



**CITY COUNCIL
MEETING AGENDA**

**Online via Zoom and In Person at
Tumwater City Hall, Council Chambers,
555 Israel Rd. SW, Tumwater, WA 98501**

**Tuesday, July 19, 2022
7:00 PM**

- 1. Call to Order**
- 2. Roll Call**
- 3. Flag Salute**
- 4. Additions to the Agenda**
- 5. Special Items:**
 - a. 2021 Transportation Benefit District Annual Report (Mary Heather Ames)
- 6. Public Comment:** (for discussion of items not having a public hearing on tonight's agenda)
- 7. Consent Calendar:**
 - [a.](#) Approval of Minutes: Special Joint City Council & Nisqually Tribal Council Meeting, June 16, 2022
 - [b.](#) Approval of Minutes: City Council, June 21, 2022
 - [c.](#) Ordinance No. O2022-016, Repealing TMC Code Section 2.40 - Police Reserves (Jon Weiks)
 - [d.](#) Intergovernmental EMS Contract – Basic Life Support Funding Amendment No. 2 (Brian Hurley)
 - [e.](#) WSDOT Rights of Way Initiative – Process Memorandum of Understanding (Brad Medrud)
 - [f.](#) Resolution No. R2022-005 – Surplus Property (Troy Niemeyer)
 - [g.](#) Interlocal Agreement to Solicit RFPs for a Designated Service Provider(s) for PEG Access Channels (Ann Cook)
 - [h.](#) First Amendment to Service Provider Agreement for Regional Fire Authority Planning (John Doan)
 - [i.](#) Interagency Agreement No. K7666, Department of Enterprise Services Energy Program (Alyssa Jones Wood)
- 8. Council Considerations:**
 - [a.](#) 2022 Pedestrian Improvements – Award and Authority to Sign Contract (Mary Heather Ames)
- 9. Committee Reports**
 - a. Public Health and Safety Committee (Leatta Dahlhoff)

- b. General Government Committee (Michael Althausen)
- c. Public Works Committee (Eileen Swarthout)
- d. Budget and Finance Committee (Debbie Sullivan)

10. Mayor/City Administrator's Report

11. Councilmember Reports

12. Any Other Business

13. Adjourn

Hybrid Meeting Information

The public are welcome to attend in person, by telephone or online via Zoom.

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.

Watch Online

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

OR

Go to <http://www.zoom.us/join> and enter the Webinar ID 891 2551 5323 and Passcode 170681.

Listen by Telephone

Call (253) 215-8782, listen for the prompts and enter the Webinar ID 891 2551 5323 and Passcode 170681.

Public and Written Comment

Attend in person to give public comment or 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_mMCqQfO_RPmdz0hP2_hjUA

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

Video recording of this meeting will be available within 24 hours of the meeting.

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

Accommodations

The City of Tumwater takes pride in ensuring that people with disabilities are able to take part in, and benefit from, the range of public programs, services, and activities offered by the City. To request an accommodation or alternate format of communication, please contact the City Clerk by calling (360) 252-5488 or email CityClerk@ci.tumwater.wa.us. For vision or hearing impaired services, please contact the Washington State Relay Services at 7-1-1 or 1-(800)-833-6384. To contact the City's ADA Coordinator directly, call (360) 754-4128 or email ADACoordinator@ci.tumwater.wa.us

**TUMWATER SPECIAL JOINT CITY COUNCIL
& NISQUALLY TRIBAL COUNCIL MEETING
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CONVENE: 5:30 p.m.

PRESENT: Mayor Debbie Sullivan and Councilmembers Peter Agabi, Michael Althausen, Leatta Dahlhoff, Angela Jefferson, Charlie Schneider and Eileen Swarthout

Staff: City Administrator John Doan and Communications Manager Ann Cook.

Members from the Nisqually Tribal Council

INTRODUCTIONS: Introductions and called to order by Mayor Sullivan and Tribal Chairman Willie Frank III at 5:30 p.m.

TOUR OF HEALTH FACILITY & ISSUES OF MUTUAL CONCERN: They toured the health facility and discussed issues of mutual interest.

ADJOURNMENT: Mayor Sullivan adjourned the meeting at 7:05 p.m.

Prepared by Melody Valiant, City Clerk

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CONVENE: 7:02 p.m.

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

Staff: City Administrator John Doan, City Attorney Karen Kirkpatrick, and City Clerk Melody Valiant.

CHANGES TO AGENDA: The minutes of May 24, 2022 were pulled from the consent calendar and moved to Council considerations.

SPECIAL ITEMS:

**PROCLAMATION:
DON TROSPER DAY
- JUNE 21, 2022:** Councilmember Althausen read a proclamation honoring June 21, 2022 as *Don Trosper Day* in the City of Tumwater. The proclamation encourages the people of Tumwater to join the City in wishing Don Trosper a long and healthy retirement, as he continues to promote the history of Tumwater as a consultant to the Olympia Tumwater Foundation, and through his many other contributions to the City and its history. Mr. Trosper is a relative of Jessie Ferguson, one of the original founding American pioneer settlers of Tumwater. Mr. Trosper currently lives on a portion of the homestead off Trosper Road his Uncle Jessie purchased in 1892.

Mr. Trosper has promoted the pioneer history of Tumwater through his volunteer work for the Tumwater Historical Association, including the publication of four booklets on the pioneer history of Tumwater: 1985 – "The Founding of Tumwater", 1987 – "New Market", 1992 – "Fortress Tumwater", and 1995 – "The Train Stops Here"; and more recently, as part of his work at the Foundation, Mr. Trosper published a book on the history of Tumwater entitled "The Tumwater We Never Knew – For people who love history, but don't realize it yet." Sales of the book have raised over \$15,000 for the Foundation.

Councilmember Althausen presented the proclamation to Mr. Trosper.

Mr. Trosper thanked the Mayor and the Council for their kind words and encouragements as they have meant much to him. He introduced his wife and son along with former Mayor Kmet and his wife. He is working on another book on the history of Tumwater. His goal for sharing his passion for local history is to make it come alive for the average person. Storytelling is about people, local sights, and local businesses coming alive. He thanked the City for the honor.

Councilmember Cathey thanked Mr. Trosper for telling the story of Tumwater's history, as well as the stories of women in Tumwater.

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**REGIONAL FIRE
 AUTHORITY
 BRIEFING ON
 GOVERNANCE:**

City Administrator Doan reported the Regional Fire Authority (RFA) Planning Committee is chaired by Councilmember Dahlhoff with Councilmembers Althausser and Swarthout serving as members. The briefing will focus on governance, a major issue the committee is currently working on. Two of the committee's consultants, Karen Reed and Karen Meyer will review governance challenges and options. In August, the Council will receive a presentation on finances.

Ms. Reed presented information on the legal requirements and options for RFA governance, the RFA Planning Committee's plan for developing governance recommendations, examples of governance of other RFAs in the state, and a set of potential governance options proposed by the RFA Planning Committee. The RFA Planning Committee seeks input on the proposed options.

The RFA must have a governing Board of Commissioners. The role of the Board is similar to the role of a city council. The RFA Plan must propose the Board structure and composition. The statute provides great flexibility in structuring the Board. An RFA Governance Board can be comprised of:

1. Elected officials from member agencies
2. Persons directly elected At-Large by the voters of the RFA
3. Persons directly elected by District by the voters of the RFA
4. A mix of any or all of the above

There is no legal limitation on the size of the Board, but there is a practical limit. The initial Board must be comprised of elected officials from member agencies. It can transition to a different structure over time if desired. The earliest transition point is the first election cycle after the RFA is created. Should the two cities (Olympia and Tumwater) adopt the RFA Plan, voters would consider establishing the RFA in spring 2023 with the RFA created in August 2023 if approved by voters. The first Board of elected officials would serve a minimum of two years and five months.

Terms of office for directly elected Board members cannot exceed 6 years. Terms must be staggered. The RFA Board can change the governance board structure on its own in the future, at any time, unless this authority is otherwise restricted in the RFA Plan.

Councilmember Jefferson inquired as to whether the positions receive a salary. Ms. Reed replied that members receive a monthly salary that is capped by statute.

Ms. Reed reviewed the committee's process for considering the governance structure:

1. Agreed to guiding values and principles and received support from City Councils at a April 19, 2022 presentation

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2. Develop a small number (3-5) of options and review the options with the City Councils to receive input.
3. Select a preferred option and review selection with City Councils for concurrence.

Ms. Reed reviewed the committee's proposed statement of Shared Values and Principles to guide development of the Plan:

Shared Values:

1. Ensuring operations meet or exceed current service levels in terms of their ability to support a safe and healthy community.
2. Providing a safe, supportive, and professional environment for first responders.
3. Participatory Governance. Jurisdictions which are part of the RFA should have a meaningful voice in the operating decisions of the RFA. The RFA Board should seek to make decisions by consensus whenever possible.
4. Pro-Active Oversight, Planning and Continuous Improvement. Committed to planning for the future and proactively identifying and addressing the needs of the communities, identifying and implementing ways to better meet those needs.
5. Promoting interagency collaboration, communication and strong working relationships. The RFA will act in the collective best interests of all its public safety partners, not just those served by the RFA.
6. Making data-driven decisions. The RFA should take strategic action based on the facts after a thorough and objective analysis of the issues.
7. Being an effective and efficient steward of public funds.
8. Affordable and sustainable financial model. The RFA should implement an affordable and sustainable financial model that can facilitate consistent service levels over time as the community served continues to grow.
9. Strong engagement with our local communities. The RFA should be a positive and engaged member of the communities it serves with pro-active outreach to the public.
10. Honoring the history and identity of the Olympia and Tumwater Fire Departments while building the culture for the new fire agency.

Operating Principles:

- A. The RFA Board will be committed to the success of the RFA and will be engaged in actively learning and understanding the work of the agency.
- B. We will strive to operate nimbly, with the ability to make decisions and respond quickly when necessary.
- C. We seek to understand and address the unique needs of the communities we serve. We strive to address these needs equitably in all operating and financial decisions.

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- D. We work to attract, develop, and retain high quality staff.
- E. We will ensure all City Fire Department staff in good standing at the time of annexation are offered at least equivalent positions within the RFA.
- F. We strive to employ rigorous quality assurance and reporting practices.
- G. We manage agency budgets to control or reduce costs.
- H. We seek to limit spikes in budgets from year to year, by use of planning capital investments over time, developing reserves, and other means.
- I. We commit to being transparent, accessible, and responsive to our customer agencies and the public.
- J. In contracting to provide services to other agencies, we are mindful of our own costs of service: communities within the RFA boundaries should not incur additional costs from these external service contracts.

Ms. Reed cited some examples of existing RFA structures in the state. Most have revised their respective governance structure over time. A local RFA, the Southeast Thurston RFA is comprised of three districts across the RFA with 2 members elected directly from each district with the board totaling six members. West Thurston RFA is a two-member agency with three elected members from each member agency comprising a six-member board. Other examples shared included the Puget Sound RFA, Renton RFA, South Snohomish County RFA, and Marysville RFA.

The RFA Planning Committee recommends the governance structure transition over time and that the RFA Plan should include both an initial Board of all City elected officials as required, and a different structure for the ongoing Governance Board after 2025 based on the rationale that it would enable for some directly-elected representation that can be solely dedicated to the RFA rather than serving on both a City Council and the RFA Board. If some city representatives are members, it would enable retaining a connection to the member cities. The committee also wants to consider an approach that enables all RFA voters to vote for most of the RFA board.

The RFA Planning Committee recommends an initial Board structure from 2023 through 2025 comprised of three appointed Councilmembers from each city. The committee considered four members (2 from each city), five members (3 from Olympia, 2 from Tumwater), and six members with three from each City. The recommended structure mirrors current RFA Planning Committee structure that is working well, it maximizes equity in start-up of the new RFA agency as a true partnership, and it maximizes input from each City without involving a quorum of each City Council.

The Council supported the recommendation as it affords equal

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representation by each City.

The committee considered several board structure options after 2025 based on number of seats (5-7), appointments by each City (1-3 from each City), number of At-Large members directly elected, number of At-Large members elected by each district, and number of votes for each member. The committee considered the following factors:

Districts versus At-Large:

- Districts may not exactly match city boundaries:
 - Example: 3 Districts would likely mean 2 districts include most/all of Olympia and 1 district includes most/all of Tumwater
- District Benefits: geographic distribution of representatives ensured
- District Challenges: Districts may be too small to ensure strong candidate pool; potential focus on district area at expense of overall agency
- At Large Benefits: Represent entirety of RFA area
- At-Large Challenges: All representatives could come from small part of RFA

Union leaders strongly want to ensure board members have sufficient time and expertise to dedicate to the oversight of the new agency.

The start-up board will be a major time commitment, ongoing board less so, but still significant.

Ms. Reed summarized the recommendation for consideration by the Council:

- Seven-member board because it is a functional size, large enough to support subcommittees, and constitutes an odd number to avoid tie votes

Ms. Reed reviewed the six options considered by the committee:

	Option 1	Option 2	Option 3	Option 4	Option 5	Option 6
# of Seats	5	6	7	7	7	7
Olympia	1	3	2	1	1	2
Tumwater	1	3	2	1	1	2
Elected – At-Large			3	5		
Elected by District	3				5	3
Voting	Each member has 1 vote					
Other	Staggering or terms/initial term for each board member under discussion, want to minimize turnover required at each election					

Councilmember Althaus asked the Council to consider the six options

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considered by the committee based on the following factors: concerns with the board size, preferences for districts versus at-large seats (or having both), and ongoing Council representation on the board. He acknowledged Councilmember Dahlhoff for her leadership of the committee.

Councilmember Dahlhoff added that all members of the committee supported a seven-member board for the reasons reviewed by Ms. Reed. The committee has been discussing and has differing opinions on whether Council representation should be majority membership versus fire commissioners. Although Councilmember Althausen prefers a majority council membership, she prefers a majority of fire commissioners (elected) based on other RFAs in the state and feedback from labor representatives.

Councilmembers Dahlhoff, Althausen, and Swarthout shared their respective opinions as to membership representation by Councilmembers versus Fire Commissioners. Councilmember Dahlhoff noted the fire union has conveyed a strong preference for majority fire commissioner representation.

Ms. Reed provided additional information in response to questions. Fire Commissioners (At-Large positions) can have a maximum 6-year term and all voters in the cities would be eligible to vote on the at-large positions. Candidates seeking an at-large position can live anywhere within the RFA boundary. In terms of the districts, it is possible to create up to three districts (2 in Olympia and 1 in Tumwater) that would not necessarily match the jurisdictional boundaries.

The Council's preference of the options was split between Option 3 and Option 4.

Ms. Reed advised that the Council would receive another briefing on the RFA finance plan later in the summer.

PUBLIC COMMENT: **Deborah Boes, 1524 Derby Lane, Tumwater,** spoke to her concerns about the proposed Tumwater Operations and Maintenance (O&M) facility located off 79th Avenue. She asked about the feasibility study for the proposed facility and timing of the study since so many changes have occurred in the area over the last several years. She recently visited the Tumwater Library at the time the maintenance facility was closing and observed a steady stream of vehicles leaving the existing facility. She questioned whether a study determined that the proposed site was unfit for the facility because of the proximity to the library and high school. She asked about the logic of locating a facility within five neighborhoods within the 79th Avenue area. Over the last several years, at least 80 new homes have been constructed with construction currently continuing generating one to four vehicles for each home. Kaufman is building three new facilities adding another 10 to 30 vehicle trips each day onto 79th Avenue.

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Adding the O&M facility and eventually Parks Department vehicles to the area would be a tragic traffic mess. In a memorandum by City Administrator Doan on December 9, 2021, he explained why the new O&M facility could not be constructed in three areas under consideration. She asked how that determination was reached in terms of completion of a feasibility study. She asked for access to the study to determine how the 79th Avenue property was evaluated and the positives and negatives, which is lacking in the memorandum. The memorandum also spoke to a previous O&M facility as a park on Tumwater Hill. The memorandum notes that the 79th Avenue site would also accommodate a future Parks and Facilities Shop. That information was not included in the plans shared with the neighborhoods during the recent open house, which will add even more traffic. She asked the Council to pause moving forward until a current and non-bias feasibility study has been completed and published for Tumwater residents to review.

Pamela Hansen, PO Box 14521, Tumwater, addressed the current level of fentanyl and other narcotic distribution and use. She cited a recent fentanyl death of a minor in Tumwater and the recent conviction of the person who provided the fentanyl. Part of the failure is the drug war focus instead of an effective deter and prevention focus, such as deterring and preventing fentanyl pills that are cheap and create highs dragging people further into drug use. She emphasized that the growth in the community will be tragic regardless of the income level if deter and prevention programs are not expanded in the community. The City needs to fully fund more single or dual-purpose K9 units for Tumwater and not rely on donations and limited grant money. She cited the City's purchase of \$33,000 in golf balls, a new amphitheater, a three roundabout freeway interchange, and funding of an old brewhouse as examples of money that could be used to fight drugs and crime and fully fund K9 units.

Kay Hansen, 8030 Deschutes Court, SE, Tumwater, said she and her husband have lived in the Deschutes Ridge Neighborhood for 22 years and in Thurston County for over 50 years. She thanked the Mayor and Councilmembers for providing an opportunity for her to share her thoughts regarding the proposed development of the Trails End property. The City of Tumwater has stated its need for a new O&M facility. Building the facility that houses a fleet of heavy equipment and trucks in a location that is bordered on three sides by dense residential neighborhoods is irresponsible and potentially dangerous. She cited the proposed neighborhood park on a portion of the former Trails End property. Citizens in the six neighborhoods surrounding the property off 79th Avenue have been vocal in their support for a neighborhood park, a park designed to serve the immediate population living within 1/4th to 1/2 mile of the park. As taxpayers, neighborhood residents believe they have been promised a neighborhood park when the neighborhood joined former Mayor Pete Kmet in his campaign to support a new Metropolitan Park District. Reviewing the

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plans for the proposed park sparked some concerns, as there appears to be an area designated for future parking. A park designed to serve residents located within walking distance does not require a large parking lot. However, if the area reserved for future parking is to accommodate the anticipated expansion of the O&M facility then she opposes the plan. She has previously suggested the City should search for another more appropriate location for the O&M facility. City planners have suggested including a community meeting space within the proposed park. She has not heard any of the residents express a need for community meeting space within the neighborhood. Homeowner association (HOA) meetings have been held in a school lunchroom and at the library. Since the pandemic, the HOA conducts meetings via zoom. A community center intended to serve the City should be located in another location that is near a bus line and more centrally located.

**CONSENT
CALENDAR:**

- a. Approval of Minutes: City Council Worksession, May 24, 2022 - *Pulled*
- b. Approval of Minutes: City Council, June 7, 2022
- c. Payment of Vouchers
- d. Preliminary Docket for 2022 Annual Housekeeping Amendments
- e. PSE Schedule 74 Project Plan
- f. Contract Extension for the Thurston County Office of Public Defense
- g. First Amendment to Intergovernmental Agreement for Law Enforcement Records Management System (LERMS)
- h. Interlocal Agreement – Barnes Boulevard and Ridgeview Loop Crossing Improvements
- i. Drainage Design and Erosion Control Manual Revisions
- j. Pioneer Park Riparian Restoration Service Provider Agreement
- k. Tumwater Hill Park Trail - Crosby Connector – Award and Authority to Sign Contract
- l. Cancellation of the July 5th Regular Council Meeting
- m. Hopkins Drainage District Assessment

MOTION:

Councilmember Althaus moved, seconded by Councilmember Dahlhoff, to approve the consent calendar as amended. A voice vote approved the motion. Councilmember Schneider abstained from voting to avoid a conflict of interest with respect to item m.

**COUNCIL
CONSIDERATIONS:**

**APPROVAL OF
MINUTES: CITY
COUNCIL
WORKSESSION,
MAY 24, 2022**

Councilmember Cathey referred to page 10 of the May 24, 2022 City Council worksession minutes. She conveyed that the summation of the conversation within the fifth paragraph is inaccurate and not reflective of the discussion. She suggested revising the paragraph to reflect, “City Administrator Doan added that the Council should avoid communicating with the public on issues involving the City’s permit process (land use).” She suggested removing the remaining portion of the paragraph unless the

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Council has a further discussion as to what it means for a Councilmember to cause a difficult situation for fellow Councilmembers and creating difficulty in interpersonal relations.

Mayor Sullivan recommended having staff review the recording, as she is not comfortable removing information that was discussed during the meeting. She suggested tabling action until staff can complete the review of the recording.

City Attorney Kirkpatrick advised the Council that she recollects that the conversation occurred at the worksession and that the recording can be reviewed to ensure the information reflects an accurate representation of the conversation. Additionally, while the City is required to produce minutes of meetings, there is no requirement for detailed minutes as currently produced. Agreement by the Council to shorten the section is an option. Minutes are intended to reflect the conversation and do not create any new Council rules.

Councilmember Cathey responded that the conversation reflects that if a Councilmember personally talks to a community member about an issue it could create a difficult situation among other Councilmembers. She prefers to remove the language as she previously recommended and asked for feedback from the Council on the issue.

MOTION:

Councilmember Cathey moved, seconded by Councilmember Dahlhoff, to revise the fifth paragraph on page 10 of the May 24, 2022 City Council worksession minutes to reflect the following, “City Administrator Doan added that the Council should avoid communicating with the public on issues involving the City’s permit process (land use).”

Several Councilmembers acknowledged that the discussion occurred but that the message was reflective of a scolding, as they understand their responsibilities as a Councilmember. Councilmember Althaus said he would not support the motion as he recalled the conversation. As elected officials, it is important to have conversations with community members and though he understands Councilmember Cathey’s concerns, he remembers the discussion and is not comfortable removing the language.

MOTION:

The motion carried. Councilmembers Cathey, Dahlhoff, Jefferson, and Swarthout voted for and Councilmembers Althaus and Schneider opposed.

COMMITTEE REPORTS:

PUBLIC HEALTH &

The committee received an overview of the Olympia Fire Department Basic

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SAFETY:

Leatta Dahlhoff

Life Services Transport and the Fire Department Cares Program, an update on the Thurston County Youth Marijuana Prevention Education Program by Janine Koffel, Tumwater HOPES Coalition Coordinator, an update on the results of 2021 Police Use of Force, and consideration of a First Amendment to Intergovernmental Agreement for Law Enforcement Records Management System (LERMS). The City of Tumwater is contributing to a study to assess the need for providing Basic Life Services Transport in Tumwater. The next meeting is on July 12, 2022 at 8 a.m.

GENERAL

GOVERNMENT:

Michael Althausen

The next meeting is scheduled on Wednesday, July 13, 2022. The agenda includes a proposed amendment to the planned unit development ordinance.

PUBLIC WORKS:

Eileen Swarthout

The next meeting is scheduled on July 7, 2022 at 8 a.m.

BUDGET AND

FINANCE:

Debbie Sullivan

There was no meeting and no report.

MAYOR/CITY

ADMINISTRATOR'S REPORT:

City Administrator Doan thanked everyone for their patience as the City experiments with hybrid meetings, virtual meetings, protocols, and logistics.

The City is hosting the annual 4th of July activities this year beginning with the parade the morning of July 4, 2022 followed by the Artesian Family Festival and the Thunder Valley Fireworks Show at the golf course.

City Administrator Doan reminded the community of the City's fireworks ban similar to the Cities of Lacey and Olympia fireworks bans. He encouraged the community to view the professional fireworks shows in Tumwater and in Lacey.

Mayor Sullivan attended the Community Action Council Mason Thurston board retreat on June 13-15, 2022. At the June 15, 2022 Intercity Transit Authority meeting, members received an update on the Bicycle Commuter Challenge, reviewed salary compensation, scheduled a public hearing for the amended vanpool fare resolution, and reappointed a citizen representative to serve another three years on the Authority. On June 20, 2022 she toured Intercity Transit's new Pattison Street facilities.

On June 18, 2022 Mayor Sullivan attended the Fred U. Harris Masonic Lodge 41st Juneteenth Celebration at the Lacey Athletic Complex. The event was co-sponsored by the City of Tumwater and the City of Lacey. The turnout was impressive. Mayor Sullivan served as an event speaker.

The City of Tumwater held a Council-to-Council meeting with the

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Nisqually Indian Tribe on June 16, 2022.

**COUNCILMEMBER
REPORTS:**

Charlie Schneider:

Councilmember Schneider attended and reported on the following meetings:

- June 9, 2022 Tumwater Public Works Committee
- Tumwater HOPEs. Discussions included the direction of the coalition for next year based on available funds and resources.
- The Fred U. Harris Masonic Lodge 41st Juneteenth Celebration.
- The joint meeting with the Nisqually Indian Tribe Council and tour of the tribe's medical facility.
- The Tumwater Education Foundation fundraiser at the Heritage Distilling Company. Councilmember Swarthout serves as the Vice President of the Foundation.
- The Tumwater Farmers Market. The market is open each Sunday from 11 a.m. to 3 p.m. at Peter G. Schmidt Elementary School featuring produce vendors, food vendors, live music, and craft vendors.

Michael Althausen

Councilmember Althausen attended and reported on the following meetings:

- The Capitol Lake Executive Work Group has not met since the last Council meeting and is scheduled to meet next week.
- The Regional Housing Council (RHC) is scheduled to meet on Wednesday, June 22, 2022. The Council is scheduled to receive and approve a report on the progress on the scattered site program that serves as a service center serving different homeless encampments throughout Thurston County. The program sunsets at the end of the month and data will reflect the effectiveness of the pilot project between the City of Olympia and Thurston County. Members are scheduled to discuss potential changes to the RHC governance structure and the possibility of considering smaller steps for formalizing some of the subgroups reporting to the RHC to include more subject matter expertise and some service provider expertise to help RHC make informed decisions at the beginning of each process, as well as discussing right-of-way impacts caused by homeless individuals. Thurston County and cities are discussing with the Department of Commerce the provision of some services to those homeless individuals using some funds from the Legislature to help fund permanent supportive housing units to move individuals from homelessness to supportive housing. Most of the rental assistance funds are nearly exhausted, which underscores the need to continue work on tenant protections and ensuring the City has strong supportive housing policies.
- The joint meeting with the Nisqually Indian Tribe Council.

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Councilmember Althausen thanked the Mayor and staff for organizing the meeting.

Peter Agabi:

Councilmember Agabi attended and reported on the following meetings:

- Joint Animal Services Commission. Councilmember Agabi received an email from Sarah Hock, Executive Director, complimenting and thanking the Tumwater Police Department for assistance in response to animal control calls. The Commission has scheduled a retreat on June 29 from 5 p.m. to 8:00 p.m. at Lacey City Council Chambers. Councilmember Agabi described some personnel and operating hour changes at the Animal Services Shelter. Following the successful recruitment of open positions, the shelter will be open seven days a week including holidays from 9 a.m. to 6 p.m. with emergency services available seven days a week from 6 p.m. to 9 p.m.
- Transportation Policy Board meeting on June 8, 2022.
- The June 14, 2022 Tumwater Public Health and Safety Committee. Councilmember Agabi requested an update by the Police Department on the City's response, procedures, and protocols for school shootings. He is hopeful the information on the action plan will drive a much larger discussion by the City Council.

Angela Jefferson:

Councilmember Jefferson attended and reported on the following meetings:

- Experience Olympia and Beyond. Members discussed the shift and focus from COVID survival mode to economic growth as part of the organization's three-year strategic plan. Members discussed lodging tax advisory committees' funded events to create an events query and evaluation matrix to identify the top tier events in the region generating the most tourism and dollars. Members reviewed the new marketing updated TREAD Map app for Washington State in partnership with Washington State Tourism. In July, a contest will be offered on a *Trend Map Treasure Chest*. The app is designed to attract visitors to the Thurston County region. The treasure hunt will include hidden items (gift cards/certificates) on a trail within the county. Participants will find clues on Facebook and the app.
- The Thurston County Emergency Medical Services Council (EMS). Members discussed withholding the dispatch of ambulances until patients are readied for departure, new guidelines for treating patients on the scene, and passage of House Bill 1893 – EMS to Administer Some Vaccines. The bill is effective in 2025. Hands-on only CPR training has certified 1,300 individuals.
- Joint meeting with the Nisqually Indian Tribe Council. The Tribal Council is eager to establish a relationship with the City of Tumwater and the Tumwater School Board to share the tribe's history and stories via arts and partnerships.
- Food distribution volunteers are needed. The Military Family

TUMWATER CITY COUNCIL MEETING
MINUTES OF MEETING
June 21, 2022 Page 13

Advisory Network is hosting another drive-through food drive for Joint Base Lewis-McChord for family members and veterans on Saturday, June 25, 2022 from 9 a.m. to 12 p.m. in Lakewood. The event has reached capacity with 700 military households registered. To register, visit milanet.org/jblmvolunteer.org. Many families in the community are having trouble making ends meet and paying their bills. Today is a challenging time for many families and individuals. She cited the availability of food pantries within the region available to the community nearly every day of the week and the option of using free public transportation offered by Intercity Transit.

Joan Cathey:

Councilmember Cathey reported on ongoing work by the Olympic Clean Air Authority on rulemaking for outdoor burning. Currently, the City of Tumwater prohibits all outdoor burning. Fire Chief Hurley provided input to Authority members.

Councilmember Cathey plans to attend the RHC meeting on Wednesday, June 22, 2022 with Councilmember Althausen.

Eileen Swarthout:

Councilmember Swarthout commented that a store she visited earlier in the day was selling packets of fireworks. She is concerned that shoppers may find the availability of fireworks confusing in a community that bans fireworks.

Leatta Dahlhoff:

Councilmember Dahlhoff acknowledged the information provided by Councilmember Jefferson for access to food and free bus transportation. She asked for the identification of some solutions for those community members who lack transportation or the flexibility within their schedule or the time to use transit to travel to different locations. She thanked Councilmember Jefferson for her efforts to publicize information to the community on the availability of food resources.

The LOTT Clean Water Alliance Board of Directors is reviewing the budget for 2023. The budget review revealed no major increases for the jurisdictions other than the standard 3% increase. The City's average customer bill for wastewater rates averages \$64.13 in comparison to the regional average of \$81.47.

Councilmember Dahlhoff spoke to the conversation on the amendment to the minutes and how it reflects a good example of the Council's ability to discuss an issue, disagree, and share frustrations while continuing to maintain mutual respect and moving on.

ADJOURNMENT:

With there being no further business, Mayor Sullivan adjourned the meeting at 9:08 p.m.

TUMWATER CITY COUNCIL MEETING

MINUTES OF MEETING

June 21, 2022 Page 14

Prepared by Valerie L. Gow, Recording Secretary/President
Puget Sound Meeting Services, psmsoly@earthlink.net

TO: City Council
FROM: Jon Weiks, Chief of Police
DATE: July 19, 2022
SUBJECT: Ordinance No. O2022-016, Repealing TMC Code Section 2.40 - Police Reserves

1) Recommended Action:

Authorization for the Mayor to sign Ordinance No. O2022-016.

2) Background:

TMC 2.40 – Police Reserve was enacted in 1970 and last updated in 1996. TMC 2.40 authorizes the police department to have a police reserve force of up to twenty volunteer members. Increasing risk management concerns the past several years surrounding law enforcement have resulted in police reserve programs being discontinued across the State of Washington. The Tumwater Police Department discontinued the program over 15 years ago. To maintain an up-to-date municipal code manual, we are recommending TMC 2.40 be repealed in its entirety. This matter was brought before the Public Health and Safety Committee on July 12th and has been authorized to be brought forward for consideration by the full council.

3) Policy Support:

2021-2022 Strategic Priority: *“Provide and Sustain Quality Public Safety Services”*

4) Alternatives:

TMC 2.40 can remain a municipal code.

5) Fiscal Notes:

No fiscal notes.

6) Attachments:

A. Ordinance No. O2022-016, Repealing TMC Code Section 2.40 - Police Reserves

ORDINANCE NO. O2022-016

AN ORDINANCE of the City Council of the City of Tumwater, Washington, repealing Tumwater Municipal Code Chapter 2.40 (Ordinance 571 and Ordinance O96-030) relating to Police Reserve.

WHEREAS, the City Council approved Ordinance 571 on June 2, 1970, enacted as Chapter 2.40 of the Tumwater Municipal Code (TMC) on June 9, 1970, establishing a police reserve force of up to twenty members functioning as a unit of the police department and under the supervision of the chief of police.

WHEREAS, the City Council approved Ordinance O96-030 amending TMC 2.40 on October 15, 1996; and

WHEREAS, risk management concerns have resulted in the Police Reserve program not operating in over fifteen years; and

WHEREAS, the City Council finds it is in the best interest of its citizens to repeal Chapter 2.40.

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF TUMWATER, STATE OF WASHINGTON, DOES ORDAIN AS FOLLOWS:

Section 1. Repealer. Chapter 2.40 of the Tumwater Municipal Code is hereby repealed in its entirety.

~~Chapter 2.40~~ **POLICE RESERVE**

Sections:

~~2.40.010 Established.~~

~~2.40.020 Commanding officer Duties.~~

~~2.40.030 Police reserve Powers and duties.~~

~~2.40.040 Eligibility for membership.~~

~~2.40.050 Identification card and badge.~~

~~2.40.060 Membership revocation or separation.~~

~~2.40.070 Carrying firearms.~~

Ordinance No. O2022-016 - Page 1 of 5

~~2.40.080—Reserve members not regarded as city employees.~~

~~2.40.090—Compensation.~~

~~2.40.010 Established.~~

~~There is created and established a police reserve force of up to twenty members. Each member shall be appointed by the chief of police, with the approval of the mayor. The police reserve force shall function as a unit of the police department and under the supervision of the chief of police.~~

~~(Ord. 571, Added, 06/02/1970)~~

~~2.40.020 Commanding officer—Duties.~~

~~The chief of police is the commanding officer of the police reserve force. The police chief shall be responsible for establishing a training program, promulgating rules and regulations for their conduct, prescribing their uniform, and supervising their performance of duty. The police chief selects and appoints the applicant to the police force in accordance with TMC 2.40.010, and may appoint subordinate officers as is deemed suitable or necessary.~~

~~(Ord. 096-030, Amended, 10/15/1996; Ord. 571, Added, 06/02/1970)~~

~~2.40.030 Police reserve—Powers and duties.~~

~~A.—Members of the police reserve force shall have all those powers vested in them by the chief of police while in the performance of officially authorized duties, but under no circumstances shall reserve police officers exercise any power while not in the performance of duties ordered by the chief of police, or the authorized representative.~~

~~B.—The duties of the police reserve force are to supplement the regular police force in event of a major disaster affecting citizens of the city, to aid in the control of traffic and maintenance of order, and general policing of large assemblies of people, and in case of a declared emergency to assist the regular police in the protection of life, property, and preservation of peace and order.~~

~~(Ord. 096-030, Amended, 10/15/1996; Ord. 571, Amended, 06/02/1970; Ord. 564, Added, 02/17/1970)~~

~~2.40.040 Eligibility for membership.~~

~~A.—To be eligible for membership in the police reserve force, each applicant must file application with the chief of police, indicating willingness to serve an average minimum of twenty hours per month in the public service, meet the qualifications~~

~~and requirements prescribed for membership in the reserve police force, complete the training program, be appointed by the chief of police, take an oath of office and be sworn in.~~

~~B. Members of the police reserve force shall:~~

- ~~1. Be a citizen of the United States;~~
- ~~2. Meet the minimum established physical requirements;~~
- ~~3. Be trustworthy and of good moral character;~~
- ~~4. Not have been convicted of a felony or any offense involving moral turpitude.~~

~~(Ord. 096-030, Amended, 10/15/1996; Ord. 571, Added, 06/02/1970)~~

~~2.40.050 Identification card and badge.~~

~~The chief of police is authorized to furnish each member of the police reserve force with a membership identification card and police badge. The membership identification card is to be carried by such member at all times, and the police badge is to be worn only when the reserve police officer is authorized to wear the prescribed uniform.~~

~~(Ord. 096-030, Amended, 10/15/1996; Ord. 571, Added, 06/02/1970)~~

~~2.40.060 Membership revocation or separation.~~

~~Membership of any person in the reserve police may be revoked at any time by the chief of police. Any member of the reserve police may resign upon written notification to the chief of police. Upon separation from the organization, all equipment, clothing, badges and identification issued to the officer by the city must be turned in within five days.~~

~~(Ord. 096-030, Amended, 10/15/1996; Ord. 571, Added, 06/02/1970)~~

~~2.40.070 Carrying firearms.~~

~~No member of the police reserve force shall carry a firearm until receiving from the chief of police a certificate showing qualifications in the use of such firearms and unless the officer is on an assignment of duty in which the chief of police considers a firearm necessary.~~

~~(Ord. 096-030, Amended, 10/15/1996; Ord. 575, Added, 07/21/1970)~~

~~2.40.080 Reserve members not regarded as city employees.~~

Ordinance No. O2022-016 - Page 3 of 5

~~No member of the police reserve force shall be regarded as a city employee for any purpose, subject to civil service rules and regulations, nor entitled to the benefits of the Police Pension Fund Act.~~

~~(Ord. 571, Added, 06/02/1970)~~

~~2.40.090 Compensation.~~

~~Members of the police reserve force serve without compensation, but the city council may, in its discretion, pay all or part of the cost of furnishing uniforms and equipment and false arrest insurance when the appropriation therefor has been indicated as an item in the city budget for the police department.~~

~~(Ord. 571, Added, 06/02/1970)~~

Section 2. Corrections. The City Clerk and codifiers of this ordinance are authorized to make necessary corrections to this ordinance including, but not limited to, the correction of scrivener/clerical errors, references, ordinance numbering, section/subsection numbers and any references thereto.

Section 3. Ratification. Any act consistent with the authority and prior to the effective date of this ordinance is hereby ratified and affirmed.

Section 4. Severability. The provisions of this ordinance are declared separate and severable. The invalidity of any clause, sentence, paragraph, subdivision, section, or portion of this ordinance or the invalidity of the application thereof to any person or circumstance, shall not affect the validity of the remainder of the ordinance, or the validity of its application to other persons or circumstances.

Section 5. Effective Date. This ordinance shall become effective thirty (30) days after passage, approval and publication as provided by law.

ADOPTED this _____ day of _____, 20__.

CITY OF TUMWATER

Debbie Sullivan, Mayor

ATTEST:

Melody Valiant, City Clerk

APPROVED AS TO FORM:

Karen Kirkpatrick, City Attorney

Published:_____

Effective Date:_____

TO: City Council
FROM: Brian Hurley, Fire Chief
DATE: July 19, 2022
SUBJECT: Intergovernmental EMS Contract – Basic Life Support Funding Amendment No. 2

1) Recommended Action:

Authorize the Mayor to sign Amendment No. 2 to the Intergovernmental Funding Contract

2) Background:

This amendment increases the amount received from Thurston County Medic One for Basic Life Support (BLS) support. The additional funding will assist Tumwater Fire in providing Ongoing Training and Education Programs (OTEP) for staff. Increased funding will also be provided for communications equipment and support for the electronic patient care records system.

3) Policy Support:

City Strategic Goals and Priorities 2023-2024: Provide and Sustain Quality Public Services

4) Alternatives:

☐ Do not authorize the Mayor to sign the agreement

5) Fiscal Notes:

Base financial support will increase by \$2,725 to \$51,262. OTEP support will be added in the amount of \$7,862.

6) Attachments:

- A. Basic Life Support Funding Amendment No. 2
- B. Basic Life Support Funding Amendment No. 1
- C. Intergovernmental EMS Contract – Basic Life Support (BLS) Funding

INTERGOVERNMENTAL EMS CONTRACT
Basic Life Support (BLS) Funding
Amendment No. 2

THIS CONTRACT is made and entered into in duplicate originals this day by and between the **COUNTY OF THURSTON**, a municipal corporation, hereinafter referred to as the "COUNTY" and **CITY OF TUMWATER** a municipal corporation, hereinafter referred to as the "AGENCY";

In consideration of the mutual benefits and covenants contained herein, the parties agree that the EMS Contract executed on January 1, 2020, shall be amended as follows, effective January 1, 2022:

1. Section I. SERVICES:

- A. The AGENCY shall perform such services and accomplish such tasks, as are identified, and designated as AGENCY responsibilities throughout this Contract (Exhibit 'A' and Exhibit 'C').
- D. COUNTY shall provide and manage modems, for the ePCR system, as well as ePCR hardware/software, and associated support. AGENCY is responsible for providing a point of contact to COUNTY's Medic One Business Application Administrator. COUNTY is responsible for providing unlimited cellular data for each modem it uses.

EXHIBIT 'B': PAYMENT

1. The formula for BLS funding may be updated by the Emergency Medical Services Council (EMSC) as needed without affecting other terms and conditions of this agreement.
2. The formula will take into consideration each individual AGENCY's relative share of run (incident) volume for the given fiscal year (January – December). This volume is calculated from the number of EMS runs that have occurred in that AGENCY's jurisdiction, and not include runs made by the AGENCY for mutual aid outside its jurisdiction. The formula will also take into consideration the number of EMT providers each AGENCY will be providing OTEP training for.
3. The EMS run volume statistics shall be prepared by Thurston 911 Communications and provided to the COUNTY. This information shall be provided by February of each year.
4. The funding is based on the annual budget for BLS Direct Support (financial support, supplies & equipment, and OTEP financial support), as approved by the EMSC. The total amount is then allocated by the COUNTY to each AGENCY based on it's individual share (or percentage).
5. Each year, the COUNTY shall prepare an annual allocation form based on the EMSC approved budget. The form shall identify the following:
 - a. Each AGENCY's run volume.
 - b. The percentage of the total Thurston County run volume that AGENCY responded to.
 - c. The total approved budget for financial support for each AGENCY.
 - d. The financial support base compensation for each AGENCY (same for all AGENCYS).
 - e. The financial support compensation per run (call).
 - f. The financial support compensation for reimbursement of AGENCY mobile computer terminal costs per run (call).
 - g. The OTEP – financial support base compensation for each AGENCY (only applies to those agencies that provide OTEP training).
 - h. The OTEP – financial support 'evaluator support' compensation, which is determined by the number of providers per AGENCY.
 - i. The total approved budget for supplies & equipment for AGENCYS.

- j. The supply & equipment support base compensation for each AGENCY (same for all AGENCYs).
 - k. The supply & equipment support compensation per run (call); and
 - l. The total COMPENSATION TO BE PROVIDED TO EACH agency.
6. The terms and conditions for compensation are covered in Section IV "Compensation and Methods of Payment" of this agreement.

EXHIBIT C: BLS OTEP AGENCY IN-HOUSE TRAINING

- I. Annual Deliverables for each AGENCY
 - 1. The AGENCY assumes all responsibility for equipment/supplies borrowed from the COUNTY.
 - a. The AGENCY shall coordinate with the COUNTY two weeks in advance of equipment needs.
 - b. The AGENCY shall be responsible to return all borrowed equipment as agreed upon with COUNTY personnel.
 - 2. AGENCY identified Lead Evaluators are the single point of contact to the COUNTY and are required to:
 - a. Maintain their EMT or Paramedic training and certification.
 - b. Participate and complete annual Evaluator workshops and quarterly meetings with COUNTY training staff.
 - c. Participate in ongoing Quality Assurance programs with Evaluator performance evaluations.
 - d. Advise AGENCY in-house Evaluators of updated requirements/material.
 - e. Submit AGENCY OTEP class schedule to the COUNTY prior to beginning annual training.
 - f. Ensure all BLS practical skill evaluations are conducted according to Thurston County protocols and Washington State DOH objectives.
 - g. Ensure OTEP completed paperwork (roster, practical skill evaluations, etc.) are submitted to the COUNTY within 1 week of completion.
- II. The terms and condition of compensation are covered in Section IV "Compensation and Methods of Payment" of this agreement.

Except as expressly provided in this EMS Contract Amendment, all other terms and conditions of the original EMS Contract remain in full force and effect.

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Executed this 19 day of July 2022.

DATED the effective date set forth above.

CITY:
CITY OF TUMWATER
555 Israel Road SW
Tumwater, WA 98501

SERVICE PROVIDER:
MEDIC ONE THURSTON COUNTY
EMERGENCY SERVICES

Debbie Sullivan, Mayor

Ben Miller-Todd, Interim Assistant
Director Emergency Services

ATTEST:

APPROVED AS TO FORM:
John Tunheim
Thurston County Prosecuting Attorney

Melody Valiant, City Clerk



By: Rick Peters, Deputy Prosecuting Attorney

APPROVED AS TO FORM:

Karen Kirkpatrick, City Attorney

INTERGOVERNMENTAL EMS CONTRACT
Basic Life Support (BLS) Funding
Amendment No. 1

THIS Amendment is made and entered into in duplicate originals this day by and between the **COUNTY OF THURSTON**, a municipal corporation, hereinafter referred to as the "COUNTY" and the **CITY OF TUMWATER**, a municipal corporation, hereinafter referred to as the "AGENCY";

In consideration of the mutual benefits and covenants contained herein, the parties agree that the EMS Contract executed on January 1, 2020 (the "Contract"), shall be amended as follows, effective January 1, 2021:

1. Section I. SERVICES.: A new section G shall be added as follows:

G. In the event AGENCY provides support to assist at COVID-19 vaccination clinics, AGENCY will invoice COUNTY for the cost and COUNTY will reimburse AGENCY at 100% of the cost. The support must be coordinated through Medic One, the cost must be pre-approved by Medic One, and the AGENCY shall not be reimbursed by any other entity. The cost shall not exceed ten percent (10%) of the total amount allocated by the County pursuant to the Contract (Exhibit 'B', paragraph 4). These costs are not part of the BLS funding distribution and will not be held against the AGENCY's BLS cap.

2. Except as expressly provided in this EMS Contract Amendment, all other terms and conditions of the original EMS Contract remain in full force and effect.

Executed this 14 day of May, 2021 .

CITY OF TUMWATER

DocuSigned by:

Pete Kmet

B11B2344454D46F...

Pete Kmet, Mayor

EMERGENCY SERVICES/MEDIC ONE
Thurston County, Washington

DocuSigned by:

Kurt A. Hardin

318C2E8BAF45434...

Kurt Hardin, Director
Emergency Services

APPROVED AS TO FORM

DocuSigned by:

Karen Kirkpatrick

9F0E9D38F34249E...

By: Karen Kirkpatrick, City Attorney

APPROVED AS TO FORM:

John Tunheim
Thurston County Prosecuting Attorney

[Signature]
By: Rick Peters, Deputy Prosecuting Attorney

INTERGOVERNMENTAL EMS CONTRACT
Basic Life Support (BLS) Funding

THIS CONTRACT is made and entered into in duplicate originals this 1st day of January, 2020, by and between the **COUNTY OF THURSTON**, a municipal corporation, hereinafter referred to as the 'COUNTY' and the City of Tumwater, a municipal corporation, hereinafter referred to as the 'AGENCY';

WHEREAS, Chapter 39.34 RCW authorizes local governments to enter into agreements for joint and cooperative undertakings; and

WHEREAS, regulations over the provision of emergency medical services include Chapters 18.71, 18.73, 70.168 RCW and Chapter 246-976 WAC; and

WHEREAS, RCW 70.168.120 authorizes the County to establish local emergency medical services care councils; and

WHEREAS, Thurston County Medic One is supported by a county wide levy in order to provide county wide emergency medical services as provided by law; and

WHEREAS, certain local agencies have the Basic Life Support (BLS) resources, as defined in State Statute available to provide such services at the requisite level of quality and training; and

WHEREAS, the COUNTY desires to have the AGENCY perform BLS services as hereinafter set forth; requiring specialized skills and other supportive capabilities; and

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

WHEREAS, the AGENCY represents that it is qualified and possesses sufficient skills and the necessary capabilities, including technical and professional expertise where required, to perform the BLS services set forth in this Contract;

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

I. SERVICES

- A. The AGENCY shall perform such services and accomplish such tasks, as are identified and designated as AGENCY responsibilities in Exhibit 'A', and throughout this Contract.
- B. The COUNTY, through the Thurston County Emergency Medical Services Fund, shall provide the AGENCY with financial support and medical supplies, based on prior year call volume for said agency.

COUNTY BLS Supply Funds shall be used to provide emergency medical care or emergency medical services, including training for such personnel and related equipment, supplies, vehicles, structures needed to provide this care or service, and/or encourage preventative health measures. Expenses shall be consistent with the level of the public agency's State Department of Health Certification. These funds may be expended directly by COUNTY on behalf of the providing agency, or by the providing agency with reimbursement requested from COUNTY. The expended amount shall not exceed the amount allocated for each providing agency, as described in Exhibit 'B'.

COUNTY Financial Support is provided directly to each jurisdiction to cover a portion of the

costs for the provision of their BLS service delivery.

- C. The COUNTY shall provide funding for the provision of certain occupational health vaccination and testing services, to include Hepatitis B vaccination series, Titer tests, Tuberculosis tests, Tetanus/Diphtheria/pertussis (Td or Tdap) and influenza vaccines for all Thurston County Fire agency EMS providers in addition to the Supply and Direct Support amounts.
- D. COUNTY shall provide and manage modems, for the ePCR system, as well as ePCR hardware/software, and associated support. AGENCY is responsible for providing a point of contact to COUNTY's Medic One Business Application Administrator. AGENCY is responsible for providing unlimited cellular data for each modem it uses.
- E. AGENCY shall provide COUNTY with access to COUNTY provided hardware.
- F. AGENCY shall not abuse or misuse COUNTY equipment.

II. EFFECTIVE DATE; DURATION

The term of this Contract and the performance of the AGENCY shall commence on January 1, 2020. and shall automatically renew every year up to 5 years from the original contract effective date, upon mutual agreement between the parties hereto and pursuant to the terms and conditions herein.

III. THE EMERGENCY MEDICAL SERVICES COUNCIL

- A. The EMS Council is formally established by Thurston County Board of Commissioners Resolution No. 6131, and the EMS Council is recognized by the Washington State Department of Health.
- B. The EMS Council shall advise the COUNTY with regard to the formulation and implementation of an Emergency Medical Services System consistent with State and Federal guidelines, including budget allocations. The EMS Council is not a party to this Contract, and nothing herein shall serve to create third party rights in favour of the EMS Council, or any other person, or entity not specifically identified as a party to this Contract.

IV. COMPENSATION AND METHOD OF PAYMENT

- A. No payment by the COUNTY shall be made for any service rendered by AGENCY except for services identified and set forth in this Contract.
- B. No payment by the COUNTY shall be made for any service rendered by AGENCY without a signed Intergovernmental EMS Contract, for BLS funding.
- C. If AGENCY is merged with another agency, allocated funds will remain in the County budget, only through the current County budget period.
- D. Purchase requests over \$49,999.00 requires prior approval from Thurston County Board of County Commissioners ("BoCC"). Purchase requests over \$49,999.00 must be received at least 30 calendar days prior to ordering the item or service.
- E. Goods and services shall be ordered by November 30th of each year and must be received by December 31st.

- F. Invoices and reimbursement requests need to be submitted within 30 days from the date item is received.
- G. Invoices and requests for reimbursement for goods and services delivered in December must be received in the COUNTY's Medic One office no later than January 15th of the following year.
- H. In the rare circumstance where a Medic One Paramedic accompanies a patient on a BLS transport capable unit due to emergency circumstances, the Fire Agency shall bill Medic one according to the Fire Agency's respective rate schedules. Medic One will set their reimbursement rate schedule according to the Centers for Medicare & Medicaid Services (CMS) rate schedule and shall publish this no later than January 1st, of each year. These transport charges shall be reimbursed utilizing the ALS budget and shall not utilize BLS funds. No additional fees, charges, or other costs shall be submitted to the patient or their health care provider.

V. ESTABLISHMENT AND MAINTENANCE OF RECORDS

- A. The AGENCY agrees to maintain books, records and documents and accounting procedures and practices which accurately reflect all direct and indirect costs related to the performance of this Contract. Such fiscal books, records, documents, reports and other data shall be maintained in a manner consistent with the "Budgeting, Accounting, Reporting System for Counties and Cities, and Other Local Governments," referred to as "BARS," as issued by the Office of the State Auditor, State of Washington.

The AGENCY further agrees that the COUNTY and/or State/Federal officials shall have the right to monitor and audit at their own expense the fiscal components of the AGENCY to ensure that actual expenditures remain consistent with the terms of this Contract.

- B. The AGENCY shall retain all books, records, documents and other material relevant to this Contract for the amount of time required by the State of Washington. The AGENCY agrees that the COUNTY or its designee shall have full access and right to examine any of said materials at all reasonable times during said period.
- C. The AGENCY'S fiscal management system shall include the capability to provide accurate, current and complete disclosure of the financial status of this Contract upon request.
- D. The patient care records of the Agency as submitted per Exhibit 'A' shall be accessible by the AGENCY for planning, quality control and all applicable public records requests.
- E. If it is determined that a Business Associate Agreement (BAA) is required, it shall be completed as an addendum to this Agreement and incorporated herein.

VI. ASSIGNMENT/SUBCONTRACTING

- A. The AGENCY shall not assign any portion of this Contract without the written consent of the COUNTY, and it is further agreed that said consent must be sought in writing by the AGENCY not less than fifteen (15) days prior to the date of any proposed assignment.
- B. Any work or services assigned hereunder shall be subject to each provision of this Contract and proper bidding procedures where applicable as set forth by local, State and/or Federal statutes, ordinances and guidelines.

- C. The COUNTY will not unreasonably withhold consent. If the COUNTY fails to respond to a request by the AGENCY to assign all or any portion of this Contract within fifteen (15) calendar days, consent shall be deemed to have been given.

VII. FUTURE SUPPORT

The COUNTY makes no commitment to future support and assumes no obligation for future support of the activity contracted for herein, except as may be expressly set forth in this Contract. All compensation methods and formulas shall be reviewed for appropriateness, annually.

VIII. COMPLIANCE WITH LAWS

The parties, in performance of this Contract, agrees to comply with all applicable local, State and/or Federal laws and ordinances, including standards for licensing, certification and operation of facilities, programs and accreditation, and licensing of individuals and any other standards or criteria as described in this Contract to assure quality of services.

IX. NON-DISCRIMINATION IN EMPLOYMENT AND SERVICES

- A. The COUNTY and the AGENCY are equal opportunity employers.
- B. The AGENCY agrees that it shall not discriminate against any employee or applicant on the grounds of race, color, religion, sex, sexual orientation, national origin, creed, marital status, age, veteran status, or the presence of any disability; provided that the prohibition against discrimination in employment because of disability shall not apply if the particular disability prevents the particular worker involved from performing the occupational requirements of the job. The AGENCY shall take such action with respect to this Contract as may be required to ensure full compliance with state and federal law.
- C. The AGENCY shall not, on the grounds of race, color, sex, sexual orientation, religion, national origin, creed, marital status, age, veteran status or the presence of any disability deny any individual any services or other benefits provided under this Contract.

X. RELATIONSHIP OF PARTIES

- A. No agent, employee, servant or representative of the AGENCY shall be deemed to be an employee, agent, servant or representative of the COUNTY for any purpose, and the employees of the AGENCY are not entitled to any of the benefits the COUNTY provides for COUNTY employees. The AGENCY shall be solely and entirely responsible for its acts and for the acts of its agents, and employees during the performance of this Contract.
- B. The COUNTY will not exercise control and direction over the work of the AGENCY, with the exception of agency personnel operating under Department of Health's approved protocol, and is interested primarily in the results to be achieved. However, the services contemplated herein must meet the general financial approval of the COUNTY and shall be subject to the COUNTY'S general rights of financial inspection and review to secure the satisfactory completion hereof.
- C. In the event that any of the AGENCY'S employees or agents, carry on activities or conduct themselves in any manner which may jeopardize the funding of this Contract, the AGENCY shall be responsible for taking adequate measures to prevent said employee or agent from performing or providing any of the services contained in this Contract.

- D. Communications between the AGENCY and the COUNTY shall be addressed to the regular place of business:

THURSTON COUNTY
c/o MEDIC ONE DIRECTOR
2703 PACIFIC AVE SE, SUITE C
OLYMPIA, WA 98501

CITY OF TUMWATER
c/o FIRE CHIEF
555 ISRAEL ROAD SW
TUMWATER, WA 98501

XI. POLITICAL ACTIVITY PROHIBITED

None of the funds, materials, property or services provided directly or indirectly under this Contract shall be used for the purpose of assisting a campaign for election of any person to any office or for the promotion of or opposition to any ballot proposition.

XII. INDEMNIFICATION; HOLD HARMLESS

- A. All services to be rendered or performed under this Contract shall be performed or rendered entirely at the AGENCY'S own risk and the AGENCY expressly agrees to indemnify and hold harmless the COUNTY and all of its officers, agents, employees, or otherwise, from any and all liability, loss or damage including reasonable costs of defense that they may suffer as a result of claims, demands, actions, or damages to any and all persons or property, costs or judgments against the COUNTY which result from or arise out of the services to be performed by the AGENCY under this Contract; provided, this section shall not apply to liability resulting exclusively from errors or omissions of the COUNTY, its officers, or employees.
- B. The COUNTY expressly agrees to indemnify and hold harmless the AGENCY and all of its officers, agents, employees, or otherwise, from any and all liability, loss or damage including reasonable costs of defense that they may suffer as a result of claims, demands, actions, or damages to any and all persons or property, costs or judgments against the AGENCY which result from or arise out of the failure of products or equipment provided by the COUNTY to the extent such failure results from the negligence of the COUNTY, or the services to be performed by the AGENCY as a result of acting under the express and negligent direction or control of a COUNTY agent or representative, excluding the Medical Program Director or any other medical doctor.
- C. In the event that a claim and/or lawsuit is brought against a party to this Agreement, or against any party's officers, officials or employees for actions arising out of their conduct in responding to a request for assistance, it shall be the duty of each such party to promptly notify the other party that the same has been initiated.
- D. Solely for purposes of enforcing the indemnification obligations of a party under this Section XII, each party expressly waives, by mutual negotiation, its immunity under Title 51 of the Revised Code of Washington, the Industrial Insurance Act, and agrees that the obligation to indemnify, defend, and hold harmless provided for in this Section XII extends to any such claim brought against the indemnified party by or on behalf of any employee of the indemnifying party. The foregoing waiver shall not in any way preclude the Indemnifying party from raising such immunity as a defense against any claim brought against the indemnifying party by any of its employees.

XIII. INSURANCE

The AGENCY shall maintain insurance coverage sufficient to insure its operations, including professional legal liability and general liability either through membership in a Washington State approved government risk pool or through commercial insurance. Commercial coverage must meet the following minimum requirements:

- A. **Professional Legal Liability:** The coverage shall apply to liability for a professional error, act or omission arising out of the scope of the AGENCY'S services provided subject to this Contract. Coverage shall not exclude bodily injury, property damage or hazards within the scope of the AGENCY'S services subject to this Contract.
- B. **Commercial General Liability:** The AGENCY shall maintain Commercial General Liability coverage for bodily injury, personal injury and property damage, subject to limits of not less than \$1,000,000 per loss, or equivalent coverage provided through a joint self-insurance program approved by the Washington State Risk Manager.
- C. The AGENCY'S general liability insurance shall apply separately to each insured against whom claim is made or suit is brought, except with respect to the limits of the insurer's liability.
- D. **Other Commercial Insurance Provisions**
 - 1. The AGENCY'S liability insurance provisions shall be primary with respect to any insurance or self-insurance programs covering the COUNTY, its elected and appointed officers, officials, employees and agents.
 - 2. The AGENCY shall place insurance with insurers licensed to do business in the State of Washington and having A.M. Best Company ratings of no less than A-, with the exception that excess and umbrella coverage used to meet the requirements for limits of liability or gaps in coverage need not be placed with insurers or re-insurers licensed in the State of Washington, or equivalent coverage provided through a joint self-insurance program approved by the Washington State Risk Manager.
 - 3. Certificates of Insurance or other reasonable notices of coverage shall be provided to the Office or Department issuing the Contract. The address of the Certificate Holder shall be shown as the current address of the Office or Department. Written notice of cancellation or change shall be mailed to the COUNTY at the following address:

Attn: Risk Analyst
Human Resources
2000 Lakeridge Drive S.W.
Olympia, Washington 98502

XIV. SUSPENSION, TERMINATION AND CLOSE-OUT

If the AGENCY fails to comply with the terms and conditions of this Contract, the COUNTY may pursue such remedies as are legally available including, but not limited to, the suspension or termination of this Contract in the manner specified herein.

- A. **Suspension:** If the AGENCY fails to comply with the terms of this Contract, or whenever the AGENCY is unable to substantiate full compliance with the provisions of this Contract, the COUNTY may suspend the Contract pending corrective action or investigation, after first allowing a reasonable period for the AGENCY'S cure. The COUNTY shall provide written

notice of intent to suspend the Contract, and shall set forth the actions the AGENCY must take, and the time frame within which such action must occur to avoid suspension. If, following such reasonable period for cure the AGENCY fails to cure, the COUNTY may suspend the Contract pending corrective action or investigation by COUNTY employees or their agents. The effective date of suspension shall not be less than seven (7) business days following written notification of suspension to the AGENCY. The suspension shall remain in full force and effect until the AGENCY has taken corrective action to the satisfaction of the COUNTY and is able to substantiate its full compliance with the terms and conditions of this Contract. No obligation incurred by the AGENCY during the period of suspension shall be allowable under the Contract except any reasonable, proper and otherwise allowable costs which the AGENCY could not avoid during the period of suspension. If the AGENCY has corrected its action(s) to the satisfaction of the COUNTY, the COUNTY shall immediately notify the AGENCY in writing that the period of suspension has ended, and shall specify the effective date of the end of such suspension.

- B. Termination for Cause by County: If the AGENCY fails to cure the non-compliance issues that resulted in a suspension of the Contract by the COUNTY, and any of the below-listed conditions exist, the COUNTY may terminate this Contract in whole or in part. If the COUNTY exercises its right to terminate the Contract, it shall notify the AGENCY in writing of the effective date of the termination, and shall set forth the reasons for termination. The COUNTY shall not give less than 21 days' notice of intent to terminate the Contract. After the effective date of termination, no charges incurred by the AGENCY under any terminated portions of the Contract are allowable as against the COUNTY, except for any charges reasonably incurred or encumbered prior to the AGENCY receiving notice of intent to terminate.

Non-compliance, and one of the following conditions provides cause for termination:

1. The lack of compliance with the provisions of this Contract are of such scope and nature that the COUNTY deems continuation of this Contract to be substantially detrimental to the interests of the COUNTY;
 2. The AGENCY has failed to take satisfactory action to correct non-compliance as directed by the COUNTY or its authorized representative within the time specified by same and as set forth in the request to cure notice in Section XIV. A.
- C. Termination for Cause by AGENCY: In the event the COUNTY fails to comply with the terms and conditions of this Contract, the AGENCY shall give notice of such failure and allow a reasonable period for the COUNTY'S cure. Thereafter, in the event the COUNTY fails to cure, the AGENCY may terminate part or all of this Contract upon sixty (60) days written notice to the COUNTY.
- D. Termination for Other Grounds: This Contract may also be terminated in whole or in part as follows:
1. By either party with the mutual consent of the other party, in which case the two parties shall devise by mutual written agreement, the conditions of termination including the effective date thereof and in case of termination in part, that portion to be terminated;
 2. By the COUNTY, if the funds allocated by the COUNTY via this Contract are from anticipated sources of revenue, and if the anticipated sources of revenue do not become available for use in purchasing said services.
- E. Close-Out: In the event that this Contract is terminated in whole or in part for any reason, the following provisions shall apply:

1. Upon written request by the AGENCY, the COUNTY shall make or arrange for payment to the AGENCY of allowable reimbursable costs not covered by previous payments;
2. The AGENCY shall immediately refund to the COUNTY any monies paid in advance for services not performed;
3. The AGENCY shall submit, within thirty (30) days after the date of expiration of this Contract, all financial, performance and other reports required by this Contract;
4. In the event a financial audit has not been performed prior to close out of this Contract, the COUNTY retains the right to withhold a just and reasonable sum from the final payment to the AGENCY after fully considering the recommendations on disallowed costs resulting from the final audit.

XV. JURISDICTION

- A. This Contract 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 Contract shall be governed by the 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 Contract or any provisions thereof, shall be instituted and maintained only in any of the courts of competent jurisdiction in Thurston County or in the superior court of the two nearest judicial districts as determined pursuant to RCW 36.01.050.

XVI. SEVERABILITY

- A. It is understood and agreed by the parties hereto that if any part, term or provision of this Contract is held by the courts to be illegal, 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 Contract did not contain the particular provision held to be invalid.
- B. If it should appear that any provision hereof is in conflict with a statute of the State of Washington, said provision which may conflict therewith shall be deemed modified to conform to such statutory provision.

XVII. ENTIRE AGREEMENT

The parties agree that this Contract is the complete expression of the terms hereto and any oral representations or understandings not incorporated herein are excluded. This agreement replaces all prior interlocal agreements regarding the subject matter contained in this agreement. Further, any modification of this Contract 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 is cause for termination. Both parties recognize time is of the essence in the performance of the provision of this Contract. It is also agreed by the parties that the forgiveness of the non-performance of any provision of this Contract does not constitute a waiver of the provisions of this Contract.

XVIII. NO THIRD PARTY LIABILITY

This Contract shall not be construed to provide any benefits to or create a cause of action for or on behalf of any third parties. Specifically and without limiting the foregoing, this

Agreement shall not create or be construed as creating an exception to the Public Duty Doctrine.

XIX. DISPUTE RESOLUTION

The parties shall use reasonable efforts to mediate any dispute arising under this Contract. In the event of such a dispute, each party may, upon mutual agreement of both parties, designate, in writing, not more than three (3) candidates it proposes to act as a non-binding mediator within ten (10) days following notification of a dispute. If the parties cannot agree on one of the mediators from the combined list within five (5) days, then the parties shall promptly meet and select a mediator by blind draw. Upon selection of the mediator, the parties shall within forty-five (45) days or as soon thereafter as possible, meet and engage in a mediation of the dispute with the assistance of the mediator. The cost for the mediation services shall be borne equally between the parties, each party paying one-half of the cost. The mediator shall determine reasonable procedures. Testimony and briefing, if any, provided to the mediator shall be inadmissible in any subsequent court proceedings. If mediation fails to resolve the dispute, the parties may thereafter seek redress in a court of competent jurisdiction. Nothing in this section shall be construed to prohibit either party from exercising its right to terminate this Agreement as otherwise provided in this Agreement or be construed as a pre-condition to the exercise of such right to terminate.

XX. EQUAL OPPORTUNITY TO DRAFT

Each party has had opportunity to consult with counsel in connection with the negotiation, execution and delivery of this Contract. Each of the provisions of this Contract has been reviewed and negotiated, and represents the combined work product of both parties hereto. No presumption or other rules of construction which would render the provisions of this Contract in favor of or against the party preparing the same will apply in connection with the construction or interpretation of any of the provisions of this Contract.

XXI. MISCELLANEOUS

Successors. All of the terms, covenants, and conditions in this Contract shall extend to and bind any approved legal successors and assigns of the parties hereto.

Effect of Recitals The headings and recitals in this Contract are for convenience only and do not in any way limit or amplify the provisions of this Contract

Recording. The parties shall ensure that copy of this Contract is filed with the Thurston County Recorder's Office or posted by subject on either party's website.

This Agreement does not establish a separate legal entity, joint board, or administrative section for the purpose of acquiring, managing, or disposing of property, or any other financial obligation allowed under the Act.

This Agreement does not provide for jointly owned property. All property presently owned or hereafter acquired by one party to enable it to perform the services required under this Agreement, shall remain the property of the acquiring party in the event of the termination of this agreement.

Contract Administration. This Contract shall be administered by the Fire Chief of the AGENCY and the COUNTY's Emergency Services Director.

DATED: 1/28/2020

City of Tumwater

Pete Kmet
Mayor Pete Kmet

DATED: 2-4-2020

Thurston County Washington

Kent Hall
Director of Emergency Services

ATTEST

Melody Valiant
Melody Valiant, City Clerk

JON TUNHEIM
PROSECUTING ATTORNEY

Rick Peters
By: Rick Peters, Deputy Prosecuting Attorney

APPROVED AS TO FORM

Karen Kirkpatrick
Karen Kirkpatrick, City Attorney

EXHIBIT A: SERVICES

I. SERVICE AREA

The following services shall be provided within Thurston County during the term of this Contract.

II. SERVICES

- A. The AGENCY shall provide BLS patient care as dispatched and following all applicable COUNTY Medic One protocols. The COUNTY, through the Thurston County Emergency Medical Services Fund, shall provide the AGENCY with financial support and medical supplies, based on prior year call volume for said agency. Medic One BLS Supply Funds shall be used to provide emergency medical care or emergency medical services, including related personnel costs, training for such personnel and related equipment, supplies, vehicles, structures needed to provide this care or service, and/or encourage preventative health measures. Expenses shall be consistent with the level of the public agency's State Department of Health Certifications. These funds may be expended directly by Medic One on behalf of the providing agency, or by the providing agency with reimbursement requested from Medic One. The expended amount shall not exceed the amount allocated for each providing agency (Exhibit "B"). Medic One Financial Support is provided directly to each jurisdiction to cover a portion of the costs for the provision of their BLS service delivery.
 - a. For non-transporting units, AGENCY shall submit the patient care reporting data as required by the COUNTY's current patient care data management system to the COUNTY within one (1) hour of the EMS run.
 - b. For transporting units, AGENCY shall submit the patient care reporting data before the unit leaves the hospital. If the ePCR system has failed, and patient care reporting data must be submitted in paper form, AGENCY shall submit data within 24 hours.
- B. The AGENCY assumes all responsibility for equipment/supplies received.
- C. COUNTY shall have supply orders filled and ready for pickup on the date requested by the Agency. Orders must be submitted no later than 2 business days prior to pick up. Orders not picked up by the Agency on the date requested will be returned to stock, unless prior notification is given for a delayed pick up.
- D. AGENCY shall notify COUNTY within 30 days of supplies/equipment purchased/received, for reimbursement requests.
- E. County shall provide monthly BLS supply fund expenditure reports within 15 business days following the last day of the previous month.
- F. AGENCY shall reconcile accounts within 30 days of receiving COUNTY's monthly BLS supply fund expended report.
- G. AGENCY shall use COUNTY ePCR in the field for patient care, and perform periodic updates as required.

- H. AGENCY shall leave modems, utilized by ePCR, powered on at all times.
- I. AGENCY shall report ePCR outages upon recognition of failure.
- J. AGENCY shall conduct OTEP, in accordance with COUNTY requirements.
- K. AGENCY shall establish, in writing, a BLS POC (point of contact), and provide this to the COUNTY.
- L. Agency shall provide BLS level of service in accordance with State Statute and Department of Health approved protocols.

EXHIBIT B: PAYMENT

1. The formula for BLS funding may be updated by the Emergency Medical Services Council (EMSC) as needed without affecting other terms and conditions of this agreement.
2. The formula will take into consideration each individual AGENCY's relative share of run (incident) volume for the given fiscal year (January – December). This volume is calculated from the number of EMS runs that have occurred in that AGENCY's jurisdiction, and not include runs made by the AGENCY for mutual aid outside its jurisdiction.
3. The EMS run volume statistics shall be prepared by Thurston 911 Communications and provided to the COUNTY. This information shall be provided by February of each year.
4. The funding is based on the annual budget for BLS Direct Support (financial and supplies & equipment) as approved by the EMSC. The total amount is then allocated by the COUNTY to each AGENCY based on its individual share (or percentage).
5. Each year, the COUNTY shall prepare an annual allocation form based on the EMSC approved budget. The form shall identify the following:
 - a. Each AGENCY's run volume;
 - b. The percentage of the total Thurston County run volume that AGENCY responded to;
 - c. The total approved budget for financial support for each AGENCY;
 - d. The financial support base compensation for each AGENCY (same for all AGENCYS);
 - e. The financial support compensation per run (call);
 - f. The financial support compensation for reimbursement of AGENCY mobile computer terminal costs per run (call);
 - g. The total approved budget for supplies & equipment for AGENCYS;
 - h. The supply & equipment support base compensation for each AGENCY (same for all AGENCYS);
 - i. The supply & equipment support compensation per run (call); and
 - j. The total compensation to be provided to each AGENCY.
6. The terms and conditions for compensation are covered in Section IV "Compensation and Methods of Payment" of this agreement.

TO: City Council
FROM: Brad Medrud, Planning Manager
DATE: July 19, 2022
SUBJECT: WSDOT Rights of Way Initiative – Process Memorandum of Understanding

1) Recommended Action:

Authorize the Mayor to sign the Memorandum of Understanding – Transitioning People Out Of State Rights Of Way in Thurston County substantially in the form presented subject to the approval of the City Attorney.

2) Background:

The WSDOT Rights of Way Initiative Process, the Memorandum of Understanding – Transitioning People Out of State Rights of Way in Thurston County is the first of a series of agreements expected between the Washington State Department of Commerce, the Washington State Department of Transportation, the Washington State Patrol, the cities of Lacey, Olympia, and Tumwater, and Thurston County to work in a collaborative fashion to achieve the short-term goal of transitioning people from specific prioritized state rights-of-way into housing.

The General Government Committee held a briefing to discuss the memorandum on July 13, 2022.

3) Policy Support:

Housing Element Goal H-3: To provide adequate, affordable housing for residents of all income groups, including sufficient housing affordable to low and moderate-income groups.

4) Alternatives:

☐ None

5) Fiscal Notes:

This is an internally funded work program task, although individual actions may have a cost if eventually pursued.

6) Attachments:

A. Memorandum of Understanding – Transitioning People Out of State Rights of Way in Thurston County

MEMORANDUM OF UNDERSTANDING

Transitioning people out of state rights of way in Thurston County

PARTIES

This is an agreement of the following parties:

- Washington State Department of Commerce (“COM”)
- Washington State Department of Transportation (“WSDOT”)
- Washington State Patrol (“WSP”)
- City of Olympia
- City of Lacey
- City of Tumwater
- Thurston County

PURPOSE

This memorandum establishes an understanding between the parties regarding the resources and processes that will be deployed to assist people in moving out of state rights of way and into housing.

GUIDING PRINCIPLES

The signatories understand that it will require working in a collaborative fashion to achieve the short-term goal of transitioning people from specific prioritized state rights of way into housing by implementing the following strategies:

- Promptly identifying shelter and housing that people living in rights of way can be referred to.
- Engaging people living in rights of way to assess their needs and refer them to identified emergency and other housing and other available services with their selected belongings prior to the clearing of rights of way.
- Identify and implement strategies to keep cleared sites uninhabited.
- Identify strengths and weaknesses in the short-term strategy to implement a more comprehensive long-term approach to individuals and families living in public places.

GOALS AND OBJECTIVES

The signatories understand that it will require working in a collaborative fashion to achieve the short-term goal of transitioning people from specific prioritized state rights of way into housing by implementing the following strategies:

- Promptly identifying existing emergency and other housing that people living in rights of way can be referred to.
- Engaging people living in rights of way to assess their needs through coordinated entry or other assessments and refer them to identified emergency and other housing and other available services.
- Immediately begin to create additional emergency and other housing dedicated to people living in rights of way.
- Identify and implement strategies to keep cleared sites uninhabited.
- Identify strengths and weaknesses in the short-term strategy to implement a more comprehensive long-term approach to individuals and families living in public places.

STRUCTURE

- **COMMERCE** shall be represented by Diane Klontz, Assistant Director, Telephone: (360) 725-4142, Email: diane.klontz@commerce.wa.gov.
- **WSDOT** shall be represented by Amy Scarton, Deputy Secretary - Transportation, Telephone: (206) 515-3401, Email: scartoa@wsdot.wa.gov.
- **WSP** shall be represented by John Batiste, Chief of the Washington State Patrol, Telephone: (360) 596-4000, Email: john.batiste@wsp.wa.gov.
- **Thurston County** shall be represented by Tom Webster, Office of Housing and Homeless Prevention, Telephone: (360) 867-2531, Email: thomas.webster@co.thurston.wa.us.
- **City of Lacey** shall be represented by Rick Walk, Director of Community and Economic Development, Telephone: (360) 438-2638, Email: RWALK@ci.lacey.wa.us.
- **City of Olympia** shall be represented by Darian Lightfoot, Housing Programs Manager, Telephone: (360) 753-8033, Email: dlightfo@ci.olympia.wa.us.
- **City of Tumwater** shall be represented by Brad Medrud, Long Range Planning Manager, Telephone: (360) 754-4180, Email: BMedrud@ci.tumwater.wa.us.

COMMITMENTS

The Parties to this MOU agree that:

COM, WSP, and WSDOT will commit and prioritize available appropriations and other state capacities at the scale necessary to address people living in state rights of way sites identified by the WSDOT.

Local governments will expand and prioritize local capacity to perform outreach and provide housing to individuals and families living in state rights of way identified by WSDOT.

WSDOT and WSP will work with local governments to maintain and secure sites that have been relocated from the state rights of way.

It is the intent of the parties to this agreement to pursue specific agreements to implement the following to address people living in state rights of way identified by WSDOT, subject to change as needed to address changing circumstances. Commitments to projects and funding beyond the first year are subject to review under the required stakeholder feedback process, the results of which may necessitate changes to the agreement and related contracts. The specifics of how funding will flow from the state and who will execute the work will be determined later, specified in contracts separate from this agreement:

1. Outreach to people living in WSDOT identified state rights of way, including offering them coordinated entry intake and assessment and referrals and/or placement in emergency or other housing starting in June 2022, funded by the state for three years.
2. Prioritization of at least 24 existing shelter beds for people living in WSDOT identified state rights of way starting June 2022, funded by the state for three years.
3. Expansion of existing hotel leasing, case management, and support services for domestic violence survivors, homeless youth, and other people living in identified state rights of way for which regular shelter placements are not appropriate, starting in July 2022; funded by the state for three years.
4. Siting, site improvements, and acquisition or building of fifty new tiny homes (capacity for about sixty people) prioritized for people living in WSDOT identified state rights of way, each with a

window and locking door, with ready access to hygiene and food, occupancy goal of September 2022, or as soon as possible thereafter; funded by the state.

5. State capital and long-term operating and service funding, increased or decreased based on the number of units available, agreed to, and provided, for the purchase and renovation of a hotel, or other existing high-density housing, that would provide approximately 100 units with an initial occupancy availability goal of September 2022, or as soon as possible thereafter. Up to half of the units will be prioritized for people living in or relocated from WSDOT-identified state rights of way, in alignment with the portion of project funding derived from sources dedicated to housing people living in state rights of way.
6. State capital and long-term operating and service funding, increased or decreased based on the number of units available, agreed to, and provided, for the siting and construction of approximately 50 new units of permanent housing with necessary services. At least half of the units will be prioritized for people living in or relocated from WSDOT-identified state rights of way, in alignment with the portion of project funding derived from sources dedicated to housing people living in state rights of way
7. Additional state capital and long-term operating and service funding for the project(s), based on the number of units available, agreed to, and provided, currently under development to address funding gaps and that is associated with people living in or relocated from WSDOT identified state rights of way.
8. Adequate funding for staff time associated with coordination and administration of rights of way activities; funded by the state for three years.
9. State Patrol engaged with serving notice to and removal as needed of people on WSDOT identified state rights of way.
10. State Patrol is readily available to assist with people living on WSDOT-identified rights of way through regular monitoring of sites by local governments.
11. WSDOT cleans sites after people have been relocated and makes site improvements to prevent future occupancy. WSDOT will respond to requests for additional or ongoing site changes identified by local governments to help prevent re-occupancy.
12. WSDOT and WSP will coordinate with local governments to monitor and maintain cleared state rights of way sites.

This agreement covers WSDOT-identified state rights of way sites that will be mutually agreed to by the parties to this agreement. The number of sites and people addressed through this agreement is subject to increase or decrease based on a good faith review of the adequacy of committed and available resources and what is needed to address the identified sites and the individuals and families living on them.

AMENDMENTS

Any amendments to this Agreement shall be in writing and agreed to by all parties.

TERMS

The parties to this agreement are required to give 90 days advance notice of their intent to withdraw from the agreement. At this time the term of this Memorandum is open-ended and will remain so until the majority of signatories decide to terminate the partnership.

SIGNATURES

Washington State Department of Commerce	_____	
	<i>Signature of Diane Klontz</i>	<i>Date</i>
Washington State Department of Transportation	_____	
	<i>Signature of Amy Scarton</i>	<i>Date</i>
Washington State Patrol	_____	
	<i>Signature of John Batiste</i>	<i>Date</i>
Thurston County	_____	
	<i>Signature of Ramiro Chavez</i>	<i>Date</i>
City of Lacey	_____	
	<i>Signature of Scott Spence</i>	<i>Date</i>
City of Olympia	_____	
	<i>Signature of Jay Burney</i>	<i>Date</i>
City of Tumwater	_____	
	<i>Signature of Debbie Sullivan</i>	<i>Date</i>

TO: City Council
FROM: Troy Niemeyer, Finance Director
DATE: July 19, 2022
SUBJECT: Resolution No. R2022-005 – Surplus Property

1) Recommended Action:

Make a motion to adopt Resolution R2022-005 Declaring Property as Surplus.

2) Background:

In 2021 the Council entered into an interlocal agreement and a purchase and sale agreement with LOTT to purchase the house on Henderson Blvd located at 6541 Henderson Blvd SE, Olympia WA 98501, tax parcel number 12701230202, with the intent of donating the house to Homes First, and increasing the supply of affordable housing in Tumwater. The house is now in City ownership. It is ready to be declared surplus. The next and final step in the process will be for Council to approve a purchase and sale agreement, which will transfer ownership to Homes First. We will ask Trudy Soucoup, CEO of Homes First, to attend the September 6th City Council meeting to help present this item.

3) Policy Support:

Affordable housing supports the health, safety and welfare of the residents of the City of Tumwater. This policy ties directly to the City of Tumwater's 2021-2026 strategic priority to "build a community recognized for quality, compassion and humanity"; "Work with government, non-profit, and private partners to develop and implement a performance-based plan for affordable housing and to address homelessness."

4) Alternatives:

- ☐ Approve the Resolution.
 - ☐ Don't approve the Resolution
-

5) Fiscal Notes:

The City paid LOTT \$200,000 plus some closing and escrow costs to acquire the home.

6) Attachments:

- A. Attachment A – Resolution R2022-005 Declaring Property as Surplus.
- B. Exhibit A to the Resolution. List of the property to declare surplus.

RESOLUTION NO. R2022-005

A RESOLUTION of the City Council of the City of Tumwater, Washington declaring the property itemized on the attached Exhibit A surplus to the City's needs, so that it can be disposed of in accordance with Washington State Law.

WHEREAS, the City Council has determined that the item on the attached Exhibit A, currently owned by the City of Tumwater by purchase, is not needed by the City for current operations; and

WHEREAS, it is the City's policy to dispose of surplus property in accordance with RCW 35A.11.010, RCW63.32.010, and other applicable Washington State laws, rules and regulations; and

WHEREAS, state law, RCW 39.33.015, authorizes municipalities to transfer, lease, and dispose of surplus public property for a public benefit purpose; and

WHEREAS, the City previously adopted a Real Property Special Disposition Process by Resolution R2021-016 in accordance with RCW 39.33.015; and

WHEREAS, transfer of the surplus property to Homes First for affordable housing purposes pursuant to RCW39.33.015 and R2021-016 would result in a public benefit.

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

Section 1. Surplus Declaration. The property itemized on the attached Exhibit A is hereby declared surplus to the needs of the City of Tumwater, and it shall be donated to Homes First for the purpose of increasing the supply of affordable housing, in accordance with the provisions of Washington State laws, rules and regulations, and City policies and procedures.

Section 2. Ratification. Any act consistent with the authority and prior to the effective date of this Resolution is hereby ratified and affirmed.

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 19th day of July 2022.

CITY OF TUMWATER

Debbie Sullivan, Mayor

ATTESTS:

Melody Valiant, City Clerk

APPROVED AS TO FORM:

Karen Kirkpatrick, City Attorney

Exhibit A



M E M O R A N D U M

DATE: July 19, 2022

TO: Troy Niemeyer, Finance Manager

FROM: Bill Sampson, Senior Accountant

SUBJECT: Surplus of Property

The following items have exceeded their useful lives, or are unclaimed items or evidence and are ready for donation, disposal or sale:

Asset #	ER&R#	Description	Tax Parcel Number	Current Location / Condition
	N/A	House at 6541 Henderson Blvd SE, Olympia WA 98501	12701230202	6541 Henderson Blvd SE Olympia, WA 98501

TO: City Council
 FROM: Ann Cook, Communications Manager
 DATE: July 19, 2022
 SUBJECT: Interlocal Agreement to Solicit RFPs for a Designated Service Provider(s) for PEG Access Channels

1) Recommended Action:

Authorize the Mayor to sign an Interlocal Agreement with the cities of Lacey, Olympia, and Thurston County to solicit RFPs for a designated PEG provider(s), substantially in the form presented as approved by the City Attorney.

2) Background:

In January of 2021, the City Council approved a 10-year cable franchise agreement between the City of Tumwater and Comcast Cable Communications Management, LLC. A cable franchise is a contract between the cable operator and the local government that the cable operator serves. In consideration for a cable operator's right to locate its facilities in the public rights of way, the City or County requires the cable operator to enter into a franchise agreement.

Federal law limits negotiations to public, educational and governmental (PEG) access channels, local control of its rights-of-ways, and other Comcast compliance obligations with the franchise, particularly its financial obligations. The agreement addresses only the provision of cable (video) service as the City does not have authority to negotiate basic cable rates, internet and phone service, channel placement, and à la carte options.

The franchise agreement includes a reasonable level of capital cost support for PEG expenditures, access to local channels, including our own Tumwater TV channel, and provisions for high definition channels in the future.

The Interlocal Agreement allows jurisdictions to make the most efficient use of their resources by collaborating to solicit request for proposals and enter into separate contracts with a designated service provider or service providers to manage public, education, and government (PEG) access funds and operate PEG access channels, facilities, and equipment, and provide noncommercial PEG access services.

The City of Lacey shall serve as the lead agency and will collect submitted requests for proposals and coordinate the review of submitted requests for proposals with each party to this agreement.

Noncommercial PEG access services include public access programming; education access programming; and government access programming; and cablecasting public, educational and governmental programming on access channels.

3) Policy Support:

2021-2026 Strategic Priority: Refine and Sustain a Great Organization

- Increase connections and partnership opportunities with other organizations, governments, and partners
 - Encourage greater community involvement by employees and officials
 - Continue to expand and explore effective methods to market Tumwater, tell our story, and engage citizens and businesses in City government and civic organizations
-

4) Alternatives:

- ☐ Amend and authorize the Mayor to sign the agreement.
 - ☐ Do not authorize signature
-

5) Fiscal Notes:

There is no common budget for this ILA, and no payments shall be made between jurisdictions. This agreement as no provisions for personal or real property is to be jointly acquired or held.

Comcast pays a franchise fee to the City of Tumwater for the use of public property. Federal law caps the maximum amount at 5% of Comcast's gross revenues from and related to the provision of cable and video services.

PEG fees charged to cable subscribers are remitted to the City and may be used for capital expenses related to the cable-delivery of Public, Education, and Government programming. The PEG fee will remain at .30 per subscriber per month. The City reserves the option to increase the fee, as needed, for capital improvements.

6) Attachments:

A. Interlocal Agreement to solicit RFPs for PEG Service Provider.

2022
INTERLOCAL AGREEMENT
BETWEEN THURSTON COUNTY, CITY OF LACEY, CITY OF OLYMPIA, & CITY
OF TUMWATER

This Agreement is entered into in duplicate originals this 18 day of July 2022 between the CITIES OF LACEY, OLYMPIA, TUMWATER, municipal corporations (hereinafter "Lacey, Olympia, and Tumwater, or Cities"), and THURSTON COUNTY, a municipal corporation (hereinafter "County"), collectively referred to as "parties" and individually as "party" pursuant to RCW 39.34.

WHEREAS, RCW 39.34.010 permits local governmental units to make the most efficient use of their powers by enabling them to cooperate with other localities on a basis of mutual advantage and thereby to provide services and facilities in a manner and pursuant to forms of governmental organization that will accord best with geographic, economic, population and other factors influencing the needs and development of local communities; and

WHEREAS, it is to the mutual advantage of Thurston County and the Cities of Lacey, Olympia, and Tumwater to cooperate as described herein in order to make the most efficient use of their resources to collaborate on soliciting the request for proposals for service provider or service providers to manage public, education, and government (PEG) access funds and PEG access channels, facilities and equipment, and provide noncommercial PEG access services to the parties; and

WHEREAS, RCW 39.34.080 authorizes a public agency to contract with another public agency to perform any governmental service, activity, or undertaking each public agency is authorized by law to perform.

NOW THEREFORE, by virtue of RCW 39.34.080 and in consideration of the terms, conditions, covenants, and performances contained herein, or attached and incorporated and made a part hereof, IT IS MUTUALLY AGREED AS FOLLOWS:

I.
GENERAL

1. It is the purpose of the Agreement to permit the parties to make the most efficient use of their resources by enabling them to collaborate on soliciting a request for proposals to enter into separate contracts with a designated service provider or service providers to manage public, education, and government (PEG) access funds and operate PEG access channels, facilities, and equipment, and provide noncommercial PEG access services. Noncommercial PEG access services include: public access programming; education access programming; and government access programming; and cable-casting public, educational and governmental programming on access channels. All jurisdictions represented in this Agreement shall: 1) work together to create the request for proposal, which shall include that vendors provide proposals for each party to this agreement, and 2) review the applications submitted through the request for proposal process. Each party reserves the right to select and enter into contracts with a vendor at their own discretion based on the needs of their respective jurisdiction. Each party also reserves the right to not enter into an agreement through this process.

II. DURATION

2. This Agreement shall become effective on the date written above and shall remain in effect for one (1) year and automatically renew for an additional one (1) year unless changed, modified, amended, or terminated sooner as provided for herein. The total duration of this Agreement shall not exceed two (2) years. Prior to commencement, this Agreement shall be filed or posted in accordance with RCW 39.34.040.

III. SERVICES

For the duration of the coordinated project, Lacey will serve as the lead agency. The lead agency will create a draft request for proposals, which shall include that vendors provide proposals for each party to this agreement. The non-lead jurisdictions will review the draft request for proposals. All jurisdiction will agree to the draft request for proposals in writing prior to finalizing and publishing the request for proposal. The request for proposal shall include, but is not limited to: scope of services, solicitation and review schedule, a defined process for answering questions, evaluation criteria, desired qualifications, and submission requirements. Should the parties be unable to agree on the draft request for proposals, each jurisdiction may move forward with separate request for proposals concurrently with terminating this Agreement.

The lead agency agrees to collect submitted requests for proposals. The lead agency will coordinate the review of submitted requests for proposals with each party to this agreement. The non-lead jurisdictions agree to review the submitted requests for proposals with the lead agency.

Each party is responsible for selecting and entering into contracts with a vendor at their own discretion based on the needs of their respective jurisdiction. Each party also reserves the right to not enter into an agreement through this process.

IV. RECORDS RETENTION AND AUDIT

3. During the progress of the work and for a period not less than six (6) years from the final date of December 31, 2022, the records and accounts pertaining to the work and accounting therefore are to be kept available for inspection and audit by either party and/or the Federal Government and copies of all records, accounts, documents, or other data pertaining to the work will be furnished upon request. If any litigation, claim, or audit is commenced, the records and accounts along with supporting documentation shall be retained until all litigation, claim, or audit finding has been resolved even though such litigation, claim, or audit continues past the 6-year retention period. Each party will promptly notify the other of any such litigation hold on records.

V. RELATIONSHIP OF THE PARTIES

4. The employees or agents of each party who are engaged in the performance of this Agreement shall continue to be employees or agents of that party and shall not be considered for any purpose to be employees or agents of the other party. This Agreement is for the benefit of the parties, and no third-party beneficiary relationship is intended. No separate legal entity is created by this Agreement. No joint organization is created. No common budget is to be established. No payments shall be made between any party to this agreement. No personal or real property is to be jointly acquired or held.

VI. TERMINATION

5. Any party may terminate this Agreement upon ninety (90) calendar days prior written notice to the other party. 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.

VII. LEGAL RELATIONS

6. No liability shall attach to the parties by reason of entering into this Agreement except as expressly provided herein.

VIII. FORCE MAJEURE

7. Neither party will be liable to the other or deemed in default under this Agreement if and to the extent that such party's performance of this Agreement is prevented by reason of force majeure. The term "force majeure" means an occurrence that is beyond the control of the party affected and could not have been avoided by exercising reasonable diligence. Force majeure will include, without limitation by the following enumeration: acts of nature, acts of civil or military authorities, fire, epidemics, civil or public disturbances, or other similar occurrences. If any party is unable to perform under this Agreement due to a force majeure event, upon giving notice and reasonably full particulars to the other party, such obligation or condition will be suspended only for the time and to the extent commercially practicable to restore normal operations.

IX. ADMINISTRATION

8. The following individuals are designated as representatives of the respective parties. The representatives shall be responsible for administration of this Agreement and for coordinating and monitoring performance under this Agreement. Wherever written notice is required under this Agreement, such notice shall be provided to the representatives designated below. In the event such representatives are changed, the party making the change shall notify the other party, the County's representative shall be the Public Information Supervisor (360)490-0562, the City of Lacey's representative shall be the Assistant City Manager (360)412-2891, the City of Olympia's representative shall be Kellie Purce Braseth (360)753-8361, and the City of Tumwater's representative shall be Ann Cook (360)754-4123.

X. CHANGES, MODIFICATIONS, AND AMENDMENTS

9. This Agreement may be changed, modified, amended, or waived only by written agreement executed by each party's authorized governing authority .

**XI.
GOVERNING LAW AND VENUE**

10. 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 the laws of the State of Washington both as to its interpretation and performance, Any action at law, suit in equity, or judicial proceeding arising out of this Agreement shall be instituted and maintained only in a court of competent jurisdiction in Thurston County, Washington or, if against Thurston County, in the superior court of either of the two nearest judicial districts..

**XII.
WAIVER**

11. A failure by either party to exercise its rights under this Agreement shall not preclude that party from subsequent exercise of such rights and shall not constitute a waiver of any other rights under this Agreement unless stated to be such in a writing signed by an authorized representative of the party and attached to the original Agreement

**XIII.
SEVERABILITY**

12. 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, if such remainder conforms to the requirements of applicable law and the fundamental purpose of this Agreement, and to this end the provisions of this Agreement are declared to be severable.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the day and year first above written.

THURSTON COUNTY

CITY OF LACEY

Ramiro Chavez, County Manager

Scott Spence, City Manager

Approved as to form:

Approved as to form:

Jon Tunheim, Prosecuting Attorney

David Schneider, Lacey City Attorney

CITY OF OLYMPIA

CITY OF TUMWATER

Steven J. (Jay) Burney

Debbie Sullivan, Mayor

Approved as to form:

Approved as to form:

Michael Young, Deputy City Attorney

Karen Kirkpatrick, City Attorney

TO: City Council
FROM: John Doan, City Administrator
DATE: July 19, 2022
SUBJECT: First Amendment to Service Provider Agreement for Regional Fire Authority Planning

1) Recommended Action:

Authorize the Mayor to sign the amended contract with The Athena Group for Regional Fire Authority Planning for the total amount of \$205,650.00.

2) Background:

In January 2022, the City executed a contract with The Athena Group of Olympia for \$99,900 to provide facilitation, financial analysis and regional fire authority expertise to the planning effort with the City of Olympia, who have agreed to pay ½ of these incurred costs. The effort has been significantly more complicated than originally envisioned resulting in more analysis and more meetings with staff, the public and the RFA Planning Committee. Among the complexities are the addition of a transport and CARES component, changes to the staffing model, the fire benefit charge being new to Thurston County, and two pending collective bargaining agreements. This has increased the projected cost to a conservative estimate of and additional \$105,750.00 through 2023 for a contract total of \$205,650.00.

3) Policy Support:

Strategic Priority: Provide and Sustain Quality Public Safety Services

- Explore regional fire and emergency medical services.

4) Alternatives:

☐ Do not extend the contact.

5) Fiscal Notes:

The additional funds will come from contingency consulting funds in the non-departmental portion of the budget. Olympia is current on paying their share.

6) Attachments:

- A. First Amendment to the Service Provider Agreement for Regional Fire Authority Planning
- B. Original City of Tumwater Service Provider Agreement with The Athena Group for Regional Fire Authority Planning

**FIRST AMENDMENT
TO
SERVICE PROVIDER AGREEMENT
FOR
Regional Fire Authority Planning**

This First Amendment ("Amendment") is dated effective this 19th day of July, 2022, and is entered into by and between the CITY OF TUMWATER, a Washington municipal corporation ("CITY"), and THE ATHENA GROUP, a Washington corporation ("SERVICE PROVIDER").

A. The CITY and the SERVICE PROVIDER entered into a Service Provider Agreement dated effective January 13, 2022, whereby the SERVICE PROVIDER agreed to provide facilitation services for the Regional Fire Authority Planning Committee ("Agreement").

B. Pursuant to that original Agreement, the SERVICE PROVIDER has facilitated ten (10) Regional Fire Authority Planning Committee meetings and more than twenty-one (21) staff meetings as part of preparing a recommendation on the formation of the Regional Fire Authority, in excess of the estimated amount to work anticipated in the original Agreement. The project has proven to be more complicated than originally expected because of issues related to the Fire Benefit Charge being new to Thurston County, the addition of Transport and CARES elements to the Authority, and outstanding collective bargaining agreements with both jurisdictions. These additional factors have caused additional work and workhours for the consultant beyond those originally expected..

C. Section 14 of the Agreement provided that the Agreement may only be amended by written agreement signed by the parties.

D. The CITY and the SERVICE PROVIDER desire to amend the Agreement to add additional services and increase the compensation paid to the SERVICE PROVIDER for providing the additional services.

NOW, THEREFORE, the parties agree to the following terms and conditions:

1. SCOPE.

Section 1 of the Agreement is amended to provide for additional services as more particularly described and detailed in Exhibit "A-1," attached hereto and incorporated herein.

2. COMPENSATION.

In consideration of the SERVICE PROVIDER continuing to provide the services described in Section 1 of the Agreement and providing the additional services described in Exhibit "A-1", Section 4.C. shall be amended to increase the compensation paid to the SERVICE PROVIDER by an additional amount not to exceed ONE HUNDRED FIVE THOUSAND SEVEN HUNDRED FIFTY DOLLARS (\$105,750.00). The total amount payable to the SERVICE PROVIDER pursuant to the original Agreement and this First Amendment shall be an amount not to exceed TWO HUNDRED FIVE THOUSAND SIX HUNDRED FIFTY DOLLARS (\$205,650.00).

3. FULL FORCE AND EFFECT.

All other terms and conditions of the Agreement not modified by this Amendment shall remain in full force and effect.

DATED the effective date set forth above.

CITY:
CITY OF TUMWATER
555 Israel Road SW
Tumwater, WA 98501

APPROVED AS TO FORM:

Debbie Sullivan, Mayor

Karen Kirkpatrick, City Attorney

ATTEST:

Melody Valiant, City Clerk

SERVICE PROVIDER:
THE ATHENA GROUP
 112 4th AVE E. Suite 200
 Olympia, WA 98501

Title: Founder and Partner

State of Washington)
) ss
County of _____)

I certify that I know or have satisfactory evidence that _____ 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 _____ of _____ to be the free and voluntary act of such party for the uses and purposes mentioned in the instrument.

My appointment expires _____

**SCOPE OF SERVICES FOR FIRST AMENDMENT
TO
SERVICE PROVIDER AGREEMENT
FOR
Regional Fire Authority Planning**

Task 1: Facilitation

Additional Meetings with preparation time beyond the original scope:

- 4 City Council meetings (16 hours)
- 2 public outreach events (16 hours)
- 8 RFA Planning Committee meetings (208 hours)
- 17 staff meetings (170 hours)

Additional direct consulting on financial, organization, and budget issues: 60 hours

TOTAL Additional Hours: 470

**CITY OF TUMWATER
SERVICE PROVIDER AGREEMENT**

Regional Fire Authority Planning

THIS AGREEMENT is made and entered into in duplicate this 13th day of January, 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.

\\
\\
\\
\\

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

DocuSigned by:

Debbie Sullivan
Debbie Sullivan
Mayor

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

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

ATTEST:

DocuSigned by:

Melody Valiant
Melody Valiant, City Clerk

APPROVED AS TO FORM:

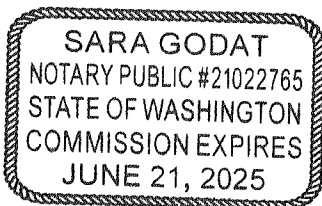
DocuSigned by:

Karen Kirkpatrick
Karen Kirkpatrick, City Attorney

STATE OF WASHINGTON

COUNTY OF THURSTON

I certify that I know or have satisfactory evidence that Faith Loretha Trimble (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 founder and partner (title) of The Athena Group (company) to be the free and voluntary act of such party for the uses and purposes mentioned in the instrument.



Dated: 1/06/2022

Sara Godat
Notary Public in and for the State of Washington,
My appointment expires: June 21, 2025

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
14		<p>Employee Transfer Issues</p> <ul style="list-style-type: none"> ○ Assigning/funding the Current Liability for Sick Leave/Vacation Hours Accrued in “Time Banks”

			<ul style="list-style-type: none"> ○ Employees on Long-Term disability ○ Benefits programs—retain current or start new?
15			LEOFF 1 <ul style="list-style-type: none"> ○ Assignment/funding of any existing and ongoing liabilities
16			Funding the RFA – Options / Implications / Setting proposed starting fire levy rate <ul style="list-style-type: none"> ○ Property Tax (fire levy) ○ EMS levy ○ Benefit Charge ○ Other ○ Interim transfers from Districts to fund operations after effective date and before levy revenues received
17			Existing Debt Obligations: transfer or retain?
18			RFA Reserves – Initial and Target Balances, how funded
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.

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:

Exhibit B

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.

Exhibit B

(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): (A/C, No): 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>INSURER(S) AFFORDING COVERAGE</th> <th>NAIC#</th> </tr> </thead> <tbody> <tr> <td>INSURER A : Sentinel Insurance Company Ltd.</td> <td>11000</td> </tr> <tr> <td>INSURER B : Arch Insurance Company</td> <td>21199</td> </tr> <tr> <td>INSURER C :</td> <td></td> </tr> <tr> <td>INSURER D :</td> <td></td> </tr> <tr> <td>INSURER E :</td> <td></td> </tr> <tr> <td>INSURER F :</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/Y YYY)	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
	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 <input type="checkbox"/> SCHEDULED AUTOS <input checked="" type="checkbox"/>						BODILY INJURY (Per accident)	
	HIRE AUTOS <input checked="" type="checkbox"/> NON-OWNED AUTOS <input checked="" type="checkbox"/>						PROPERTY DAMAGE (Per accident)	
	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)	Y/N <input type="checkbox"/>	N/A				E L EACH ACCIDENT	
	If yes, describe under DESCRIPTION OF OPERATIONS below						E L DISEASE - EA EMPLOYEE	
							E L DISEASE - POLICY LIMIT	
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

CANCELLATION

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

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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	DED <input type="checkbox"/> RETENTION \$						AGGREGATE	
	OCCUR CLAIMS-MADE							
	WORKERS COMPENSATION AND EMPLOYERS' LIABILITY	Y/N	N/A				PER STATUTE	OTH-ER
	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	
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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;

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- (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.

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- 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

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(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

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- (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.

BUSINESS LIABILITY COVERAGE FORM**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.

BUSINESS LIABILITY COVERAGE FORM**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:

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- (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.

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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.

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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;

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- (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.

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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 and 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:

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- 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;

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- 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.
- 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";

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- 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: Alyssa Jones Wood, Sustainability Coordinator
 DATE: July 19, 2022
 SUBJECT: Interagency Agreement No. K7666, Department of Enterprise Services Energy Program

1) Recommended Action:

Staff recommends Council approve Interagency Agreement No. K7666 with the Department of Enterprise Services in substantially similar form as approved by City Attorney. The Agreement was recommended for approval by the Public Works Committee at their July 7, 2022 meeting.

2) Background:

The 2020 Green Team Sustainability Report showed that 76% of our City Operations Greenhouse Gas Emissions come from water wells (48%), lift stations (7%), and facilities (21%). City staff intends to undertake an Energy & Water Audit of city facilities and infrastructure, through the ESCO process, with the goal to reduce energy and potable water consumption and thus emissions. This Interagency Agreement with the Department of Enterprise Services allows the City to begin the ESCO process.

3) Policy Support:

2023-2024 Strategic Priority: Be a Leader in Environmental Sustainability.

- Reduce the carbon footprint of the City organization; and
 - Work with partners to develop and implement a regional climate action plan with measurable targets to reduce our community's carbon footprint.
-

4) Alternatives:

- ☐ Do not recommend approval of Interagency Agreement No. K7666.
-

5) Fiscal Notes:

The preliminary assessment of city facilities and infrastructure will be done at no cost to the City. Following the preliminary assessment, the ESCO will perform an Investment Grade Audit and prepare an Energy Services Proposal for the Committee to consider at a later date.

6) Attachments:

- A. Interagency Agreement No. K7666

State of Washington ENERGY PROGRAM Department of Enterprise Services P.O. Box 41476 Olympia, WA 98504-1476	INTERAGENCY AGREEMENT	
	IAA No.:	K7666
CITY OF TUMWATER 555 Israel Road SW Tumwater, WA 98501	Date:	June 13, 2022

INTERAGENCY AGREEMENT
BETWEEN
CITY OF TUMWATER
AND
WASHINGTON STATE DEPARTMENT OF ENTERPRISE SERVICES

Pursuant to RCW chapter 39.34 and RCW chapter 39.35C, this *Interagency Agreement (Agreement)* is made and entered into by and between the State of Washington acting by and through the Energy Program of the Department of Enterprise Services, a Washington State governmental agency ("Enterprise Services") and City of Tumwater, a Washington State governmental agency ("Client Agency") and is dated and effective as of the date of the last signature.

RECITALS

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

A G R E E M E N T

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

1. **TERM.** The term of this *Agreement* commences on the date of the last signature and ends **December 31 2026**.

2. **STATEMENT OF WORK.**

A. **ENERGY PROGRAM.** Energy Program agrees to provide the following Services:

- i. Upon request by Client Agency for energy services for a specific Energy/Utility Conservation Project(s), the Parties shall execute an amendment to this *Agreement* to specify the project and associated project management fees as set forth by Attachment B. Enterprise Services shall furnish necessary personnel and services as specified and set forth in Attachment A, *Project Management Services Scope of Work*.
- ii. Assist in Dispute Resolution. Dispute resolution is an ongoing process throughout the project. However, this assistance does not include formal dispute resolution, arbitration or legal advice or representation in any legal action, and does not include legal fees and costs related to any dispute. Formal dispute resolution begins when a written claim is received demanding arbitration or other legal process is received. All formal dispute fees and costs will be borne separately by Client Agency. The Attorney General cannot and will not represent or advise a non-state agency.

B. **CLIENT AGENCY.** Client Agency agrees to the following:

- i. Will conform to the protocols of this *Agreement*, including Enterprise Services' *General Conditions for Washington State Energy Savings Performance Contracting ("General Conditions")*, and as supplemented.
- ii. Will conform to the requirements of the *General Conditions* for timely processing and approval of agreed upon changes to construction contracts involving cost, and for payment.
- iii. Will conform to the following guidelines for communications between Client Agency, Enterprise Services and ESCOs (Energy Services Company) through the design, construction and post-construction phases as outlined below:
 - a) Communications between Client Agency, Energy Program Project Manager ("PM") and ESCO shall go through the PM. The PM may authorize exceptions for specific projects or situations. The PM may authorize the ESCO to communicate directly with Client Agency personnel to expedite the design and to avoid communication delays. This action does not authorize additional work, change in scope, or exclude copying all communications between ESCO and Client Agency to the PM.
 - b) All drawings, specifications, reports, and project correspondence must contain the State Project Number and suffix.
 - The State Project Number consists of the fiscal year and a numerical sequence number, for example 2018-024, followed by an alphabetical suffix.

- Professional services agreements have suffixes A through F, for example 2018-024 A.
 - Construction contracts have suffixes G through Z, for example 2018-024 G.
- iv. All identification and monitoring of documentation required by the funding source shall remain the responsibility of Client Agency.

3. COMPENSATION AND REQUIREMENTS.

- A. **COMPENSATION.** Compensation under this *Agreement* shall be by amendment to this *Agreement* for each authorized project. Each amendment shall include a payment schedule for the specific project.
- i. **Project Management Services Scope of Work (Attachment A):** For project management services provided by Energy Program, Client Agency shall pay Enterprise Services a Project Management Fee for services based on the total project value (including Washington state sales tax) per the Project Management Fee Schedule set forth in Attachment B.
 - ii. **Termination Fee:** If Client Agency, after authorizing an investment grade audit and energy services proposal, decides not to proceed with an energy/utility conservation project that meets Client Agency's cost effective criteria, then the Client Agency will be charged a termination fee as set forth in Project Management Fee Schedule. The termination fee shall be based on the estimated total project value outlined in the energy services proposal prepared by the ESCO as set forth in Attachment B.
 - iii. **Measurement & Verification Services ("M&V") Scope of Work (Attachment C):** If M&V are requested by Client Agency beyond the first three years following the notice of commencement of energy cost savings, Client Agency shall pay Enterprise Services \$2,000.00 annually for each year that such M&V are provided.
- B. **PAYMENT FOR ESCO SERVICES.** In the event that Client Agency enters into a contract with an Energy Program pre-qualified ESCO, pursuant to an *Enterprise Services Master Energy Services Agreement for ESCO Services*, Client Agency shall make payment for such contracted services directly to the ESCO, after Energy Program has reviewed and sent such invoices to Client Agency for payment.
- C. **FURTHER ASSURANCES.** Client Agency shall provide the ESCO with any additional necessary or desired contract language to comply with Client Agency's obligations pertaining to its use of federal, state, or other grants, funding restrictions, or unique contract/entity requirements. The ESCO and their subcontractors are required to comply with all applicable federal regulations and reporting procedures.
- D. **MANAGING COMPLIANCE WITH STATE AND FEDERAL LAW.** In all ESCO project agreements and contracts pertaining to this *Agreement*, Energy Program will require ESCO's compliance with applicable federal and state laws and state policies including, but not limited to, the following:
- 1. RCW Title 39 and 43
 - 2. ADA Requirements
 - 3. Buy America
 - 4. Davis-Bacon
 - 5. Prevailing Wage
 - 6. DBE Participation
 - 7. Apprentice Participation

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

4. INVOICES AND BILLING.

- A. **BILLING PROCEDURE.** Enterprise Services shall submit invoices to Client Agency upon substantial completion and notice of commencement of energy cost savings of each authorized project, unless an amendment specifies special billing conditions and timeline. Substantial completion of the project will include the delivery and acceptance of the notice of commencement of energy cost savings issued by the energy services company. Each invoice will clearly indicate that it is for the services rendered in performance under this *Agreement* and shall reflect this *Agreement* and Amendment number. Energy Program will invoice for any provided services within sixty (60) days of the expiration or termination of this *Agreement*.
- B. **PAYMENT PROCEDURE.** Client Agency shall pay all invoices received from Enterprise Services within thirty (30) days of receipt of properly executed invoice vouchers.
- C. **BILLING DETAIL.** Each invoice submitted to Client Agency by Enterprise Services shall include information as is necessary for Client Agency to determine the exact nature of all expenditures. At a minimum, the invoice shall reference this *Agreement* and include the following:
 - The date(s) such services were provided
 - Brief description of the services provided
 - Total invoice amount
- D. **BILLING ADDRESS.** Invoices shall be delivered to Client Agency electronically to:

Email: ajoneswood@ci.tumwater.wa.us

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

Enterprise Services

Attn: Bernard Jackson
 Energy Project Manager
 Energy Program
 Washington Dept. of Enterprise Services
 PO Box 41476
 Olympia, WA 98504-1476
 Tel: (360) 280-0654
 Email: Bernard.jackson@des.wa.gov

Client Agency

Attn: Alyssa Jones Wood
 Sustainability Coordinator
 City of Tumwater
 555 Israel Road SW
 Tumwater, WA 98501
 Tel: (360) 654-4140
 Email: ajoneswood@ci.tumwater.wa.us

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

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

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

6. RECORDS.

- A. **AGREEMENT AVAILABILITY.** Prior to its entry into force, this *Agreement* shall be posted on the parties' websites or other electronically retrievable public source as required by RCW 39.34.040.
- B. **RECORDS RETENTION.** Each party shall maintain records and other evidence that sufficiently and properly reflect all direct and indirect costs expended by either party in the performance and payment of the services. These records shall be subject to inspection, review, or audit by personnel of both parties, other personnel duly authorized by either party, the Office of the State Auditor, and officials authorized by law. Such records shall be retained for a period of six (6) years following expiration or termination of this *Agreement* or final payment for any service placed against this *Agreement*, whichever is later; Provided, however, that if any litigation, claim, or audit is commenced prior to the expiration of this period, such period shall extend until all such litigation, claims, or audits have been resolved.
- C. **OWNERSHIP.** Records and other information, in any medium, furnished by one party to this *Agreement* to the other party, will remain the property of the furnishing party, unless otherwise agreed. The receiving party will not disclose or make available this material to any third party without first providing notice to the other party and allowing ten (10) business days in which to file, at its sole expense, a motion seeking a protective order, or other legal action. Each party will utilize reasonable security procedures and protections to assure that records and information provided by the other party are not erroneously disclosed to third parties.
- D. **PUBLIC RECORDS.** This *Agreement* and all related records are subject to public disclosure as required by RCW 42.56, the Public Records Act (PRA). Neither party shall release any record that would, in the judgment of the party, be subject to an exemption from disclosure under the PRA, without first providing notice to the other party and allowing ten (10) business days in which to file, at its sole expense, a motion seeking a protective order, or other legal action.

- 7. **RESPONSIBILITY OF THE PARTIES.** Each party to this *Agreement* assumes responsibility for claims and/or damages to persons and/or property resulting from any act or omission on the part of itself, its employees, or its agents. Neither party assumes any responsibility to the other party for any third party claims.
- 8. **DISPUTE RESOLUTION.** The parties shall use their best, good faith efforts cooperatively and collaboratively to resolve any dispute that may arise in connection with this *Agreement* as efficiently as practicable, and at the lowest possible level with authority to resolve such dispute. The parties shall make a good faith effort to continue without delay to carry out their respective responsibilities under this *Agreement* while attempting to resolve any such dispute. If, however, a dispute persists regarding this *Agreement* and cannot be resolved, it may be escalated within each organization. In such situation, upon notice by either party, each party, within five (5) business days shall produce its description of the dispute in writing and deliver it to the other party. The receiving party then shall have three (3) business days to review and respond in writing. In the event that the parties cannot

then agree on a resolution of the dispute, the parties shall schedule a conference between the respective senior managers of each organization to attempt to resolve the dispute. In the event the parties cannot agree on a mutual resolution within fifteen (15) business days, the parties shall abide by the Governor's dispute resolution process (RCW 43.17.330), if applicable, or collectively shall appoint a third party to evaluate and resolve the dispute and such dispute resolution shall be final and binding on the parties.

9. **TERMINATION FOR CONVENIENCE.** Except as otherwise provided in this *Agreement*, either party may terminate this *Agreement* upon thirty (30) calendar days prior written notification. Upon such termination, the parties shall be liable only for performance rendered or costs incurred in accordance with the terms of this *Agreement* prior to the effective date of such termination.

10. **GENERAL PROVISIONS.**

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

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

EXECUTED AND EFFECTIVE as of the date of the last signature.

CITY OF TUMWATER

**STATE OF WASHINGTON
DEPARTMENT OF ENTERPRISE SERVICES**

By: _____
Name: _____
Title: _____
Date: _____

By: _____
Name: Kirsten G. Wilson, PE
Title: Energy Program Manager
Date: _____

ATTACHMENT A**PROJECT MANAGEMENT SERVICES SCOPE OF WORK**

Energy/Utility Conservation Projects

Statewide Energy Performance Contracting Program

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

1. Assist the Client Agency in the selection of an Energy Service Company (ESCO) consistent with the requirements of RCW 39.35A for local governments; or 39.35C for state agencies and school districts.
2. Assist in identifying potential energy/utility conservation measures and estimated cost savings.
3. Assist in negotiating scope of work and fee for an ESCO audit of the facility(s).
4. Assist in identifying appropriate project funding sources and assist with obtaining project funding.
5. Assist in negotiating the technical, financial and legal issues associated with ESCO's Energy Services Proposal.
6. Review and recommend approval of ESCO energy/utility audits and Energy Services Proposals.
7. Provide assistance during the design, construction and commissioning processes.
8. Review ESCO invoice voucher(s) received for reasonableness and forward to Client Agency for review and payment.
9. Assist with final project acceptance.
10. Assist in resolution of disputes with the ESCO that arise during this *Agreement*, not to include formal disputes.
11. Review up to the first three years of the ESCO's annual Measurement and Verification (M&V) reports for completeness and accuracy. Review any ESCO guarantee compared to reported results and resolve differences, if needed. Review and forward ESCO invoice vouchers for payment by the Client Agency.

ATTACHMENT B

PROJECT MANAGEMENT FEE SCHEDULE

2021-23 Interagency Reimbursement Costs
for Project Management Fees to Administer Energy/Utility Conservation Projects

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

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

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

ATTACHMENT C**MEASUREMENT & VERIFICATION SERVICES SCOPE OF WORK**

Energy/Utility Conservation Projects

Statewide Energy Performance Contracting Program

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

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

TO: City Council
 FROM: Mary Heather Ames, Transportation Manager
 DATE: July 19, 2022
 SUBJECT: 2022 Pedestrian Improvements – Award and Authority to Sign Contract

1) Recommended Action:

Staff recommends the City Council award and authorize the Mayor to sign a Public Works contract with Sound Pacific Construction, LLC of Gig Harbor, Washington, in the amount of \$493,337 for the 2022 Pedestrian Improvements project.

2) Background:

Each year, monies are identified in the Capital Facilities Plan (CFP) and budget to be used for pedestrian improvements and traffic calming. The project for 2022 includes sidewalk and crossing improvements.

The project consists of four main parts: 1) installation of a pedestrian crossing for the south approach to the Custer Way and Capitol Boulevard intersection; 2) a Rectangular Rapid Flashing Beacon (RRFB) crossing on Capitol Boulevard north of Trosper Road (roughly at 5110 Capitol Boulevard S); 3) an RRFB crossing on Barnes Boulevard at Ridgeview Loop in partnership with Tumwater School District; and 4) various sidewalk deficiencies on residential streets that were identified through data collection as part of the recent Americans with Disabilities Act (ADA) Transition Plan Update.

Bids were received July 7, 2022, and ranged from \$493,337 to \$655,655. The engineer's estimate was \$423,143. The most substantial cost differences were in asphalt, concrete, and traffic control (strictly labor) that were affected by the volatile market.

3) Policy Support:

C. Create and Maintain a Transportation System Safe for All Modes of Travel
 - Construct an inter-connected bicycle and pedestrian system, including developing improved neighborhood connections and enhancing overall bicycle and pedestrian safety

4) Alternatives:

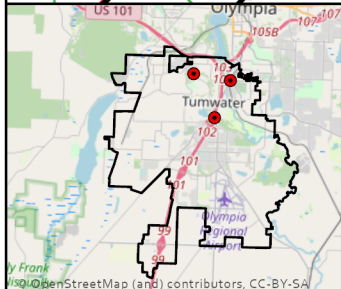
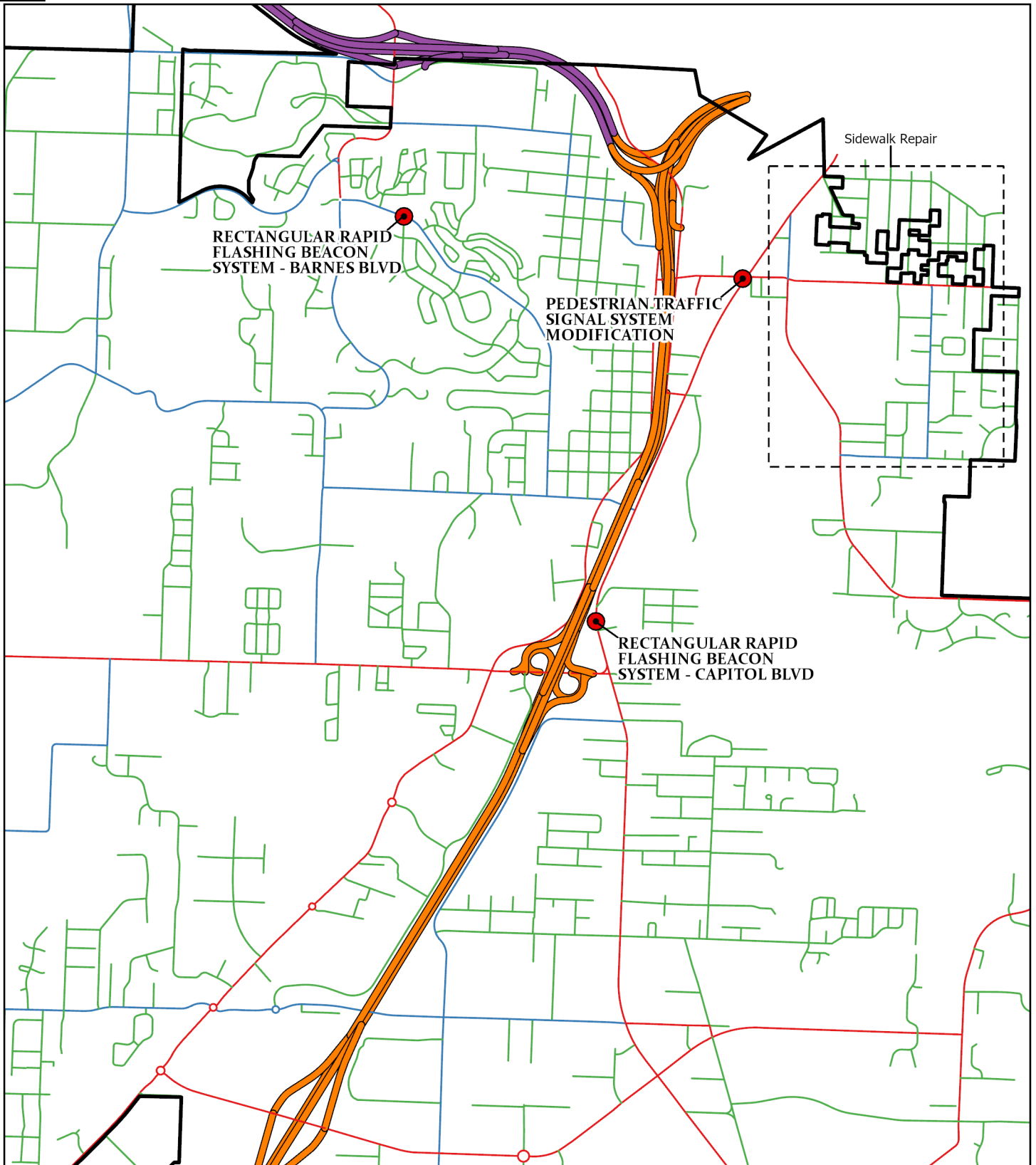
☐ Reject the bids and re-advertise the project.

5) Fiscal Notes:

This project is included in the CFP. The Tumwater School District has signed an Interlocal Agreement to participate in funding. The project is partially funded by the Transportation Benefit District.

6) Attachments:

- A. Vicinity Maps
- B. Bid Tabulation

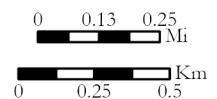


2022 Pedestrian Improvements

- | | | |
|----------------------|--------------------|---------------|
| Improvement Sites | Arterial | Residential |
| Tumwater City Limits | Collector | State Freeway |
| | Interstate Freeway | |

2022

Coordinate System: NAD 1983 HARN StatePlane Washington South FIPS 4602 Feet



Item 8a.

BID TABULATION SHEET

2022 Pedestrian Improvements
Project No. 2021036

Bid Opening 7/7/2022

				<i>Engineer's Estimate</i>		<i>BID #1 Sound Pacific Construction</i>		<i>BID #2 Rognlin's, Inc.</i>		<i>BID #3 Nova Contracting, Inc.</i>		<i>BID #4 Northwest Cascade, Inc.</i>	
ITEM	Schedule A	QTY	UNIT	UNIT PRICE	TOTAL	UNIT PRICE	TOTAL	UNIT PRICE	TOTAL	UNIT PRICE	TOTAL	UNIT PRICE	TOTAL
1	Mobilization	1	LS	\$38,468.00	\$38,468.00	\$49,000.00	\$49,000.00	\$56,000.00	\$56,000.00	\$120,000.00	\$120,000.00	\$98,000.00	\$98,000.00
2	Clearing and Grubbing	1	LS	\$23,408.00	\$23,408.00	\$10,000.00	\$10,000.00	\$12,000.00	\$12,000.00	\$12,000.00	\$12,000.00	\$38,000.00	\$38,000.00
3	Removing Cement Conc. Sidewalk	399	SY	\$40.00	\$15,960.00	\$40.00	\$15,960.00	\$65.00	\$25,935.00	\$10.00	\$3,990.00	\$20.00	\$7,980.00
4	Removing Asphalt Conc. Pavement	199	SY	\$45.00	\$8,955.00	\$50.00	\$9,950.00	\$63.00	\$12,537.00	\$10.00	\$1,990.00	\$21.00	\$4,179.00
5	Removing Traffic Island	8	SY	\$150.00	\$1,200.00	\$55.00	\$440.00	\$165.00	\$1,320.00	\$100.00	\$800.00	\$125.00	\$1,000.00
6	Removing Traffic Curb	5	LF	\$100.00	\$500.00	\$55.00	\$275.00	\$60.00	\$300.00	\$100.00	\$500.00	\$63.00	\$315.00
7	Removing Plastic Line	34	LF	\$25.00	\$850.00	\$9.00	\$306.00	\$17.00	\$578.00	\$10.00	\$340.00	\$10.00	\$340.00
8	Removing Plastic Traffic Marking	2	EACH	\$325.00	\$650.00	\$100.00	\$200.00	\$250.00	\$500.00	\$100.00	\$200.00	\$107.00	\$214.00
9	Removing Plastic Crosswalk Line	436	SF	\$7.00	\$3,052.00	\$6.00	\$2,616.00	\$6.50	\$2,834.00	\$9.00	\$3,924.00	\$6.25	\$2,725.00
10	Removing Misc. Traffic Item	1	LS	\$1,925.00	\$1,925.00	\$400.00	\$400.00	\$500.00	\$500.00	\$16,000.00	\$16,000.00	\$425.00	\$425.00
11	Commercial HMA	81	TON	\$350.00	\$28,350.00	\$525.00	\$42,525.00	\$775.00	\$62,775.00	\$400.00	\$32,400.00	\$410.00	\$33,210.00
12	Erosion Control and Water Pollution Prevention	1	LS	\$1,500.00	\$1,500.00	\$8,000.00	\$8,000.00	\$1,000.00	\$1,000.00	\$1,200.00	\$1,200.00	\$17,235.00	\$17,235.00
13	Bark or Wood Chip Mulch	9	SY	\$85.00	\$765.00	\$65.00	\$585.00	\$115.00	\$1,035.00	\$100.00	\$900.00	\$88.00	\$792.00
14	Cement Conc. Traffic Curb and Gutter	88	LF	\$60.00	\$5,280.00	\$70.00	\$6,160.00	\$84.00	\$7,392.00	\$100.00	\$8,800.00	\$79.00	\$6,952.00
15	Cement Conc. Traffic Curb	26	LF	\$50.00	\$1,300.00	\$70.00	\$1,820.00	\$53.00	\$1,378.00	\$100.00	\$2,600.00	\$81.00	\$2,106.00
16	Cement Conc. Pedestrian Curb	64	LF	\$40.00	\$2,560.00	\$70.00	\$4,480.00	\$36.00	\$2,304.00	\$100.00	\$6,400.00	\$65.00	\$4,160.00
17	Paint Line	111	LF	\$10.00	\$1,110.00	\$6.00	\$666.00	\$5.50	\$610.50	\$7.00	\$777.00	\$6.00	\$666.00
18	Plastic Crosswalk Line	516	SJ	\$15.00	\$7,740.00	\$9.00	\$4,644.00	\$9.00	\$4,644.00	\$12.00	\$6,192.00	\$9.50	\$4,902.00
19	Plastic Stop Line	95	LF	\$20.00	\$1,900.00	\$12.00	\$1,140.00	\$12.00	\$1,140.00	\$16.00	\$1,520.00	\$13.00	\$1,235.00
20	Permanent Signing	1	LS	\$4,900.00	\$4,900.00	\$4,000.00	\$4,000.00	\$5,000.00	\$5,000.00	\$3,637.00	\$3,637.00	\$7,800.00	\$7,800.00
21	Pedestrian Traffic Signal System Modification	1	LS	\$28,200.00	\$28,200.00	\$27,000.00	\$27,000.00	\$26,000.00	\$26,000.00	\$50,000.00	\$50,000.00	\$43,600.00	\$43,600.00
22	Rectangular Rapid Flashing Beacon System - Capitol Blvd.	1	LS	\$55,500.00	\$55,500.00	\$49,000.00	\$49,000.00	\$45,000.00	\$45,000.00	\$57,000.00	\$57,000.00	\$50,800.00	\$50,800.00
23	Rectangular Rapid Flashing Beacon System - Barnes Blvd.	1	LS	\$51,840.00	\$51,840.00	\$59,000.00	\$59,000.00	\$67,000.00	\$67,000.00	\$66,000.00	\$66,000.00	\$91,650.00	\$91,650.00
24	Project Temporary Traffic Control	1	LS	\$44,000.00	\$44,000.00	\$83,000.00	\$83,000.00	\$33,000.00	\$33,000.00	\$50,000.00	\$50,000.00	\$96,775.00	\$96,775.00
25	Traffic Control Supervisor	1	LS	\$15,000.00	\$15,000.00	\$30,000.00	\$30,000.00	\$28,000.00	\$28,000.00	\$6,000.00	\$6,000.00	\$23,100.00	\$23,100.00
26	Pedestrian Traffic Control	1	LS	\$10,000.00	\$10,000.00	\$7,000.00	\$7,000.00	\$10,000.00	\$10,000.00	\$9,000.00	\$9,000.00	\$8,725.00	\$8,725.00
27	Cement Conc. Sidewalk	74	SY	\$110.00	\$8,140.00	\$120.00	\$8,880.00	\$184.00	\$13,616.00	\$150.00	\$11,100.00	\$104.00	\$7,696.00
28	Cement Conc. Driveway Entrance Type 1	132	SY	\$150.00	\$19,800.00	\$125.00	\$16,500.00	\$208.00	\$27,456.00	\$200.00	\$26,400.00	\$198.00	\$26,136.00
29	Cement Conc. Curb Ramp Type Combination	2	EACH	\$3,000.00	\$6,000.00	\$2,500.00	\$5,000.00	\$3,000.00	\$6,000.00	\$6,000.00	\$12,000.00	\$5,000.00	\$10,000.00
30	Cement Conc. Curb Ramp Type Perpendicular A	1	EACH	\$3,500.00	\$3,500.00	\$2,200.00	\$2,200.00	\$2,500.00	\$2,500.00	\$6,000.00	\$6,000.00	\$5,500.00	\$5,500.00
31	Detectable Warning Surface	53	SF	\$75.00	\$3,975.00	\$55.00	\$2,915.00	\$60.00	\$3,180.00	\$100.00	\$5,300.00	\$52.00	\$2,756.00
32	Monolithic Cement Conc. Curb and Sidewalk	233	SY	\$100.00	\$23,300.00	\$155.00	\$36,115.00	\$200.00	\$46,600.00	\$300.00	\$69,900.00	\$234.00	\$54,522.00
33	Adjust Catch Basin	1	EACH	\$750.00	\$750.00	\$1,200.00	\$1,200.00	\$500.00	\$500.00	\$1,000.00	\$1,000.00	\$600.00	\$600.00
34	Adjust Valve Box	1	EACH	\$500.00	\$500.00	\$1,000.00	\$1,000.00	\$500.00	\$500.00	\$1,000.00	\$1,000.00	\$600.00	\$600.00
35	SPCC Plan	1	LS	\$1,500.00	\$1,500.00	\$1,000.00	\$1,000.00	\$1,000.00	\$1,000.00	\$600.00	\$600.00	\$500.00	\$500.00
36	Construction Geotextile for Separation	9	SY	\$85.00	\$765.00	\$40.00	\$360.00	\$20.00	\$180.00	\$60.00	\$540.00	\$51.00	\$459.00
Project Total					\$423,143.00	\$493,337.00		\$510,314.50		\$596,010.00		\$655,655.00	