with criteria for domestic partnerships specified by rule by the city administrator;
- D. “Employee benefits” means the provision of bereavement leave; disability, life, and other types of insurance; family medical leave; health benefits; membership or membership discounts; moving expenses; pension and retirement benefits; vacation; travel benefits; and any other benefits given to employees; provided, that it does not include benefits to the extent that the application of the requirements of this chapter to such benefits may be preempted by federal or state law.

(Ord. O2000-028, Added, 02/06/2001)

3.46.020 Nondiscrimination in benefits.

A. No contractor on a city contract shall discriminate in the provision of employee benefits between an employee with a domestic partner and an employee with a spouse. The contractor shall not be deemed to discriminate in the provision of employee benefits if, despite taking reasonable measures to do so, the contractor is unable to extend a particular employee benefit to domestic partners, so long as the contractor provides the employee with a cash equivalent.

B. Other Options for Compliance Allowed. Provided that a contractor does not discriminate in the provision of benefits between employees with spouses and employees with domestic partners, a contractor may:

1. Elect to provide benefits to individuals in addition to employees' spouses and employees' domestic partners;
2. Allow each employee to designate a legally domiciled member of the employee's household as being eligible for spousal equivalent benefits; or
3. Provide benefits neither to employees' spouses nor to employees' domestic partners.

C. Requirements Inapplicable Under Certain Conditions. The city administrator may waive the requirements of this chapter where:

1. Award of a contract or amendment is necessary to respond to an emergency;
2. The contractor is a sole source;
3. No compliant contractors are capable of providing goods or services that respond to the city's requirements;
4. The contractor is a public entity;
5. The requirements are inconsistent with a grant, subvention or agreement with a public agency;
6. The city is purchasing through a cooperative or joint purchasing agreement.

D. Requests for waivers of the terms of this chapter are to be made to the city administrator by the contract awarding authority. Decisions by the city administrator to issue or deny waivers are final unless appealed pursuant to TMC 3.46.050.

E. The city administrator shall reject an entity's bid or proposal, or terminate a contract, if the city administrator determines that the entity was set up, or is being used, for the purpose of evading the intent of this chapter.

F. No contract awarding authority shall execute a contract with a contractor unless such contractor has agreed that the contractor will not discriminate in the provision of employee benefits as provided for in this chapter.

G. All contracts awarded by the city shall contain provisions prohibiting discrimination in the provision of employee benefits, including provisions containing appropriate remedies for the breach thereof as prescribed by this chapter, except as exempted by this chapter or rule.

(Ord. O2000-028, Added, 02/06/2001)

3.46.030 Limitations.

The requirements of this chapter only shall apply to those portions of a contractor's operations that occur:

- A. Within the city;
- B. On real property outside of the city if the property is owned by the city or if the city has a right to occupy the property, and if the contractor's presence at that location is connected to a contract with the city; and
- C. Elsewhere in the United States where work related to a city contract is being performed. The requirements of this chapter shall not apply to subcontracts or subcontractors of any contract or contractor.

(Ord. O2000-028, Added, 02/06/2001)

3.46.040 Powers and duties of the city administrator.

The city administrator shall have the power to:

- A. Adopt rules and regulations in accordance with this chapter establishing standards and procedures for effectively carrying out this chapter;
- B. Determine and impose appropriate sanctions and/or liquidated damages for violation of this chapter by contractors including, but not limited to:
 - 1. Disqualification of the contractor from bidding on or being awarded a city contract for a period of up to five years; and
 - 2. Contractual remedies, including, but not limited to, liquidated damages and termination of the contract;
- C. Examine contractor's benefit programs covered by this chapter;
- D. Impose other appropriate contractual and civil remedies and sanctions for violations of this chapter;
- E. Allow for remedial action after a finding of noncompliance, as specified by rule;
- F. Perform such other duties as may be required by ordinance or which are necessary to implement the purposes of this chapter.

(Ord. O2000-028, Added, 02/06/2001)

3.46.050 Appeals.

Any aggrieved party may appeal a decision of the city administrator to the mayor by the submittal of a written request to the city attorney within ten working days of the decision to be appealed. The mayor's decision will be in writing with findings identified upon which the decision was made. Subsequent appeal will be to the Thurston County superior court.

(Ord. O2000-028, Added, 02/06/2001)

3.46.060 Effective date.

The provisions of this chapter shall apply to any contract awarded on or after January 2, 2002.

(Ord. O2000-028, Added, 02/06/2001)



CERTIFICATE OF LIABILITY INSURANCE

DATE (MM/DD/YYYY)

12/14/2021

THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AFFIRMATIVELY OR NEGATIVELY AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW. THIS CERTIFICATE OF INSURANCE DOES NOT CONSTITUTE A CONTRACT BETWEEN THE ISSUING INSURER(S), AUTHORIZED REPRESENTATIVE OR PRODUCER, AND THE CERTIFICATE HOLDER.

IMPORTANT: If the certificate holder is an ADDITIONAL INSURED, the policy(ies) must be endorsed. If SUBROGATION IS WAIVED, subject to the terms and conditions of the policy, certain policies may require an endorsement. A statement on this certificate does not confer rights to the certificate holder in lieu of such endorsement(s).

PRODUCER PROPEL INSURANCE/PHS 52819943 The Hartford Business Service Center 3600 Wiseman Blvd San Antonio, TX 78251	CONTACT NAME: PHONE (866) 467-8730 FAX (877) 905-2772 (A/C, No, Ext): E-MAIL ADDRESS:																					
INSURED FLT Consulting Inc / The Athena Group, LLC 112 4TH AVE E STE 200 OLYMPIA WA 98501-6984	<table border="1"> <thead> <tr> <th colspan="2">INSURER(S) AFFORDING COVERAGE</th><th>NAIC#</th></tr> </thead> <tbody> <tr> <td>INSURER A :</td><td>Sentinel Insurance Company Ltd.</td><td>11000</td></tr> <tr> <td>INSURER B :</td><td>Arch Insurance Company</td><td>21199</td></tr> <tr> <td>INSURER C :</td><td></td><td></td></tr> <tr> <td>INSURER D :</td><td></td><td></td></tr> <tr> <td>INSURER E :</td><td></td><td></td></tr> <tr> <td>INSURER F :</td><td></td><td></td></tr> </tbody> </table>	INSURER(S) AFFORDING COVERAGE		NAIC#	INSURER A :	Sentinel Insurance Company Ltd.	11000	INSURER B :	Arch Insurance Company	21199	INSURER C :			INSURER D :			INSURER E :			INSURER F :		
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COVERAGES

CERTIFICATE NUMBER:

REVISION NUMBER:

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INSR LTR	TYPE OF INSURANCE	ADDL INSR	SUBR WVD	POLICY NUMBER	POLICY EFF (MM/DD/YYYY)	POLICY EXP (MM/DD/YYYY)	LIMITS
A	COMMERCIAL GENERAL LIABILITY			52 SBA PV4611	12/20/2020	12/20/2021	EACH OCCURRENCE \$2,000,000
	CLAIMS-MADE <input checked="" type="checkbox"/> OCCUR						DAMAGE TO RENTED PREMISES (Ea occurrence) \$1,000,000
	<input checked="" type="checkbox"/> General Liability						MED EXP (Any one person) \$10,000
	GEN'L AGGREGATE LIMIT APPLIES PER:						PERSONAL & ADV INJURY \$2,000,000
	POLICY <input type="checkbox"/> PRO-JECT <input checked="" type="checkbox"/> LOC						GENERAL AGGREGATE \$4,000,000
	OTHER:						PRODUCTS - COMP/OP AGG \$4,000,000
A	AUTOMOBILE LIABILITY			52 SBA PV4611	12/20/2020	12/20/2021	COMBINED SINGLE LIMIT (Ea accident) \$2,000,000
	ANY AUTO						BODILY INJURY (Per person)
	ALL OWNED AUTOS						BODILY INJURY (Per accident)
	<input checked="" type="checkbox"/> HIRED AUTOS	<input checked="" type="checkbox"/>					PROPERTY DAMAGE (Per accident)
	SCHEDULED AUTOS						
	UMBRELLA LIAB EXCESS LIAB						EACH OCCURRENCE
	DED <input type="checkbox"/> RETENTION \$						AGGREGATE
	WORKERS COMPENSATION AND EMPLOYERS' LIABILITY						PER STATUTE <input type="checkbox"/> OTH-ER <input type="checkbox"/>
	ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? (Mandatory in NH)						E.L. EACH ACCIDENT
	If yes, describe under DESCRIPTION OF OPERATIONS below						E.L. DISEASE -EA EMPLOYEE
B	Professional Liability			SPL100021001	05/23/2021	05/23/2022	Each Claim \$1,000,000 Aggregate \$2,000,000

DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES (ACORD 101, Additional Remarks Schedule, may be attached if more space is required)

Those usual to the Insured's Operations. Certificate Holder is an Additional Insured Designated Person or Organization per the Business Liability Coverage Form SS0008 attached to this policy.

CERTIFICATE HOLDER

City of Tumwater
 555 ISRAEL RD SW
 OLYMPIA WA 98501-6515

CANCELLATION

SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, NOTICE WILL BE DELIVERED IN ACCORDANCE WITH THE POLICY PROVISIONS.

AUTHORIZED REPRESENTATIVE

Susan L. Castaneda

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	ANY AUTO						BODILY INJURY (Per person)
	ALL OWNED AUTOS <input type="checkbox"/> SCHEDULED AUTOS						BODILY INJURY (Per accident)
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	DED <input type="checkbox"/> RETENTION \$						
	WORKERS COMPENSATION AND EMPLOYERS' LIABILITY						PER STATUTE <input type="checkbox"/> OTH-ER <input type="checkbox"/>
	ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? (Mandatory in NH)						E.L. EACH ACCIDENT
	If yes, describe under DESCRIPTION OF OPERATIONS below						E.L. DISEASE -EA EMPLOYEE
	Y/N <input type="checkbox"/> N/ A						E.L. DISEASE - POLICY LIMIT
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AUTHORIZED REPRESENTATIVE

Susan L. Castaneda

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BUSINESS LIABILITY COVERAGE FORM

QUICK REFERENCE
BUSINESS LIABILITY COVERAGE FORM
READ YOUR POLICY CAREFULLY

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BUSINESS LIABILITY COVERAGE FORM

Various provisions in this policy restrict coverage. Read the entire policy carefully to determine rights, duties and what is and is not covered.

Throughout this policy the words "you" and "your" refer to the Named Insured shown in the Declarations. The words "we", "us" and "our" refer to the stock insurance company member of The Hartford providing this insurance.

The word "insured" means any person or organization qualifying as such under Section **C.** - Who Is An Insured.

Other words and phrases that appear in quotation marks have special meaning. Refer to Section **G.** - Liability And Medical Expenses Definitions.

A. COVERAGES

1. BUSINESS LIABILITY COVERAGE (BODILY INJURY, PROPERTY DAMAGE, PERSONAL AND ADVERTISING INJURY)

Insuring Agreement

- a. We will pay those sums that the insured becomes legally obligated to pay as damages because of "bodily injury", "property damage" or "personal and advertising injury" to which this insurance applies. We will have the right and duty to defend the insured against any "suit" seeking those damages. However, we will have no duty to defend the insured against any "suit" seeking damages for "bodily injury", "property damage" or "personal and advertising injury" to which this insurance does not apply.

We may, at our discretion, investigate any "occurrence" or offense and settle any claim or "suit" that may result. But:

- (1) The amount we will pay for damages is limited as described in Section **D.** - Liability And Medical Expenses Limits Of Insurance; and
- (2) Our right and duty to defend ends when we have used up the applicable limit of insurance in the payment of judgments, settlements or medical expenses to which this insurance applies.

No other obligation or liability to pay sums or perform acts or services is covered unless explicitly provided for under Coverage Extension - Supplementary Payments.

- b. This insurance applies:

- (1) To "bodily injury" and "property damage" only if:

- (a) The "bodily injury" or "property damage" is caused by an "occurrence" that takes place in the "coverage territory";

- (b) The "bodily injury" or "property damage" occurs during the policy period; and

- (c) Prior to the policy period, no insured listed under Paragraph 1. of Section **C.** - Who Is An Insured and no "employee" authorized by you to give or receive notice of an "occurrence" or claim, knew that the "bodily injury" or "property damage" had occurred, in whole or in part. If such a listed insured or authorized "employee" knew, prior to the policy period, that the "bodily injury" or "property damage" occurred, then any continuation, change or resumption of such "bodily injury" or "property damage" during or after the policy period will be deemed to have been known prior to the policy period.

- (2) To "personal and advertising injury" caused by an offense arising out of your business, but only if the offense was committed in the "coverage territory" during the policy period.

- c. "Bodily injury" or "property damage" will be deemed to have been known to have occurred at the earliest time when any insured listed under Paragraph 1. of Section **C.** - Who Is An Insured or any "employee" authorized by you to give or receive notice of an "occurrence" or claim:

- (1) Reports all, or any part, of the "bodily injury" or "property damage" to us or any other insurer;

BUSINESS LIABILITY COVERAGE FORM

- (2) Receives a written or verbal demand or claim for damages because of the "bodily injury" or "property damage"; or
 - (3) Becomes aware by any other means that "bodily injury" or "property damage" has occurred or has begun to occur.
- d. Damages because of "bodily injury" include damages claimed by any person or organization for care, loss of services or death resulting at any time from the "bodily injury".
- e. **Incidental Medical Malpractice**
- (1) "Bodily injury" arising out of the rendering of or failure to render professional health care services as a physician, dentist, nurse, emergency medical technician or paramedic shall be deemed to be caused by an "occurrence", but only if:
 - (a) The physician, dentist, nurse, emergency medical technician or paramedic is employed by you to provide such services; and
 - (b) You are not engaged in the business or occupation of providing such services.
 - (2) For the purpose of determining the limits of insurance for incidental medical malpractice, any act or omission together with all related acts or omissions in the furnishing of these services to any one person will be considered one "occurrence".

2. MEDICAL EXPENSES**Insuring Agreement**

- a. We will pay medical expenses as described below for "bodily injury" caused by an accident:
- (1) On premises you own or rent;
 - (2) On ways next to premises you own or rent; or
 - (3) Because of your operations;
- provided that:
- (1) The accident takes place in the "coverage territory" and during the policy period;
 - (2) The expenses are incurred and reported to us within three years of the date of the accident; and
 - (3) The injured person submits to examination, at our expense, by physicians of our choice as often as we reasonably require.

- b. We will make these payments regardless of fault. These payments will not exceed the applicable limit of insurance. We will pay reasonable expenses for:

- (1) First aid administered at the time of an accident;
- (2) Necessary medical, surgical, x-ray and dental services, including prosthetic devices; and
- (3) Necessary ambulance, hospital, professional nursing and funeral services.

3. COVERAGE EXTENSION - SUPPLEMENTARY PAYMENTS

- a. We will pay, with respect to any claim or "suit" we investigate or settle, or any "suit" against an insured we defend:
- (1) All expenses we incur.
 - (2) Up to \$1,000 for the cost of bail bonds required because of accidents or traffic law violations arising out of the use of any vehicle to which Business Liability Coverage for "bodily injury" applies. We do not have to furnish these bonds.
 - (3) The cost of appeal bonds or bonds to release attachments, but only for bond amounts within the applicable limit of insurance. We do not have to furnish these bonds.
 - (4) All reasonable expenses incurred by the insured at our request to assist us in the investigation or defense of the claim or "suit", including actual loss of earnings up to \$500 a day because of time off from work.
 - (5) All costs taxed against the insured in the "suit".
 - (6) Prejudgment interest awarded against the insured on that part of the judgment we pay. If we make an offer to pay the applicable limit of insurance, we will not pay any prejudgment interest based on that period of time after the offer.
 - (7) All interest on the full amount of any judgment that accrues after entry of the judgment and before we have paid, offered to pay, or deposited in court the part of the judgment that is within the applicable limit of insurance.

Any amounts paid under (1) through (7) above will not reduce the limits of insurance.

b. If we defend an insured against a "suit" and an indemnitee of the insured is also named as a party to the "suit", we will defend that indemnitee if all of the following conditions are met:

- (1) The "suit" against the indemnitee seeks damages for which the insured has assumed the liability of the indemnitee in a contract or agreement that is an "insured contract";
- (2) This insurance applies to such liability assumed by the insured;
- (3) The obligation to defend, or the cost of the defense of, that indemnitee, has also been assumed by the insured in the same "insured contract";
- (4) The allegations in the "suit" and the information we know about the "occurrence" are such that no conflict appears to exist between the interests of the insured and the interest of the indemnitee;
- (5) The indemnitee and the insured ask us to conduct and control the defense of that indemnitee against such "suit" and agree that we can assign the same counsel to defend the insured and the indemnitee; and
- (6) The indemnitee:
 - (a) Agrees in writing to:
 - (i) Cooperate with us in the investigation, settlement or defense of the "suit";
 - (ii) Immediately send us copies of any demands, notices, summonses or legal papers received in connection with the "suit";
 - (iii) Notify any other insurer whose coverage is available to the indemnitee; and
 - (iv) Cooperate with us with respect to coordinating other applicable insurance available to the indemnitee; and
 - (b) Provides us with written authorization to:
 - (i) Obtain records and other information related to the "suit"; and
 - (ii) Conduct and control the defense of the indemnitee in such "suit".

So long as the above conditions are met, attorneys' fees incurred by us in the defense of that indemnitee, necessary litigation expenses incurred by us and necessary litigation expenses incurred by the indemnitee at our request will be paid as Supplementary Payments.

Notwithstanding the provisions of Paragraph **1.b.(b)** of Section **B.** – Exclusions, such payments will not be deemed to be damages for "bodily injury" and "property damage" and will not reduce the Limits of Insurance.

Our obligation to defend an insured's indemnitee and to pay for attorneys' fees and necessary litigation expenses as Supplementary Payments ends when:

- (1) We have used up the applicable limit of insurance in the payment of judgments or settlements; or
- (2) The conditions set forth above, or the terms of the agreement described in Paragraph (6) above, are no longer met.

B. EXCLUSIONS

1. Applicable To Business Liability Coverage

This insurance does not apply to:

a. Expected Or Intended Injury

- (1) "Bodily injury" or "property damage" expected or intended from the standpoint of the insured. This exclusion does not apply to "bodily injury" or "property damage" resulting from the use of reasonable force to protect persons or property; or
- (2) "Personal and advertising injury" arising out of an offense committed by, at the direction of or with the consent or acquiescence of the insured with the expectation of inflicting "personal and advertising injury".

b. Contractual Liability

- (1) "Bodily injury" or "property damage"; or
- (2) "Personal and advertising injury"

for which the insured is obligated to pay damages by reason of the assumption of liability in a contract or agreement.

This exclusion does not apply to liability for damages because of:

- (a) "Bodily injury", "property damage" or "personal and advertising injury" that the insured would have in the absence of the contract or agreement; or

BUSINESS LIABILITY COVERAGE FORM

(b) "Bodily injury" or "property damage" assumed in a contract or agreement that is an "insured contract", provided the "bodily injury" or "property damage" occurs subsequent to the execution of the contract or agreement. Solely for the purpose of liability assumed in an "insured contract", reasonable attorneys' fees and necessary litigation expenses incurred by or for a party other than an insured are deemed to be damages because of "bodily injury" or "property damage" provided:

- (i) Liability to such party for, or for the cost of, that party's defense has also been assumed in the same "insured contract", and
- (ii) Such attorneys' fees and litigation expenses are for defense of that party against a civil or alternative dispute resolution proceeding in which damages to which this insurance applies are alleged.

c. Liquor Liability

"Bodily injury" or "property damage" for which any insured may be held liable by reason of:

- (1) Causing or contributing to the intoxication of any person;
- (2) The furnishing of alcoholic beverages to a person under the legal drinking age or under the influence of alcohol; or
- (3) Any statute, ordinance or regulation relating to the sale, gift, distribution or use of alcoholic beverages.

This exclusion applies only if you are in the business of manufacturing, distributing, selling, serving or furnishing alcoholic beverages.

d. Workers' Compensation And Similar Laws

Any obligation of the insured under a workers' compensation, disability benefits or unemployment compensation law or any similar law.

e. Employer's Liability

"Bodily injury" to:

- (1) An "employee" of the insured arising out of and in the course of:
 - (a) Employment by the insured; or

(b) Performing duties related to the conduct of the insured's business, or

- (2) The spouse, child, parent, brother or sister of that "employee" as a consequence of (1) above.

This exclusion applies:

- (1) Whether the insured may be liable as an employer or in any other capacity; and
- (2) To any obligation to share damages with or repay someone else who must pay damages because of the injury.

This exclusion does not apply to liability assumed by the insured under an "insured contract".

f. Pollution

- (1) "Bodily injury", "property damage" or "personal and advertising injury" arising out of the actual, alleged or threatened discharge, dispersal, seepage, migration, release or escape of "pollutants":

(a) At or from any premises, site or location which is or was at any time owned or occupied by, or rented or loaned to any insured. However, this subparagraph does not apply to:

- (i) "Bodily injury" if sustained within a building and caused by smoke, fumes, vapor or soot produced by or originating from equipment that is used to heat, cool or dehumidify the building, or equipment that is used to heat water for personal use, by the building's occupants or their guests;
- (ii) "Bodily injury" or "property damage" for which you may be held liable, if you are a contractor and the owner or lessee of such premises, site or location has been added to your policy as an additional insured with respect to your ongoing operations performed for that additional insured at that premises, site or location and such premises, site or location is not and never was owned or occupied by, or rented or loaned to, any insured, other than that additional insured; or

- (iii) "Bodily injury" or "property damage" arising out of heat, smoke or fumes from a "hostile fire";
 - (b) At or from any premises, site or location which is or was at any time used by or for any insured or others for the handling, storage, disposal, processing or treatment of waste;
 - (c) Which are or were at any time transported, handled, stored, treated, disposed of, or processed as waste by or for:
 - (i) Any insured; or
 - (ii) Any person or organization for whom you may be legally responsible;
 - (d) At or from any premises, site or location on which any insured or any contractors or subcontractors working directly or indirectly on any insured's behalf are performing operations if the "pollutants" are brought on or to the premises, site or location in connection with such operations by such insured, contractor or subcontractor. However, this subparagraph does not apply to:
 - (i) "Bodily injury" or "property damage" arising out of the escape of fuels, lubricants or other operating fluids which are needed to perform the normal electrical, hydraulic or mechanical functions necessary for the operation of "mobile equipment" or its parts, if such fuels, lubricants or other operating fluids escape from a vehicle part designed to hold, store or receive them. This exception does not apply if the "bodily injury" or "property damage" arises out of the intentional discharge, dispersal or release of the fuels, lubricants or other operating fluids, or if such fuels, lubricants or other operating fluids are brought on or to the premises, site or location with the intent that they be discharged, dispersed or released as part of the operations being performed by such insured, contractor or subcontractor;
 - (ii) "Bodily injury" or "property damage" sustained within a building and caused by the release of gases, fumes or vapors from materials brought into that building in connection with operations being performed by you or on your behalf by a contractor or subcontractor; or
 - (iii) "Bodily injury" or "property damage" arising out of heat, smoke or fumes from a "hostile fire"; or
 - (e) At or from any premises, site or location on which any insured or any contractors or subcontractors working directly or indirectly on any insured's behalf are performing operations if the operations are to test for, monitor, clean up, remove, contain, treat, detoxify or neutralize, or in any way respond to, or assess the effects of, "pollutants".
- (2) Any loss, cost or expense arising out of any:
- (a) Request, demand, order or statutory or regulatory requirement that any insured or others test for, monitor, clean up, remove, contain, treat, detoxify or neutralize, or in any way respond to, or assess the effects of, "pollutants"; or
 - (b) Claim or suit by or on behalf of a governmental authority for damages because of testing for, monitoring, cleaning up, removing, containing, treating, detoxifying or neutralizing, or in any way responding to, or assessing the effects of, "pollutants".
- However, this paragraph does not apply to liability for damages because of "property damage" that the insured would have in the absence of such request, demand, order or statutory or regulatory requirement, or such claim or "suit" by or on behalf of a governmental authority.

g. Aircraft, Auto Or Watercraft

"Bodily injury" or "property damage" arising out of the ownership, maintenance, use or entrustment to others of any aircraft, "auto" or watercraft owned or operated by or rented or loaned to any insured. Use includes operation and "loading or unloading".

This exclusion applies even if the claims against any insured allege negligence or other wrongdoing in the supervision, hiring, employment, training or monitoring of others by that insured, if the "occurrence" which caused the "bodily injury" or "property damage" involved the ownership, maintenance, use or entrustment to others of any aircraft, "auto" or watercraft that is owned or operated by or rented or loaned to any insured.

This exclusion does not apply to:

- (1) A watercraft while ashore on premises you own or rent;
- (2) A watercraft you do not own that is:
 - (a) Less than 51 feet long; and
 - (b) Not being used to carry persons for a charge;
- (3) Parking an "auto" on, or on the ways next to, premises you own or rent, provided the "auto" is not owned by or rented or loaned to you or the insured;
- (4) Liability assumed under any "insured contract" for the ownership, maintenance or use of aircraft or watercraft;
- (5) "Bodily injury" or "property damage" arising out of the operation of any of the equipment listed in Paragraph **f.(2)** or **f.(3)** of the definition of "mobile equipment"; or
- (6) An aircraft that is not owned by any insured and is hired, chartered or loaned with a paid crew. However, this exception does not apply if the insured has any other insurance for such "bodily injury" or "property damage", whether the other insurance is primary, excess, contingent or on any other basis.

h. Mobile Equipment

"Bodily injury" or "property damage" arising out of:

- (1) The transportation of "mobile equipment" by an "auto" owned or operated by or rented or loaned to any insured; or

- (2) The use of "mobile equipment" in, or while in practice or preparation for, a prearranged racing, speed or demolition contest or in any stunting activity.

i. War

"Bodily injury", "property damage" or "personal and advertising injury", however caused, arising, directly or indirectly, out of:

- (1) War, including undeclared or civil war;
- (2) Warlike action by a military force, including action in hindering or defending against an actual or expected attack, by any government, sovereign or other authority using military personnel or other agents; or
- (3) Insurrection, rebellion, revolution, usurped power, or action taken by governmental authority in hindering or defending against any of these.

j. Professional Services

"Bodily injury", "property damage" or "personal and advertising injury" arising out of the rendering of or failure to render any professional service. This includes but is not limited to:

- (1) Legal, accounting or advertising services;
- (2) Preparing, approving, or failing to prepare or approve maps, shop drawings, opinions, reports, surveys, field orders, change orders, designs or drawings and specifications;
- (3) Supervisory, inspection, architectural or engineering activities;
- (4) Medical, surgical, dental, x-ray or nursing services treatment, advice or instruction;
- (5) Any health or therapeutic service treatment, advice or instruction;
- (6) Any service, treatment, advice or instruction for the purpose of appearance or skin enhancement, hair removal or replacement or personal grooming;
- (7) Optical or hearing aid services including the prescribing, preparation, fitting, demonstration or distribution of ophthalmic lenses and similar products or hearing aid devices;

- (8) Optometry or optometric services including but not limited to examination of the eyes and the prescribing, preparation, fitting, demonstration or distribution of ophthalmic lenses and similar products;
- (9) Any:
 - (a) Body piercing (not including ear piercing);
 - (b) Tattooing, including but not limited to the insertion of pigments into or under the skin; and
 - (c) Similar services;
- (10) Services in the practice of pharmacy; and
- (11) Computer consulting, design or programming services, including web site design.

Paragraphs (4) and (5) of this exclusion do not apply to the Incidental Medical Malpractice coverage afforded under Paragraph 1.e. in Section A. - Coverages.

k. Damage To Property

"Property damage" to:

- (1) Property you own, rent or occupy, including any costs or expenses incurred by you, or any other person, organization or entity, for repair, replacement, enhancement, restoration or maintenance of such property for any reason, including prevention of injury to a person or damage to another's property;
- (2) Premises you sell, give away or abandon, if the "property damage" arises out of any part of those premises;
- (3) Property loaned to you;
- (4) Personal property in the care, custody or control of the insured;
- (5) That particular part of real property on which you or any contractors or subcontractors working directly or indirectly on your behalf are performing operations, if the "property damage" arises out of those operations; or
- (6) That particular part of any property that must be restored, repaired or replaced because "your work" was incorrectly performed on it.

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Paragraphs (1), (3) and (4) of this exclusion do not apply to "property damage" (other than damage by fire) to premises, including the contents of such premises, rented to you for a period of 7 or fewer consecutive days. A separate Limit of Insurance applies to Damage To Premises Rented To You as described in Section D. - Limits Of Insurance.

Paragraph (2) of this exclusion does not apply if the premises are "your work" and were never occupied, rented or held for rental by you.

Paragraphs (3) and (4) of this exclusion do not apply to the use of elevators.

Paragraphs (3), (4), (5) and (6) of this exclusion do not apply to liability assumed under a sidetrack agreement.

Paragraphs (3) and (4) of this exclusion do not apply to "property damage" to borrowed equipment while not being used to perform operations at a job site.

Paragraph (6) of this exclusion does not apply to "property damage" included in the "products-completed operations hazard".

l. Damage To Your Product

"Property damage" to "your product" arising out of it or any part of it.

m. Damage To Your Work

"Property damage" to "your work" arising out of it or any part of it and included in the "products-completed operations hazard".

This exclusion does not apply if the damaged work or the work out of which the damage arises was performed on your behalf by a subcontractor.

n. Damage To Impaired Property Or Property Not Physically Injured

"Property damage" to "impaired property" or property that has not been physically injured, arising out of:

- (1) A defect, deficiency, inadequacy or dangerous condition in "your product" or "your work"; or
- (2) A delay or failure by you or anyone acting on your behalf to perform a contract or agreement in accordance with its terms.

This exclusion does not apply to the loss of use of other property arising out of sudden and accidental physical injury to "your product" or "your work" after it has been put to its intended use.

o. Recall Of Products, Work Or Impaired Property

Damages claimed for any loss, cost or expense incurred by you or others for the loss of use, withdrawal, recall, inspection, repair, replacement, adjustment, removal or disposal of:

- (1) "Your product";
- (2) "Your work"; or
- (3) "Impaired property";

if such product, work or property is withdrawn or recalled from the market or from use by any person or organization because of a known or suspected defect, deficiency, inadequacy or dangerous condition in it.

p. Personal And Advertising Injury

"Personal and advertising injury":

- (1) Arising out of oral, written or electronic publication of material, if done by or at the direction of the insured with knowledge of its falsity;
- (2) Arising out of oral, written or electronic publication of material whose first publication took place before the beginning of the policy period;
- (3) Arising out of a criminal act committed by or at the direction of the insured;
- (4) Arising out of any breach of contract, except an implied contract to use another's "advertising idea" in your "advertisement";
- (5) Arising out of the failure of goods, products or services to conform with any statement of quality or performance made in your "advertisement";
- (6) Arising out of the wrong description of the price of goods, products or services;
- (7) Arising out of any violation of any intellectual property rights such as copyright, patent, trademark, trade name, trade secret, service mark or other designation of origin or authenticity.

However, this exclusion does not apply to infringement, in your "advertisement", of

- (a) Copyright;
- (b) Slogan, unless the slogan is also a trademark, trade name, service mark or other designation of origin or authenticity; or

(c) Title of any literary or artistic work;

(8) Arising out of an offense committed by an insured whose business is:

- (a) Advertising, broadcasting, publishing or telecasting;
- (b) Designing or determining content of web sites for others; or
- (c) An Internet search, access, content or service provider.

However, this exclusion does not apply to Paragraphs **a.**, **b.** and **c.** under the definition of "personal and advertising injury" in Section **G.** – Liability And Medical Expenses Definitions.

For the purposes of this exclusion, placing an "advertisement" for or linking to others on your web site, by itself, is not considered the business of advertising, broadcasting, publishing or telecasting;

- (9) Arising out of an electronic chat room or bulletin board the insured hosts, owns, or over which the insured exercises control;
- (10) Arising out of the unauthorized use of another's name or product in your e-mail address, domain name or metatags, or any other similar tactics to mislead another's potential customers;
- (11) Arising out of the violation of a person's right of privacy created by any state or federal act.

However, this exclusion does not apply to liability for damages that the insured would have in the absence of such state or federal act;

(12) Arising out of:

- (a) An "advertisement" for others on your web site;
- (b) Placing a link to a web site of others on your web site;
- (c) Content from a web site of others displayed within a frame or border on your web site. Content includes information, code, sounds, text, graphics or images; or
- (d) Computer code, software or programming used to enable:
 - (i) Your web site; or
 - (ii) The presentation or functionality of an "advertisement" or other content on your web site;

- (13) Arising out of a violation of any anti-trust law;
- (14) Arising out of the fluctuation in price or value of any stocks, bonds or other securities; or
- (15) Arising out of discrimination or humiliation committed by or at the direction of any "executive officer", director, stockholder, partner or member of the insured.

q. Electronic Data

Damages arising out of the loss of, loss of use of, damage to, corruption of, inability to access, or inability to manipulate "electronic data".

r. Employment-Related Practices

"Bodily injury" or "personal and advertising injury" to:

- (1) A person arising out of any:
 - (a) Refusal to employ that person;
 - (b) Termination of that person's employment; or
 - (c) Employment-related practices, policies, acts or omissions, such as coercion, demotion, evaluation, reassignment, discipline, defamation, harassment, humiliation or discrimination directed at that person; or
- (2) The spouse, child, parent, brother or sister of that person as a consequence of "bodily injury" or "personal and advertising injury" to the person at whom any of the employment-related practices described in Paragraphs (a), (b), or (c) above is directed.

This exclusion applies:

- (1) Whether the insured may be liable as an employer or in any other capacity; and
- (2) To any obligation to share damages with or repay someone else who must pay damages because of the injury.

s. Asbestos

- (1) "Bodily injury", "property damage" or "personal and advertising injury" arising out of the "asbestos hazard".
- (2) Any damages, judgments, settlements, loss, costs or expenses that:

- (a) May be awarded or incurred by reason of any claim or suit alleging actual or threatened injury or damage of any nature or kind to persons or property which would not have occurred in whole or in part but for the "asbestos hazard";
- (b) Arise out of any request, demand, order or statutory or regulatory requirement that any insured or others test for, monitor, clean up, remove, encapsulate, contain, treat, detoxify or neutralize or in any way respond to or assess the effects of an "asbestos hazard"; or
- (c) Arise out of any claim or suit for damages because of testing for, monitoring, cleaning up, removing, encapsulating, containing, treating, detoxifying or neutralizing or in any way responding to or assessing the effects of an "asbestos hazard".

t. Violation Of Statutes That Govern E-Mails, Fax, Phone Calls Or Other Methods Of Sending Material Or Information

"Bodily injury", "property damage", or "personal and advertising injury" arising directly or indirectly out of any action or omission that violates or is alleged to violate:

- (1) The Telephone Consumer Protection Act (TCPA), including any amendment of or addition to such law;
- (2) The CAN-SPAM Act of 2003, including any amendment of or addition to such law; or
- (3) Any statute, ordinance or regulation, other than the TCPA or CAN-SPAM Act of 2003, that prohibits or limits the sending, transmitting, communicating or distribution of material or information.

Damage To Premises Rented To You – Exception For Damage By Fire, Lightning or Explosion

Exclusions **c.** through **h.** and **k.** through **o.** do not apply to damage by fire, lightning or explosion to premises rented to you or temporarily occupied by you with permission of the owner. A separate Limit of Insurance applies to this coverage as described in Section **D.** - Liability And Medical Expenses Limits Of Insurance.

BUSINESS LIABILITY COVERAGE FORM**2. Applicable To Medical Expenses Coverage**

We will not pay expenses for "bodily injury":

a. Any Insured

To any insured, except "volunteer workers".

b. Hired Person

To a person hired to do work for or on behalf of any insured or a tenant of any insured.

c. Injury On Normally Occupied Premises

To a person injured on that part of premises you own or rent that the person normally occupies.

d. Workers' Compensation And Similar Laws

To a person, whether or not an "employee" of any insured, if benefits for the "bodily injury" are payable or must be provided under a workers' compensation or disability benefits law or a similar law.

e. Athletics Activities

To a person injured while practicing, instructing or participating in any physical exercises or games, sports or athletic contests.

f. Products-Completed Operations Hazard

Included with the "products-completed operations hazard".

g. Business Liability Exclusions

Excluded under Business Liability Coverage.

C. WHO IS AN INSURED**1. If you are designated in the Declarations as:**

- a.** An individual, you and your spouse are insureds, but only with respect to the conduct of a business of which you are the sole owner.
- b.** A partnership or joint venture, you are an insured. Your members, your partners, and their spouses are also insureds, but only with respect to the conduct of your business.
- c.** A limited liability company, you are an insured. Your members are also insureds, but only with respect to the conduct of your business. Your managers are insureds, but only with respect to their duties as your managers.
- d.** An organization other than a partnership, joint venture or limited liability company, you are an insured. Your "executive officers" and directors are insureds, but only with respect to their duties as your officers or directors. Your stockholders are also insureds, but only with respect to their liability as stockholders.

- e.** A trust, you are an insured. Your trustees are also insureds, but only with respect to their duties as trustees.

2. Each of the following is also an insured:**a. Employees And Volunteer Workers**

Your "volunteer workers" only while performing duties related to the conduct of your business, or your "employees", other than either your "executive officers" (if you are an organization other than a partnership, joint venture or limited liability company) or your managers (if you are a limited liability company), but only for acts within the scope of their employment by you or while performing duties related to the conduct of your business.

However, none of these "employees" or "volunteer workers" are insureds for:

(1) "Bodily injury" or "personal and advertising injury":

- (a)** To you, to your partners or members (if you are a partnership or joint venture), to your members (if you are a limited liability company), or to a co-"employee" while in the course of his or her employment or performing duties related to the conduct of your business, or to your other "volunteer workers" while performing duties related to the conduct of your business;
- (b)** To the spouse, child, parent, brother or sister of that co-"employee" or that "volunteer worker" as a consequence of Paragraph **(1)(a)** above;
- (c)** For which there is any obligation to share damages with or repay someone else who must pay damages because of the injury described in Paragraphs **(1)(a)** or **(b)** above; or
- (d)** Arising out of his or her providing or failing to provide professional health care services.

If you are not in the business of providing professional health care services, Paragraph **(d)** does not apply to any nurse, emergency medical technician or paramedic employed by you to provide such services.

(2) "Property damage" to property:

- (a)** Owned, occupied or used by,

- (b) Rented to, in the care, custody or control of, or over which physical control is being exercised for any purpose by you, any of your "employees", "volunteer workers", any partner or member (if you are a partnership or joint venture), or any member (if you are a limited liability company).

b. Real Estate Manager

Any person (other than your "employee" or "volunteer worker"), or any organization while acting as your real estate manager.

c. Temporary Custodians Of Your Property

Any person or organization having proper temporary custody of your property if you die, but only:

- (1) With respect to liability arising out of the maintenance or use of that property; and
- (2) Until your legal representative has been appointed.

d. Legal Representative If You Die

Your legal representative if you die, but only with respect to duties as such. That representative will have all your rights and duties under this insurance.

e. Unnamed Subsidiary

Any subsidiary and subsidiary thereof, of yours which is a legally incorporated entity of which you own a financial interest of more than 50% of the voting stock on the effective date of this Coverage Part.

The insurance afforded herein for any subsidiary not shown in the Declarations as a named insured does not apply to injury or damage with respect to which an insured under this insurance is also an insured under another policy or would be an insured under such policy but for its termination or upon the exhaustion of its limits of insurance.

3. Newly Acquired Or Formed Organization

Any organization you newly acquire or form, other than a partnership, joint venture or limited liability company, and over which you maintain financial interest of more than 50% of the voting stock, will qualify as a Named Insured if there is no other similar insurance available to that organization. However:

- a. Coverage under this provision is afforded only until the 180th day after you acquire or form the organization or the end of the policy period, whichever is earlier; and

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- b. Coverage under this provision does not apply to:

- (1) "Bodily injury" or "property damage" that occurred; or
- (2) "Personal and advertising injury" arising out of an offense committed

before you acquired or formed the organization.

4. Operator Of Mobile Equipment

With respect to "mobile equipment" registered in your name under any motor vehicle registration law, any person is an insured while driving such equipment along a public highway with your permission. Any other person or organization responsible for the conduct of such person is also an insured, but only with respect to liability arising out of the operation of the equipment, and only if no other insurance of any kind is available to that person or organization for this liability. However, no person or organization is an insured with respect to:

- a. "Bodily injury" to a co-"employee" of the person driving the equipment; or
- b. "Property damage" to property owned by, rented to, in the charge of or occupied by you or the employer of any person who is an insured under this provision.

5. Operator of Nonowned Watercraft

With respect to watercraft you do not own that is less than 51 feet long and is not being used to carry persons for a charge, any person is an insured while operating such watercraft with your permission. Any other person or organization responsible for the conduct of such person is also an insured, but only with respect to liability arising out of the operation of the watercraft, and only if no other insurance of any kind is available to that person or organization for this liability.

However, no person or organization is an insured with respect to:

- a. "Bodily injury" to a co-"employee" of the person operating the watercraft; or
- b. "Property damage" to property owned by, rented to, in the charge of or occupied by you or the employer of any person who is an insured under this provision.

6. Additional Insureds When Required By Written Contract, Written Agreement Or Permit

The person(s) or organization(s) identified in Paragraphs a. through f. below are additional insureds when you have agreed, in a written

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contract, written agreement or because of a permit issued by a state or political subdivision, that such person or organization be added as an additional insured on your policy, provided the injury or damage occurs subsequent to the execution of the contract or agreement, or the issuance of the permit.

A person or organization is an additional insured under this provision only for that period of time required by the contract, agreement or permit.

However, no such person or organization is an additional insured under this provision if such person or organization is included as an additional insured by an endorsement issued by us and made a part of this Coverage Part, including all persons or organizations added as additional insureds under the specific additional insured coverage grants in Section F. – Optional Additional Insured Coverages.

a. Vendors

Any person(s) or organization(s) (referred to below as vendor), but only with respect to "bodily injury" or "property damage" arising out of "your products" which are distributed or sold in the regular course of the vendor's business and only if this Coverage Part provides coverage for "bodily injury" or "property damage" included within the "products-completed operations hazard".

- (1) The insurance afforded to the vendor is subject to the following additional exclusions:

This insurance does not apply to:

- (a) "Bodily injury" or "property damage" for which the vendor is obligated to pay damages by reason of the assumption of liability in a contract or agreement. This exclusion does not apply to liability for damages that the vendor would have in the absence of the contract or agreement;
- (b) Any express warranty unauthorized by you;
- (c) Any physical or chemical change in the product made intentionally by the vendor;
- (d) Repackaging, except when unpacked solely for the purpose of inspection, demonstration, testing, or the substitution of parts under instructions from the manufacturer, and then repackaged in the original container;

- (e) Any failure to make such inspections, adjustments, tests or servicing as the vendor has agreed to make or normally undertakes to make in the usual course of business, in connection with the distribution or sale of the products;

- (f) Demonstration, installation, servicing or repair operations, except such operations performed at the vendor's premises in connection with the sale of the product;

- (g) Products which, after distribution or sale by you, have been labeled or relabeled or used as a container, part or ingredient of any other thing or substance by or for the vendor; or

- (h) "Bodily injury" or "property damage" arising out of the sole negligence of the vendor for its own acts or omissions or those of its employees or anyone else acting on its behalf. However, this exclusion does not apply to:

- (i) The exceptions contained in Subparagraphs (d) or (f); or

- (ii) Such inspections, adjustments, tests or servicing as the vendor has agreed to make or normally undertakes to make in the usual course of business, in connection with the distribution or sale of the products.

- (2) This insurance does not apply to any insured person or organization from whom you have acquired such products, or any ingredient, part or container, entering into, accompanying or containing such products.

b. Lessors Of Equipment

- (1) Any person or organization from whom you lease equipment; but only with respect to their liability for "bodily injury", "property damage" or "personal and advertising injury" caused, in whole or in part, by your maintenance, operation or use of equipment leased to you by such person or organization.

- (2) With respect to the insurance afforded to these additional insureds, this insurance does not apply to any "occurrence" which takes place after you cease to lease that equipment.

c. Lessors Of Land Or Premises

- (1) Any person or organization from whom you lease land or premises, but only with respect to liability arising out of the ownership, maintenance or use of that part of the land or premises leased to you.
- (2) With respect to the insurance afforded to these additional insureds, this insurance does not apply to:
- (a) Any "occurrence" which takes place after you cease to lease that land or be a tenant in that premises; or
- (b) Structural alterations, new construction or demolition operations performed by or on behalf of such person or organization.

d. Architects, Engineers Or Surveyors

- (1) Any architect, engineer, or surveyor, but only with respect to liability for "bodily injury", "property damage" or "personal and advertising injury" caused, in whole or in part, by your acts or omissions or the acts or omissions of those acting on your behalf:
- (a) In connection with your premises; or
- (b) In the performance of your ongoing operations performed by you or on your behalf.
- (2) With respect to the insurance afforded to these additional insureds, the following additional exclusion applies:
- This insurance does not apply to "bodily injury", "property damage" or "personal and advertising injury" arising out of the rendering of or the failure to render any professional services by or for you, including:
- (a) The preparing, approving, or failure to prepare or approve, maps, shop drawings, opinions, reports, surveys, field orders, change orders, designs or drawings and specifications; or
- (b) Supervisory, inspection, architectural or engineering activities.

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e. Permits Issued By State Or Political Subdivisions

- (1) Any state or political subdivision, but only with respect to operations performed by you or on your behalf for which the state or political subdivision has issued a permit.
- (2) With respect to the insurance afforded to these additional insureds, this insurance does not apply to:
- (a) "Bodily injury", "property damage" or "personal and advertising injury" arising out of operations performed for the state or municipality; or
- (b) "Bodily injury" or "property damage" included within the "products-completed operations hazard".

f. Any Other Party

- (1) Any other person or organization who is not an insured under Paragraphs **a.** through **e.** above, but only with respect to liability for "bodily injury", "property damage" or "personal and advertising injury" caused, in whole or in part, by your acts or omissions or the acts or omissions of those acting on your behalf:
- (a) In the performance of your ongoing operations;
- (b) In connection with your premises owned by or rented to you; or
- (c) In connection with "your work" and included within the "products-completed operations hazard", but only if
- (i) The written contract or written agreement requires you to provide such coverage to such additional insured; and
- (ii) This Coverage Part provides coverage for "bodily injury" or "property damage" included within the "products-completed operations hazard".
- (2) With respect to the insurance afforded to these additional insureds, this insurance does not apply to:
- "Bodily injury", "property damage" or "personal and advertising injury" arising out of the rendering of, or the failure to render, any professional architectural, engineering or surveying services, including:

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- (a) The preparing, approving, or failure to prepare or approve, maps, shop drawings, opinions, reports, surveys, field orders, change orders, designs or drawings and specifications; or
- (b) Supervisory, inspection, architectural or engineering activities.

The limits of insurance that apply to additional insureds are described in Section **D. – Limits Of Insurance**.

How this insurance applies when other insurance is available to an additional insured is described in the Other Insurance Condition in Section **E. – Liability And Medical Expenses General Conditions**.

No person or organization is an insured with respect to the conduct of any current or past partnership, joint venture or limited liability company that is not shown as a Named Insured in the Declarations.

D. LIABILITY AND MEDICAL EXPENSES LIMITS OF INSURANCE

1. The Most We Will Pay

The Limits of Insurance shown in the Declarations and the rules below fix the most we will pay regardless of the number of:

- a. Insureds;
- b. Claims made or "suits" brought; or
- c. Persons or organizations making claims or bringing "suits".

2. Aggregate Limits

The most we will pay for:

- a. Damages because of "bodily injury" and "property damage" included in the "products-completed operations hazard" is the Products-Completed Operations Aggregate Limit shown in the Declarations.
- b. Damages because of all other "bodily injury", "property damage" or "personal and advertising injury", including medical expenses, is the General Aggregate Limit shown in the Declarations.

This General Aggregate Limit applies separately to each of your "locations" owned by or rented to you.

"Location" means premises involving the same or connecting lots, or premises whose connection is interrupted only by a street, roadway or right-of-way of a railroad.

This General Aggregate limit does not apply to "property damage" to premises while rented to you or temporarily occupied by you with permission of the owner, arising out of fire, lightning or explosion.

3. Each Occurrence Limit

Subject to **2.a.** or **2.b.** above, whichever applies, the most we will pay for the sum of all damages because of all "bodily injury", "property damage" and medical expenses arising out of any one "occurrence" is the Liability and Medical Expenses Limit shown in the Declarations.

The most we will pay for all medical expenses because of "bodily injury" sustained by any one person is the Medical Expenses Limit shown in the Declarations.

4. Personal And Advertising Injury Limit

Subject to **2.b.** above, the most we will pay for the sum of all damages because of all "personal and advertising injury" sustained by any one person or organization is the Personal and Advertising Injury Limit shown in the Declarations.

5. Damage To Premises Rented To You Limit

The Damage To Premises Rented To You Limit is the most we will pay under Business Liability Coverage for damages because of "property damage" to any one premises, while rented to you, or in the case of damage by fire, lightning or explosion, while rented to you or temporarily occupied by you with permission of the owner.

In the case of damage by fire, lightning or explosion, the Damage to Premises Rented To You Limit applies to all damage proximately caused by the same event, whether such damage results from fire, lightning or explosion or any combination of these.

6. How Limits Apply To Additional Insureds

The most we will pay on behalf of a person or organization who is an additional insured under this Coverage Part is the lesser of:

- a. The limits of insurance specified in a written contract, written agreement or permit issued by a state or political subdivision; or
- b. The Limits of Insurance shown in the Declarations.

Such amount shall be a part of and not in addition to the Limits of Insurance shown in the Declarations and described in this Section.

If more than one limit of insurance under this policy and any endorsements attached thereto applies to any claim or "suit", the most we will pay under this policy and the endorsements is the single highest limit of liability of all coverages applicable to such claim or "suit". However, this paragraph does not apply to the Medical Expenses limit set forth in Paragraph 3. above.

The Limits of Insurance of this Coverage Part apply separately to each consecutive annual period and to any remaining period of less than 12 months, starting with the beginning of the policy period shown in the Declarations, unless the policy period is extended after issuance for an additional period of less than 12 months. In that case, the additional period will be deemed part of the last preceding period for purposes of determining the Limits of Insurance.

E. LIABILITY AND MEDICAL EXPENSES GENERAL CONDITIONS

1. Bankruptcy

Bankruptcy or insolvency of the insured or of the insured's estate will not relieve us of our obligations under this Coverage Part.

2. Duties In The Event Of Occurrence, Offense, Claim Or Suit

a. Notice Of Occurrence Or Offense

You or any additional insured must see to it that we are notified as soon as practicable of an "occurrence" or an offense which may result in a claim. To the extent possible, notice should include:

- (1) How, when and where the "occurrence" or offense took place;
- (2) The names and addresses of any injured persons and witnesses; and
- (3) The nature and location of any injury or damage arising out of the "occurrence" or offense.

b. Notice Of Claim

If a claim is made or "suit" is brought against any insured, you or any additional insured must:

- (1) Immediately record the specifics of the claim or "suit" and the date received; and
- (2) Notify us as soon as practicable.

You or any additional insured must see to it that we receive a written notice of the claim or "suit" as soon as practicable.

c. Assistance And Cooperation Of The Insured

You and any other involved insured must:

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- (1) Immediately send us copies of any demands, notices, summonses or legal papers received in connection with the claim or "suit";
- (2) Authorize us to obtain records and other information;
- (3) Cooperate with us in the investigation, settlement of the claim or defense against the "suit"; and
- (4) Assist us, upon our request, in the enforcement of any right against any person or organization that may be liable to the insured because of injury or damage to which this insurance may also apply.

d. Obligations At The Insured's Own Cost

No insured will, except at that insured's own cost, voluntarily make a payment, assume any obligation, or incur any expense, other than for first aid, without our consent.

e. Additional Insured's Other Insurance

If we cover a claim or "suit" under this Coverage Part that may also be covered by other insurance available to an additional insured, such additional insured must submit such claim or "suit" to the other insurer for defense and indemnity.

However, this provision does not apply to the extent that you have agreed in a written contract, written agreement or permit that this insurance is primary and non-contributory with the additional insured's own insurance.

f. Knowledge Of An Occurrence, Offense, Claim Or Suit

Paragraphs **a.** and **b.** apply to you or to any additional insured only when such "occurrence", offense, claim or "suit" is known to:

- (1) You or any additional insured that is an individual;
- (2) Any partner, if you or an additional insured is a partnership;
- (3) Any manager, if you or an additional insured is a limited liability company;
- (4) Any "executive officer" or insurance manager, if you or an additional insured is a corporation;
- (5) Any trustee, if you or an additional insured is a trust; or
- (6) Any elected or appointed official, if you or an additional insured is a political subdivision or public entity.

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This Paragraph **f.** applies separately to you and any additional insured.

3. Financial Responsibility Laws

- a.** When this policy is certified as proof of financial responsibility for the future under the provisions of any motor vehicle financial responsibility law, the insurance provided by the policy for "bodily injury" liability and "property damage" liability will comply with the provisions of the law to the extent of the coverage and limits of insurance required by that law.
- b.** With respect to "mobile equipment" to which this insurance applies, we will provide any liability, uninsured motorists, underinsured motorists, no-fault or other coverage required by any motor vehicle law. We will provide the required limits for those coverages.

4. Legal Action Against Us

No person or organization has a right under this Coverage Form:

- a.** To join us as a party or otherwise bring us into a "suit" asking for damages from an insured; or
- b.** To sue us on this Coverage Form unless all of its terms have been fully complied with.

A person or organization may sue us to recover on an agreed settlement or on a final judgment against an insured; but we will not be liable for damages that are not payable under the terms of this insurance or that are in excess of the applicable limit of insurance. An agreed settlement means a settlement and release of liability signed by us, the insured and the claimant or the claimant's legal representative.

5. Separation Of Insureds

Except with respect to the Limits of Insurance, and any rights or duties specifically assigned in this policy to the first Named Insured, this insurance applies:

- a.** As if each Named Insured were the only Named Insured; and
- b.** Separately to each insured against whom a claim is made or "suit" is brought.

6. Representations**a. When You Accept This Policy**

By accepting this policy, you agree:

- (1)** The statements in the Declarations are accurate and complete;
- (2)** Those statements are based upon representations you made to us; and

- (3)** We have issued this policy in reliance upon your representations.

b. Unintentional Failure To Disclose Hazards

If unintentionally you should fail to disclose all hazards relating to the conduct of your business at the inception date of this Coverage Part, we shall not deny any coverage under this Coverage Part because of such failure.

7. Other Insurance

If other valid and collectible insurance is available for a loss we cover under this Coverage Part, our obligations are limited as follows:

a. Primary Insurance

This insurance is primary except when **b.** below applies. If other insurance is also primary, we will share with all that other insurance by the method described in **c.** below.

b. Excess Insurance

This insurance is excess over any of the other insurance, whether primary, excess, contingent or on any other basis:

(1) Your Work

That is Fire, Extended Coverage, Builder's Risk, Installation Risk or similar coverage for "your work";

(2) Premises Rented To You

That is fire, lightning or explosion insurance for premises rented to you or temporarily occupied by you with permission of the owner;

(3) Tenant Liability

That is insurance purchased by you to cover your liability as a tenant for "property damage" to premises rented to you or temporarily occupied by you with permission of the owner;

(4) Aircraft, Auto Or Watercraft

If the loss arises out of the maintenance or use of aircraft, "autos" or watercraft to the extent not subject to Exclusion **g.** of Section **A.** – Coverages.

(5) Property Damage To Borrowed Equipment Or Use Of Elevators

If the loss arises out of "property damage" to borrowed equipment or the use of elevators to the extent not subject to Exclusion **k.** of Section **A.** – Coverages.

(6) When You Are Added As An Additional Insured To Other Insurance

That is other insurance available to you covering liability for damages arising out of the premises or operations, or products and completed operations, for which you have been added as an additional insured by that insurance; or

(7) When You Add Others As An Additional Insured To This Insurance

That is other insurance available to an additional insured.

However, the following provisions apply to other insurance available to any person or organization who is an additional insured under this Coverage Part:

(a) Primary Insurance When Required By Contract

This insurance is primary if you have agreed in a written contract, written agreement or permit that this insurance be primary. If other insurance is also primary, we will share with all that other insurance by the method described in **c.** below.

(b) Primary And Non-Contributory To Other Insurance When Required By Contract

If you have agreed in a written contract, written agreement or permit that this insurance is primary and non-contributory with the additional insured's own insurance, this insurance is primary and we will not seek contribution from that other insurance.

Paragraphs **(a)** and **(b)** do not apply to other insurance to which the additional insured has been added as an additional insured.

When this insurance is excess, we will have no duty under this Coverage Part to defend the insured against any "suit" if any other insurer has a duty to defend the insured against that "suit". If no other insurer defends, we will undertake to do so, but we will be entitled to the insured's rights against all those other insurers.

BUSINESS LIABILITY COVERAGE FORM

When this insurance is excess over other insurance, we will pay only our share of the amount of the loss, if any, that exceeds the sum of:

- (1)** The total amount that all such other insurance would pay for the loss in the absence of this insurance; and
- (2)** The total of all deductible and self-insured amounts under all that other insurance.

We will share the remaining loss, if any, with any other insurance that is not described in this Excess Insurance provision and was not bought specifically to apply in excess of the Limits of Insurance shown in the Declarations of this Coverage Part.

c. Method Of Sharing

If all the other insurance permits contribution by equal shares, we will follow this method also. Under this approach, each insurer contributes equal amounts until it has paid its applicable limit of insurance or none of the loss remains, whichever comes first.

If any of the other insurance does not permit contribution by equal shares, we will contribute by limits. Under this method, each insurer's share is based on the ratio of its applicable limit of insurance to the total applicable limits of insurance of all insurers.

8. Transfer Of Rights Of Recovery Against Others To Us

a. Transfer Of Rights Of Recovery

If the insured has rights to recover all or part of any payment, including Supplementary Payments, we have made under this Coverage Part, those rights are transferred to us. The insured must do nothing after loss to impair them. At our request, the insured will bring "suit" or transfer those rights to us and help us enforce them. This condition does not apply to Medical Expenses Coverage.

b. Waiver Of Rights Of Recovery (Waiver Of Subrogation)

If the insured has waived any rights of recovery against any person or organization for all or part of any payment, including Supplementary Payments, we have made under this Coverage Part, we also waive that right, provided the insured waived their rights of recovery against such person or organization in a contract, agreement or permit that was executed prior to the injury or damage.

F. OPTIONAL ADDITIONAL INSURED COVERAGES

If listed or shown as applicable in the Declarations, one or more of the following Optional Additional Insured Coverages also apply. When any of these Optional Additional Insured Coverages apply, Paragraph 6. (Additional Insureds When Required by Written Contract, Written Agreement or Permit) of Section C., Who Is An Insured, does not apply to the person or organization shown in the Declarations. These coverages are subject to the terms and conditions applicable to Business Liability Coverage in this policy, except as provided below:

1. Additional Insured - Designated Person Or Organization

WHO IS AN INSURED under Section C. is amended to include as an additional insured the person(s) or organization(s) shown in the Declarations, but only with respect to liability for "bodily injury", "property damage" or "personal and advertising injury" caused, in whole or in part, by your acts or omissions or the acts or omissions of those acting on your behalf:

- a. In the performance of your ongoing operations; or
- b. In connection with your premises owned by or rented to you.

2. Additional Insured - Managers Or Lessors Of Premises

- a. WHO IS AN INSURED under Section C. is amended to include as an additional insured the person(s) or organization(s) shown in the Declarations as an Additional Insured - Designated Person Or Organization; but only with respect to liability arising out of the ownership, maintenance or use of that part of the premises leased to you and shown in the Declarations.
- b. With respect to the insurance afforded to these additional insureds, the following additional exclusions apply:

This insurance does not apply to:

- (1) Any "occurrence" which takes place after you cease to be a tenant in that premises; or
- (2) Structural alterations, new construction or demolition operations performed by or on behalf of such person or organization.

3. Additional Insured - Grantor Of Franchise

WHO IS AN INSURED under Section C. is amended to include as an additional insured the person(s) or organization(s) shown in the Declarations as an Additional Insured - Grantor Of Franchise, but only with respect to their liability as grantor of franchise to you.

4. Additional Insured - Lessor Of Leased Equipment

- a. WHO IS AN INSURED under Section C. is amended to include as an additional insured the person(s) or organization(s) shown in the Declarations as an Additional Insured - Lessor of Leased Equipment, but only with respect to liability for "bodily injury", "property damage" or "personal and advertising injury" caused, in whole or in part, by your maintenance, operation or use of equipment leased to you by such person(s) or organization(s).
- b. With respect to the insurance afforded to these additional insureds, this insurance does not apply to any "occurrence" which takes place after you cease to lease that equipment.

5. Additional Insured - Owners Or Other Interests From Whom Land Has Been Leased

- a. WHO IS AN INSURED under Section C. is amended to include as an additional insured the person(s) or organization(s) shown in the Declarations as an Additional Insured - Owners Or Other Interests From Whom Land Has Been Leased, but only with respect to liability arising out of the ownership, maintenance or use of that part of the land leased to you and shown in the Declarations.
- b. With respect to the insurance afforded to these additional insureds, the following additional exclusions apply:

This insurance does not apply to:

- (1) Any "occurrence" that takes place after you cease to lease that land; or
- (2) Structural alterations, new construction or demolition operations performed by or on behalf of such person or organization.

6. Additional Insured - State Or Political Subdivision - Permits

- a. WHO IS AN INSURED under Section C. is amended to include as an additional insured the state or political subdivision shown in the Declarations as an Additional

Insured – State Or Political Subdivision - Permits, but only with respect to operations performed by you or on your behalf for which the state or political subdivision has issued a permit.

- b. With respect to the insurance afforded to these additional insureds, the following additional exclusions apply:

This insurance does not apply to:

- (1) "Bodily injury", "property damage" or "personal and advertising injury" arising out of operations performed for the state or municipality; or
- (2) "Bodily injury" or "property damage" included in the "product-completed operations" hazard.

7. Additional Insured – Vendors

- a. WHO IS AN INSURED under Section C. is amended to include as an additional insured the person(s) or organization(s) (referred to below as vendor) shown in the Declarations as an Additional Insured - Vendor, but only with respect to "bodily injury" or "property damage" arising out of "your products" which are distributed or sold in the regular course of the vendor's business and only if this Coverage Part provides coverage for "bodily injury" or "property damage" included within the "products-completed operations hazard".
- b. The insurance afforded to the vendor is subject to the following additional exclusions:

- (1) This insurance does not apply to:

- (a) "Bodily injury" or "property damage" for which the vendor is obligated to pay damages by reason of the assumption of liability in a contract or agreement. This exclusion does not apply to liability for damages that the vendor would have in the absence of the contract or agreement;
- (b) Any express warranty unauthorized by you;
- (c) Any physical or chemical change in the product made intentionally by the vendor;
- (d) Repackaging, unless unpacked solely for the purpose of inspection, demonstration, testing, or the substitution of parts under instructions from the manufacturer, and then repackaged in the original container;

- (e) Any failure to make such inspections, adjustments, tests or servicing as the vendor has agreed to make or normally undertakes to make in the usual course of business, in connection with the distribution or sale of the products;

- (f) Demonstration, installation, servicing or repair operations, except such operations performed at the vendor's premises in connection with the sale of the product;

- (g) Products which, after distribution or sale by you, have been labeled or relabeled or used as a container, part or ingredient of any other thing or substance by or for the vendor; or

- (h) "Bodily injury" or "property damage" arising out of the sole negligence of the vendor for its own acts or omissions or those of its employees or anyone else acting on its behalf. However, this exclusion does not apply to:

- (i) The exceptions contained in Subparagraphs (d) or (f); or

- (ii) Such inspections, adjustments, tests or servicing as the vendor has agreed to make or normally undertakes to make in the usual course of business, in connection with the distribution or sale of the products.

- (2) This insurance does not apply to any insured person or organization from whom you have acquired such products, or any ingredient, part or container, entering into, accompanying or containing such products.

8. Additional Insured – Controlling Interest

WHO IS AN INSURED under Section C. is amended to include as an additional insured the person(s) or organization(s) shown in the Declarations as an Additional Insured – Controlling Interest, but only with respect to their liability arising out of:

- a. Their financial control of you; or
- b. Premises they own, maintain or control while you lease or occupy these premises.

BUSINESS LIABILITY COVERAGE FORM

This insurance does not apply to structural alterations, new construction and demolition operations performed by or for that person or organization.

9. Additional Insured – Owners, Lessees Or Contractors – Scheduled Person Or Organization

a. WHO IS AN INSURED under Section C. is amended to include as an additional insured the person(s) or organization(s) shown in the Declarations as an Additional Insured – Owner, Lessees Or Contractors, but only with respect to liability for "bodily injury", "property damage" or "personal and advertising injury" caused, in whole or in part, by your acts or omissions or the acts or omissions of those acting on your behalf:

- (1) In the performance of your ongoing operations for the additional insured(s); or
- (2) In connection with "your work" performed for that additional insured and included within the "products-completed operations hazard", but only if this Coverage Part provides coverage for "bodily injury" or "property damage" included within the "products-completed operations hazard".

b. With respect to the insurance afforded to these additional insureds, this insurance does not apply to "bodily injury", "property damage" or "personal an advertising injury" arising out of the rendering of, or the failure to render, any professional architectural, engineering or surveying services, including:

- (1) The preparing, approving, or failure to prepare or approve, maps, shop drawings, opinions, reports, surveys, field orders, change orders, designs or drawings and specifications; or
- (2) Supervisory, inspection, architectural or engineering activities.

10. Additional Insured – Co-Owner Of Insured Premises

WHO IS AN INSURED under Section C. is amended to include as an additional insured the person(s) or Organization(s) shown in the Declarations as an Additional Insured – Co-Owner Of Insured Premises, but only with respect to their liability as co-owner of the premises shown in the Declarations.

The limits of insurance that apply to additional insureds are described in Section D. – Limits Of Insurance.

How this insurance applies when other insurance is available to an additional insured is described in the Other Insurance Condition in Section E. – Liability And Medical Expenses General Conditions.

G. LIABILITY AND MEDICAL EXPENSES DEFINITIONS

1. "Advertisement" means the widespread public dissemination of information or images that has the purpose of inducing the sale of goods, products or services through:

- a. (1) Radio;
- (2) Television;
- (3) Billboard;
- (4) Magazine;
- (5) Newspaper;

b. The Internet, but only that part of a web site that is about goods, products or services for the purposes of inducing the sale of goods, products or services; or

c. Any other publication that is given widespread public distribution.

However, "advertisement" does not include:

- a. The design, printed material, information or images contained in, on or upon the packaging or labeling of any goods or products; or
- b. An interactive conversation between or among persons through a computer network.

2. "Advertising idea" means any idea for an "advertisement".

3. "Asbestos hazard" means an exposure or threat of exposure to the actual or alleged properties of asbestos and includes the mere presence of asbestos in any form.

4. "Auto" means a land motor vehicle, trailer or semi-trailer designed for travel on public roads, including any attached machinery or equipment. But "auto" does not include "mobile equipment".

5. "Bodily injury" means physical:

- a. Injury;
- b. Sickness; or
- c. Disease

sustained by a person and, if arising out of the above, mental anguish or death at any time.

6. "Coverage territory" means:

- a. The United States of America (including its territories and possessions), Puerto Rico and Canada;
- b. International waters or airspace, but only if the injury or damage occurs in the course of travel or transportation between any places included in **a.** above;
- c. All other parts of the world if the injury or damage arises out of:
 - (1) Goods or products made or sold by you in the territory described in **a.** above;
 - (2) The activities of a person whose home is in the territory described in **a.** above, but is away for a short time on your business; or
 - (3) "Personal and advertising injury" offenses that take place through the Internet or similar electronic means of communication

provided the insured's responsibility to pay damages is determined in the United States of America (including its territories and possessions), Puerto Rico or Canada, in a "suit" on the merits according to the substantive law in such territory, or in a settlement we agree to.

- 7. "Electronic data" means information, facts or programs:
 - a. Stored as or on;
 - b. Created or used on; or
 - c. Transmitted to or from computer software, including systems and applications software, hard or floppy disks, CD-ROMS, tapes, drives, cells, data processing devices or any other media which are used with electronically controlled equipment.
- 8. "Employee" includes a "leased worker". "Employee" does not include a "temporary worker".
- 9. "Executive officer" means a person holding any of the officer positions created by your charter, constitution, by-laws or any other similar governing document.
- 10. "Hostile fire" means one which becomes uncontrollable or breaks out from where it was intended to be.
- 11. "Impaired property" means tangible property, other than "your product" or "your work", that cannot be used or is less useful because:
 - a. It incorporates "your product" or "your work" that is known or thought to be defective, deficient, inadequate or dangerous; or

- b. You have failed to fulfill the terms of a contract or agreement;

if such property can be restored to use by:

- a. The repair, replacement, adjustment or removal of "your product" or "your work"; or
- b. Your fulfilling the terms of the contract or agreement.

12. "Insured contract" means:

- a. A contract for a lease of premises. However, that portion of the contract for a lease of premises that indemnifies any person or organization for damage by fire, lightning or explosion to premises while rented to you or temporarily occupied by you with permission of the owner is subject to the Damage To Premises Rented To You limit described in Section **D. – Liability and Medical Expenses Limits of Insurance.**
- b. A sidetrack agreement;
- c. Any easement or license agreement, including an easement or license agreement in connection with construction or demolition operations on or within 50 feet of a railroad;
- d. Any obligation, as required by ordinance, to indemnify a municipality, except in connection with work for a municipality;
- e. An elevator maintenance agreement; or
- f. That part of any other contract or agreement pertaining to your business (including an indemnification of a municipality in connection with work performed for a municipality) under which you assume the tort liability of another party to pay for "bodily injury" or "property damage" to a third person or organization, provided the "bodily injury" or "property damage" is caused, in whole or in part, by you or by those acting on your behalf. Tort liability means a liability that would be imposed by law in the absence of any contract or agreement.

Paragraph **f.** includes that part of any contract or agreement that indemnifies a railroad for "bodily injury" or "property damage" arising out of construction or demolition operations within 50 feet of any railroad property and affecting any railroad bridge or trestle, tracks, road-beds, tunnel, underpass or crossing.

However, Paragraph **f.** does not include that part of any contract or agreement:

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- (1) That indemnifies an architect, engineer or surveyor for injury or damage arising out of:
- (a) Preparing, approving or failing to prepare or approve maps, shop drawings, opinions, reports, surveys, field orders, change orders, designs or drawings and specifications; or
 - (b) Giving directions or instructions, or failing to give them, if that is the primary cause of the injury or damage; or
- (2) Under which the insured, if an architect, engineer or surveyor, assumes liability for an injury or damage arising out of the insured's rendering or failure to render professional services, including those listed in (1) above and supervisory, inspection, architectural or engineering activities.
13. "Leased worker" means a person leased to you by a labor leasing firm under an agreement between you and the labor leasing firm, to perform duties related to the conduct of your business. "Leased worker" does not include a "temporary worker".
14. "Loading or unloading" means the handling of property:
- a. After it is moved from the place where it is accepted for movement into or onto an aircraft, watercraft or "auto";
 - b. While it is in or on an aircraft, watercraft or "auto"; or
 - c. While it is being moved from an aircraft, watercraft or "auto" to the place where it is finally delivered;
- but "loading or unloading" does not include the movement of property by means of a mechanical device, other than a hand truck, that is not attached to the aircraft, watercraft or "auto".
15. "Mobile equipment" means any of the following types of land vehicles, including any attached machinery or equipment:
- a. Bulldozers, farm machinery, forklifts and other vehicles designed for use principally off public roads;
 - b. Vehicles maintained for use solely on or next to premises you own or rent;
 - c. Vehicles that travel on crawler treads;
 - d. Vehicles, whether self-propelled or not, on which are permanently mounted:
- (1) Power cranes, shovels, loaders, diggers or drills; or
 - (2) Road construction or resurfacing equipment such as graders, scrapers or rollers;
- e. Vehicles not described in a., b., c., or d. above that are not self-propelled and are maintained primarily to provide mobility to permanently attached equipment of the following types:
- (1) Air compressors, pumps and generators, including spraying, welding, building cleaning, geophysical exploration, lighting and well servicing equipment; or
 - (2) Cherry pickers and similar devices used to raise or lower workers;
- f. Vehicles not described in a., b., c., or d. above maintained primarily for purposes other than the transportation of persons or cargo.
- However, self-propelled vehicles with the following types of permanently attached equipment are not "mobile equipment" but will be considered "autos":
- (1) Equipment, of at least 1,000 pounds gross vehicle weight, designed primarily for:
 - (a) Snow removal;
 - (b) Road maintenance, but not construction or resurfacing; or
 - (c) Street cleaning;
 - (2) Cherry pickers and similar devices mounted on automobile or truck chassis and used to raise or lower workers; and
 - (3) Air compressors, pumps and generators, including spraying, welding, building cleaning, geophysical exploration, lighting and well servicing equipment.
16. "Occurrence" means an accident, including continuous or repeated exposure to substantially the same general harmful conditions.
17. "Personal and advertising injury" means injury, including consequential "bodily injury", arising out of one or more of the following offenses:
- a. False arrest, detention or imprisonment;
 - b. Malicious prosecution;

- c. The wrongful eviction from, wrongful entry into, or invasion of the right of private occupancy of a room, dwelling or premises that the person occupies, committed by or on behalf of its owner, landlord or lessor;
 - d. Oral, written or electronic publication of material that slanders or libels a person or organization or disparages a person's or organization's goods, products or services;
 - e. Oral, written or electronic publication of material that violates a person's right of privacy;
 - f. Copying, in your "advertisement", a person's or organization's "advertising idea" or style of "advertisement";
 - g. Infringement of copyright, slogan, or title of any literary or artistic work, in your "advertisement"; or
 - h. Discrimination or humiliation that results in injury to the feelings or reputation of a natural person.
- 18. "Pollutants"** means any solid, liquid, gaseous or thermal irritant or contaminant, including smoke, vapor, soot, fumes, acids, alkalis, chemicals and waste. Waste includes materials to be recycled, reconditioned or reclaimed.
- 19. "Products-completed operations hazard";**
- a. Includes all "bodily injury" and "property damage" occurring away from premises you own or rent and arising out of "your product" or "your work" except:
 - (1) Products that are still in your physical possession; or
 - (2) Work that has not yet been completed or abandoned. However, "your work" will be deemed to be completed at the earliest of the following times:
 - (a) When all of the work called for in your contract has been completed.
 - (b) When all of the work to be done at the job site has been completed if your contract calls for work at more than one job site.
 - (c) When that part of the work done at a job site has been put to its intended use by any person or organization other than another contractor or subcontractor working on the same project.

BUSINESS LIABILITY COVERAGE FORM

Work that may need service, maintenance, correction, repair or replacement, but which is otherwise complete, will be treated as completed.

The "bodily injury" or "property damage" must occur away from premises you own or rent, unless your business includes the selling, handling or distribution of "your product" for consumption on premises you own or rent.

- b. Does not include "bodily injury" or "property damage" arising out of:
 - (1) The transportation of property, unless the injury or damage arises out of a condition in or on a vehicle not owned or operated by you, and that condition was created by the "loading or unloading" of that vehicle by any insured; or
 - (2) The existence of tools, uninstalled equipment or abandoned or unused materials.
- 20. "Property damage" means:**
- a. Physical injury to tangible property, including all resulting loss of use of that property. All such loss of use shall be deemed to occur at the time of the physical injury that caused it; or
 - b. Loss of use of tangible property that is not physically injured. All such loss of use shall be deemed to occur at the time of "occurrence" that caused it.
- As used in this definition, "electronic data" is not tangible property.
- 21. "Suit" means a civil proceeding in which damages because of "bodily injury", "property damage" or "personal and advertising injury" to which this insurance applies are alleged. "Suit" includes:**
- a. An arbitration proceeding in which such damages are claimed and to which the insured must submit or does submit with our consent; or
 - b. Any other alternative dispute resolution proceeding in which such damages are claimed and to which the insured submits with our consent.
- 22. "Temporary worker" means a person who is furnished to you to substitute for a permanent "employee" on leave or to meet seasonal or short-term workload conditions.**
- 23. "Volunteer worker" means a person who:**
- a. Is not your "employee";

BUSINESS LIABILITY COVERAGE FORM

- b. Donates his or her work;
- c. Acts at the direction of and within the scope of duties determined by you; and
- d. Is not paid a fee, salary or other compensation by you or anyone else for their work performed for you.

24. "Your product":**a. Means:**

- (1) Any goods or products, other than real property, manufactured, sold, handled, distributed or disposed of by:
 - (a) You;
 - (b) Others trading under your name; or
 - (c) A person or organization whose business or assets you have acquired; and
- (2) Containers (other than vehicles), materials, parts or equipment furnished in connection with such goods or products.

b. Includes:

- (1) Warranties or representations made at any time with respect to the fitness, quality, durability, performance or use of "your product"; and

- (2) The providing of or failure to provide warnings or instructions.

- c. Does not include vending machines or other property rented to or located for the use of others but not sold.

25. "Your work":**a. Means:**

- (1) Work or operations performed by you or on your behalf; and
- (2) Materials, parts or equipment furnished in connection with such work or operations.

b. Includes:

- (1) Warranties or representations made at any time with respect to the fitness, quality, durability, performance or use of "your work"; and
- (2) The providing of or failure to provide warnings or instructions.

TO: City Council
FROM: Jon Weiks, Chief of Police
DATE: January 4, 2022
SUBJECT: 2022 Lewis County Jail Interlocal Agreement Amendment

1) Recommended Action:

Authorization for the Mayor to sign the Amendment to Interlocal Agreement for Use of Jail Facilities – City of Tumwater Amendment No. 1.

2) Background:

In mid-2020 the City contracted with Lewis County for jail services. The contract calls for an annual review of the daily contract rate for housing prisoners and any adjustments for the next year to be provided to the City by September 30th. This Amendment No. 1 serves this purpose and sets the rates for 2022. Because of the pandemic, we have been unable to utilize the Lewis County jail. We hope to be able to have access in 2022.

3) Policy Support:

2020 Strategic Priority: *“Provide and Sustain Quality Public Safety Services”*

4) Alternatives:

Continue operating solely with the Nisqually Jail.

5) Fiscal Notes:

The daily contract rate for 2021 was \$75.00 and the 2022 rate is being adjusted to \$77.25.

6) Attachments:

- A. Interlocal Agreement for Use of Jail Facilities between the Lewis County Sheriff's Office and the City of Tumwater.
- B. Amendment to Interlocal Agreement for Use of Jail Facilities – City of Tumwater Amendment No. 1

**BEFORE THE BOARD OF COUNTY COMMISSIONERS
LEWIS COUNTY, WASHINGTON**

IN THE MATTER OF:

RESOLUTION NO. 20-215

ACCEPTANCE OF AN INTERLOCAL AGREEMENT FOR
USE OF JAIL FACILITIES BETWEEN THE LEWIS
COUNTY SHERIFF'S OFFICE AND THE CITY OF
TUMWATER.

WHEREAS, the Board of County Commissioners (BOCC) has reviewed the agreement between the Lewis County Sheriff's Office and the City of Tumwater for use of jail facilities; and

WHEREAS, it appears to be in the best public interest to authorize the execution of said interlocal agreement; and

WHEREAS, this contract provides a daily bed rate of \$75.00 for 2020; and

WHEREAS, the BOCC authorizes the Sheriff, or his designee, to approve and sign future amendments extending the duration of this agreement.

NOW THEREFORE BE IT RESOLVED the aforesaid interlocal agreement for utilization of jail facilities by the City of Tumwater is hereby approved, and the BOCC is authorized to sign the same.

DONE IN OPEN SESSION this 22nd day of June, 2020.

APPROVED AS TO FORM:
Jonathan Meyer, Prosecuting Attorney

BOARD OF COUNTY COMMISSIONERS
LEWIS COUNTY, WASHINGTON

Kevin McDowell
By: Kevin McDowell,
Deputy Prosecuting Attorney

Gary Stamper

Gary Stamper, Chair

ATTEST:



Edna J. Fund

Edna J. Fund, Vice Chair

Rieva Lester

Rieva Lester,
Clerk of the Lewis County Board of County
Commissioners

Robert C. Jackson

Robert C. Jackson, Commissioner

AGREEMENT FOR USE OF JAIL FACILITIES IN LEWIS COUNTY

THIS AGREEMENT is made and entered into by and between LEWIS COUNTY, a political subdivision of the State of Washington (hereinafter "County"), and the City of Tumwater (hereinafter "Contract Agency") a Washington municipal corporation.

RECITALS

WHEREAS, the County is authorized by law to operate a jail for misdemeanants and felons and the Contract Agency is authorized by law to operate a jail for misdemeanants and felons;

WHEREAS, the Contracting Agency wishes to designate the County jail as a place of confinement for the incarceration of one or more inmates lawfully committed to the Contract Agency's custody;

WHEREAS, the County is amenable to accepting and keeping inmates received from the Contract Agency in the County's custody at its jail for a rate of compensation mutually agreed to herein;

WHEREAS, RCW 39.34 RCW 70.48, and other Washington laws authorize any public agency to contract with another public agency to perform services and activities that each such public agency is authorized by law to perform; and

WHEREAS, the County and Contract Agency have considered the anticipated costs of incarceration services and potential revenues to fund such services and determined it is in each of their best interests to enter into this Agreement as authorized and provided for by RCW 39.34.080, RCW 70.48, and other Washington law.

AGREEMENT

For and in consideration of the conditions, covenants and agreements contained herein the parties agree as follows:

1. PURPOSE:

It is the purpose of this Agreement to provide for the use by the Contract Agency of the County's jail facilities and services at the County's jail located at the Lewis County Jail, 28 SW Chehalis Avenue, Chehalis, Washington 98532-1900.

2. MAILING AND CONTACT ADDRESS:

All written notices shall be deemed received three (3) days after being deposited in the US Mail. All written notices, reports and correspondence required or allowed by this Agreement shall be sent to the following:

County: Lewis County Jail
Attention: Corrections Chief
28 SW Chehalis Avenue
Chehalis, WA 98532-1900
Facsimile: (360) 740-1463
Telephone Number: (360) 740-2714

Contract Agency: Tumwater Police Department
Attention: Accounts Payable
555 Israel Road S.W.
Tumwater, WA. 98501

E-mail: policerecords@ci.tumwater.wa.us
Telephone Number: 360-754-4200

3. AVAILABILITY OF JAIL FACILITIES:

Subject to the County's rights with respect to certain inmates set forth in Sections 8 and 9 herein, the County will accept and keep inmates at the request of the Contract Agency, unless the facility is declared at or near capacity by court order, or in the sole discretion of the County, if its inmate population is at capacity or so near capacity there is a risk the reasonable operational capacity limits of the County's jail might be reached or exceeded.

4. COMPENSATION FROM CONTRACT AGENCY:

(a) Daily Rate. In return for the County's housing of an inmate of the Contract Agency, the Contract Agency shall pay the County seventy-five dollars (\$75.00) for every calendar day said inmate is in the custody of the County. Such time period shall be measured from the time said inmate is transferred to the custody of the County and ends when the Contract Agency resumes custody.

(b) Other Costs. The Contract Agency shall also pay such other costs to the County or third parties as set forth herein, including but not limited to any medical costs required by Section 5.

(c) Billing. The County will bill the Contracting Agency on the 15th day of each month for amounts due to the County under this Agreement for services rendered in the prior calendar month. Payment shall be due from the Contract Agency by the 15th day of the following month. Account balances overdue 30 days or more will be subject to a service charge of 1% per month (12% per annum). Should collection action become necessary, the Contract Agency will pay collection costs associated with late payments.

(d) Concurrent Sentences. When a contract agency requests the Lewis County Jail to track, monitor, calculate time served for sentences imposed by a court other than Lewis County District or Superior Courts, or to place a hold on or to notify a court of an inmate's incarceration in the Lewis County Jail, the Contract Agency will pay 1/2 of the daily rate for offender serving time concurrently.

(e) Annual Review.

The daily rate for housing prisoners shall be adjusted annually by the County based on the projected costs for the next contract year. The adjusted daily rate anticipated for the next year shall be provided to the Contract Agency for review and comment no later than August of each year. The Contract Agency's written response will be considered and the final daily rate for the following year will be provided to the Contract Agency by September 30. Any increase shall take effect January 1.

5. MEDICAL COSTS AND TREATMENT:

(a) Services Provided. Upon transfer of custody to the County, the County will provide or arrange for the Contract Agency's inmates to receive medical, psychiatric and dental services necessary to safeguard their health while confined, in accordance with the provisions of RCW 74.48.130, as now in effect or hereinafter amended, and the policies and rules of the County jail.

(b) Cost Responsibility. The Contract Agency shall be responsible for the cost of medication prescribed for its inmates. The Contract Agency shall also be responsible for costs associated with the delivery of medical, psychiatric, dental, and emergency medical services provided to an inmate which are not available from the health care program within the County jail. These costs shall be paid directly to the provider or as a reimbursement to the County, as mutually agreed by the County and Contract Agency.

(c) Notice. Except in situations deemed an emergency by the County, the County shall notify the Contract Agency's contact person in writing, by mail or facsimile, prior to transfer of a Contract Agency's inmate to a medical, dental or psychiatric provider outside of the County jail or to a hospital for medical, psychiatric or dental services.

(d) Pre-Confinement Consents or Refusals. If a Contract Agency inmate has received or refused medical, psychiatric or dental treatment from the Contract Agency before confinement in the County jail, the Contract Agency shall provide the County written verification of any authorization of or refusal to authorize care or treatment for such inmate(s).

(e) Return for Medical Services. Nothing herein shall preclude the Contract Agency from resuming custody of an ill or injured inmate by picking such inmate up for transfer at the County jail; provided, in situations in which the County deems an inmate requires emergency medical care, the County shall have the right to arrange for emergency medical services at the Contract Agency's expense.

(f) Records. The County shall keep records of all medical, psychiatric or dental services provided to inmates. Upon request by the Contract Agency, and in accordance with applicable law, the Contract Agency shall receive a copy of the medical, psychiatric or dental records held by the County for an inmate of the

Contract Agency. County and the contract medical provider for County shall comply with all requirements under the Health Insurance Portability and Accountability Act (HIPAA) and other applicable law.

6. TRANSPORTATION OF CONTRACT PRISONERS:

(a) Transportation: The Contract Agency is responsible for the transport of offenders to and from the County Jail at any time that inmate transport is needed, including, but not limited to, for mandatory court appearances. The County shall have no obligation to provide transportation services. However, if transportation is provided by the County, the County shall be reimbursed for any actual expense incurred.

7. TRANSFER OF CUSTODY:

(a) Commencement of Custody by County. The Contract Agency's inmates shall be deemed transferred to the custody of the County when Corrections Officers from the Lewis County Sheriff's Office take physical control of an inmate. The County will not take such control of an inmate until the Contract Agency has delivered copies of all inmate records pertaining to the inmate's incarceration by the Contract Agency or its agent, including a copy or summary of each inmate's medical records held by the Contract Agency or its agent. If the County requests additional information, the parties shall mutually cooperate to obtain such information. In the absence of documentation and information satisfactory to the County, the receiving officer may refuse to accept the Contract Agency's inmate for confinement. Property shall be limited to the amount which can be stored in a grocery size bag. The Contract Agency's officers delivering an inmate to the transportation location shall be responsible for ensuring that all paperwork is in order and all property allowed to be transported with the inmate is properly packaged. Only when all paperwork and property are in order will the County take physical control and assume custody and responsibility for the Contract Agency's inmate for confinement.

(b) Further Transfer of Custody. Except as otherwise allowed by Section 10 of this Agreement, the County will not transfer custody of any inmate confined pursuant to this Agreement to any agency other than to the Contract Agency without written authorization from a court of competent jurisdiction.

(c) Responsibilities upon Assumption of Custody. Upon transfer of custody to the County, it shall be the County's responsibility to confine the inmate; to supervise, discipline and control said inmate; and to administer the inmate's sentence pursuant to the order of the committing court in the State of Washington. During such confinement, the County shall provide and furnish or arrange for necessary medical and hospital services and supplies in accordance with Section 5 of this Agreement.

8. RIGHT TO REFUSE AN INMATE:

The County shall have the right to refuse the Contract Agency's inmates under the following circumstances:

(a) Pending Medical Needs. The County shall have the right to refuse to accept a Contract Agency inmate who, at the time of presentation to the County jail for confinement, appears in need of medical, psychiatric or dental attention, until the Contract Agency has provided medical, psychiatric or dental treatment to the inmate to the satisfaction of the County. At the time of custody transfer it is the Contract Agency's responsibility to provide information relevant to the care and custody of the Contract Agency's inmate.

9. REMOVAL FROM JAIL:

The Contract Agency's inmates may be removed from the County jail for reasons outlined below.

(a) Request by Contract Agency. Upon the County's receipt of written request for inmate return made by the Contract Agency, the inmate will be transported by the Contract Agency or the County pursuant to Section 6 above.

(b) Court Order. Upon the County's receipt of an order issued by a court having jurisdiction over a Contract Agency's inmate, transport will be according to the terms expressed in the court order, or by the Contract Agency or the County pursuant to Section 6 above.

(c) Treatment Outside of Jail. The Contract Agency's inmate may be removed from the County jail for medical, psychiatric or dental treatment or care not available within the County jail.

(d) Catastrophe. In the event of a catastrophic condition presenting, in the sole discretion of the County, an imminent danger to the safety of the inmate(s), inmates held on behalf of the Contract Agency may be removed from the County Jail. The County will inform the Contract Agency, at the earliest practical time, of the whereabouts of the inmate(s) and shall exercise all reasonable care for the safekeeping and custody of such inmate(s).

10. TRANSFER OF INMATES UPON TERMINATION/EXPIRATION OF AGREEMENT:

(a) Termination by County. In the event of a notice of termination by the County in accordance with Section 20 below, it shall be the County's obligation to transport the Contract Agency's inmates to the Contract Agency at no expense to the Contract Agency.

(b) Termination by Contract Agency. In the event of a notice of termination from the Contract Agency in accordance with Section 20 below, it shall be the Contract Agency's obligation to transport the Contract Agency's inmates at its own expense, on or before the effective date of such termination. Until such

removal, the Contract Agency shall pay the compensation and costs set forth herein related to the housing of such inmate(s) and the County shall retain all rights hereunder, notwithstanding such termination, until the Contract Agency's inmates are removed from the County jail.

11. INMATE RIGHTS, ACCOUNTS AND PROGRAMS:

(a) Early Release Credit and Discipline. The Contract Agency's inmates confined under this Agreement shall earn early release credits under the policies and rules prescribed by the County and state law for inmates at the County jail. With respect to the Contract Agency's inmates, the County shall maintain and manage disciplinary issues and will administer sanctions, including removal of earned early release credit, as per facility rules and defined by RCW. No discipline prohibited by federal or state law will be permitted. The disciplinary policies and rules of the County jail will apply equally to inmates confined pursuant to this Agreement and to those otherwise confined.

(b) Inmate Accounts. The County shall establish and maintain a financial account for each inmate and shall credit to such account money received from each inmate or from the Contract Agency on behalf of each inmate. The County shall make disbursements from such accounts by debiting such accounts in accurate amounts for items purchased by the inmate for personal needs in accordance with the policies of the Lewis County Jail. Disbursements shall be made in limited amounts as are reasonably necessary for personal maintenance. The County shall remit a check to the Contract Agency in the name of each inmate eligible for reimbursement in the following situations: Termination or expiration of this Agreement, an inmate's return to the Contract Agency, inmate death or inmate escape.

(c) Programs. The County shall provide the Contract Agency's inmates with access to educational, recreational and social service programs offered at the County jail under the terms and conditions applicable to other similarly situated inmates at the County jail.

12. ACCESS TO FACILITY AND PRISONERS:

(a) Access to Facility. Contract Agency shall have the right to inspect, at mutually agreeable times, the County jail in order to confirm such jail maintains standards acceptable to the Contract Agency and ensure its inmates are treated appropriately. The County agrees to manage, maintain and operate its facilities consistent with applicable federal, state and local laws.

(b) Access to Inmates. Contract Agency personnel shall have the right to interview Contract Agency inmates at reasonable times within the jail. Contract Agency officers shall be afforded equal priority for use of jail interview rooms with other departments, including the Lewis County Sheriff's Office.

13. ESCAPES AND DEATHS:

(a) Escapes.

In the event of an escape by a Contract Agency's inmate from the County jail, the Contract Agency will be notified by telephone or e-mail with a follow-up in writing as soon as practical. The County will have the primary authority to direct the investigation and to pursue the inmate within its jurisdiction. Any costs related to the investigation and pursuit within its jurisdiction will be the responsibility of the County. The County will not be required to pursue and return the Contract Agency's escaped inmates from outside of the County.

(b) Deaths.

1) In the event of a death of a Contract Agency inmate in the County jail, the Contract Agency shall be promptly notified by telephone or e-mail with a follow-up notification in writing via US mail. Lewis County Sheriff's Office and the Lewis County Coroner will investigate the circumstances. The Contract Agency may, if it wishes, join in the investigation and receive copies of records and documents in connection with the investigation.

2) Subject to RCW 68.50.160, any other applicable provisions of law, and to the orders of the Lewis County Coroner, the County shall follow the written instructions of the Contract Agency regarding the disposition of the body. Such written instructions shall be provided within three working days of receipt by the Contract Agency of notice of such death. All expenses related to necessary preparation of the body and transport charges shall be the responsibility of the Contract Agency. With written consent from the Contract Agency, the County may arrange burial and all matters related or incidental thereto, and the Contract Agency shall pay all such expenses. This paragraph deals with relations between the parties to this Agreement and is not intended to relieve any relative or other person from responsibility for the disposition of the deceased or any associated expenses.

14. POSTING OF BAIL:

The County shall serve as an agent for the Contract Agency in receipt of bail bonds or money posted for or by a Contract Agency's inmate. Bail posted for Contract Agency inmates shall adhere to the County's bail guidelines.

Posting of bail (cash or bond) shall only be accepted by Lewis County Jail in the correct and full amount. Bail must be accounted for in the inmate's file maintained by Lewis County Jail. Bail and related documents shall be remitted to a designated Tumwater Police Department transport officer who will file it with the appropriate court. The Tumwater Police Department agrees to make such a transport officer available for such remittance within 24 hours of notice from the County that the bail and related documents are ready for pickup. Bail remitted to the TPD transport officer must be accompanied by a fully completed Release From Custody form and a copy of the court's Release Order, if applicable. If a

bond is posted, Lewis County Jail shall confirm the accuracy of the information in both the bond and attached power of attorney documents before acceptance and release of the inmate, including proper bail amount and appropriate court name. For cash bail, Lewis County Jail shall provide the Tumwater PD transport officer with a copy of the receipt and complete payer contact information.

15. RECORD KEEPING:

The County agrees to maintain a system of record keeping relative to the booking and confinement of each of the Contract Agency's inmates consistent with the record keeping by the County for other inmates. The County shall make copies of said records available to the Contract Agency upon its request.

16. INDEMNIFICATIONS AND INSURANCE:

(a) To the extent of its comparative liability, each party agrees to indemnify, defend and hold the other party, its elected and appointed officials, employees, and agents, harmless from and against any and all claims (including, but not limited to, claims relating to false arrest or detention, alleged mistreatment, alleged violation of civil rights, injury), damages, losses and expenses, including but not limited to court costs, and attorney's fees, for any personal injury, for any bodily injury, sickness, disease or death and for any damage to or destruction of any property which are alleged or proven to be caused by an act or omission, negligent or otherwise, of its elected and appointed officials, employees, and/or agents.

(b) A party shall not be required to indemnify, defend, or hold the other party harmless if the claim, damage, loss or expense for personal injury, for any bodily injury, sickness, disease or death or for any damage to or destruction of any property is caused by the sole act or omission of the other party. In the event of any concurrent act or omission of the parties, negligent or otherwise, these indemnity provisions shall be valid and enforceable only to the extent of each party's comparative liability.

(c) The parties agree to maintain a consolidated defense to claims made against them and to reserve all indemnity claims against each other until after liability to the claimant and damages, if any, are adjudicated. If any claim is resolved by voluntary settlement, both parties must consent to the settlement. If a party does not express consent to a voluntary settlement then the non-consenting party shall not be bound by the settlement.

In the event a dispute should arise between the parties, before filing an action in court, the parties agree to use a alternative dispute resolution ("ADR") process such as mediation, through an agreed upon mediator and process. All costs for mediation services would be divided equally between the parties. Each party would be responsible for the costs of its own legal representation incurred in conjunction with pre-litigation ADR.

(d) The indemnification obligations of the parties shall not be limited in any way by the Washington State Industrial Insurance Act, RCW Title 51, or by application of any other workmen's compensation act, disability benefit act or other employee benefit act. Each party hereby expressly waives any immunity afforded by such acts if required, and to the extent required, by a party's obligations to indemnify, defend and hold harmless the other party.

(e) Nothing contained in this section or this Agreement shall be construed to create a right in any third party to indemnification or defense. The foregoing indemnification obligations of the parties are a material inducement to enter into the Agreement and have been mutually negotiated. The provisions of this section shall survive any termination or expiration of this Agreement.

(f) Insurance Requirement. The County and the Contract Agency shall each maintain throughout the term of this Agreement coverage in minimum liability limits of Five Million Dollars (\$5,000,000) per occurrence and Ten Million Dollars (\$10,000,000) in the aggregate for its liability exposures, including comprehensive general liability, errors and omissions, auto liability and police professional liability. The insurance policies shall provide coverage on an occurrence basis.

(g) Certificate of Insurance. The County and the Contract Agency shall provide each other with evidence of insurance coverage, in the form of a certificate or other competent evidence from an insurance provider, insurance pool, or of self-insurance sufficient to satisfy the insurance obligations set forth in this Agreement.

17. NON-DISCRIMINATION POLICY:

The County and the Contract Agency agree not to discriminate in the performance of this Agreement on the basis of race, color, national origin, sex, age, religion, creed, marital status, disabled or Vietnam era veteran status, or the presence of any physical, mental, or sensory handicap.

18. CONTRACT ADMINISTRATION/REQUIREMENTS OF CHAPTER 39.34 RCW:

This Agreement is executed in accordance with the authority of Chapter 39.34 RCW, the Interlocal Cooperation Act and other applicable law. Pursuant to the provisions of RCW 39.34.030, the Lewis County Sheriff shall be responsible for administering the confinement of inmates here under. No real or personal property will be jointly acquired by the parties under this Agreement. All property owned by each of the parties shall remain its sole property to hold and dispose of in its sole discretion. Prior to its entry into force, an agreement made pursuant to this chapter shall be filed with the county auditor or, alternatively, listed by subject on a public agency's web site or other electronically retrievable public source.

19. WAIVER OF RIGHTS:

No waiver of any right under this Agreement shall be effective unless made in writing by an authorized representative of the party to be bound thereby. Failure to insist upon full performance on any occasion shall not constitute consent to or waiver of any continuation of nonperformance or any later nonperformance; nor does payment or acceptance of payment of a billing, or continued performance after notice of a deficiency in performance constitute acquiescence thereto.

20. TERMINATION:

This Agreement may be terminated prior to expiration by written notice from either party delivered by regular mail to the contact person at the address set forth herein. Termination by said notice shall become effective sixty (60) days after receipt of such notice. The notice shall set forth the specific plan for accommodating the affected inmates, if any.

21. WAIVER OF ARBITRATION RIGHTS:

Both parties acknowledge and agree they are familiar with the provisions of RCW 39.34.180(3), as now in effect, and of their own free will they hereby expressly waive any and all rights under RCW 39.34.180(3), as now in effect or as hereinafter amended, to arbitrate the level of compensation for incarceration services charged under this Agreement, or any renewal thereof, that either party may possess. The parties further agree such level of compensation and other issues related to the purpose of this Agreement will only be as agreed to herein or as otherwise agreed to in a writing executed by the parties.

22. DURATION:

This Agreement will remain effective unless terminated by either party under the terms set forth in Section 20 above. Nothing in this Agreement shall be construed to make it necessary for the Contracting Agency to continuously house inmates with the County.

23. GOVERNING LAW AND VENUE:

The parties hereto agree that, except where expressly otherwise provided, the laws and administrative rules and regulations of the State of Washington shall govern in any matter relating to this Agreement and an inmate's confinement under this Agreement. The venue shall be in the Lewis County Superior Court.

24. MISCELLANEOUS:

In providing these services to the Contract Agency, the County is an independent contractor and neither its officers, agents, nor employees are employees of the Contract Agency for any purpose including responsibility for any federal or state

tax, industrial insurance or Social Security liability. No provision of services under this Agreement shall give rise to any claim of career service or civil service right, which may accrue to an employee of the Contract Agency under any applicable law, rule, or regulation.

[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK]

DATE: 6/22/2020

LEWIS COUNTY, WASHINGTON

[Signature], Chairman

[Signature] Member

[Signature] Member

Constituting the Board of County
Commissioners of Lewis County,
Washington

Attest: [Signature] for
Clerk of the Board

Approved as to Form and Content:

[Signature]
Robert R. Snaza, Sheriff
Lewis County Sheriff's Office

Reviewed by:

[Signature]
Prosecuting Attorney, Civil Deputy
K.A. McDowell

DATE: 6/4/2020

CITY OF TUMWATER
555 Israel Road S.W.
Tumwater, WA. 98501

DocuSigned by:

[Signature]

[Signature]
Pete Kmet, Mayor

Attest:

DocuSigned by:

[Signature]

[Signature]
Melody Valiant, City Clerk

Approved as to form:

DocuSigned by:

[Signature]

[Signature]
Karen Kirkpatrick, City Attorney

AMENDMENT TO INTERLOCAL AGREEMENT FOR USE OF JAIL FACILITIES
CITY OF TUMWATER
 AMENDMENT NO. 1

This Interlocal Agreement is made and entered into between **Lewis County**, a municipal corporation, with its offices at 28 SW Chehalis, Chehalis WA 98532-1900, hereinafter "**County**", and **City of Tumwater**, located at 555 Israel Road SW, Tumwater, WA 98501, hereinafter "**Contract Agency**".

In consideration of the mutual benefits and covenants contained herein, the parties agree that the Interlocal Agreement executed on June 22, 2020, shall be amended as follows:

1. Section 4 COMPENSATION shall be amended to read:

(a) Daily Rate. In return for the County's housing of an inmate of the Contract Agency, the Contract Agency shall pay the County seventy-seven dollars and twenty-five cents (\$77.25) for every calendar day said inmate is in the custody of the County. Such time period shall be measured from the time said inmate is transferred to the custody of the County and ends when the Contract Agency resumes custody.

2. Except as expressly provided in this Amendment to the Interlocal Agreement, all other terms and conditions of the Interlocal Agreement remain in full force and effect.

Executed this _____ day of _____, _____.

CONTRACT AGENCY:

City of Tumwater, Washington

Lewis County Washington
 By: Robert R. Snaza, Sheriff
 (Authorized Representative)

 Debbie Sullivan, Mayor

Attest:

 Melody Valiant, City Clerk

Approved as to form:

 Karen Kirkpatrick, City Attorney

TO: City Council
FROM: John Doan, City Administrator
DATE: January 4, 2022
SUBJECT: Election of Mayor Pro Tem

1) Recommended Action:

Pursuant to Council Rules, elect a Mayor Pro Tem for 2022-2023.

2) Background:

Council Rules provide the following direction for the selection of the Mayor Pro Tem.

Section 20. Mayor Pro Tem Selection Process

20.1 The Mayor Pro Tem shall be elected to a two year term at the first regular Council meeting in January following a municipal election year. The Mayor shall conduct the election for the Mayor Pro Tem who shall be elected by a majority of the full Council. The Mayor Pro Tem shall be limited to two consecutive terms, unless by unanimous vote the limitation is waived.

3) Policy Support:

VISION | MISSION | BELIEFS

Our Mission:

In active partnership with our community, we provide courageous leadership and essential municipal services to cultivate a prosperous economy, a healthy natural environment, vibrant neighborhoods, and a supportive social fabric.

4) Alternatives:

None.

5) Fiscal Notes:

There is no fiscal cost associated with the election of the Mayor Pro Tem.

6) Attachments:

None.