



White Salmon City Council Meeting

A G E N D A

April 06, 2022 – 6:00 PM

119 NE Church

Hybrid Meeting: In Person and Via Zoom Teleconference

Meeting ID: 822 3912 4277 Passcode: 042783

Call in Numbers:

669-900-6833

929-205-6099

301-715-8592

346-248-7799

253-215-8782

312-626-6799

The city council will hold a hybrid meeting – in person and via Zoom teleconference.

If attending via Zoom teleconference, we ask that those audience members call in instead of videoing in or turn off your camera, so video does not show during the meeting to prevent disruption. Thank you.

I. Call to Order, Presentation of the Flag and Roll Call

II. Changes to the Agenda

III. Consent Agenda

- [A.](#) CDBG Grant Subrecipient Agreement - Columbia Cascade Housing Corp.
- [B.](#) Amendment No. 3, Personal Services Contract with Anderson Perry, Transmission Main Line Improvements (Increase in Contract by \$150,000 to \$920,859)
- [C.](#) Agreement Between Owner and Engineer for Professional Services, Anderson Perry (Construction Engineering Services - \$220,000)
- [D.](#) Shoreland Shoreline Master Program Agreement, Department of Ecology, Periodic Review (\$11,200)
- [E.](#) Utility Easement and Memorandum of Agreement - WA Department of Natural Resources and City of White Salmon
- F. Approval of Meeting Minutes - March 16, 2022 (Minutes will be provided on Monday April 4)
- G. Approval of Meeting Minutes - March 23, 2022 (Minutes will be provided Monday, April 4)
- H. Approval of Meeting Minutes - March 28, 2022 (Minutes will be provided Monday, April 4)
- I. Approval of Vouchers

IV. Public Comment

V. Presentations

- A. Klickitat County Solid Waste Department Update

VI. Business Items

A. Workshop - Proposed Amendments to WSMC Chapter 17.75, Residential Planned Unit Development (R-PUD); WSMC 19.10.040, Project Permit Application Framework; and WSMC 17.81 Site and Building Plan Review

1. Presentation
2. Discussion

B. Ordinance 2022-04-1100, Amending WSMC 3.24.25, USDA Rural Development, Jewett Water Main Improvements

1. Presentation and Discussion
2. Action

C. Ordinance 2022-04-1101, Water Revenue Bond Anticipation Note, 2022

1. Presentation and Discussion
2. Action

D. Note Purchase Agreement, Cashmere Valley Bank

1. Presentation and Discussion
2. Action

VII. Reports and Communications

- A. Council Members
- B. Department Heads
- C. Mayor

VIII. Executive Session (if needed)

IX. Adjournment

File Attachments for Item:

A. CDBG Grant Subrecipient Agreement - Columbia Cascade Housing Corp.



CONSENT AGENDA MEMO

Needs Legal Review: Yes
Meeting Date: April 6, 2022
Agenda Item: CDBG Grant Subrecipient Agreement – Columbia Cascade Housing Corp. (\$400,000)
Presented By: Jan Brending, Clerk Treasurer

Action Required

Authorization for mayor to sign CDBG Grant Subrecipient Agreement with Columbia Cascade Housing Corp. regarding a \$400,000 housing rehabilitation program grant.

Proposed Motion

None unless the agenda item is pulled from the Consent Agenda. If pulled from the Consent Agenda the following motion is recommended:

Motion to authorize the mayor to sign CDBG Grant Subrecipient Agreement with Columbia Cascade Housing Corp. regarding a \$400,000 housing rehabilitation program grant.

Explanation of Issue

The City of White Salmon, in conjunction with Columbia Cascade Housing Corp applied for and received a \$400,000 CDBG grant for a housing rehabilitation program in Skamania and Klickitat Counties. Washington Department of Commerce requires that a subrecipient agreement be signed between the City of White Salmon and Columbia Cascade Housing Corp. providing for the responsibilities of each entity. The agreement language is provided by Washington Department of Commerce and has been reviewed by Columbia Cascade Housing.

Recommendation of Staff/Committee

Staff recommends authorizing the mayor to sign CDBG Grant Subrecipient Agreement with Columbia Cascade Housing Corp. regarding a \$400,000 housing rehabilitation program grant.

**SUBRECIPIENT AGREEMENT
BETWEEN
CITY OF WHITE SALMON AND COLUMBIA CASCADE HOUSING CORP.**

This Agreement is made between City of White Salmon (herein called the Local Government) and Columbia Cascade Housing Corp. (herein called Subrecipient) for the 2021 Regional Housing Rehabilitation Program (herein called the Project).

As the Washington State Department of Commerce (Commerce) is authorized by the federal Department of Housing and Urban Development (HUD) to provide funds to units of local government selected to undertake and carryout projects under the Washington State Community Development Block Grant (CDBG) Program in compliance with all applicable local, state, and federal laws, regulations, and policies; and

As the Local Government has applied for and received a CDBG award, contract number 21-62210-039 (CFDA 14.228), to fund the project with Federal Award Identification Number B-21-DC-53-0001; and

As it benefits the Local Government to engage the Subrecipient to accomplish the Scope of Work and the objectives of the local CDBG project;

The parties agree that:

I. SCOPE OF SERVICES

A. Local Government Responsibilities

The Local Government is responsible for administration of the CDBG contract and ensuring CDBG funds are used in accordance with all program requirements [24 CFR 570.501(b)] and its CDBG contract with Commerce referenced above. The Local Government will provide such assistance and guidance to the Subrecipient as may be required to accomplish the objectives and conditions set forth in this Agreement.

B. Subrecipient Responsibilities

The Subrecipient will complete in a satisfactory and proper manner as determined by the Local Government the following tasks to accomplish the objectives of principally benefiting low- and moderate-income persons. The Subrecipient will periodically meet with the Local Government to review the status of these tasks.

1. Assist Local Government in completing the first-tier environmental review and prepare environmental review record in compliance with NEPA requirements for CDBG.
2. Establish CDBG housing rehabilitation assistance program policies and procedures, incorporating CDBG income qualifications and beneficiary reporting requirements.
3. Conduct outreach and market the rehabilitation assistance program.

4. Monitor program progress and compliance with applicable federal and state regulations.
5. Review and process applications for assistance determine CDBG eligibility.
6. Assist Local Government in completing second-tier, site-specific environmental review for any improvement activities outside the original documentation.
7. Conduct housing inspections.
8. Develop scopes of work and cost estimates.
9. Approve projects and process loan agreement documents with homeowners.
10. Establish financial management systems for tracking CDBG eligible housing rehabilitation costs, grant receipts, and program income.
11. Develop a revolving loan program for tracking and reusing program income earned from rehabilitation loans.
12. Monitor rehabilitation progress and receive homeowner acceptance of work as project progresses.
13. Once costs are approved, prepare and submit payment requests and progress status reports to Local Government.
14. Conduct final inspections and receive homeowner acceptance of completed work prior to final payments.
15. Submit CDBG Beneficiary Reports to Local Government within 30 days of each calendar quarter.

II. TIME OF PERFORMANCE

The effective date of this Agreement will be the date the parties sign and complete execution of this agreement and will be in effect for the timer period during which the Subrecipient remains in control of CDBG funds or other CDBG assets.

III. AGREEMENT REPRESENTATIVES

Each party to this Agreement shall have a representative. Each party may change its representative upon providing written notice to the other party. The parties' representatives are as follows:

A. Subrecipient

David Peters, Housing Center Manager
Columbia Cascade Housing Corp.
500 E. 2nd Street
The Dalles OR 97058
Phone: 541-296-3397, Ext. 118
E-mail address: davep@columbiacascadehousingcorp.org

B. Local Government

Jan Brending, Clerk Treasurer
City of White Salmon
PO Box 2139
White Salmon WA 98672
Phone: 509-493-1333, Ext. 205
E-mail address: janb@ci.white-salmon.wa.us

IV. BUDGET

The Local Government will pass through to the Subrecipient no more than \$400,000 in CDBG funds for eligible costs and expenses for the Project according to the following budget.

Project Budget Element	Budgeted Amount
Rehabilitation Administration and Program Mgmt	\$80,000
Rehabilitation-Single unit Residential Repair	\$320,000
Indirect Cost Rate: ____% Federally Approved Indirect Rate, or 10% de minimis rate, or fill out "N/A" declining to charge indirect	

Indirect Cost Rate if the Subrecipient chooses to charge indirect under this grant, the Subrecipient shall provide their indirect cost rate that has been negotiated between their entity and the Federal Government. If no such rate exists, a de minimis indirect cost of 10% of Modified Total Direct Costs (MTDC) will be used.

"Modified Total Direct Costs" shall mean all direct salaries and wages, applicable fringe benefits, materials and supplies, services, travel, and up to the first \$25,000 of each subaward (regardless of the period of performance of the subawards under the award). MTDC excludes equipment, capital expenditures, and rental costs.

Any amendments to this Agreement's Budget must first be determined by the Local Government as consistent with the CDBG contract with Commerce and then approved in writing by the Local Government and the Subrecipient.

V. PAYMENT

The Local Government shall reimburse the Subrecipient in accordance with the payment procedures outlined in the CDBG Management Handbook, Financial Management Section for all allowable expenses agreed upon by the parties to complete the Scope of Service.

Reimbursement under this Agreement will be based on billing, supported by appropriate documentation of costs actually incurred. It is expressly understood that claims for reimbursement will not be submitted in excess of actual, immediate cash requirements necessary to carry out the purposes of the agreement. Funds available under this Agreement will be utilized to supplement rather than supplant funds otherwise available.

It is understood that this Agreement is funded in whole or in part with CDBG funds through the Washington State CDBG Program as administered by Commerce and is subject to those regulations and restrictions normally associated with federally-funded programs and any other requirements that the State may prescribe.

VI. PERFORMANCE MONITORING

The Local Government will monitor the performance of the Subrecipient by tracking project progress, reviewing payment requests for applicable costs, managing the timely pass-through of CDBG funds, overseeing compliance with CDBG requirements, and ensuring recordkeeping and audit requirements are met. Substandard performance as determined by the Local Government will constitute noncompliance with this Agreement.

If action to correct such substandard performance is not taken by the Subrecipient within a reasonable period of time after being notified by the Local Government, contract suspension or termination procedures will be initiated.

VII. GENERAL CONDITIONS

A. General Compliance

The Subrecipient agrees to comply with:

- The requirements of Title 24 of the Code of Federal Regulations, 570 (HUD regulations concerning CDBG); and
- All other applicable Federal, State and Local laws, regulations, and policies, governing the funds provided under this Agreement.

B. CDBG National Objective

The Subrecipient certifies the activities carried out under this Agreement meet a CDBG Program National Objective as defined in 24 CFR 570.208.

C. Independent Contract

Nothing contained in this Agreement is intended to, or will be construed in any manner, as creating, or establishing the relationship of employer/employee between the parties. The Subrecipient will at all times remain an “independent contractor” with respect to the services to be performed under this Agreement. The Local Government will be exempt from payment of all unemployment compensation, FICA, retirement, life and/or medical insurance and Workers’ Compensation Insurance, as the Subrecipient is an independent contractor.

D. Hold Harmless

The Subrecipient will hold harmless, defend, and indemnify the Local Government from any and all claims, actions, suits, charges, and judgments whatsoever that arise out of the Subrecipient’s performance or nonperformance of the services or subject matter called for in this Agreement.

E. Workers’ Compensation

The Subrecipient will provide Workers’ Compensation Insurance Coverage for all of its employees involved in the performance of this Agreement.

F. Insurance and Bonding

1. The Subrecipient will carry sufficient insurance coverage to protect contract assets from loss due to theft, fraud and/or undue physical damage, and as a minimum will purchase a blanket fidelity bond covering all employees in an amount equal to cash advances from the Local Government.
 - a. Worker’s Compensation – in compliance with State and Federal laws.
 - b. Comprehensive Automobile Liability - \$1,000,000 combined single limit of liability of bodily injuries and property damage resulting from any one occurrence, including all owned, hired, and non-owned vehicles.
 - c. Comprehensive General Liability - \$1,000,000 combined single limit of liability for bodily injuries, death, and property damage, and personal injury resulting from any one occurrence, including the following coverages:
 - i. Premises and Operations; and
 - ii. Broad Form Commercial General Liability Endorsement to include blanket contractual liability (specifically covering, but not limited to, the contractual obligations assumed by the firm); Personal Injury (with employment and contractual exclusions deleted); and Broad Form Property Damages coverages.

2. The Local Government shall be named as an additional insured on all policies related to the project, excluding worker's compensation and professional liability.
3. The Subrecipient shall furnish the Local Government with properly executed certificates of insurance or a signed policy endorsement which shall clearly evidence all insurance required in this section prior to commencement of service. The certificates will, at a minimum, list limits of liability and coverage. The certificate will provide that the underlying insurance contract will not be cancelled or allowed to expire except on thirty (30) days prior written notice to the Local Government.

G. Funding Source Recognition

The Subrecipient will ensure recognition of the roles of Commerce, the WA State CDBG program, and the Local Government in providing services through this Agreement. All activities, facilities and items utilized pursuant to this Agreement will be prominently labeled as to funding source. In addition, the Subrecipient will include a reference to the support provided herein in all publications made possible with funds made available under this Agreement.

H. Amendments

The Local Government or Subrecipient may amend this Agreement at any time provided that such amendments make specific reference to this Agreement, and are executed in writing, signed by a duly authorized representative of each organization, and approved by the Local Government's government body. Such amendments will not invalidate this Agreement, nor relieve or release the Local Government or Subrecipient from its obligations under this Agreement.

I. Suspension of Termination

In accordance with 2 CFR 200.338-9, the Local Government may suspend or terminate this Agreement if the Subrecipient materially fails to comply with any terms of this Agreement, which include (but are not limited to) the following:

1. Failure to comply with any of the rules, regulations or provisions referred to herein, or such statutes, regulations, executive orders, and HUD guidelines, policies or directives as may become applicable at any time;
2. Failure, for any reason, of the Subrecipient to fulfill in a timely and proper manner its obligations under this Agreement;
3. Ineffective or improper use of funds provided under this Agreement; or
4. Submission by the Subrecipient to the Local Government of reports that are incorrect or incomplete in any material respect.

In accordance with 2 CFR 200.339, this Agreement may also be terminated by either the Local Government or the Subrecipient, in whole or in part, by setting

forth the reasons for such termination, the effective date, and, in the case of partial termination, the portion to be terminated. However, if in the case of a partial termination, the Local Government determines that the remaining portion of the award will not accomplish the purpose for which the award was made, the Local Government may terminate the award in its entirety.

VIII. ADMINISTRATIVE REQUIREMENTS

A. Financial Management

1. Accounting Standards

The Subrecipient agrees to comply with 2 CFR 200 and agrees to adhere to the accounting principles and procedures required therein, utilize adequate internal controls, and maintain necessary source documentation for all costs incurred.

2. Cost Principles

The Subrecipient will administer its program in conformance with 2 CFR 200. These principles will be applied for all costs incurred whether charged on a direct or indirect basis.

3. Duplication of Costs

The Subrecipient certified that work to be performed under this Agreement does not duplicate any work to be charged against any other contract, subcontract, or other source.

B. Documentation and Record Keeping

1. Records to Be Maintained

The Subrecipient will maintain all records required by the Federal regulations specified in 24 CFR 570.506 that are pertinent to the activities to be funded under this Agreement and those records described in the CDBG Management Handbook. Such records will include but not be limited to:

- a. Records providing a full description of each activity undertaken;
- b. Records demonstrating that each activity undertaken meets one of the National Objectives of the CDBG program;
- c. Records required to determine the eligibility of activities;
- d. Records required to document the acquisition, improvement, use or disposition of real property acquired or improved with CDBG assistance;

- e. Records documenting compliance with the civil rights components of the CDBG program;
- f. Financial records as required by 24 CFR 570.502, and 2 CFR 200.333;
- g. labor standards records required to document compliance with the Davis Bacon Act, the provisions of the Contract Work Hours and Safety Standards Act, and all other applicable Federal, State and Local laws and regulations applicable to CDBG funded construction projects; and
- h. Other records necessary to document compliance with Subpart K of 24 CFR 570.

2. Access to Records and Retention

The grantee, Commerce, and other authorized representatives of the state and federal governments shall have access to any books, documents, papers, and records of the Subrecipient that are directly pertinent to this Agreement for the purposes of making audit, examination, excerpts, and transcriptions.

The Subrecipient agrees to maintain such records and follow such procedures as may be required under the state's CDBG Program and any such procedures as the Local Government or Commerce may prescribe. In general, such records will include information pertaining to the contract, obligations and unobligated balances, assets and liabilities, outlays, equal opportunity, labor standards (as appropriate), and performance.

All such records and all other records pertinent to this Agreement and work undertaken under this Agreement will be retained by the Subrecipient for a period of six years after final audit of the Local Government's CDBG project unless a longer period is required to resolve audit findings or litigation. In such cases, the Local Government will request a longer period of record retention.

3. Audits and Inspections

All Subrecipient records with respect to any matters covered by this Agreement will be made available to the Local Government, Commerce, and duly authorized officials of the state and federal government, at any time during normal business hours, as often as deemed necessary, to audit, examine, and make excerpts or transcripts of all relevant data.

Any deficiencies noted in audit reports must be fully cleared by the Subrecipient within 30 days after receipt by the Subrecipient. Failure of the Subrecipient to comply with the above audit requirements will constitute a violation of this Agreement and may result in the withholding of future payments.

The Subrecipient that expends \$750,000 or more in a fiscal year in federal funds from all sources hereby agrees to have an annual agency audit conducted in

accordance with current Local Government policy concerning Subrecipient audits and 2 CFR 200.501. The Catalog of Federal Domestic Assistance (CFDA) number is 14.228.

C. Reporting

1. Program Income

The Subrecipient will report annually all program income (as defined at 24 CFR 570.500(a)) generated by activities carried out with CDBG funds made available under this Agreement. The use of program income by the Subrecipient will comply with the requirements set forth at 24 CFR 570.504.

2. Periodic Reports

The Subrecipient, at such times and in such forms as the Local Government may require, will furnish the Local Government such periodic reports as it may request pertaining to the work or services undertaken pursuant to this Agreement, the costs and obligations incurred or to be incurred in connection therewith, and any other matters covered by this Agreement.

D. Use and Reversion of Assets

The use and disposition of real property and equipment under this Agreement will be in compliance with the requirements of 2 CFR 200.311 and 313, 24 CFR 570.502, 570.503, 570.504, as applicable, which include but are not limited to the following:

1. The Subrecipient will transfer to the Local Government any CDBG funds on hand and any accounts receivable attributable to the use of funds under this Agreement at the time of expiration, cancellation, or termination.
2. Real property under the Subrecipient's control that was acquired or improved, in whole or in part, with funds under this Agreement in excess of \$25,000 will be used to meet one of the CDBG National Objectives pursuant to 24 CFR 570.208 until ten (10) years after the contract between Commerce and the Local Government is closed. If the Subrecipient fails to use CDBG-assisted real property in a manner that meets a CDBG National Objective for this 10-year period of time, the Subrecipient will pay the Local Government an amount equal to the current fair market value of the property less any ATTACHMENT 18-C (8) Page 8 of 11 portion of the value attributable to expenditures of non-CDBG funds for acquisition of, or improvement to, the property after the CDBG program's approval. Such payment will constitute program income to the Local Government. The Subrecipient may retain real property acquired or improved under this Agreement after the expiration of the ten-year period.
3. In cases in which equipment acquired, in whole or in part, with funds under this Agreement is sold, the proceeds will be program income. Equipment not needed by the Subrecipient for activities under this Agreement will be (a)

transferred to the Local Government for CDBG-eligible activities as approved by the CDBG program or (b) retained after compensating the Local Government.

IX. PERSONNEL AND PARTICIPANT CONDITIONS

A. Civil Rights

Title VI of the Civil Rights Act of 1964:

Under Title VI of the Civil Rights Act of 1964, no person will, on the grounds of race, color, creed, religion, sex, or national origin, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving federal financial assistance.

Section 109 of the Housing and Community Development Act of 1974:

No person in the United States will on the grounds of race, color, creed, religion, sex, or national origin be excluded from participation in, be denied benefits of, or be subjected to discrimination under any program or activity funded in whole or in part with funds made available under this title.

Age Discrimination Act of 1975, as Amended:

No person will be excluded from participation, denied program benefits, or subjected to discrimination on the basis of age under any program or activity receiving federal funding assistance. (42 U.S.C. 610 et. seq.)

Section 504 of the Rehabilitation Act of 1973, as Amended:

No otherwise qualified individual will, solely by reason of his or her disability, be excluded from participation (including employment), denied program benefits, or subjected to discrimination under any program or activity receiving Federal funds. (29 U.S.C. 794)

Public Law 101-336, Americans with Disabilities Act of 1990:

Subject to the provisions of this title, no qualified individual with a disability will, by reason of such disability, be excluded from participation in or be denied the benefits of the services, programs, or activities of a public entity, or be subjected to discrimination by any such entity.

B. Section 3 of the Housing and Community Development Act of 1968

Compliance in the Provision of Training, Employment, and Business Opportunities:

1. The work to be performed under this agreement is on a project assisted under a program providing direct federal financial assistance from HUD and is subject to the requirements of Section 3 of the Housing and Urban Development Act of 1968, as amended, 12 U.S.C. 1701u. Section 3 requires that to the greatest extent feasible opportunities for training and employment be given lower income residents of the project area; and contracts for work in connection with the project be awarded to business concerns which are located in, or owned in substantial part, by persons residing in the area of the project.

2. The parties to this contract will comply with the provisions of said Section 3 and the regulations set forth in 24 CFR 75, and all applicable rules and orders of HUD and Commerce issued thereunder prior to the execution of this contract. The parties to this contract certify and agree that they are under no contractual or other disability that would prevent them from complying with these provisions.
3. The Subrecipient will send to each labor organization or representative of workers with which he has a collective bargaining agreement or other contract or understanding, if any, a notice advising the said labor organization or workers' representative of his commitments under this Section 3 clause and will post copies of the notice in conspicuous places available to employees and applicants for employment or training.
4. The Subrecipient will include this Section 3 clause in every subcontract for work in connection with the project and will, at the direction of the applicant, or recipient of federal financial assistance, take appropriate action pursuant to the subcontract upon a finding that the subcontractor is in violation of regulations issued by the Secretary of HUD, 24 CFR 75. The Subrecipient will not subcontract with any subcontractor where it has notice or knowledge that the latter has been found in violation of regulations under 24 CFR 75 and will not let any subcontract unless the subcontractor has first provided it with a preliminary statement of ability to comply with the requirements of these regulations.
5. Compliance with the provisions of Section 3, the regulations set forth in 24 CFR 75, and all applicable rules and orders of HUD and Commerce issued hereunder prior to the execution of the contract, will be a condition of the federal financial assistance provided to the project, binding upon the applicant or recipient for such assistance, its successors, and assigns. Failure to fulfill these requirements will subject the applicant, or recipient, its consultants and subcontractors, its successors and assigned to those sanctions specified by the grant or loan agreement or contract through which federal assistance is provided, and to such sanctions as are specified by 24 CFR 75.

C. Conduct

1. Assignability

The Subrecipient will not assign or transfer any interest in this Agreement without the prior written consent of the Local Government thereto; provided, however, that claims for money due or to become due to the Subrecipient from the Local Government under this contract may be assigned to a bank, trust company, or other financial institution without such approval. Notice of any such assignment or transfer will be furnished promptly to the Local Government and Commerce.

2. Conflict of Interest

No member of the Local Government's governing body and no other public official of such locality, who exercises any functions or responsibilities in connection with the planning or carrying out of the project, will have any personal financial interest, direct or indirect, in this Agreement; and the Subrecipient will take appropriate steps to assure compliance.

The Subrecipient agrees to abide by the provisions of 2 CFR 200.318 and 24 CFR 570.611, which includes maintaining a written standard code of conduct that will govern the performance of its officers, employees or agents engaged in the award and administration of contracts supported by Federal funds.

The Subrecipient covenants that its employees have no interest and will not acquire interest, direct or indirect, in the study area or any parcels therein or any other interest which would conflict in any manner or degree with the performance of services hereunder. The Subrecipient further covenants that in the performance of this Agreement, no person having such interest will be employed.

3. Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion - Lower Tier Covered Transactions

- a. The lower tier contractor certifies, by signing this contract that neither it nor its principals is presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by any Federal department or agency.
- b. Where the lower tier contractor is unable to certify to any of the statements in this contract, such contractor will attach an explanation to this contract.

D. Copyright

If this Agreement results in any copyrightable material or inventions, the Local Government and/or Commerce reserves the right to royalty-free, non-exclusive, and irrevocable license to reproduce, publish or otherwise use and to authorize others to use, the work or materials for governmental purposes.

E. Religious Activities

The Subrecipient agrees that funds provided under this Agreement will not be utilized for inherently religious activities prohibited by 24 CFR 570.200(j), such as worship, religious instruction, or proselytization.

X. SEVERABILITY

If any provision of this Agreement is held invalid, the remainder of this Agreement will not be affected thereby, and all other parts of this Agreement will nevertheless be in full force and effect.

XI. PERFORMANCE WAIVER

The Local Government's failure to act with respect to a breach by the Subrecipient does not waive its right to act with respect to subsequent or similar breaches. The failure of the Local Government to exercise or enforce any right or provision will not constitute a waiver of such right or provision.

XII. ENTIRE AGREEMENT

This Agreement constitutes the entire agreement between the Local Government and the Subrecipient for the use of funds received under this Agreement and it supersedes all prior communications and proposals, whether electronic, oral, or written between the Local Government and the Subrecipient with respect to this Agreement.

IN WITNESS WHEREOF, the Local Government and the Subrecipient have executed this Agreement as of the date and year last written below.

CITY OF WHITE SALMON

COLUMBIA CASCADE HOUSING CORP.

By: _____ By: _____

Title: _____ Title: _____

Date: _____ Date: _____

Approved As To Form:

Attorney

File Attachments for Item:

B. Amendment No. 3, Personal Services Contract with Anderson Perry, Transmission Main Line Improvements (Increase in Contract by \$150,000 to \$920,859)



CONSENT AGENDA MEMO

Needs Legal Review: Yes
Meeting Date: April 6, 2022
Agenda Item: Amendment No. 3, Personal Services Contract with Anderson Perry, Transmission Main Line Improvements (Increase in Contract by \$150,000 to \$920,859)
Presented By: Jan Brending, Clerk Treasurer

Action Required

Authorization for mayor to sign Amendment No. 3 to Personal Services Contract with Anderson Perry & Associates for engineering services related to Transmission Main Line Improvements increasing the contract price by \$150,000 to \$920,859.

Proposed Motion

None unless the agenda item is pulled from the Consent Agenda. If pulled from the Consent Agenda the following motion is recommended:

Motion to authorize the mayor to sign Amendment No. 3 to Personal Services Contract with Anderson Perry & Associates for engineering services related to Transmission Main Line Improvements increasing the contract price by \$150,000 to \$920,859.

Explanation of Issue

The City of White Salmon entered into a personal services contract with Anderson Perry & Associates a number of years for the design and engineering of Transmission Main Line Improvements (14-Inch Water Main Line Replacement and Improvements). The city has a Public Works Trust Fund loan in the amount of \$750,000 to cover most of the design and engineering costs. Amendment No. increases the contract price by \$150,000 from \$770,859 to \$920,859.

The increase provides for design and engineering services for the following:

1. Additional coordination with Department of Natural Resources staff
2. The additional of a new 12-inch water main between Well No. 2 and Existing 16-Inch Transmission Main
3. Additional Water Distribution Main and Services (approximately 9,350 feet)

Funding for this project will come from the City's Water Fund.

Recommendation of Staff/Committee

Staff recommends authorizing the mayor to sign Amendment No. 3 to Personal Services Contract with Anderson Perry & Associates for engineering services related to Transmission Main Line Improvements increasing the contract price by \$150,000 to \$920,859.

March 25, 2022

City of White Salmon
P.O. Box 2139
White Salmon, Washington 98672

ATTN: Pat Munyan, City Administrator/Public Works Director

RE: Transmission Main Improvements Project - Design Engineering Services
Proposed Engineering Amendment No. 3

Dear Pat:

Anderson Perry & Associates, Inc. (AP) is continuing to pursue the design of the Transmission Main Improvements project. The design of the Phase I improvements is essentially complete, and we are currently waiting for the City to secure the final Washington State Department of Natural Resources (DNR) easement and Memorandum of Agreement (MOA) documents prior to project bidding. AP has compiled a conceptual design for the proposed Phase II improvements and is working on the detailed design and cultural/environmental review for the project.

In reviewing the current billings and the design that still needs to be completed, we have concerns whether the project design for the Phase II portion of the project can be completed under the existing engineering budget. As we have discussed several times, there are several design elements that have either been added to this project or have required significantly more effort than anticipated. Each of these elements is outlined below.

- **Additional Coordination with DNR Staff** - A significant amount of additional time was needed to review and comment on proposed easement and MOA documents, correspondence and site visits to resolve abandonment of the existing transmission main, and to address specific technical concerns (e.g., valve box burial, separation from culverts, location of communication vaults, etc.). Our coordination with DNR is ongoing as the easement and MAO documents have not yet been finalized.
- **New 12-Inch Water Main Between Well No. 2 and the Existing 16-Inch Transmission Main** - Additional time for design and environmental review of new water main from the existing 16-inch diameter transmission main (upstream of the Childs Reservoir inlet main) along SR 141 and Wallace Road to Well No. 2. This design is being requested by City staff and the City's Aquifer and Storage Recovery (ASR) consultant (Aspect Consulting LLC) to provide direct flow of water from Buck Creek Water Treatment Plant to the Well No. 2 site for ASR. To date, the survey and preliminary layout for this water main have been completed. Completion of this additional water main design is included as part of the proposed amendment. The City has also requested that AP design a new booster pump station at the Well No. 2 site to increase the head pressure for enhanced ASR delivery into Well No. 2. The design of the new booster pump station is not included as part of the proposed amendment and will be addressed in a separate amendment or agreement in the future.

- **Additional Water Distribution Main and Services** - Design and environmental review of the additional water distribution mains (approximately 9,350 linear feet) and service lines (approximately 60) to transfer customer water connections/access from the old to the new transmission main. The breadth and magnitude of these new water lines and the services required to maintain service to existing customers was significantly more than anticipated.

These additional project elements, coupled with inflation, have increased the anticipated total construction related costs (construction, contingency, interim financing, construction engineering services) for the overall project to approximately \$15.5 to \$16.0 million (\$4.0 to 4.3 million for Phase I and \$11.5 to 11.7 million for Phase II improvements).

To complete the design of all the remaining project elements, AP is requesting an additional \$150,000 in engineering fees. This proposed amendment increases the contract amount to \$920,859. We recognize that this is a big increase; however, please note that it results in an overall design engineering fee that is approximately 7.8 percent of the anticipated construction costs, which is well within the typical range for a project of this size and complexity.

A proposed Amendment No. 3 is attached for the City's review and approval. Keep in mind that this is a time and materials contract, so if we are able to finish the project under budget, the City retains the remaining amount.

We appreciate working for the City and look forward to completing the design of the Transmission Main Improvements projects. Please contact me if you have any questions on proposed Amendment No. 3 or the project itself.

Sincerely,

ANDERSON PERRY & ASSOCIATES, INC.

By David Jepsen
David Jepsen, P.E.

DJ/ct

Attachment

cc: File No. 250-11-02, w/attach

S:\Docs\White Salmon\250-11 Transmission Main Replacement\Agreement\Amendment No. 3\Amendment No. 3 Letter.docx



AMENDMENT NO. 3
TO AGREEMENT BETWEEN CLIENT AND ENGINEER FOR
PROFESSIONAL SERVICES

Job No. 250-11

PROJECT: TRANSMISSION MAIN IMPROVEMENTS PROJECT - DESIGN ENGINEERING SERVICES

PART I. PARTIES AND DESCRIPTION OF WORK

THIS AMENDMENT, made this 6th day of April 2022, amends the AGREEMENT between the CITY OF WHITE SALMON, WASHINGTON (the OWNER) and ANDERSON PERRY & ASSOCIATES, INC. (the CONSULTANT) dated April 2, 2020.

This AMENDMENT modifies the agreement to include the following:

CONSULTANT SERVICES

The Scope of Services is hereby modified to include the following additional design services.

1. Additional work provided by the CONSULTANT includes the following.
 - a. **Additional Coordination with Washington State Department of Natural Resources (DNR) Staff** - Review and comment on proposed easement and Memorandum of Agreement (MOA) documents, correspondence and site visits to resolve abandonment of existing transmission main, and address specific technical concerns (e.g., valve box burial, separation from culverts, location of communication vaults, etc.). Coordination with DNR is required for completion of the Phase I improvements.
 - b. **New 12-Inch Water Main Between Well No. 2 and the Existing 16-Inch Transmission Main** - Design and environmental review of the new water main from the existing 16-inch diameter transmission main (upstream of the Childs Reservoir inlet main) along SR 141 and Wallace Road to Well No. 2. This design is being requested by the OWNER's staff and OWNER's Aquifer and Storage Recovery (ASR) consultant to provide direct flow of water from Buck Creek Water Treatment Plant to the Well No. 2 site for ASR. This work would be included in the Phase II improvements unless otherwise directed by the OWNER. These services do not include the design of a proposed booster pump station at the Well No. 2 site.
 - c. **Additional Water Distribution Main and Services** - Design and environmental review of additional water distribution mains (approximately 9,350 linear feet) and service lines (approximately 60) to transfer customer water connections/access from the old to the new transmission main. This work would be included as part of the Phase II improvements.

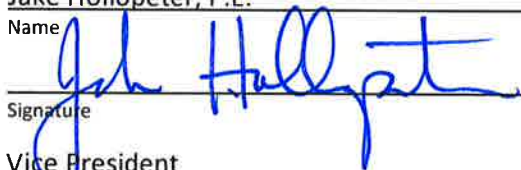
COMPENSATION FOR SERVICES

In consideration for performing the services outlined in this Amendment, the OWNER agrees to compensate the CONSULTANT as follows: On a time and materials basis not to exceed \$150,000. This Amendment increases the total project budget from \$770,859 to \$920,859.

All other provisions of the AGREEMENT shall remain the same.

CONSULTANT
ANDERSON PERRY & ASSOCIATES, INC.

OWNER
CITY OF WHITE SALMON, WASHINGTON

Jake Hollopeter, P.E.
 Name _____

 Signature _____
 Vice President
 Title _____

 Name _____

 Signature _____

 Title _____

File Attachments for Item:

C. Agreement Between Owner and Engineer for Professional Services, Anderson Perry
(Construction Engineering Services - \$220,000)



CONSENT AGENDA MEMO

Needs Legal Review: Yes
Meeting Date: April 6, 2022
Agenda Item: Agreement Between Owner and Engineer for Professional Services, Anderson Perry, Transmission Main Line Improvements Phase I (Construction Engineering Services - \$220,000)
Presented By: Jan Brending, Clerk Treasurer

Action Required

Authorization for mayor to sign Agreement Between Owner and Engineer for Professional services, Anderson Perry Transmission Main Line Improvements Phase I providing for construction engineering services in the amount of \$220,000.

Proposed Motion

None unless the agenda item is pulled from the Consent Agenda. If pulled from the Consent Agenda the following motion is recommended:

Motion to authorize the mayor to sign Agreement Between Owner and Engineer for Professional services, Anderson Perry Transmission Main Line Improvements Phase I providing for construction engineering services in the amount of \$220,000.

Explanation of Issue

USDA Rural Development requires the city to enter into an agreement with an engineering firm for construction engineering related to the construction of the Transmission Main Line Improvements Phase I. The funding package (\$2,777,000 loan, \$999,000 grant, and \$150,500 city funds) provides for construction engineering costs. Construction engineering includes assisting in the bidding phase, general administration of the construction contract (including inspection of the project) and providing a "Resident Project Representative." The proposed agreement has been reviewed by USDA Rural Development.

Recommendation of Staff/Committee

Staff recommends authorizing the mayor to sign Agreement Between Owner and Engineer for Professional services, Anderson Perry Transmission Main Line Improvements Phase I providing for construction engineering services in the amount of \$220,000.

This document has important legal consequences; consultation with an attorney is encouraged with respect to its use or modification. This document should be adapted to the particular circumstances of the contemplated Project and the controlling Laws and Regulations.

**AGREEMENT
BETWEEN OWNER AND ENGINEER
FOR PROFESSIONAL SERVICES**

Prepared by



Issued and Published Jointly by



This Agreement has been prepared for use with EJCDC® C-700, Standard General Conditions of the Construction Contract, 2013 Edition. Their provisions are interrelated, and a change in one may necessitate a change in the other. For guidance on the completion and use of this Agreement, see EJCDC® E-001, Commentary on the EJCDC Engineering Services Agreements, 2013 Edition.

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(703) 684-2882
www.nspe.org

American Council of Engineering Companies
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www.acec.org

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**AGREEMENT
BETWEEN OWNER AND ENGINEER
FOR PROFESSIONAL SERVICES**

THIS IS AN AGREEMENT effective as of April 6, 2022 (“Effective Date”) between
City of White Salmon, Washington (“Owner”) and
Anderson Perry & Associates, Inc. (“Engineer”).

Owner's Project, of which Engineer's services under this Agreement are a part, is generally identified as follows:
Transmission Main Replacement Phase I ("Project").

Other terms used in this Agreement are defined in Article 7.

Engineer's services under this Agreement are generally identified as follows: bidding phase, general administration
of Construction Contract, Resident Project Representative.

Financial assistance for this Project is expected to be provided by USDA Rural Development (Agency), a
governmental entity. Nothing herein creates any contractual relationship between Agency and Engineer.

Owner and Engineer further agree as follows:

ARTICLE 1 – SERVICES OF ENGINEER

1.01 *Scope*

- A. Engineer shall provide, or cause to be provided, the services set forth herein and in Exhibit A consistent with this Agreement. Engineer shall provide the services to the best of the Engineer's ability, in good faith, and in a manner consistent with locally accepted standards for professional skill and care.

ARTICLE 2 – OWNER’S RESPONSIBILITIES

2.01 *General*

- A. Owner shall have the responsibilities set forth herein and in Exhibit B.
- B. Owner shall pay Engineer as set forth in Article 4 and Exhibit C.
- C. Owner shall be responsible for all requirements and instructions that it furnishes to Engineer pursuant to this Agreement, and for the accuracy and completeness of all programs, reports, data, and other information furnished by Owner to Engineer pursuant to this Agreement. Engineer may use and rely upon such requirements, programs, instructions, reports, data, and information in performing or furnishing services under this Agreement, subject to any express limitations or reservations applicable to the furnished items.

- D. Owner shall give prompt written notice to Engineer whenever Owner observes or otherwise becomes aware of:
 - 1. any development that affects the scope or time of performance of Engineer's services;
 - 2. the presence at the Site of any Constituent of Concern; or
 - 3. any relevant, material defect or nonconformance in: (a) Engineer's services, (b) the Work, (c) the performance of any Constructor, or (d) Owner's performance of its responsibilities under this Agreement.

ARTICLE 3 – SCHEDULE FOR RENDERING SERVICES

3.01 Commencement

- A. Engineer is authorized to begin rendering services as of the Effective Date.

3.02 Time for Completion

- A. Engineer shall complete its obligations within a reasonable time. Specific periods of time for rendering services, or specific dates by which services are to be completed, are provided in Exhibit A, and are hereby agreed to be reasonable.
- B. If, through no fault of Engineer, such periods of time or dates are changed, or the orderly and continuous progress of Engineer's services is impaired, or Engineer's services are delayed or suspended, then the time for completion of Engineer's services, and the rates and amounts of Engineer's compensation, shall be adjusted equitably.
- C. If Owner authorizes changes in the scope, extent, or character of the Project or Engineer's services, then the time for completion of Engineer's services, and the rates and amounts of Engineer's compensation, shall be adjusted equitably.
- D. Owner shall make decisions and carry out its other responsibilities in a timely manner so as not to delay the Engineer's performance of its services.
- E. If Engineer fails, through its own fault, to complete the performance required in this Agreement within the time set forth, as duly adjusted, then Owner shall be entitled, as its sole remedy, to the recovery of direct damages, if any, resulting from such failure.

ARTICLE 4 – INVOICES AND PAYMENTS

4.01 Invoices

- A. *Preparation and Submittal of Invoices:* Engineer shall prepare invoices in accordance with its standard invoicing practices and the terms of Exhibit C. Engineer shall submit its invoices to Owner on a monthly basis. Invoices are due and payable within 30 days of receipt. Invoices will include a breakdown of services provided.

4.02 *Payments*

- A. *Application to Interest and Principal:* Payment will be credited first to any interest owed to Engineer and then to principal.
- B. *Failure to Pay:* If Owner fails to make any payment due Engineer for services and expenses within 30 days after receipt of Engineer's invoice, then:
 - 1. amounts due Engineer will be increased at the rate of 1.0% per month (or the maximum rate of interest permitted by law, if less) from said thirtieth day; and
 - 2. Engineer may, after giving seven days written notice to Owner, suspend services under this Agreement until Owner has paid in full all amounts due for services, expenses, and other related charges. Owner waives any and all claims against Engineer for any such suspension.
- C. *Disputed Invoices:* If Owner disputes an invoice, either as to amount or entitlement, then Owner shall promptly advise Engineer in writing of the specific basis for doing so, may withhold only that portion so disputed, and must pay the undisputed portion subject to the terms of Paragraph 4.01.
- D. *Sales or Use Taxes:* If after the Effective Date any governmental entity takes a legislative action that imposes additional sales or use taxes on Engineer's services or compensation under this Agreement, then Engineer may invoice such additional sales or use taxes for reimbursement by Owner. Owner shall reimburse Engineer for the cost of such invoiced additional sales or use taxes; such reimbursement shall be in addition to the compensation to which Engineer is entitled under the terms of Exhibit C.

ARTICLE 5 – OPINIONS OF COST

5.01 *Opinions of Probable Construction Cost*

- A. Engineer's opinions (if any) of probable Construction Cost are to be made on the basis of Engineer's experience, qualifications, and general familiarity with the construction industry. However, because Engineer has no control over the cost of labor, materials, equipment, or services furnished by others, or over contractors' methods of determining prices, or over competitive bidding or market conditions, Engineer cannot and does not guarantee that proposals, bids, or actual Construction Cost will not vary from opinions of probable Construction Cost prepared by Engineer. If Owner requires greater assurance as to probable Construction Cost, then Owner agrees to obtain an independent cost estimate. Opinions of Probable Cost and any revisions thereof should reflect compliance with American Iron & Steel requirements mandated by Section 746 of Title VII of the Consolidated Appropriations Act of 2017 (Division A - Agriculture, Rural Development, Food and Drug Administration, and Related Agencies Appropriations Act, 2017) and subsequent statutes mandating domestic preference.

5.02 *Designing to Construction Cost Limit*

- A. If a Construction Cost limit is established between Owner and Engineer, such Construction Cost limit and a statement of Engineer's rights and responsibilities with respect thereto will be specifically set forth in Exhibit F to this Agreement.

5.03 *Opinions of Total Project Costs*

- A. The services, if any, of Engineer with respect to Total Project Costs shall be limited to assisting the Owner in tabulating the various categories that comprise Total Project Costs. Engineer assumes no responsibility for the accuracy of any opinions of Total Project Costs. Opinions of Total Project Costs and any revisions thereof should reflect compliance with American Iron & Steel requirements mandated by Section 746 of Title VII of the Consolidated Appropriations Act of 2017 (Division A - Agriculture, Rural Development, Food and Drug Administration, and Related Agencies Appropriations Act, 2017) and subsequent statutes mandating domestic preference.

ARTICLE 6 – GENERAL CONSIDERATIONS

6.01 *Standards of Performance*

- A. *Standard of Care:* The standard of care for all professional engineering and related services performed or furnished by Engineer under this Agreement will be the care and skill ordinarily used by members of the subject profession practicing under similar circumstances at the same time and in the same locality. Engineer makes no warranties, express or implied, under this Agreement or otherwise, in connection with any services performed or furnished by Engineer.
- B. *Technical Accuracy:* Owner shall not be responsible for discovering deficiencies in the technical accuracy of Engineer's services. Engineer shall correct deficiencies in technical accuracy without additional compensation, unless such corrective action is directly attributable to deficiencies in Owner-furnished information.
- C. *Consultants:* Engineer may retain such Consultants as Engineer deems necessary to assist in the performance or furnishing of the services, subject to reasonable, timely, and substantive objections by Owner.
- D. *Reliance on Others:* Subject to the standard of care set forth in Paragraph 6.01.A, Engineer and its Consultants may use or rely upon design elements and information ordinarily or customarily furnished by others, including, but not limited to, specialty contractors, manufacturers, suppliers, and the publishers of technical standards.
- E. *Compliance with Laws and Regulations, and Policies and Procedures:*
 - 1. Engineer and Owner shall comply with applicable Laws and Regulations.
 - 2. Engineer shall comply with any and all policies, procedures, and instructions of Owner that are applicable to Engineer's performance of services under this Agreement and that Owner provides to Engineer in writing, subject to the standard of care set forth in

Paragraph 6.01.A, and to the extent compliance is not inconsistent with professional practice requirements.

3. This Agreement is based on Laws and Regulations and Owner-provided written policies and procedures as of the Effective Date. The following may be the basis for modifications to Owner's responsibilities or to Engineer's scope of services, times of performance, or compensation:
 - a. changes after the Effective Date to Laws and Regulations;
 - b. the receipt by Engineer after the Effective Date of Owner-provided written policies and procedures;
 - c. changes after the Effective Date to Owner-provided written policies or procedures.
- F. Engineer shall not be required to sign any document, no matter by whom requested, that would result in the Engineer having to certify, guarantee, or warrant the existence of conditions whose existence the Engineer cannot ascertain. Owner agrees not to make resolution of any dispute with the Engineer or payment of any amount due to the Engineer in any way contingent upon the Engineer signing any such document.
- G. The general conditions for any construction contract documents prepared hereunder are to be EJCDC® C-700 "Standard General Conditions of the Construction Contract" (2013 Edition), prepared by the Engineers Joint Contract Documents Committee, unless expressly indicated otherwise in Exhibit J or elsewhere in this Agreement.
- H. Engineer shall not at any time supervise, direct, control, or have authority over any Constructor's work, nor shall Engineer have authority over or be responsible for the means, methods, techniques, sequences, or procedures of construction selected or used by any Constructor, or the safety precautions and programs incident thereto, for security or safety at the Site, nor for any failure of a Constructor to comply with Laws and Regulations applicable to that Constructor's furnishing and performing of its work. Engineer shall not be responsible for the acts or omissions of any Constructor.
- I. Engineer neither guarantees the performance of any Constructor nor assumes responsibility for any Constructor's, failure to furnish and perform the Work in accordance with the Construction Contract Documents.
- J. Engineer shall not be responsible for any decision made regarding the Construction Contract Documents, or any application, interpretation, clarification, or modification of the Construction Contract Documents, other than those made by Engineer or its Consultants.
- K. Engineer is not required to provide and does not have any responsibility for surety bonding or insurance-related advice, recommendations, counseling, or research, or enforcement of construction insurance or surety bonding requirements.
- L. Engineer's services do not include providing legal advice or representation.

- M. Engineer's services do not include (1) serving as a "municipal advisor" for purposes of the registration requirements of Section 975 of the Dodd-Frank Wall Street Reform and Consumer Protection Act (2010) or the municipal advisor registration rules issued by the Securities and Exchange Commission, or (2) advising Owner, or any municipal entity or other person or entity, regarding municipal financial products or the issuance of municipal securities, including advice with respect to the structure, timing, terms, or other similar matters concerning such products or issuances.
- N. While at the Site, Engineer, its Consultants, and their employees and representatives shall comply with the applicable requirements of Contractor's and Owner's safety programs of which Engineer has been informed in writing.

6.02 *Design Without Construction Phase Services*

- A. Engineer shall be responsible only for those Construction Phase services expressly required of Engineer in Exhibit A, Paragraph A1.05. With the exception of such expressly required services, Engineer shall have no design, Shop Drawing review, or other obligations during construction, and Owner assumes all responsibility for the application and interpretation of the Construction Contract Documents, review and response to Contractor claims, Construction Contract administration, processing of Change Orders and submittals, revisions to the Construction Contract Documents during construction, construction observation and review, review of Contractor's payment applications, and all other necessary Construction Phase administrative, engineering, and professional services. Owner waives all claims against the Engineer that may be connected in any way to Construction Phase administrative, engineering, or professional services except for those services that are expressly required of Engineer in Exhibit A.

6.03 *Use of Documents*

- A. All Documents are instruments of service, and Engineer shall retain an ownership and property interest therein (including the copyright and the right of reuse at the discretion of the Engineer) whether or not the Project is completed.
- B. If Engineer is required to prepare or furnish Drawings or Specifications under this Agreement, Engineer shall deliver to Owner at least one original printed record version of such Drawings and Specifications, signed and sealed according to applicable Laws and Regulations.
- C. Owner may make and retain copies of Documents for information and reference in connection with the use of the Documents on the Project. Engineer grants Owner a limited license to use the Documents on the Project, extensions of the Project, and for related uses of the Owner, subject to receipt by Engineer of full payment due and owing for all services relating to preparation of the Documents, and subject to the following limitations: (1) Owner acknowledges that such Documents are not intended or represented to be suitable for use on the Project unless completed by Engineer, or for use or reuse by Owner or others on extensions of the Project, on any other project, or for any other use or purpose, without written verification or adaptation by Engineer; (2) any such use or reuse, or any modification of the Documents, without written verification, completion, or adaptation by Engineer, as appropriate for the specific purpose intended, will be at Owner's sole risk and without liability or legal exposure to Engineer or to its

officers, directors, members, partners, agents, employees, and Consultants; (3) Owner shall indemnify and hold harmless Engineer and its officers, directors, members, partners, agents, employees, and Consultants from all claims, damages, losses, and expenses, including attorneys' fees, arising out of or resulting from any use, reuse, or modification of the Documents without written verification, completion, or adaptation by Engineer; and (4) such limited license to Owner shall not create any rights in third parties.

- D. If Engineer at Owner's request verifies the suitability of the Documents, completes them, or adapts them for extensions of the Project or for any other purpose, then Owner shall compensate Engineer at rates or in an amount to be agreed upon by Owner and Engineer.

6.04 *Electronic Transmittals*

- A. Owner and Engineer may transmit, and shall accept, Project-related correspondence, Documents, text, data, drawings, information, and graphics, in electronic media or digital format, either directly, or through access to a secure Project website, in accordance with a mutually agreeable protocol.
- B. If this Agreement does not establish protocols for electronic or digital transmittals, then Owner and Engineer may jointly develop such protocols.
- C. When transmitting items in electronic media or digital format, the transmitting party makes no representations as to long term compatibility, usability, or readability of the items resulting from the recipient's use of software application packages, operating systems, or computer hardware differing from those used in the drafting or transmittal of the items, or from those established in applicable transmittal protocols.

6.05 *Insurance*

- A. Engineer shall procure and maintain insurance as set forth in Exhibit G. Engineer shall cause Owner to be listed as an additional insured on any applicable general liability insurance policy carried by Engineer.
- B. Owner shall procure and maintain insurance as set forth in Exhibit G. Owner shall cause Engineer and its Consultants to be listed as additional insureds on any general liability policies carried by Owner, which are applicable to the Project.
- C. Owner shall require Contractor to purchase and maintain policies of insurance covering workers' compensation, general liability, motor vehicle damage and injuries, and other insurance necessary to protect Owner's and Engineer's interests in the Project. Owner shall require Contractor to cause Engineer and its Consultants to be listed as additional insureds with respect to such liability insurance purchased and maintained by Contractor for the Project.
- D. Owner and Engineer shall each deliver to the other certificates of insurance evidencing the coverages indicated in Exhibit G. Such certificates shall be furnished prior to commencement of Engineer's services and at renewals thereafter during the life of the Agreement.

- E. All policies of property insurance relating to the Project, including but not limited to any builder's risk policy, shall allow for waiver of subrogation rights and contain provisions to the effect that in the event of payment of any loss or damage the insurers will have no rights of recovery against any insured thereunder or against Engineer or its Consultants. Owner and Engineer waive all rights against each other, Contractor, the Consultants, and the respective officers, directors, members, partners, employees, agents, consultants, and subcontractors of each and any of them, for all losses and damages caused by, arising out of, or resulting from any of the perils or causes of loss covered by any builder's risk policy and any other property insurance relating to the Project. Owner and Engineer shall take appropriate measures in other Project-related contracts to secure waivers of rights consistent with those set forth in this paragraph.
- F. All policies of insurance shall contain a provision or endorsement that the coverage afforded will not be canceled or reduced in limits by endorsement, and that renewal will not be refused, until at least 10 days prior written notice has been given to the primary insured. Upon receipt of such notice, the receiving party shall promptly forward a copy of the notice to the other party to this Agreement.
- G. At any time, Owner may request that Engineer or its Consultants, at Owner's sole expense, provide additional insurance coverage, increased limits, or revised deductibles that are more protective than those specified in Exhibit G. If so requested by Owner, and if commercially available, Engineer shall obtain and shall require its Consultants to obtain such additional insurance coverage, different limits, or revised deductibles for such periods of time as requested by Owner, and Exhibit G will be supplemented to incorporate these requirements.

6.06 *Suspension and Termination*

A. *Suspension:*

- 1. *By Owner:* Owner may suspend the Project for up to 90 days upon seven days written notice to Engineer.
- 2. *By Engineer:* Engineer may, after giving seven days written notice to Owner, suspend services under this Agreement if Owner has failed to pay Engineer for invoiced services and expenses, as set forth in Paragraph 4.02.B, or in response to the presence of Constituents of Concern at the Site, as set forth in Paragraph 6.10.D.

B. *Termination:* The obligation to provide further services under this Agreement may be terminated:

- 1. For cause,
 - a. by either party upon 30 days written notice in the event of substantial failure by the other party to perform in accordance with the terms hereof through no fault of the terminating party.

b. by Engineer:

- 1) upon seven days written notice if Owner demands that Engineer furnish or perform services contrary to Engineer's responsibilities as a licensed professional; or
- 2) upon seven days written notice if the Engineer's services for the Project are delayed or suspended for more than 90 days for reasons beyond Engineer's control, or as the result of the presence at the Site of undisclosed Constituents of Concern, as set forth in Paragraph 6.10.D.
- 3) Engineer shall have no liability to Owner on account of such termination.

c. Notwithstanding the foregoing, this Agreement will not terminate under Paragraph 6.06.B.1.a if the party receiving such notice begins, within seven days of receipt of such notice, to correct its substantial failure to perform and proceeds diligently to cure such failure within no more than 30 days of receipt thereof; provided, however, that if and to the extent such substantial failure cannot be reasonably cured within such 30 day period, and if such party has diligently attempted to cure the same and thereafter continues diligently to cure the same, then the cure period provided for herein shall extend up to, but in no case more than, 60 days after the date of receipt of the notice.

2. For convenience, by Owner effective upon Engineer's receipt of notice from Owner.

C. *Effective Date of Termination:* The terminating party under Paragraph 6.06.B may set the effective date of termination at a time up to 30 days later than otherwise provided to allow Engineer to demobilize personnel and equipment from the Site, to complete tasks whose value would otherwise be lost, to prepare notes as to the status of completed and uncompleted tasks, and to assemble Project materials in orderly files.

D. *Payments Upon Termination:*

1. In the event of any termination under Paragraph 6.06, Engineer will be entitled to invoice Owner and to receive full payment for all services performed or furnished in accordance with this Agreement and all Reimbursable Expenses incurred through the effective date of termination. Upon making such payment, Owner shall have the limited right to the use of Documents, at Owner's sole risk, subject to the provisions of Paragraph 6.03.
2. In the event of termination by Owner for convenience or by Engineer for cause, Engineer shall be entitled, in addition to invoicing for those items identified in Paragraph 6.06.D.1, to invoice Owner and receive payment of a reasonable amount for services and expenses directly attributable to termination, both before and after the effective date of termination, such as reassignment of personnel, costs of terminating contracts with Engineer's Consultants, and other related close-out costs, using methods and rates for Additional Services as set forth in Exhibit C.

6.07 *Controlling Law*

- A. This Agreement is to be governed by the Laws and Regulations of the state in which the Project is located.

6.08 *Successors, Assigns, and Beneficiaries*

- A. Owner and Engineer are hereby bound and the successors, executors, administrators, and legal representatives of Owner and Engineer (and to the extent permitted by Paragraph 6.08.B the assigns of Owner and Engineer) are hereby bound to the other party to this Agreement and to the successors, executors, administrators and legal representatives (and said assigns) of such other party, in respect of all covenants, agreements, and obligations of this Agreement.
- B. Neither Owner nor Engineer may assign, sublet, or transfer any rights under or interest (including, but without limitation, money that is due or may become due) in this Agreement without the written consent of the other party, except to the extent that any assignment, subletting, or transfer is mandated by law. Unless specifically stated to the contrary in any written consent to an assignment, no assignment will release or discharge the assignor from any duty or responsibility under this Agreement.
- C. Unless expressly provided otherwise in this Agreement:
 - 1. Nothing in this Agreement shall be construed to create, impose, or give rise to any duty owed by Owner or Engineer to any Constructor, other third-party individual or entity, or to any surety for or employee of any of them.
 - 2. All duties and responsibilities undertaken pursuant to this Agreement will be for the sole and exclusive benefit of Owner and Engineer and not for the benefit of any other party.
 - 3. Owner agrees that the substance of the provisions of this Paragraph 6.08.C shall appear in the Construction Contract Documents.

6.09 *Dispute Resolution*

- A. Owner and Engineer agree to negotiate all disputes between them in good faith for a period of 30 days from the date of notice prior to invoking the procedures of Exhibit H or other provisions of this Agreement, or exercising their rights at law.
- B. If the parties fail to resolve a dispute through negotiation under Paragraph 6.09.A, then either or both may invoke the procedures of Exhibit H. If Exhibit H is not included, or if no dispute resolution method is specified in Exhibit H, then the parties may exercise their rights at law.

6.10 *Environmental Condition of Site*

- A. Owner represents to Engineer that as of the Effective Date to the best of Owner's knowledge no Constituents of Concern, other than those disclosed in writing to Engineer, exist at or adjacent to the Site.

- B. If Engineer encounters or learns of an undisclosed Constituent of Concern at the Site, then Engineer shall notify (1) Owner and (2) appropriate governmental officials if Engineer reasonably concludes that doing so is required by applicable Laws or Regulations.
- C. It is acknowledged by both parties that Engineer's scope of services does not include any services related to unknown or undisclosed Constituents of Concern. If Engineer or any other party encounters, uncovers, or reveals an undisclosed Constituent of Concern, then Owner shall promptly determine whether to retain a qualified expert to evaluate such condition or take any necessary corrective action.
- D. If investigative or remedial action, or other professional services, are necessary with respect to undisclosed Constituents of Concern, or if investigative or remedial action beyond that reasonably contemplated is needed to address a disclosed or known Constituent of Concern, then Engineer may, at its option and without liability for consequential or any other damages, suspend performance of services on the portion of the Project affected thereby until such portion of the Project is no longer affected.
- E. If the presence at the Site of undisclosed Constituents of Concern adversely affects the performance of Engineer's services under this Agreement, then the Engineer shall have the option of (1) accepting an equitable adjustment in its compensation or in the time of completion, or both; or (2) terminating this Agreement for cause on seven days notice.
- F. Owner acknowledges that Engineer is performing professional services for Owner and that Engineer is not and shall not be required to become an "owner," "arranger," "operator," "generator," or "transporter" of hazardous substances, as defined in the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA), as amended, which are or may be encountered at or near the Site in connection with Engineer's activities under this Agreement.

6.11 *Indemnification and Mutual Waiver*

- A. *Indemnification by Engineer:* To the fullest extent permitted by Laws and Regulations, Engineer shall indemnify and hold harmless Owner, and Owner's officers, directors, members, partners, agents, consultants, and employees, from losses, damages, and judgments (including reasonable consultants' and attorneys' fees and expenses) arising from third-party claims or actions relating to the Project, provided that any such claim, action, loss, damages, or judgment is attributable to bodily injury, sickness, disease, or death, or to injury to or destruction of tangible property (other than the Work itself), including the loss of use resulting therefrom, but only to the extent caused by any negligent act or omission of Engineer or Engineer's officers, directors, members, partners, agents, employees, or Consultants. This indemnification provision is subject to and limited by the provisions, if any, agreed to by Owner and Engineer in Exhibit I, "Limitations of Liability."
- B. *Indemnification by Owner:* Owner shall indemnify and hold harmless Engineer and its officers, directors, members, partners, agents, employees, and Consultants as required by Laws and Regulations and to the extent (if any) required in Exhibit I, "Limitations of Liability."

- C. *Environmental Indemnification:* To the fullest extent permitted by Laws and Regulations, Owner shall indemnify and hold harmless Engineer and its officers, directors, members, partners, agents, employees, and Consultants from all claims, costs, losses, damages, actions, and judgments (including reasonable consultants' and attorneys fees and expenses) caused by, arising out of, relating to, or resulting from a Constituent of Concern at, on, or under the Site, provided that (1) any such claim, cost, loss, damages, action, or judgment is attributable to bodily injury, sickness, disease, or death, or to injury to or destruction of tangible property (other than the Work itself), including the loss of use resulting therefrom, and (2) nothing in this paragraph shall obligate Owner to indemnify any individual or entity from and against the consequences of that individual's or entity's own negligence or willful misconduct.
- D. *No Defense Obligation:* The indemnification commitments in this Agreement do not include a defense obligation by the indemnitor unless such obligation is expressly stated.
- E. *Percentage Share of Negligence:* To the fullest extent permitted by Laws and Regulations, a party's total liability to the other party and anyone claiming by, through, or under the other party for any cost, loss, or damages caused in part by the negligence of the party and in part by the negligence of the other party or any other negligent entity or individual, shall not exceed the percentage share that the party's negligence bears to the total negligence of Owner, Engineer, and all other negligent entities and individuals.
- F. *Mutual Waiver:* To the fullest extent permitted by Laws and Regulations, Owner and Engineer waive against each other, and the other's employees, officers, directors, members, agents, insurers, partners, and consultants, any and all claims for or entitlement to special, incidental, indirect, or consequential damages arising out of, resulting from, or in any way related to this Agreement or the Project, from any cause or causes.

6.12 *Records Retention*

- A. Engineer shall maintain on file in legible form, for a period of five years following completion or termination of its services, all Documents, records (including cost records), and design calculations related to Engineer's services or pertinent to Engineer's performance under this Agreement. Upon Owner's request, Engineer shall provide a copy of any such item to Owner at cost.

6.13 *Miscellaneous Provisions*

- A. *Notices:* Any notice required under this Agreement will be in writing, addressed to the appropriate party at its address on the signature page and given personally, by registered or certified mail postage prepaid, or by a commercial courier service. All notices shall be effective upon the date of receipt.
- B. *Survival:* All express representations, waivers, indemnifications, and limitations of liability included in this Agreement will survive its completion or termination for any reason.
- C. *Severability:* Any provision or part of the Agreement held to be void or unenforceable under any Laws or Regulations shall be deemed stricken, and all remaining provisions shall continue to be valid and binding upon Owner and Engineer, which agree that the Agreement shall be reformed to replace such stricken provision or part thereof with a

valid and enforceable provision that comes as close as possible to expressing the intention of the stricken provision.

- D. *Waiver*: A party's non-enforcement of any provision shall not constitute a waiver of that provision, nor shall it affect the enforceability of that provision or of the remainder of this Agreement.
- E. *Accrual of Claims*: To the fullest extent permitted by Laws and Regulations, all causes of action arising under this Agreement shall be deemed to have accrued, and all statutory periods of limitation shall commence, no later than the date of Substantial Completion.

ARTICLE 7 – DEFINITIONS

7.01 *Defined Terms*

- A. Wherever used in this Agreement (including the Exhibits hereto) terms (including the singular and plural forms) printed with initial capital letters have the meanings indicated in the text above, in the exhibits, or in the following definitions:
 1. *Addenda*—Written or graphic instruments issued prior to the opening of bids which clarify, correct, or change the bidding requirements or the proposed Construction Contract Documents.
 2. *Additional Services*—The services to be performed for or furnished to Owner by Engineer in accordance with Part 2 of Exhibit A of this Agreement.
 3. *Agreement*—This written contract for professional services between Owner and Engineer, including all exhibits identified in Paragraph 8.01 and any duly executed amendments.
 4. *Application for Payment*—The form acceptable to Engineer which is to be used by Contractor during the course of the Work in requesting progress or final payments and which is to be accompanied by such supporting documentation as is required by the Construction Contract.
 5. *Basic Services*—The services to be performed for or furnished to Owner by Engineer in accordance with Part 1 of Exhibit A of this Agreement.
 6. *Change Order*—A document which is signed by Contractor and Owner and authorizes an addition, deletion, or revision in the Work or an adjustment in the Construction Contract Price or the Construction Contract Times, or other revision to the Construction Contract, issued on or after the effective date of the Construction Contract.
 7. *Change Proposal*—A written request by Contractor, duly submitted in compliance with the procedural requirements set forth in the Construction Contract, seeking an adjustment in Construction Contract Price or Construction Contract Times, or both; contesting an initial decision by Engineer concerning the requirements of the Construction Contract Documents or the acceptability of Work under the Construction

Contract Documents; challenging a set-off against payments due; or seeking other relief with respect to the terms of the Construction Contract.

8. *Constituent of Concern*—Asbestos, petroleum, radioactive material, polychlorinated biphenyls (PCBs), hazardous waste, and any substance, product, waste, or other material of any nature whatsoever that is or becomes listed, regulated, or addressed pursuant to (a) the Comprehensive Environmental Response, Compensation and Liability Act, 42 U.S.C. §§9601 et seq. (“CERCLA”); (b) the Hazardous Materials Transportation Act, 49 U.S.C. §§5501 et seq.; (c) the Resource Conservation and Recovery Act, 42 U.S.C. §§6901 et seq. (“RCRA”); (d) the Toxic Substances Control Act, 15 U.S.C. §§2601 et seq.; (e) the Clean Water Act, 33 U.S.C. §§1251 et seq.; (f) the Clean Air Act, 42 U.S.C. §§7401 et seq.; or (g) any other federal, State, or local statute, law, rule, regulation, ordinance, resolution, code, order, or decree regulating, relating to, or imposing liability or standards of conduct concerning, any hazardous, toxic, or dangerous waste, substance, or material.
9. *Construction Contract*—The entire and integrated written contract between the Owner and Contractor concerning the Work.
10. *Construction Contract Documents*—Those items designated as “Contract Documents” in the Construction Contract, and which together comprise the Construction Contract.
11. *Construction Contract Price*—The money that Owner has agreed to pay Contractor for completion of the Work in accordance with the Construction Contract Documents.
12. *Construction Contract Times*—The number of days or the dates by which Contractor shall: (a) achieve milestones, if any, in the Construction Contract; (b) achieve Substantial Completion; and (c) complete the Work.
13. *Construction Cost*—The cost to Owner of the construction of those portions of the entire Project designed or specified by or for Engineer under this Agreement, including construction labor, services, materials, equipment, insurance, and bonding costs, and allowances for contingencies. Construction Cost does not include costs of services of Engineer or other design professionals and consultants; cost of land or rights-of-way, or compensation for damages to property; Owner’s costs for legal, accounting, insurance counseling, or auditing services; interest or financing charges incurred in connection with the Project; or the cost of other services to be provided by others to Owner. Construction Cost is one of the items comprising Total Project Costs.
14. *Constructor*—Any person or entity (not including the Engineer, its employees, agents, representatives, and Consultants), performing or supporting construction activities relating to the Project, including but not limited to Contractors, Subcontractors, Suppliers, Owner’s work forces, utility companies, other contractors, construction managers, testing firms, shippers, and truckers, and the employees, agents, and representatives of any or all of them.
15. *Consultants*—Individuals or entities having a contract with Engineer to furnish services with respect to this Project as Engineer’s independent professional associates and consultants; subcontractors; or vendors.

16. *Contractor*—The entity or individual with which Owner enters into a Construction Contract.
17. *Documents*—Data, reports, Drawings, Specifications, Record Drawings, building information models, civil integrated management models, and other deliverables, whether in printed or electronic format, provided or furnished in appropriate phases by Engineer to Owner pursuant to this Agreement.
18. *Drawings*—That part of the Construction Contract Documents that graphically shows the scope, extent, and character of the Work to be performed by Contractor.
19. *Effective Date*—The date indicated in this Agreement on which it becomes effective, but if no such date is indicated, the date on which this Agreement is signed and delivered by the last of the parties to sign and deliver.
20. *Engineer*—The individual or entity named as such in this Agreement.
21. *Field Order*—A written order issued by Engineer which requires minor changes in the Work but does not change the Construction Contract Price or the Construction Contract Times.
22. *Laws and Regulations; Laws or Regulations*—Any and all applicable laws, statutes, rules, regulations, ordinances, codes, and orders of any and all governmental bodies, agencies, authorities, and courts having jurisdiction.
23. *Owner*—The individual or entity named as such in this Agreement and for which Engineer's services are to be performed. Unless indicated otherwise, this is the same individual or entity that will enter into any Construction Contracts concerning the Project.
24. *Project*—The total undertaking to be accomplished for Owner by engineers, contractors, and others, including planning, study, design, construction, testing, commissioning, and start-up, and of which the services to be performed or furnished by Engineer under this Agreement are a part.
25. *Record Drawings*—Drawings depicting the completed Project, or a specific portion of the completed Project, prepared by Engineer and based on Contractor's record copy of all Drawings, Specifications, Addenda, Change Orders, Work Change Directives, Field Orders, and written interpretations and clarifications, as delivered to Engineer and annotated by Contractor to show changes made during construction.
26. *Reimbursable Expenses*—The expenses incurred directly by Engineer in connection with the performing or furnishing of Basic Services and Additional Services for the Project.
27. *Resident Project Representative*—The authorized representative of Engineer assigned to assist Engineer at the Site during the Construction Phase. As used herein, the term Resident Project Representative or "RPR" includes any assistants or field staff of Resident Project Representative. The duties and responsibilities of the Resident Project Representative, if any, are as set forth in Exhibit D.

28. *Samples*—Physical examples of materials, equipment, or workmanship that are representative of some portion of the Work and that establish the standards by which such portion of the Work will be judged.
29. *Shop Drawings*—All drawings, diagrams, illustrations, schedules, and other data or information that are specifically prepared or assembled by or for Contractor and submitted by Contractor to illustrate some portion of the Work. Shop Drawings, whether approved or not, are not Drawings and are not Construction Contract Documents.
30. *Site*—Lands or areas to be indicated in the Construction Contract Documents as being furnished by Owner upon which the Work is to be performed, including rights-of-way and easements, and such other lands furnished by Owner which are designated for the use of Contractor.
31. *Specifications*—The part of the Construction Contract Documents that consists of written requirements for materials, equipment, systems, standards, and workmanship as applied to the Work, and certain administrative requirements and procedural matters applicable to the Work.
32. *Subcontractor*—An individual or entity having a direct contract with Contractor or with any other Subcontractor for the performance of a part of the Work.
33. *Substantial Completion*—The time at which the Work (or a specified part thereof) has progressed to the point where, in the opinion of Engineer, the Work (or a specified part thereof) is sufficiently complete, in accordance with the Construction Contract Documents, so that the Work (or a specified part thereof) can be utilized for the purposes for which it is intended. The terms “substantially complete” and “substantially completed” as applied to all or part of the Work refer to Substantial Completion thereof.
34. *Supplier*—A manufacturer, fabricator, supplier, distributor, materialman, or vendor having a direct contract with Contractor or with any Subcontractor to furnish materials or equipment to be incorporated in the Work by Contractor or a Subcontractor.
35. *Total Project Costs*—The total cost of planning, studying, designing, constructing, testing, commissioning, and start-up of the Project, including Construction Cost and all other Project labor, services, materials, equipment, insurance, and bonding costs, allowances for contingencies, and the total costs of services of Engineer or other design professionals and consultants, together with such other Project-related costs that Owner furnishes for inclusion, including but not limited to cost of land, rights-of-way, compensation for damages to properties, Owner’s costs for legal, accounting, insurance counseling, and auditing services, interest and financing charges incurred in connection with the Project, and the cost of other services to be provided by others to Owner.
36. *Work*—The entire construction or the various separately identifiable parts thereof required to be provided under the Construction Contract Documents. Work includes and is the result of performing or providing all labor, services, and documentation

necessary to produce such construction; furnishing, installing, and incorporating all materials and equipment into such construction; and may include related services such as testing, start-up, and commissioning, all as required by the Construction Contract Documents.

37. *Work Change Directive*—A written directive to Contractor issued on or after the effective date of the Construction Contract, signed by Owner and recommended by Engineer, ordering an addition, deletion, or revision in the Work.

38. *Agency* – The Rural Utilities Service or any designated representative of Rural Utilities Service, including USDA, Rural Development.

B. *Day*:

1. The word “day” means a calendar day of 24 hours measured from midnight to the next midnight.

ARTICLE 8 – EXHIBITS AND SPECIAL PROVISIONS

8.01 Exhibits Included:

- A. Exhibit A, Engineer’s Services.
- B. Exhibit B, Owner’s Responsibilities.
- C. Exhibit C.1, Compensation Packet BC-2: Basic Services and Additional Services - Standard Hourly Rates
- D. Exhibit C.2, Compensation Packet RPR-2: Resident Project representative - Standard Hourly Rates
- E. Exhibit D, Duties, Responsibilities and Limitations of Authority of Resident Project Representative.
- F. Exhibit E, Notice of Acceptability of Work.
- G. Exhibit F, Construction Cost Limit.
- H. Exhibit G, Insurance.
- I. Exhibit H, Dispute Resolution.
- J. Exhibit I, Limitations of Liability.
- K. Exhibit J, Special Provisions.
- L. Exhibit K, Amendment to Owner-Engineer Agreement.
- M. Exhibit L, Engineer Agreement Certification

8.02 *Total Agreement*

- A. This Agreement, (together with the exhibits included above) constitutes the entire agreement between Owner and Engineer and supersedes all prior written or oral understandings. This Agreement may only be amended, supplemented, modified, or canceled by a written instrument duly executed by both parties. Amendments should be based whenever possible on the format of Exhibit K to this Agreement.

8.03 *Designated Representatives*

- A. With the execution of this Agreement, Engineer and Owner shall designate specific individuals to act as Engineer's and Owner's representatives with respect to the services to be performed or furnished by Engineer and responsibilities of Owner under this Agreement. Such an individual shall have authority to transmit instructions, receive information, and render decisions relative to this Agreement on behalf of the respective party whom the individual represents.

8.04 *Engineer's Certifications*

- A. Engineer certifies that it has not engaged in corrupt, fraudulent, or coercive practices in competing for or in executing the Agreement. For the purposes of this Paragraph 8.04:
 - 1. "corrupt practice" means the offering, giving, receiving, or soliciting of any thing of value likely to influence the action of a public official in the selection process or in the Agreement execution;
 - 2. "fraudulent practice" means an intentional misrepresentation of facts made (a) to influence the selection process or the execution of the Agreement to the detriment of Owner, or (b) to deprive Owner of the benefits of free and open competition;
 - 3. "coercive practice" means harming or threatening to harm, directly or indirectly, persons or their property to influence their participation in the selection process or affect the execution of the Agreement.

8.05 *Federal Requirements*

- A. Agency Concurrence. Signature of a duly authorized representative of the Agency in the space provided on the signature page of EJCDC form E-500 hereof does not constitute a commitment to provide financial assistance or payments hereunder but does signify that this Agreement conforms to Agency's applicable requirements. This Agreement shall not be effective unless the Funding Agency's designated representative concurs. No amendment to this Agreement shall be effective unless the Funding Agency's designated representative concurs.
- B. Audit and Access to Records. Owner, Agency, the Comptroller General of the United States, or any of their duly authorized representatives, shall have access to any books, documents, papers, and records of the Engineer which are pertinent to the Agreement, for the purpose of making audits, examinations, excerpts, and transcriptions. Engineer shall maintain all required records for three years after final payment is made and all other pending matters are RUS Bulletin 1780-26 Exhibit C, Attachment 1 Page 2.

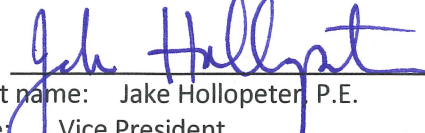
- C. Restrictions on Lobbying. Engineer and each Consultant shall comply with “Restrictions on Lobbying” if they are recipients of engineering services contracts and subcontracts that exceed \$100,000 at any tier. If applicable, Engineer must complete a certification form on lobbying activities related to a specific Federal loan or grant that is a funding source for this Agreement. Each tier certifies to the tier above that it will not and has not used Federal appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of any agency, a member of Congress, or an employee of a member of Congress in connection with obtaining any Federal contract, grant, or any other applicable award. Each tier shall disclose any lobbying with non-Federal funds that takes place in connection with obtaining any Federal award. Certifications and disclosures are forwarded from tier to tier up to the Owner. Necessary certification and disclosure forms shall be provided by Owner.
- D. Suspension and Debarment. Engineer certifies, by signing this Agreement, that neither it nor its principals are presently debarred, suspended, proposed for debarment, declared ineligible or voluntarily excluded from participation in this transaction by any Federal department or agency. Engineer will not contract with any Consultant for this project if it or its principals is presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by any Federal department or agency. Necessary certification forms shall be provided by the Owner. The Engineer will complete and submit a form AD-1048, “Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion – lower tier transactions,” to the Owner who will forward it the USDA, Rural Development processing office.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement, the Effective Date of which is indicated on page 1.

Owner: City of White Salmon, Washington

By: _____
Print name: Marla Keethler
Title: Mayor
Date Signed: _____

Engineer: Anderson Perry & Associates, Inc.

By:  _____
Print name: Jake Hollopeter, P.E.
Title: Vice President
Date Signed: March 23, 2022

Engineer License or Firm's Certificate No. (if required):
34274
State of: Washington

Address for Owner's receipt of notices:
P.O. Box 2139
100 N. Main Street
White Salmon, WA 98672

Address for Engineer's receipt of notices:
P.O. Box 1687
214 E. Birch Street, Suite 1
Walla Walla, WA 99362

Designated Representative (Paragraph 8.03.A):
Jan Brending
Title: City Clerk-Treasurer
Phone Number: (509) 493-1133, ext 205
E-Mail Address: janb@ci.white-salmon.wa.us

Designated Representative (Paragraph 8.03.A):
Bill Vixie, P.E.
Title: Project Engineer
Phone Number: (509) 529-9260
E-Mail Address: bvixie@andersonperry.com

This is **EXHIBIT A**, consisting of 13 pages, referred to in and part of the **Agreement between Owner and Engineer for Professional Services** dated April 6, 2022.

Engineer's Services

Article 1 of the Agreement is supplemented to include the following agreement of the parties.

Engineer shall provide Basic and Additional Services as set forth below.

PART 1 – BASIC SERVICES

A1.01 Study and Report Phase

- A. Engineer shall not provide any services under this phase. Services provided by previous contract.

A1.02 Preliminary Design Phase

- A. Engineer shall not provide any services under this phase. Services provided by previous contract.

A1.03 Final Design Phase

- A. Engineer shall not provide any services under this phase. Services provided by previous contract. These services included providing the Owner and Agency with a written certification that the final Drawings and Specifications, other assembled construction Contract Documents, bidding-related documents (or requests for proposals or other construction procurement documents), and any other Final Design Phase deliverables comply with all requirements of Agency.
- B. Services required to determine and certify that to the best of the Engineer's knowledge and belief all iron and steel products referenced in engineering analysis, the Plans, Specifications, and Bidding Documents requiring design revisions are either produced in the United States or are the subject of an approved waiver; and services required to determine to the best of the engineer's knowledge and belief that approved substitutes, equals, and all iron and steel products proposed in the Plans, Specifications, and Bidding Documents are either produced in the United States or are the subject of an approved waiver under AIS.

A1.04 Bidding or Negotiating Phase

- A. After acceptance by Owner, Washington State Department of Health, Washington State Department of Natural Resources, and Agency of the final Drawings and Specifications, other Construction Contract Documents, bidding-related documents (or requests for proposals or other construction procurement documents), and the most recent opinion of probable Construction Cost as determined in the Final Design Phase, and upon written authorization by Owner to proceed, Engineer shall:
 - 1. Assist Owner in advertising for and obtaining bids or proposals for the Work, assist Owner in issuing assembled design, contract, and bidding-related documents (or

Exhibit A – Engineer's Services

requests for proposals or other construction procurement documents) to prospective contractors, and, where applicable, maintain a record of prospective contractors to which documents have been issued, attend pre-bid conferences, if any, and receive and process contractor deposits or charges for the issued documents.

2. Prepare and issue Addenda as appropriate to clarify, correct, or change the issued documents. Obtain Agency concurrence on any Addenda that modify the Bidding Documents. Obtain prior concurrence where possible.
3. Provide information or assistance needed by Owner in the course of any review of proposals or negotiations with prospective contractors.
4. Consult with Owner as to the qualifications of prospective contractors.
5. Consult with Owner as to the qualifications of Subcontractors, suppliers, and other individuals and entities proposed by prospective contractors, for those portions of the Work as to which review of qualifications is required by the issued documents.
6. The Engineer shall evaluate and determine the acceptability of “or equals” and substitute materials and equipment proposed by prospective contractors prior to award of contracts for the Work. Engineer shall issue a bid addendum for any and all approved “or equals” and substitutes. Review of substitutes and “or equals” shall be in accordance with the General Conditions of the Construction Contract and applicable Agency regulations. Services under this paragraph are subject to the provisions of Paragraph A2.02.A.2 of this Exhibit A. Services required to determine and certify that to the best of the Engineer’s knowledge and belief all iron and steel products referenced in Bid Addenda requiring design revisions are either produced in the United States or are the subject of an approved waiver.
7. Attend the bid opening, prepare bid tabulation sheets to meet Owner’s schedule, and assist Owner in evaluating bids or proposals, assembling final contracts for the Work for execution by Owner and Contractor, and in issuing notices of award of such contracts.
8. If Owner engages in negotiations with bidders or proposers, assist Owner with respect to technical and engineering issues that arise during the negotiations.
9. Perform or provide the following other Bidding or Negotiating Phase tasks or deliverables:
 - a. Engineer will make copies of the Bidding Documents and any Addenda available to prospective bidders, materials suppliers, and other interested parties through a third-party administrator. The third-party administrator will charge for such services from the requesting parties. Engineer receives no compensation from the third-party administrator.
 - b. Conduct a pre-Bid conference, if any, at the project site and record the discussion and direction given to attendees.

- c. Upon award of the Construction Contract, the Engineer shall furnish to Owner five executed copies of the Contract Documents and one electronic copy of the signed documents, including Drawings and Specifications.
- d. Provide copies of Manufacturers' Certifications to the Bidders on any brand name iron and steel products specified as sole-source in the Plans, Specifications and Bidding Documents. Manufacturers' Certifications are to be included in the Bidding Documents and must be kept in the Engineer's project file and on-site during construction.
- e. Provide copies of Manufacturers' Certifications to the Contractor on any brand name iron and steel products specified as sole-source in the Plans, Specifications, Bidding Documents including any Bid Addenda and Change Orders. Manufacturers' Certifications must be kept in the Engineer's project file and on-site during construction. The Bidding or Negotiating Phase will be considered complete upon commencement of the Construction Phase or upon cessation of negotiations with prospective contractors (except as may be required if Exhibit F is a part of this Agreement).

A1.05 Construction Phase

- A. Upon successful completion of the Bidding and Negotiating Phase, and upon written authorization from Owner, Engineer shall:
 - 1. *General Administration of Construction Contract:* Consult with Owner and act as Owner's representative as provided in the Construction Contract. The extent and limitations of the duties, responsibilities, and authority of Engineer shall be as assigned in EJCDC® C-700, Standard General Conditions of the Construction Contract (2018 Edition), prepared by the Engineers Joint Contract Documents Committee, or other construction general conditions specified in this Agreement. If Owner, or Owner and Contractor, modify the duties, responsibilities, and authority of Engineer in the Construction Contract, or modify other terms of the Construction Contract having a direct bearing on Engineer, then Owner shall compensate Engineer for any related increases in the cost to provide Construction Phase services. Engineer shall not be required to furnish or perform services contrary to Engineer's responsibilities as a licensed professional. All of Owner's instructions to Contractor will be issued through Engineer, which shall have authority to act on behalf of Owner in dealings with Contractor to the extent provided in this Agreement and the Construction Contract except as otherwise provided in writing.
 - 2. *Resident Project Representative (RPR):* Provide the services of an RPR at the Site to assist the Engineer and to provide more extensive observation of Contractor's work. Duties, responsibilities, and authority of the RPR are as set forth in Exhibit D. The furnishing of such RPR's services will not limit, extend, or modify Engineer's responsibilities or authority except as expressly set forth in Exhibit D.
 - 3. *Selection and Utilization of Independent Testing Laboratory:* Select and utilize an independent testing laboratory and services to provide quality control testing of the backfill materials, compaction of the backfill materials, and cement concrete. Assist

Owner in the selection of an independent testing laboratory to perform the services identified in Exhibit B, Paragraph B2.01.

4. *Pre-Construction Conference:* Participate in and chair a pre-construction conference prior to commencement of Work at the Site.
5. *Electronic Transmittal Protocols:* If the Construction Contract Documents do not specify protocols for the transmittal of Project-related correspondence, documents, text, data, drawings, information, and graphics, in electronic media or digital format, either directly, or through access to a secure Project website, then together with Owner and Contractor jointly develop such protocols for transmittals between and among Owner, Contractor, and Engineer during the Construction Phase and Post-Construction Phase.
6. *Original Documents:* Maintain and safeguard during the Construction Phase at least one original printed record version of the Construction Contract Documents, including Drawings and Specifications signed and sealed by Engineer and other design professionals in accordance with applicable Laws and Regulations. Throughout the Construction Phase, make such original printed record version of the Construction Contract Documents available to Contractor and Owner for review.
7. *Schedules:* Receive, review, and determine the acceptability of any and all schedules that Contractor is required to submit to Engineer, including the Progress Schedule, Schedule of Submittals, and Schedule of Values.
8. *Baselines and Benchmarks:* As appropriate, establish baselines and benchmarks for locating the Work which in Engineer's judgment are necessary to enable Contractor to proceed.
9. *Visits to Site and Observation of Construction:* In connection with observations of Contractor's Work while it is in progress:
 - a. Make visits to the Site at intervals appropriate to the various stages of construction, as Engineer deems necessary, to observe as an experienced and qualified design professional the progress of Contractor's executed Work. Such visits and observations by Engineer, and the Resident Project Representative, if any, are not intended to be exhaustive or to extend to every aspect of the Work or to involve detailed inspections of the Work beyond the responsibilities specifically assigned to Engineer in this Agreement and the Construction Contract Documents, but rather are to be limited to spot checking, selective sampling, and similar methods of general observation of the Work based on Engineer's exercise of professional judgment, as assisted by the Resident Project Representative, if any. Based on information obtained during such visits and observations, Engineer will determine in general if the Work is proceeding in accordance with the Construction Contract Documents, and Engineer shall keep Owner informed of the progress of the Work.
 - b. The purpose of Engineer's visits to the Site, and representation by the Resident Project Representative, if any, at the Site, will be to enable Engineer to better carry out the duties and responsibilities assigned to and undertaken by Engineer during the Construction Phase, and, in addition, by the exercise of Engineer's efforts as an experienced and qualified design professional, to provide for Owner a greater

degree of confidence that the completed Work will conform in general to the Construction Contract Documents and that Contractor has implemented and maintained the integrity of the design concept of the completed Project as a functioning whole as indicated in the Construction Contract Documents. Engineer shall not, during such visits or as a result of such observations of the Work, supervise, direct, or have control over the Work, nor shall Engineer have authority over or responsibility for the means, methods, techniques, sequences, or procedures of construction selected or used by any Constructor, for security or safety at the Site, for safety precautions and programs incident to any Constructor's work in progress, for the coordination of the Constructors' work or schedules, nor for any failure of any Constructor to comply with Laws and Regulations applicable to furnishing and performing of its work. Accordingly, Engineer neither guarantees the performance of any Constructor nor assumes responsibility for any Constructor's failure to furnish or perform the Work, or any portion of the Work, in accordance with the Construction Contract Documents.

- c. The visits described in Article A1.05.A.9.a shall be at least monthly and the Engineer shall document all visits to the project with copies furnished to the Owner and Agency.
10. *Defective Work:* Reject Work if, on the basis of Engineer's observations, Engineer believes that such Work is defective under the terms and standards set forth in the Construction Contract Documents. Provide recommendations to Owner regarding whether Contractor should correct such Work or remove and replace such Work, or whether Owner should consider accepting such Work as provided in the Construction Contract Documents.
11. *Compatibility with Design Concept:* If Engineer has express knowledge that a specific part of the Work that is not defective under the terms and standards set forth in the Construction Contract Documents is nonetheless not compatible with the design concept of the completed Project as a functioning whole, then inform Owner of such incompatibility, and provide recommendations for addressing such Work.
12. *Clarifications and Interpretations:* Accept from Contractor and Owner submittal of all matters in question concerning the requirements of the Construction Contract Documents (sometimes referred to as requests for information or interpretation—RFIs), or relating to the acceptability of the Work under the Construction Contract Documents. With reasonable promptness, render a written clarification, interpretation, or decision on the issue submitted, or initiate an amendment or supplement to the Construction Contract Documents.
13. *Non-reviewable Matters:* If a submitted matter in question concerns the Engineer's performance of its duties and obligations, or terms and conditions of the Construction Contract Documents that do not involve (1) the performance or acceptability of the Work under the Construction Contract Documents, (2) the design (as set forth in the Drawings, Specifications, or otherwise), or (3) other engineering or technical matters, then Engineer will promptly give written notice to Owner and Contractor that Engineer will not provide a decision or interpretation.

14. *Field Orders:* Subject to any limitations in the Construction Contract Documents, Engineer may prepare and issue Field Orders requiring minor changes in the Work.
15. *Change Orders and Work Change Directives:* Recommend Change Orders and Work Change Directives to Owner, as appropriate, and prepare Change Orders and Work Change Directives as required.
16. *Differing Site Conditions:* Respond to any notice from Contractor of differing site conditions, including conditions relating to underground facilities such as utilities, and hazardous environmental conditions. Promptly conduct reviews and prepare findings, conclusions, and recommendations for Owner's use.
17. *Shop Drawings, Samples, and Other Submittals:* Review and approve or take other appropriate action with respect to Shop Drawings, Samples, and other required Contractor submittals, including Applications for Payment, to ensure compliance with AIS. Any iron and steel products included in any submittal by the General Contractor, must include a Manufacturers' Certification letter to verify the products were produced in the United States. Copies of Manufacturers' Certifications must be kept in the Engineer's project file and on-site during construction. In the event the Engineer requires an item to be sole-source, the Engineer must furnish the Manufacturers Certification to the Contractor for said item. Review and approve or take other appropriate action with respect to Shop Drawings, Samples, and other required Contractor submittals, but only for conformance with the information given in the Construction Contract Documents and compatibility with the design concept of the completed Project as a functioning whole as indicated by the Construction Contract Documents. Such reviews and approvals or other action will not extend to means, methods, techniques, sequences, or procedures of construction or to safety precautions and programs incident thereto. Engineer shall meet any Contractor's submittal schedule that Engineer has accepted.
18. *Substitutes and "Or-equal":* Evaluate and determine the acceptability of substitute or "or-equal" materials and equipment proposed by Contractor, but subject to the provisions of Paragraph A2.02.A.2 of this Exhibit A. Review of substitutes and "or equals" shall be in accordance with the General Conditions of the Contract and applicable Agency regulations. Prior to approval of any substitute "or equal" review Manufacturers' Certifications provided by the Contractor to verify the product(s) meet AIS requirements. Manufacturers' Certifications must be kept in the Engineer's project file and on-site during construction to ensure compliance with AIS.
19. *Inspections and Tests:*
 - a. Receive and review all certificates of inspections, tests, and approvals required by Laws and Regulations or the Construction Contract Documents. Engineer's review of such certificates will be for the purpose of determining that the results certified indicate compliance with the Construction Contract Documents and will not constitute an independent evaluation that the content or procedures of such inspections, tests, or approvals comply with the requirements of the Construction Contract Documents. Engineer shall be entitled to rely on the results of such inspections and tests.

- b. As deemed reasonably necessary, request that Contractor uncover Work that is to be inspected, tested, or approved.
 - c. Pursuant to the terms of the Construction Contract, require special inspections or testing of the Work, whether or not the Work is fabricated, installed, or completed.
 - d. Receive and review all Manufacturers' Certifications for materials required to comply with AIS. Manufacturers' Certifications must be kept in the Engineer's project file and on-site during construction.
20. *Change Proposals and Claims:* (a) Review and respond to Change Proposals. Review each duly submitted Change Proposal from Contractor and, within 30 days after receipt of the Contractor's supporting data, either deny the Change Proposal in whole, approve it in whole, or deny it in part and approve it in part. Such actions shall be in writing, with a copy provided to Owner and Contractor. If the Change Proposal does not involve the design (as set forth in the Drawings, Specifications, or otherwise), the acceptability of the Work, or other engineering or technical matters, then Engineer will notify the parties that the Engineer will not resolve the Change Proposal. (b) Provide information or data to Owner regarding engineering or technical matters pertaining to Claims. Review Change Proposals to ensure compliance with AIS.
21. *Applications for Payment:* Based on Engineer's observations as an experienced and qualified design professional and on review of Applications for Payment and accompanying supporting documentation:
- a. Determine the amounts that Engineer recommends Contractor be paid. Recommend reductions in payment (set-offs) based on the provisions for set-offs stated in the Construction Contract. Such recommendations of payment will be in writing and will constitute Engineer's representation to Owner, based on such observations and review, that, to the best of Engineer's knowledge, information and belief, Contractor's Work has progressed to the point indicated, the Work is generally in accordance with the Construction Contract Documents (subject to an evaluation of the Work as a functioning whole prior to or upon Substantial Completion, to the results of any subsequent tests called for in the Construction Contract Documents, and to any other qualifications stated in the recommendation), and the conditions precedent to Contractor's being entitled to such payment appear to have been fulfilled in so far as it is Engineer's responsibility to observe the Work. In the case of unit price Work, Engineer's recommendations of payment will include final determinations of quantities and classifications of the Work (subject to any subsequent adjustments allowed by the Construction Contract Documents).
 - b. By recommending payment, Engineer shall not thereby be deemed to have represented that observations made by Engineer to check the quality or quantity of Contractor's Work as it is performed and furnished have been exhaustive, extended to every aspect of Contractor's Work in progress, or involved detailed inspections of the Work beyond the responsibilities specifically assigned to Engineer in this Agreement. Neither Engineer's review of Contractor's Work for the purposes of recommending payments nor Engineer's recommendation of any payment including final payment will impose on Engineer responsibility to supervise, direct,

or control the Work, or for the means, methods, techniques, sequences, or procedures of construction or safety precautions or programs incident thereto, or Contractor's compliance with Laws and Regulations applicable to Contractor's furnishing and performing the Work. It will also not impose responsibility on Engineer to make any examination to ascertain how or for what purposes Contractor has used the money paid to Contractor by Owner; to determine that title to any portion of the Work, including materials or equipment, has passed to Owner free and clear of any liens, claims, security interests, or encumbrances; or that there may not be other matters at issue between Owner and Contractor that might affect the amount that should be paid.

22. *Contractor's Completion Documents:* Receive from Contractor, review, and transmit to Owner maintenance and operating instructions, schedules, guarantees, bonds, certificates or other evidence of insurance required by the Construction Contract Documents, certificates of inspection, tests and approvals, and Shop Drawings, Samples, and other data approved as provided under Paragraph A1.05.A.17. Receive from Contractor and review the annotated record documents which are to be assembled by Contractor in accordance with the construction Contract Documents to obtain final payment. The Engineer shall prepare Record Drawings and furnish such Record Drawings to Owner.
23. *Substantial Completion:* Promptly after notice from Contractor that Contractor considers the entire Work ready for its intended use, in company with Owner and Contractor, visit the Site to review the Work and determine the status of completion. Follow the procedures in the Construction Contract regarding the preliminary certificate of Substantial Completion, punch list of items to be completed, Owner's objections, notice to Contractor, and issuance of a final certificate of Substantial Completion. Assist Owner regarding any remaining engineering or technical matters affecting Owner's use or occupancy of the Work following Substantial Completion.
24. *Other Tasks:* Perform or provide the following other Construction Phase tasks or deliverables:
 - a. Upon Substantial Completion, the Engineer shall provide a copy of the Certificate of Substantial Completion to the Agency.
25. *Final Notice of Acceptability of the Work:* Conduct a final visit to the Project to determine if the Work is complete and acceptable so that Engineer may recommend, in writing, final payment to Contractor. Accompanying the recommendation for final payment, Engineer shall also provide a notice to Owner and Contractor in the form attached hereto as Exhibit E ("Notice of Acceptability of Work") that the Work is acceptable (subject to the provisions of the Notice and Paragraph A1.05.A.21.b) to the best of Engineer's knowledge, information, and belief, and based on the extent of the services provided by Engineer under this Agreement.
 - a. Obtain the Contractors' Certification letter and copies of Manufacturers' Certifications from the Contractor for all American Iron and Steel products used in the project. Upon Substantial Completion, provide copies of Contractors' and Manufacturers' Certifications to the Owner and a copy of Contractor's Certification to the Agency.

- B. *Standards for Certain Construction-Phase Decisions:* Engineer will render decisions regarding the requirements of the Construction Contract Documents, and judge the acceptability of the Work, pursuant to the specific procedures set forth in the Construction Contract for initial interpretations, Change Proposals, and acceptance of the Work. In rendering such decisions and judgments, Engineer will not show partiality to Owner or Contractor, and will not be liable to Owner, Contractor, or others in connection with any proceedings, interpretations, decisions, or judgments conducted or rendered in good faith. *Duration of Construction Phase:* The Construction Phase will commence with the execution of the first Construction Contract for the Project or any part thereof and will terminate upon written recommendation by Engineer for final payment to Contractors. If the Project involves more than one prime contract as indicated in Paragraph A1.03.D, then Construction Phase services may be rendered at different times in respect to the separate contracts. Subject to the provisions of Article 3, Engineer shall be entitled to an equitable increase in compensation if Construction Phase services (including Resident Project Representative services, if any) are required after the original date for completion and readiness for final payment of Contractor as set forth in the Construction Contract.

A1.06 *Post-Construction Phase*

- A. Upon written authorization from Owner during the Post-Construction Phase, Engineer shall:
1. Together with Owner, visit the Project to observe any apparent defects in the Work, make recommendations as to replacement or correction of defective Work, if any, or the need to repair of any damage to the Site or adjacent areas, and assist Owner in consultations and discussions with Contractor concerning correction of any such defective Work and any needed repairs.
 2. Together with Owner, visit the Project within one month before the end of the Construction Contract's correction period to ascertain whether any portion of the Work or the repair of any damage to the Site or adjacent areas is defective and therefore subject to correction by Contractor.
 3. Perform or provide the following other Post-Construction Phase tasks or deliverables:
 - a. Provide the required documentation to the Washington State Department of Health that the project was completed in accordance with the Drawings and Specifications.
- B. The Post-Construction Phase services may commence during the Construction Phase and, if not otherwise modified in this Exhibit A, will terminate twelve months after the commencement of the Construction Contract's correction period.

PART 2 – ADDITIONAL SERVICES

A2.01 *Additional Services Requiring Owner's Written Authorization*

- A. If authorized in writing by Owner, Engineer shall provide Additional Services of the types listed below. These services are not included as part of Basic Services and will be paid for by Owner as indicated in Exhibit C.

1. Preparation of applications and supporting documents (in addition to those furnished under Basic Services) for private or governmental grants, loans, or advances in connection with the Project; preparation or review of environmental assessments and impact statements; review and evaluation of the effects on the design requirements for the Project of any such statements and documents prepared by others; and assistance in obtaining approvals of authorities having jurisdiction over the anticipated environmental impact of the Project.
2. Services to make measured drawings of existing conditions or facilities, to conduct tests or investigations of existing conditions or facilities, or to verify the accuracy of drawings or other information furnished by Owner or others.
3. Services resulting from significant changes in the scope, extent, or character of the portions of the Project designed or specified by Engineer, or the Project's design requirements, including, but not limited to, changes in size, complexity, Owner's schedule, character of construction, or method of financing; and revising previously accepted studies, reports, Drawings, Specifications, or Construction Contract Documents when such revisions are required by changes in Laws and Regulations enacted subsequent to the Effective Date or are due to any other causes beyond Engineer's control.
4. Services resulting from Owner's request to evaluate additional Study and Report Phase alternative solutions beyond those described in the Transmission Main Replacement Project Phase I Preliminary Engineering Report
5. Services required as a result of Owner's providing incomplete or incorrect Project information to Engineer.
6. Deleted.
7. Undertaking investigations and studies including, but not limited to:
 - a. detailed consideration of operations, maintenance, and overhead expenses;
 - b. the preparation of feasibility studies (such as those that include projections of output capacity, utility project rates, project market demand, or project revenues) and cash flow analyses, provided that such services are based on the engineering and technical aspects of the Project, and do not include rendering advice regarding municipal financial products or the issuance of municipal securities;
 - c. preparation of appraisals;
 - d. evaluating processes available for licensing, and assisting Owner in obtaining process licensing;
 - e. detailed quantity surveys of materials, equipment, and labor; and
 - f. audits or inventories required in connection with construction performed or furnished by Owner.

8. Furnishing services of Consultants for other than Basic Services.
9. Providing data or services of the types described in Exhibit B, when Owner retains Engineer to provide such data or services instead of Owner furnishing the same.
10. Providing the following services:
 - a. Services attributable to more bid openings, or prime construction contracts than specified in Paragraph A1.03.D.
 - b. Services to arrange for performance of construction services for Owner by contractors other than the principal prime Contractor, and administering Owner's contract for such services.
11. Services during out-of-town travel required of Engineer, other than for visits to the Site or Owner's office as required in Basic Services (Part 1 of Exhibit A).
12. Preparing for, coordinating with, participating in and responding to structured independent review processes, including, but not limited to, construction management, cost estimating, project peer review, value engineering, and constructibility review requested by Owner; and performing or furnishing services required to revise studies, reports, Drawings, Specifications, or other documents as a result of such review processes.
13. Preparing additional bidding-related documents (or requests for proposals or other construction procurement documents) or Construction Contract Documents for alternate bids or cost estimates requested by Owner for the Work or a portion thereof.
14. Assistance in connection with bid protests, rebidding, or renegotiating contracts for construction, materials, equipment, or services, except when such assistance is required to complete services required by Paragraph 5.02.A and Exhibit F.
15. Provide Construction Contract Documents that include the content of all Addenda and any amendments negotiated by Owner and Contractor.
16. Providing Construction Phase services beyond the original date for completion and readiness for final payment of Contractor, but only if such services increase the total quantity of services to be performed in the Construction Phase, rather than merely shifting performance of such services to a later date.
17. Deleted.
18. Supplementing Record Drawings with information regarding the completed Project, Site, and immediately adjacent areas obtained from field observations, Owner, utility companies, and other reliable sources.
19. Conducting surveys, investigations, and field measurements to verify the accuracy of Record Drawing content obtained from Contractor, Owner, utility companies, and other sources; revise and supplement Record Drawings as needed.

Exhibit A – Engineer's Services

EJCDC® E-500, Agreement Between Owner and Engineer for Professional Services.

20. Review and comment on operation, maintenance, and staffing manuals prepared by Contractor.
21. Protracted or extensive assistance in refining and adjusting of Project equipment and systems (such as initial startup, testing, and balancing).
22. Assistance to Owner in training Owner's staff to operate and maintain Project equipment and systems.
23. Assistance to Owner in developing systems and procedures for (a) control of the operation and maintenance of Project equipment and systems, and (b) related recordkeeping.
24. Preparing to serve or serving as a consultant or witness for Owner in any litigation, arbitration, lien or bond claim, or other legal or administrative proceeding involving the Project.
25. Overtime work requiring higher than regular rates.
26. Providing construction surveys and staking to enable Contractor to perform its work other than as required under Paragraph A1.05.A.8; any type of property surveys or related engineering services needed for the transfer of interests in real property; and providing other special field surveys.
27. Providing more extensive services required to enable Engineer to issue notices or certifications requested by Owner.
28. Extensive services required during any correction period, or with respect to monitoring Contractor's compliance with warranties and guarantees called for in the Construction Contract (except as agreed to under Basic Services).
29. Redesigns ordered or requested by Owner after final plans have been accepted by the Owner and Agency.
30. Other additional services performed or furnished by Engineer not otherwise provided for in this Agreement.

A2.02 *Additional Services Not Requiring Owner's Written Authorization*

- A. Engineer shall advise Owner that Engineer is commencing to perform or furnish the Additional Services of the types listed below. For such Additional Services, Engineer need not request or obtain specific advance written authorization from Owner. Engineer shall cease performing or furnishing such Additional Services upon receipt of written notice to cease from Owner.
 1. Services in connection with Work Change Directives and Change Orders to reflect changes requested by Owner.
 2. Services in making revisions to Drawings and Specifications occasioned by the acceptance of substitute materials or equipment other than "or equal" items; evaluation

and determination of an excessive number of proposed "or equals" or substitutions, whether proposed before or after award of the Construction Contract.

3. Services resulting from significant delays, changes, or price increases occurring as a direct or indirect result of materials, equipment, or energy shortages.
4. Additional or extended services arising from (a) the presence at the Site of any Constituent of Concern or items of historical or cultural significance, (b) emergencies or acts of God endangering the Work, (c) damage to the Work by fire or other causes during construction, (d) a significant amount of defective, neglected, or delayed Work, (e) acceleration of the progress schedule involving services beyond normal working hours, (f) default by Contractor, or (g) pandemic mandates or restrictions.
5. Services (other than Basic Services during the Post-Construction Phase) in connection with any partial utilization of the Work by Owner prior to Substantial Completion.
6. Evaluating unreasonable or frivolous requests for interpretation or information (RFIs), Change Proposals, or other demands from Contractor or others in connection with the Work, or an excessive number of RFIs, Change Proposals, or demands.
7. Reviewing a Shop Drawing or other Contractor submittal more than three times, as a result of repeated inadequate submissions by Contractor.
8. While at the Site, compliance by Engineer and its staff with those terms of Owner's or Contractor's safety program provided to Engineer subsequent to the Effective Date that exceed those normally required of engineering personnel by federal, State, or local safety authorities for similar construction sites.

This is **EXHIBIT B**, consisting of 4 pages, referred to in and part of the **Agreement between Owner and Engineer for Professional Services** dated April 6, 2022.

Owner's Responsibilities

Article 2 of the Agreement is supplemented to include the following agreement of the parties.

B2.01 In addition to other responsibilities of Owner as set forth in this Agreement, Owner shall at its expense:

- A. Provide Engineer with all criteria and full information as to Owner's requirements for the Project, including design objectives and constraints, space, capacity and performance requirements, flexibility, and expandability, and any budgetary limitations.
- B. Give instructions to Engineer regarding Owner's procurement of construction services (including instructions regarding advertisements for bids, instructions to bidders, and requests for proposals, as applicable), Owner's construction contract practices and requirements, insurance and bonding requirements, electronic transmittals during construction, and other information necessary for the finalization of Owner's bidding-related documents (or requests for proposals or other construction procurement documents), and Construction Contract Documents. Furnish copies (or give specific directions requesting Engineer to use copies already in Engineer's possession) of all design and construction standards, Owner's standard forms, general conditions (if other than EJCDC® C-700, Standard General Conditions of the Construction Contract, 2018 Edition), supplementary conditions, text, and related documents and content for Engineer to include in the draft bidding-related documents (or requests for proposals or other construction procurement documents), and draft Construction Contract Documents, when applicable. Owner shall have responsibility for the final content of (1) such bidding-related documents (or requests for proposals or other construction procurement documents), and (2) those portions of any Construction Contract other than the design (as set forth in the Drawings, Specifications, or otherwise), and other engineering or technical matters; and Owner shall seek the advice of Owner's legal counsel, risk managers, and insurance advisors with respect to the drafting and content of such documents.
- C. Furnish to Engineer any other available information pertinent to the Project including reports and data relative to previous designs, construction, or investigation at or adjacent to the Site.
- D. Following Engineer's assessment of initially-available Project information and data and upon Engineer's request, obtain, furnish, or otherwise make available (if necessary through title searches, or retention of specialists or consultants) such additional Project-related information and data as is reasonably required to enable Engineer to complete its Basic and Additional Services. Such additional information or data would generally include the following:

1. Property descriptions.
 2. Zoning, deed, and other land use restrictions.
 3. Utility and topographic mapping and surveys.
 4. Property, boundary, easement, right-of-way, and other special surveys or data, including establishing relevant reference points.
 5. Explorations and tests of subsurface conditions at or adjacent to the Site; geotechnical reports and investigations; drawings of physical conditions relating to existing surface or subsurface structures at the Site; hydrographic surveys, laboratory tests and inspections of samples, materials, and equipment; with appropriate professional interpretation of such information or data.
 6. Environmental assessments, audits, investigations, and impact statements, and other relevant environmental, historical, or cultural studies relevant to the Project, the Site, and adjacent areas.
 7. Data or consultations as required for the Project but not otherwise identified in this Agreement.
- E. Arrange for safe access to and make all provisions for Engineer to enter upon public and private property as required for Engineer to perform services under the Agreement.
- F. Recognizing and acknowledging that Engineer's services and expertise do not include the following services, provide, as required for the Project:
1. Accounting, bond and financial advisory (including, if applicable, "municipal advisor" services as described in Section 975 of the Dodd-Frank Wall Street Reform and Consumer Protection Act (2010) and the municipal advisor registration rules issued by the Securities and Exchange Commission), independent cost estimating, and insurance counseling services.
 2. Legal services with regard to issues pertaining to the Project as Owner requires, Contractor raises, or Engineer reasonably requests.
 3. Such auditing services as Owner requires to ascertain how or for what purpose Contractor has used the money paid.
- G. Provide the services of an independent testing laboratory to perform all inspections, tests, and approvals of samples, materials, and equipment required by the Construction Contract Documents (other than those required to be furnished or arranged by Engineer, as described in Exhibit A, Paragraph 1.05.A, or Contractor), or to evaluate the performance of materials, equipment, and facilities of Owner, prior to their incorporation into the Work with appropriate professional interpretation thereof. Provide Engineer with the findings and reports generated by testing laboratories, including findings and reports obtained from or through Contractor.

- H. Provide reviews, approvals, and permits from all governmental authorities having jurisdiction to approve all phases of the Project designed or specified by Engineer and such reviews, approvals, and consents from others as may be necessary for completion of each phase of the Project.
- I. Advise Engineer of the identity and scope of services of any independent consultants employed by Owner to perform or furnish services in regard to the Project, including, but not limited to, cost estimating, project peer review, value engineering, and constructibility review.
- J. If Owner designates a construction manager or an individual or entity other than, or in addition to, Engineer to represent Owner at the Site, define and set forth as an attachment to this Exhibit B the duties, responsibilities, and limitations of authority of such other party and the relation thereof to the duties, responsibilities, and authority of Engineer.
- K. If more than one prime contract is to be awarded for the Work designed or specified by Engineer, then designate a person or entity to have authority and responsibility for coordinating the activities among the various prime Contractors, and define and set forth the duties, responsibilities, and limitations of authority of such individual or entity and the relation thereof to the duties, responsibilities, and authority of Engineer as an attachment to this Exhibit B that is to be mutually agreed upon and made a part of this Agreement before such services begin.
- L. Inform Engineer in writing of any specific requirements of safety or security programs that are applicable to Engineer, as a visitor to the Site.
- M. Examine all alternative solutions, studies, reports, sketches, Drawings, Specifications, proposals, and other documents presented by Engineer (including obtaining advice of an attorney, risk manager, insurance counselor, financial/municipal advisor, and other advisors or consultants as Owner deems appropriate with respect to such examination) and render in writing timely decisions pertaining thereto.
- N. Inform Engineer regarding any need for assistance in evaluating the possible use of Project Strategies, Technologies, and Techniques, as defined in Exhibit A.
- O. Advise Engineer as to whether Engineer's assistance is requested in identifying opportunities for enhancing the sustainability of the Project.
- P. Place and pay for advertisement for Bids in appropriate publications.
- Q. Furnish to Engineer data as to Owner's anticipated costs for services to be provided by others (including, but not limited to, accounting, bond and financial, independent cost estimating, insurance counseling, and legal advice) for Owner so that Engineer may assist Owner in collating the various cost categories which comprise Total Project Costs.
- R. Attend and participate in the pre-bid conference, bid opening, pre-construction conferences, construction progress and other job related meetings, and Site visits to determine Substantial Completion and readiness of the completed Work for final payment.

Exhibit B – Owner's Responsibilities

EJCDC® E-500, Agreement Between Owner and Engineer for Professional Services.

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- S. Authorize Engineer to provide Additional Services as set forth in Part 2 of Exhibit A of the Agreement, as required.
- T. Perform or provide the following:
 - 1. Submit and pay for review fees, building or other permits, licenses, etc., as may be required by local, state, or federal authorities.
 - 2. Secure the necessary land, easements, and rights-of-way needed to complete the construction of the improvements.
 - 3. Provide Engineer a copy of resolution by the Owner accepting the project within 30 days of the Engineer's recommendation of project acceptance to the Owner.
 - 4. Provide the Engineer evidence of the Owner's receipt and acceptance of the Record Drawing(s) and O&M Manual(s) within 30 days of the Engineer's mailing or delivery of these documents.

B2.02 Owners are ultimately responsible for compliance with Section 746 of Title VII of the Consolidated Appropriations Act of 2017 (Division A - Agriculture, Rural Development, Food and Drug Administration, and Related Agencies Appropriations Act, 2017) and subsequent statutes mandating domestic preference and will be responsible for the following:

- A. Sign loan resolutions, grant agreements and letters of intent to meet conditions which include American Iron and Steel language, accepting American Iron and Steel requirements in those documents and in the letter of conditions.
- B. Sign change orders (i.e. C-941 of EJCDC) and partial payment estimates (i.e. C-620 of EJCDC) and thereby acknowledge responsibility for compliance with American Iron and Steel requirements.
- C. Obtain the certification letters from the Engineer upon Substantial Completion of the project and maintain this documentation for the life of the loan.
- D. Where the Owner directly procures American Iron and Steel products,
 - 1. Include American Iron and Steel clauses in the procurement contracts;
 - 2. Obtain Manufacturers' Certifications; and
 - 3. Provide copies to Engineers and Contractors.

This is **EXHIBIT C.1**, consisting of 3 pages, referred to in and part of the **Agreement between Owner and Engineer for Professional Services** dated April 6, 2022.

Payments to Engineer for Services and Reimbursable Expenses
COMPENSATION PACKET BC-2: Basic Services and Additional Services – Standard Hourly Rates

Article 2 of the Agreement is supplemented to include the following agreement of the parties:

ARTICLE 2 – OWNER’S RESPONSIBILITIES

C2.01 Compensation For Basic Services and Additional Services (other than Resident Project Representative) – Standard Hourly Rates Method of Payment

A. Owner shall pay Engineer for Basic Services and Additional Services set forth in Exhibit A, except for services of Engineer’s Resident Project Representative, if any, as follows:

1. An amount equal to the cumulative hours charged to the Project by each class of Engineer’s personnel times Standard Hourly Rates for each applicable billing class for all services performed on the Project, plus Reimbursable Expenses and Engineer’s Consultants’ charges, if any.
2. The Standard Hourly Rates charged by Engineer constitute full and complete compensation for Engineer’s services, including labor costs, overhead, and profit; the Standard Hourly Rates do not include Reimbursable Expenses or Engineer’s Consultants’ charges.
3. Engineer’s Reimbursable Expenses Schedule and Standard Hourly Rates are attached to this Exhibit C.1 as Appendix 1.
4. The total compensation for services under Paragraph C2.01 is estimated to be \$223,000 based on the following estimated distribution of compensation:
 - a. Bidding or Negotiating Phase \$10,000
 - b. Construction and Post-Construction Phase \$145,000
 - c. AIS Certification \$ 5,000
 - d. Operation and Maintenance Manual \$5,000
 - e. Record of Survey \$30,000
 - f. Record Drawings \$8,000
 - g. Material Testing \$20,000

5. Engineer may alter the distribution of compensation between individual phases of the work noted herein to be consistent with services actually rendered, but shall not exceed the total estimated compensation amount unless approved in writing by Owner and Agency. See also C2.03.C.2 below.
6. The total estimated compensation for Engineer's services included in the breakdown by phases as noted in Paragraph C2.01.A.3 incorporates all labor, overhead, profit, Reimbursable Expenses, and Engineer's Consultants' charges.
7. The amounts billed for Engineer's services under Paragraph C2.01 will be based on the cumulative hours charged to the Project during the billing period by each class of Engineer's employees times Standard Hourly Rates for each applicable billing class, plus Reimbursable Expenses and Engineer's Consultants' charges.
8. The Standard Hourly Rates and Reimbursable Expenses Schedule will be adjusted annually (on or around April 1st) to reflect equitable changes in the compensation payable to Engineer. Changes will not be effective unless and until concurred in writing by Owner and Agency.

C2.02 *Compensation For Reimbursable Expenses*

- A. Owner shall pay Engineer for all Reimbursable Expenses at the rates set forth in Appendix 1 to this Exhibit C.
- B. Reimbursable Expenses include the expenses identified in Appendix 1 and the following: transportation (including mileage), lodging, and subsistence incidental thereto; providing and maintaining field office facilities including furnishings and utilities; toll telephone calls, mobile phone charges, and courier charges; reproduction of reports, Drawings, Specifications, bidding-related or other procurement documents, Construction Contract Documents, and similar Project-related items; and Consultants' charges. In addition, if authorized in advance by Owner, Reimbursable Expenses will also include expenses incurred for the use of highly specialized equipment.
- C. The amounts payable to Engineer for Reimbursable Expenses will be the Project-related internal expenses actually incurred or allocated by Engineer, plus all invoiced external Reimbursable Expenses allocable to the Project, the latter multiplied by a factor of 1.10.

C2.03 *Other Provisions Concerning Payment*

- A. Whenever Engineer is entitled to compensation for the charges of Engineer's Consultants, those charges shall be the amounts billed by Engineer's Consultants to Engineer times a factor of 1.10.
- B. *Factors:* The external Reimbursable Expenses and Engineer's Consultants' factors include Engineer's overhead and profit associated with Engineer's responsibility for the administration of such services and costs.

C. *Estimated Compensation Amounts:*

1. Engineer's estimate of the amounts that will become payable for specified services are only estimates for planning purposes, are not binding on the parties, and are not the minimum or maximum amounts payable to Engineer under the Agreement.
 2. When estimated compensation amounts have been stated herein and it subsequently becomes apparent to Engineer that the total compensation amount thus estimated will be exceeded, Engineer shall give Owner and Agency written notice thereof, allowing Owner to consider its options, including suspension or termination of Engineer's services for Owner's convenience. Upon notice, Owner and Engineer promptly shall review the matter of services remaining to be performed and compensation for such services. Owner shall either exercise its right to suspend or terminate Engineer's services for Owner's convenience, agree to such compensation exceeding said estimated amount, or agree to a reduction in the remaining services to be rendered by Engineer, so that total compensation for such services will not exceed said estimated amount when such services are completed. If Owner decides not to suspend the Engineer's services during the negotiations and Engineer exceeds the estimated amount before Owner and Engineer have agreed to an increase in the compensation due Engineer or a reduction in the remaining services, then Engineer shall be paid for all services rendered hereunder.
- D. To the extent necessary to verify Engineer's charges and upon Owner's timely request, Engineer shall make copies of such records available to Owner at cost.

This is **EXHIBIT C.2**, consisting of 2 pages, referred to in and part of the **Agreement between Owner and Engineer for Professional Services** dated April 6, 2022.

**COMPENSATION PACKET RPR-2:
Resident Project Representative – Standard Hourly Rates**

Article 2 of the Agreement is supplemented to include the following agreement of the parties:

C2.04 Compensation for Resident Project Representative Basic Services – Standard Hourly Rates Method of Payment

A. Owner shall pay Engineer for Resident Project Representative Basic Services as follows:

1. **Resident Project Representative Services:** For services of Engineer's Resident Project Representative under Paragraph A1.05.A of Exhibit A, an amount equal to the cumulative hours charged to the Project by each class of Engineer's personnel times Standard Hourly Rates for each applicable billing class for all Resident Project Representative services performed on the Project, plus related Reimbursable Expenses and Engineer's Consultant's charges, if any. The total compensation under this paragraph is estimated to be \$130,000 based upon full-time RPR services on an eight-hour workday, Monday through Friday, over a 180 calendar day construction schedule.
2. If rate(s) for RPR services is not indicated in Appendix 1 to Exhibits C.1 and C.2, "Standard Hourly Rates Schedule," the Standard Hourly Rate for RPR services is \$110 per hour.

B. Compensation for Reimbursable Expenses:

1. For those Reimbursable Expenses that are not accounted for in the compensation for Basic Services under Paragraph C2.01, and are directly related to the provision of Resident Project Representative or Post-Construction Basic Services, Owner shall pay Engineer at the rates set forth in Appendix 1 to this Exhibit C.
2. Reimbursable Expenses include the expenses identified in Appendix 1 and the following: transportation (including mileage), lodging, and subsistence incidental thereto; providing and maintaining field office facilities including furnishings and utilities; subsistence and transportation of Resident Project Representative and assistants; toll telephone calls, mobile phone charges, and courier charges; reproduction of reports, Drawings, Specifications, bidding-related or other procurement documents, Construction Contract Documents, and similar Project-related items. In addition, if authorized in advance by Owner, Reimbursable Expenses will also include expenses incurred for the use of highly specialized equipment.
3. The amounts payable to Engineer for Reimbursable Expenses, if any, will be those internal expenses related to the Resident Project Representative Basic Services that are actually incurred or allocated by Engineer, plus all invoiced external Reimbursable Expenses allocable to such services, the latter multiplied by a factor of 1.10.

**Exhibit C – Compensation Packet RPR-2: Resident Project Representative Services—
Standard Hourly Rates Method of Payment.**

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4. The Reimbursable Expenses Schedule will be adjusted annually (as of on or around March 1st) to reflect equitable changes in the compensation payable to Engineer. Changes will not be effective unless and until concurred in by the Owner and Agency.

C. *Other Provisions Concerning Payment Under this Paragraph C2.04:*

1. Whenever Engineer is entitled to compensation for the charges of Engineer's Consultants, those charges shall be the amounts billed by Engineer's Consultants to Engineer times a factor of 1.10.
2. *Factors:* The external Reimbursable Expenses and Engineer's Consultant's factors include Engineer's overhead and profit associated with Engineer's responsibility for the administration of such services and costs.
3. *Estimated Compensation Amounts:*
 - a. Engineer's estimate of the amounts that will become payable for specified services are only estimates for planning purposes, are not binding on the parties, and are not the minimum or maximum amounts payable to Engineer under the Agreement.
 - b. When estimated compensation amounts have been stated herein and it subsequently becomes apparent to Engineer that the total compensation amount thus estimated will be exceeded, Engineer shall give Owner written notice thereof, allowing Owner to consider its options, including suspension or termination of Engineer's services for Owner's convenience. Upon notice Owner and Engineer promptly shall review the matter of services remaining to be performed and compensation for such services. Owner shall either exercise its right to suspend or terminate Engineer's services for Owner's convenience, agree to such compensation exceeding said estimated amount, or agree to a reduction in the remaining services to be rendered by Engineer, so that total compensation for such services will not exceed said estimated amount when such services are completed. If Owner decides not to suspend Engineer's services during negotiations and Engineer exceeds the estimated amount before Owner and Engineer have agreed to an increase in the compensation due Engineer or a reduction in the remaining services, then Engineer shall be paid for all services rendered hereunder.
4. To the extent necessary to verify Engineer's charges and upon Owner's timely request, Engineer shall make copies of such records available to Owner at no cost.

This is **Appendix 1 to EXHIBITS C1 and C2**, consisting of 2 pages, referred to in and part of the **Agreement between Owner and Engineer for Professional Services** dated April 6, 2022.

Standard Hourly Rates Schedule

A. *Standard Hourly Rates:*

1. Standard Hourly Rates are set forth in this Appendix 1 to this Exhibits C1 and C2 and include salaries and wages paid to personnel in each billing class plus the cost of customary and statutory benefits, general and administrative overhead, non-project operating costs, and operating margin or profit.
2. The Standard Hourly Rates apply only as specified in Article C2.

B. *Schedule:*

Hourly rates for services performed on or after the date of the Agreement are:

PROFESSIONAL TECHNICAL STAFF

TECHNICIANS	ENGINEERING	ARCHAEOLOGY
Technician I \$ 65.00	Engineering Technician I \$105.00	Archaeological Technician I \$ 60.00
Technician II \$ 75.00	Engineering Technician II \$110.00	Archaeological Technician II \$ 70.00
Technician III \$ 80.00	Engineering Technician III \$115.00	Staff Archaeologist I \$ 75.00
Technician IV \$ 90.00	Staff Engineer I \$120.00	Staff Archaeologist II \$ 80.00
Technician V \$ 95.00	Staff Engineer II \$125.00	Project Archaeologist I \$ 85.00
Technician VI \$100.00	Project Engineer I \$130.00	Senior Archaeologist I \$105.00
Technician VII \$105.00	Project Engineer II \$135.00	Senior Archaeologist II \$120.00
Senior Technician I \$110.00	Project Engineer III \$145.00	
Senior Technician II \$120.00	Project Engineer IV \$150.00	PROJECT REPRESENTATIVES
Senior Technician III \$125.00	Project Engineer V \$155.00	Project Representative I \$ 95.00
Senior Technician IV \$135.00	Project Engineer VI \$165.00	Project Representative II \$100.00
Senior Technician V \$145.00	Project Engineer VII \$170.00	Project Representative III \$105.00
Senior Technician VI \$155.00	Senior Engineer I \$175.00	Project Representative IV \$110.00
Senior Technician VII \$165.00	Senior Engineer II \$180.00	
Senior Technician VIII \$170.00	Senior Engineer III \$185.00	OVERTIME
Senior Technician IX \$185.00	Senior Engineer IV \$190.00	Overtime Surcharge \$ 35.00
	Senior Engineer V \$200.00	
	Senior Engineer VI \$205.00	
	Senior Engineer VII \$210.00	
	Senior Engineer VIII \$225.00	

SURVEYORS AND CREWS

Survey Technician I \$ 70.00	Professional Land Surveyor I \$130.00	Total Station \$ 25.00
Survey Technician II \$ 85.00	Professional Land Surveyor II \$140.00	ATV (4-hour minimum) \$ 32.00
Survey Technician III \$ 90.00	Professional Land Surveyor III \$155.00	Resource Grade GPS \$ 22.00
Survey Crew Chief I \$ 95.00	Professional Land Surveyor IV \$175.00	Electrofisher \$ 25.00
Survey Crew Chief II \$100.00	Professional Land Surveyor V \$185.00	Unmanned Aircraft System
Survey Crew Chief III \$110.00	GPS Total Station \$ 40.00	(UAS/Drone) \$ 45.00
	Robotic Survey Station \$ 30.00	GIS RTK GPS/GNSS Unit \$ 32.00

OUT OF TOWN WORK

Mileage will be charged at the applicable IRS rate for vehicles, which is \$0.585 per mile for standard highway vehicles as of January 1, 2022. Mileage will be charged at \$0.75 per mile for vans and pickup trucks. Subsistence will be charged either per diem or actual cost, per contract. Lodging will be billed at actual cost.

OTHER

Other miscellaneous, direct, and outside expenses, including special Consultants, will be charged at actual cost plus 10%.

Expert Witness will be charged at two times the standard hourly rate.

All accounts unpaid 30 days after date of invoice may be charged a service fee of 1.0% per month.

This is **EXHIBIT D**, consisting of 5 pages, referred to in and part of the **Agreement between Owner and Engineer for Professional Services** dated April 6, 2022.

Duties, Responsibilities, and Limitations of Authority of Resident Project Representative

Article 1 of the Agreement is supplemented to include the following agreement of the parties:

ARTICLE 1 - SERVICES OF ENGINEER

D1.01 Resident Project Representative

- A. Engineer shall furnish a Resident Project Representative (“RPR”) to assist Engineer in observing progress and quality of the Work. The RPR may provide full time representation or may provide representation to a lesser degree. RPR is Engineer’s representative at the Site, will act as directed by and under the supervision of Engineer, and will confer with Engineer regarding RPR’s actions. Full time Resident Project Representation is required unless requested in writing by the Owner and waived in writing by the Agency.
- B. Through RPR's observations of the Work, including field checks of materials and installed equipment, Engineer shall endeavor to provide further protection for Owner against defects and deficiencies in the Work. However, Engineer shall not, as a result of such RPR observations of the Work, supervise, direct, or have control over the Work, nor shall Engineer (including the RPR) have authority over or responsibility for the means, methods, techniques, sequences, or procedures of construction selected or used by any Constructor, for security or safety at the Site, for safety precautions and programs incident to the Work or any Constructor’s work in progress, for the coordination of the Constructors’ work or schedules, or for any failure of any Constructor to comply with Laws and Regulations applicable to the performing and furnishing of its work. The Engineer (including RPR) neither guarantees the performances of any Constructor nor assumes responsibility for any Constructor’s failure to furnish and perform the Work, or any portion of the Work, in accordance with the Construction Contract Documents. In addition, the specific terms set forth in Exhibit A, Paragraph A1.05, of this Agreement are applicable.
- C. The duties and responsibilities of the RPR are as follows:
 - 1. *General:* RPR’s dealings in matters pertaining to the Work in general shall be with Engineer and Contractor. RPR’s dealings with Subcontractors shall only be through or with the full knowledge and approval of Contractor. RPR shall generally communicate with Owner only with the knowledge of and under the direction of Engineer.
 - 2. *Schedules:* Review the progress schedule, schedule of Shop Drawing and Sample submittals, schedule of values, and other schedules prepared by Contractor and consult with Engineer concerning acceptability of such schedules.
 - 3. *Conferences and Meetings:* Attend meetings with Contractor, such as preconstruction conferences, progress meetings, job conferences, and other Project-related meetings

Exhibit D - Resident Project Representative.

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(but not including Contractor's safety meetings), and as appropriate prepare and circulate copies of minutes thereof.

4. *Safety Compliance:* Comply with Site safety programs, as they apply to RPR, and if required to do so by such safety programs, receive safety training specifically related to RPR's own personal safety while at the Site.
5. *Liaison:*
 - a. Serve as Engineer's liaison with Contractor. Working principally through Contractor's authorized representative or designee, assist in providing information regarding the provisions and intent of the Construction Contract Documents.
 - b. Assist Engineer in serving as Owner's liaison with Contractor when Contractor's operations affect Owner's on-Site operations.
 - c. Assist in obtaining from Owner additional details or information, when required for proper execution of the Work.
6. *Clarifications and Interpretations:* Receive from Contractor submittal of any matters in question concerning the requirements of the Construction Contract Documents (sometimes referred to as requests for information or interpretation—RFIs), or relating to the acceptability of the Work under the Construction Contract Documents. Report to Engineer regarding such RFIs. Report to Engineer when clarifications and interpretations of the Construction Contract Documents are needed, whether as the result of a Contractor RFI or otherwise. Transmit Engineer's clarifications, interpretations, and decisions to Contractor. ,
7. *Shop Drawings and Samples:*
 - a. Record date of receipt of Samples and Contractor-approved Shop Drawings.
 - b. Receive Samples that are furnished at the Site by Contractor, and notify Engineer of availability of Samples for examination.
 - c. Advise Engineer and Contractor of the commencement of any portion of the Work requiring a Shop Drawing or Sample submittal, if RPR believes that the submittal has not been received from Contractor, or has not been approved by Contractor or Engineer.
8. *Proposed Modifications:* Consider and evaluate Contractor's suggestions for modifications to the Drawings or Specifications, and report such suggestions, together with RPR's recommendations, if any, to Engineer. Transmit Engineer's response (if any) to such suggestions to Contractor.
9. *Review of Work; Defective Work:*
 - a. Report to Engineer whenever RPR believes that any part of the Work is defective under the terms and standards set forth in the Construction Contract Documents, and provide recommendations as to whether such Work should be corrected,

removed and replaced, or accepted as provided in the Construction Contract Documents.

- b. Inform Engineer of any Work that RPR believes is not defective under the terms and standards set forth in the Construction Contract Documents, but is nonetheless not compatible with the design concept of the completed Project as a functioning whole, and provide recommendations to Engineer for addressing such Work.
- c. Advise Engineer of that part of the Work that RPR believes should be uncovered for observation, or requires special testing, inspection, or approval.

10. *Inspections, Tests, and System Start-ups:*

- a. Consult with Engineer in advance of scheduled inspections, tests, and systems start-ups.
- b. Verify that tests, equipment, and systems start-ups and operating and maintenance training are conducted in the presence of appropriate Owner's personnel, and that Contractor maintains adequate records thereof.
- c. Observe, record, and report to Engineer appropriate details relative to the test procedures and systems start-ups.
- d. Observe whether Contractor has arranged for inspections required by Laws and Regulations, including but not limited to those to be performed by public or other agencies having jurisdiction over the Work.
- e. Accompany visiting inspectors representing public or other agencies having jurisdiction over the Work, record the results of these inspections, and report to Engineer.

11. *Records:*

- a. Maintain at the Site orderly files for correspondence, reports of job conferences, copies of Construction Contract Documents including all Change Orders, Field Orders, Work Change Directives, Addenda, additional Drawings issued subsequent to the execution of the Construction Contract, RFIs, Engineer's clarifications and interpretations of the Construction Contract Documents, progress reports, approved Shop Drawing and Sample submittals, and other Project-related documents.
- b. Prepare a daily report or keep a diary or log book, recording Contractor's hours on the Site, Subcontractors present at the Site, weather conditions, data relative to questions of Change Orders, Field Orders, Work Change Directives, or changed conditions, Site visitors, deliveries of equipment or materials, daily activities, decisions, observations in general, and specific observations in more detail as in the case of observing test procedures; and send copies to Engineer.
- c. Upon request from Owner to Engineer, photograph or video Work in progress or Site conditions.

- d. Record and maintain accurate, up-to-date lists of the names, addresses, fax numbers, e-mail addresses, websites, and telephone numbers (including mobile numbers) of all Contractors, Subcontractors, and major Suppliers of materials and equipment.
- e. Maintain records for use in preparing Project documentation.
- f. Upon completion of the Work, furnish original set of all RPR Project documentation to Engineer.
- g. Maintain all Manufacturers' Certifications in the project file and on-site during construction to ensure compliance with AIS, as applicable.

12. *Reports:*

- a. Furnish to Engineer periodic reports as required of progress of the Work and of Contractor's compliance with the progress schedule and schedule of Shop Drawing and Sample submittals.
- b. Deleted.
- c. Furnish to Engineer and Owner copies of all inspection, test, and system start-up reports.
- d. Immediately inform Engineer of the occurrence of any Site accidents, emergencies, acts of God endangering the Work, possible force majeure or delay events, damage to property by fire or other causes, or the discovery of any potential differing site condition or Constituent of Concern.

13. *Payment Requests:* Review applications for payment with Contractor for compliance with the established procedure for their submission and forward with recommendations to Engineer, noting particularly the relationship of the payment requested to the schedule of values, Work completed, and materials and equipment delivered at the Site but not incorporated in the Work.

14. *Certificates, Operation and Maintenance Manuals:* During the course of the Work, verify that materials and equipment certificates, operation and maintenance manuals and other data required by the Contract Documents to be assembled and furnished by Contractor are applicable to the items actually installed and in accordance with the Contract Documents, and have these documents delivered to Engineer for review and forwarding to Owner prior to payment for that part of the Work.

15. *Completion:*

- a. Participate in Engineer's visits to the Site regarding Substantial Completion, assist in the determination of Substantial Completion, and prior to the issuance of a Certificate of Substantial Completion submit a punch list of observed items requiring completion or correction.

- b. Participate in Engineer's visit to the Site in the company of Owner and Contractor, to determine completion of the Work, and prepare a final punch list of items to be completed or corrected by Contractor.
 - c. Observe whether all items on the final punch list have been completed or corrected, and make recommendations to Engineer concerning acceptance and issuance of the Notice of Acceptability of the Work (Exhibit E).
- D. Resident Project Representative shall not:
- 1. Authorize any deviation from the Construction Contract Documents or substitution of materials or equipment (including "or-equal" items), unless authorized in writing by Engineer.
 - 2. Exceed limitations of Engineer's authority as set forth in this Agreement.
 - 3. Undertake any of the responsibilities of Contractor, Subcontractors, or Suppliers, or any Constructor.
 - 4. Advise on, issue directions relative to, or assume control over any aspect of the means, methods, techniques, sequences or procedures of the Work, by Contractor or any other Constructor.
 - 5. Advise on, issue directions regarding, or assume control over security or safety practices, precautions, and programs in connection with the activities or operations of Owner or Contractor.
 - 6. Participate in specialized field or laboratory tests or inspections conducted off-site by others except as specifically authorized by Engineer.
 - 7. Accept Shop Drawing or Sample submittals from anyone other than Contractor.
 - 8. Authorize Owner to occupy the Project in whole or in part.

This is **EXHIBIT E**, consisting of 2 pages, referred to in and part of the **Agreement between Owner and Engineer for Professional Services** dated April 6, 2022.



NOTICE OF ACCEPTABILITY OF WORK

PROJECT: Transmission Main Replacement Phase I

OWNER: City of White Salmon

CONTRACTOR:

OWNER'S CONSTRUCTION CONTRACT IDENTIFICATION: 250-11

EFFECTIVE DATE OF THE CONSTRUCTION CONTRACT:

ENGINEER: Anderson Perry & Associates, Inc.

NOTICE DATE:

To: City of White Salmon
Owner

And To: _____
Contractor

From: Anderson Perry & Associates, Inc.
Engineer

The Engineer hereby gives notice to the above Owner and Contractor that Engineer has recommended final payment of Contractor, and that the Work furnished and performed by Contractor under the above Construction Contract is acceptable, expressly subject to the provisions of the related Contract Documents, the Agreement between Owner and Engineer for Professional Services dated _____, and the following terms and conditions of this Notice:

CONDITIONS OF NOTICE OF ACCEPTABILITY OF WORK

The Notice of Acceptability of Work (“Notice”) is expressly made subject to the following terms and conditions to which all those who receive said Notice and rely thereon agree:

1. This Notice is given with the skill and care ordinarily used by members of the engineering profession practicing under similar conditions at the same time and in the same locality.
2. This Notice reflects and is an expression of the Engineer’s professional opinion.
3. This Notice is given as to the best of Engineer’s knowledge, information, and belief as of the Notice Date.
4. This Notice is based entirely on and expressly limited by the scope of services Engineer has been employed by Owner to perform or furnish during construction of the Project (including observation of the Contractor’s work) under Engineer’s Agreement with Owner, and applies only to facts that are within Engineer’s knowledge or could reasonably have been ascertained by Engineer as a result of carrying out the responsibilities specifically assigned to Engineer under such Agreement.
5. This Notice is not a guarantee or warranty of Contractor’s performance under the Construction Contract, an acceptance of Work that is not in accordance with the related Contract Documents, including but not limited to defective Work discovered after final inspection, nor an assumption of responsibility for any failure of Contractor to furnish and perform the Work thereunder in accordance with the Construction Contract Documents, or to otherwise comply with the Construction Contract Documents or the terms of any special guarantees specified therein.
6. This Notice does not relieve Contractor of any surviving obligations under the Construction Contract, and is subject to Owner’s reservations of rights with respect to completion and final payment.

By: _____

Title: _____

Dated: _____

This is **EXHIBIT F**, consisting of 1 page, referred to in and part of the **Agreement between Owner and Engineer for Professional Services** dated April 6, 2022.

Construction Cost Limit

Paragraph 5.02 of the Agreement is supplemented to include the following agreement of the parties:

F5.02 *Designing to Construction Cost Limit*

- A. Owner and Engineer hereby agree to a Construction Cost limit in the amount of \$3,294,500.
- B. A bidding or negotiating contingency of 10 percent of the estimated construction cost of \$2,995,000 is included in the Construction Cost limit established.
- C. The acceptance by Owner at any time during Basic Services of a revised opinion of probable Construction Cost in excess of the then-established Construction Cost limit will constitute a corresponding increase in the Construction Cost limit.
- D. Engineer will be permitted to determine what types and quality of materials, equipment and component systems are to be included in the Drawings and Specifications. Engineer may make reasonable adjustments in the scope, extent, and character of the Project to the extent consistent with the Project requirements and sound engineering practices, to bring the Project within the Construction Cost limit. Engineer's determinations on types and quality of materials, equipment, and component systems to be included in the Drawings and Specifications are subject to approval by Agency in accordance with requirements of 7 CFR 1780, including open and free competition.
- E. If the Bidding or Negotiating Phase has not commenced within three months after completion of the Final Design Phase, or if industry-wide prices are changed because of unusual or unanticipated events affecting the general level of prices or times of delivery in the construction industry, the established Construction Cost limit will not be binding on Engineer. In such cases, Owner shall consent to an adjustment in the Construction Cost limit commensurate with any applicable change in the general level of prices in the construction industry between the date of completion of the Final Design Phase and the date on which proposals or Bids are sought.
- F. If the lowest bona fide proposal or Bid exceeds the established Construction Cost limit, Owner shall (1) give written approval to increase such Construction Cost limit, or (2) authorize negotiating or rebidding the Project within a reasonable time, or (3) cooperate in revising the Project's scope, extent, or character to the extent consistent with the Project's requirements and with sound engineering practices. In the case of (3), Engineer shall modify the Construction Contract Documents as necessary to bring the Construction Cost within the Construction Cost Limit. Owner shall pay Engineer's cost to provide such modification services, including the costs of the services of its Consultants, all overhead expenses reasonably related thereto, and Reimbursable Expenses, but without profit to Engineer on account of such services. The providing of such services will be the limit of Engineer's responsibility in this regard and, having done so, Engineer shall be entitled to payment for services and expenses in accordance with this Agreement and will not otherwise be liable for damages attributable to the lowest bona fide proposal or bid exceeding the established Construction Cost limit.

Exhibit F – Construction Cost Limit.

This is **EXHIBIT G**, consisting of 2 pages, referred to in and part of the **Agreement between Owner and Engineer for Professional Services** dated April 6, 2022.

Insurance

Paragraph 6.05 of the Agreement is supplemented to include the following agreement of the parties:

G6.05 Insurance

A. The limits of liability for the insurance required by Paragraph 6.05.A and 6.05.B of the Agreement are as follows:

1. By Engineer:

- | | |
|---|--------------|
| a. Workers' Compensation: | Statutory |
| b. Employer's Liability -- | |
| 1) Bodily injury, each accident: | \$500,000 |
| 2) Bodily injury by disease, each employee: | \$500,000 |
| 3) Bodily injury/disease, aggregate: | \$500,000 |
| c. General Liability -- | |
| 1) Each Occurrence (Bodily Injury and Property Damage): | \$1,000,000 |
| 2) General Aggregate: | \$2,000,000 |
| d. Excess or Umbrella Liability -- | |
| 1) Per Occurrence: | \$10,000,000 |
| 2) General Aggregate: | \$10,000,000 |
| e. Automobile Liability –Combined Single Limit (Bodily Injury and Property Damage): | \$1,000,000 |
| f. Professional Liability – | |
| 1) Each Claim Made | \$3,000,000 |
| 2) Annual Aggregate | \$5,000,000 |
| g. Other (specify): | \$0 |

2. By Owner:

- | | |
|---|--------------|
| a. Workers' Compensation: | Statutory |
| b. Employer's Liability -- | \$15,000,000 |
| c. General Liability -- | \$15,000,000 |
| d. Automobile Liability--Combined Single Limit (Bodily Injury and Property Damage): | \$15,000,000 |
| e. Other (specify): | |
| 1) Products Completed Ops | \$15,000,000 |
| 2) Fidelity and Crime | \$1,000,000 |
| 3) Cyber Liability | \$3,000,000 |

B. *Additional Insureds:*

1. The following individuals or entities are to be listed on Owner's general liability policies of insurance as additional insureds:
 - a. Anderson Perry & Associates, Inc.
Engineer
 - b. Klein & Associates, Inc.
Engineer's Consultant
 - c. R&W Engineering, Inc.
Engineer's Consultant
2. During the term of this Agreement the Engineer shall notify Owner of any other Consultant to be listed as an additional insured on Owner's general liability policies of insurance.
3. The Owner shall be listed on Engineer's general liability policy as provided in Paragraph 6.05.A.

This is **EXHIBIT H**, consisting of 2 pages, referred to in and part of the **Agreement between Owner and Engineer for Professional Services** dated April 6, 2022.

Dispute Resolution

Paragraph 6.09 of the Agreement is supplemented to include the following agreement of the parties:

H6.08 *Dispute Resolution*

- A. *Mediation*: Owner and Engineer agree that they shall first submit any and all unsettled claims, counterclaims, disputes, and other matters in question between them arising out of or relating to this Agreement or the breach thereof (“Disputes”) to mediation by a mutually agreed upon mediator. If the parties do not agree on a mediator, each party will designate a mediator and the mediation will be held before a third mediator selected by the designated mediators. Owner and Engineer agree to participate in the mediation process in good faith. The process shall be conducted on a confidential basis, and shall be completed within 120 days. If such mediation is unsuccessful in resolving a Dispute, then (1) the parties may mutually agree to a dispute resolution of their choice, or (2) either party may seek to have the Dispute resolved through arbitration as outlined in H6.09B.
- B. *Arbitration*: Except as provided in H6.09.A, all Disputes between Owner and Engineer shall be settled by a single arbitrator in Portland, Oregon. If the parties do not agree on an arbitrator, each party will designate an arbitrator and the arbitration will be held before a third arbitrator selected by the designated arbitrators. Each arbitration will be conducted in accordance with the then-current rules of the Arbitration Services of Portland, Inc., subject to the conditions stated below. Each arbitrator will be an attorney knowledgeable in the areas of business and municipal law. This agreement to arbitrate and any other agreement or consent to arbitrate entered into in accordance with this Paragraph H6.09.A will be specifically enforceable under prevailing law of any court having jurisdiction.
1. Notice of the demand for arbitration must be filed in writing with the other party to the Agreement and with the Arbitration Services of Portland, Inc . The demand must be made within a reasonable time after the Dispute has arisen. In no event may the demand for arbitration be made (a) before Owner and Engineer have submitted the Dispute to mediation under H6.09.A and participated in the mediation in good faith, and (b) after the date when institution of legal or equitable proceedings based on such Dispute would be barred by the applicable statute of limitations.
 2. All demands for arbitration and all answering statements thereto which include any monetary claims must contain a statement that the total sum or value in controversy as alleged by the party making such demand or answering statement.
 3. The rules of any arbitration shall be supplemented to include the following: The award rendered by the arbitrators shall be in writing, and shall include (a) a precise breakdown of the award, and (b) a written explanation of the award specifically citing the Agreement provisions deemed applicable and relied on in making the award.

Exhibit H - Dispute Resolution.

4. The award rendered by the arbitrators will be consistent with the Agreement of the parties and final, and judgment may be entered upon it in any court having jurisdiction thereof, and will not be subject to appeal or modification.
5. If a Dispute in question between Owner and Engineer involves the work of a Contractor, Subcontractor, or consultants to the Owner or Engineer (each a “Joinable Party”), and such Joinable Party has agreed contractually or otherwise to participate in a consolidated arbitration concerning this Project, then either Owner or Engineer may join such Joinable Party as a party to the arbitration between Owner and Engineer hereunder. Nothing in this Paragraph H6.09.B.5 nor in the provision of such contract consenting to joinder shall create any claim, right, or cause of action in favor of the Joinable Party and against Owner or Engineer that does not otherwise exist.

This is **EXHIBIT I**, consisting of 1 page, referred to in and part of the **Agreement between Owner and Engineer for Professional Services** dated April 6, 2022.

Limitations of Liability

Paragraph 6.11 of the Agreement is supplemented to include the following agreement of the parties:

A. *Limitation of Engineer's Liability*

1. *Engineer's Liability Limited to Amount of Engineer's Compensation:* To the fullest extent permitted by Laws and Regulations, and notwithstanding any other provision of this Agreement, the total liability, in the aggregate, of Engineer and Engineer's officers, directors, members, partners, agents, employees, and Consultants, to Owner and anyone claiming by, through, or under Owner for any and all claims, losses, costs, or damages whatsoever arising out of, resulting from, or in any way related to the Project or the Agreement from any cause or causes, including but not limited to the negligence, professional errors or omissions, strict liability, breach of contract, indemnity obligations, or warranty express or implied of Engineer or Engineer's officers, directors, members, partners, agents, employees, or Consultants shall not exceed the total compensation received by Engineer under this Agreement.
 2. *Exclusion of Special, Incidental, Indirect, and Consequential Damages:* To the fullest extent permitted by Laws and Regulations, and notwithstanding any other provision in the Agreement, consistent with the terms of Paragraph 6.11, the Engineer and Engineer's officers, directors, members, partners, agents, Consultants, and employees shall not be liable to Owner or anyone claiming by, through, or under Owner for any and all claims for or entitlement to special, incidental, indirect, or consequential damages arising out of, resulting from, or in any way related to this Agreement or the Project, from any cause or causes, including but not limited to: None.
- B. *Indemnification by Owner:* To the fullest extent permitted by Laws and Regulations, Owner shall indemnify and hold harmless Engineer and its officers, directors, members, partners, agents, employees, and Consultants from and against any and all claims, costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals, and all court, arbitration, or other dispute resolution costs) arising out of or relating to the Project, provided that any such claim, cost, loss, or damage is attributable to bodily injury, sickness, disease, or death or to injury to or destruction of tangible property (other than the Work itself), including the loss of use resulting therefrom, but only to the extent caused by any negligent act or omission of Owner or Owner's officers, directors, members, partners, agents, employees, consultants, or others retained by or under contract to the Owner with respect to this Agreement or to the Project.

This is **EXHIBIT J**, consisting of 1 page, referred to in and part of the **Agreement between Owner and Engineer for Professional Services** dated April 6, 2022.

Special Provisions

Section 6 of the Agreement is amended to include the following agreement(s) of the parties:

1. Add the following to Section 6.11 of the Agreement:
 - G. The Owner and Engineer acknowledge that in a project of this magnitude and complexity: changes may be required during construction as a result of possible omissions, ambiguities, or inconsistencies in the Drawings and Specifications; changes may be identified during construction, which will result in an overall better end product for the Owner; or changes may be necessary due to unusual field conditions or construction circumstances beyond the control of the Owner, Engineer, or Contractor.

As a consequence of the above, the Owner realizes that the construction contractor(s) may be entitled to additional payment. The Owner agrees to set up a reserve in the project budget to be used as required to make additional payments to the construction contractor(s) with respect to such changes. When additional payments are due the contractor(s), they will be made in accordance with an approved change order. The Owner further agrees to make no claim by way of direct or third-party action against the Engineer with respect to additional payments made to construction contractors or as a result of any claim made by construction contractors relating to such changes.

This is **EXHIBIT K**, consisting of 2 pages, referred to in and part of the **Agreement between Owner and Engineer for Professional Services** dated April 6, 2022.

AMENDMENT TO OWNER-ENGINEER AGREEMENT
Amendment No. _____

The Effective Date of this Amendment is: _____.

Background Data

Effective Date of Owner-Engineer Agreement:

Owner: City of White Salmon

Engineer: Anderson Perry & Associates, Inc.

Project: Transmission Main Replacement Phase I

Nature of Amendment: [Check those that are applicable and delete those that are inapplicable.]

- _____ Additional Services to be performed by Engineer
- _____ Modifications to services of Engineer
- _____ Modifications to responsibilities of Owner
- _____ Modifications of payment to Engineer
- _____ Modifications to time(s) for rendering services
- _____ Modifications to other terms and conditions of the Agreement

Description of Modifications:

Here describe the modifications, in as much specificity and detail as needed. Use an attachment if necessary.

Agreement Summary:

Original agreement amount:	\$ _____
Net change for prior amendments:	\$ _____
This amendment amount:	\$ _____
Adjusted Agreement amount:	\$ _____

Change in time for services (days or date, as applicable): _____

The foregoing Agreement Summary is for reference only and does not alter the terms of the Agreement, including those set forth in Exhibit C.

Owner and Engineer hereby agree to modify the above-referenced Agreement as set forth in this Amendment. All provisions of the Agreement not modified by this or previous Amendments remain in effect.

OWNER:

ENGINEER:

By: _____

By: _____

Print _____

Print _____

name: _____

name: _____

Title: _____

Title: _____

Date Signed: _____

Date Signed: _____

This is **EXHIBIT L**, consisting of 2 pages, referred to in and part of the **Agreement between Owner and Engineer for Professional Services** dated April 6, 2022.

ENGINEER AGREEMENT CERTIFICATION

PROJECT NAME: City of White Salmon, Washington - Transmission Main Replacement Phase I

The Engineer and Owner hereby concur in the Funding Agency required revisions to E-500 identified in RUS Bulletin 1780-26. In addition, the Engineer certifies to the following:

All modifications to E-500 have been made in accordance with the terms of the license agreement, which states in part that the Engineer "must plainly show all changes to the Standard EJDCD Text, using 'Track Changes' (redline/strikeout), highlighting, or other means of clearly indicating additions and deletions." Such other means may include attachments indicating changes (e.g. Supplementary Conditions modifying the General Conditions).

SUMMARY OF ENGINEERING FEES

Note that the fees indicated on this table are only a summary and if there is a conflict with any provision of Exhibit C, the provisions there overrule the values on this table. Fees shown will not be exceeded without the concurrence of the Agency.

Basic Services and Additional Services (Exhibit C.1)	\$223,000
Resident Project Observation (Exhibit C.2)	\$130,000
TOTAL:	\$353,000

Any adjustment to engineering fees or changes to maximum estimated values must be approved by the Agency and must include a table of what specific category or categories of fees are being changed, what fees were before and after the change, and the resulting total fee.

Anderson Perry & Associates, Inc.

3-23-22

Engineer

Date

Name and Title

John Hallgren, VICE PRESIDENT

City of White Salmon, Washington

Owner

Date

Name and Title

Agency Concurrence:

As lender or insurer of funds to defray the costs of this Contract, and without liability for any payments thereunder, the Agency hereby concurs in the form, content, and execution of this Agreement.

Agency Representative Date

Name and Title

File Attachments for Item:

D. Shoreland Shoreline Master Program Agreement, Department of Ecology, Periodic Review (\$11,200)



CONSENT AGENDA MEMO

Needs Legal Review: Yes
Meeting Date: April 6, 2022
Agenda Item: Shoreland Shoreline Master Program Agreement, Department of Ecology, Periodic Review (\$11,200 Grant)
Presented By: Jan Brending, Clerk Treasurer

Action Required

Authorization for mayor to sign Shoreland Shoreline Master Program Agreement, Department of Ecology, Periodic Review for a \$11,200 grant.

Proposed Motion

None unless the agenda item is pulled from the Consent Agenda. If pulled from the Consent Agenda the following motion is recommended:

Motion to authorize the mayor to sign Shoreland Shoreline Master Program Agreement, Department of Ecology, Periodic Review for a \$11,200 grant.

Explanation of Issue

The City's Shoreline Master Program is up for periodic review. The Washington Department of Ecology is providing a \$11,200 grant to the city for the periodic review process. The City will hire a planning consultant to assist with the periodic review.

Recommendation of Staff/Committee

Staff recommends authorizing the mayor to sign Shoreland Shoreline Master Program Agreement, Department of Ecology, Periodic Review for a \$11,200 grant.



Agreement No. SEASMP-2123-WhiSal-00151

SHORELANDS SHORELINE MASTER PROGRAM AGREEMENT

BETWEEN

THE STATE OF WASHINGTON DEPARTMENT OF ECOLOGY

AND

CITY OF WHITE SALMON

This is a binding Agreement entered into by and between the state of Washington, Department of Ecology, hereinafter referred to as “ECOLOGY,” and City of White Salmon, hereinafter referred to as the “RECIPIENT,” to carry out with the provided funds activities described herein.

GENERAL INFORMATION

Project Title:	Shoreline Master Program – Periodic Review
Total Cost:	\$11,200.00
Total Eligible Cost:	\$11,200.00
Ecology Share:	\$11,200.00
Recipient Share:	\$0.00
The Effective Date of this Agreement is:	07/01/2021
The Expiration Date of this Agreement is no later than:	06/30/2023
Project Type:	Periodic Review of the Shoreline Master Program

Project Short Description:

The RECIPIENT will conduct a periodic review of the Shoreline Master Program (SMP) that is developed in a manner consistent with requirements of the Shoreline Management Act (SMA), RCW 90.58, and its implementing rules, WAC 173-26, including the Shoreline Master Program Guidelines (SMP Guidelines).

Project Long Description:

The purpose of the Shoreline Master Program periodic review is to (a) assure that the master program complies with applicable law and SMP Guidelines in effect at the time of the review, and (b) assure consistency of the master program with the local government's comprehensive plan and development regulations adopted under chapter RCW 36.70A, if applicable. Local governments should also consider amendments needed to address changed circumstances, new information, or improved data.

Agreement No: SEASMP-2123-WhiSal-00151
Project Title: Shoreline Master Program – Periodic Review
Recipient Name: City of White Salmon

Please note: Beyond the scope of this agreement, the RECIPIENT will continue the SMP formal adoption process as stated in the SMA and WAC 173-26. Work related to these activities and formal adoption by the local governing body is eligible for reimbursement under this grant, provided it is completed by June 30, 2023. The adoption process includes the activities shown below.

1. Complete SEPA review and documentation

Conduct SEPA review pursuant to the State Environmental Policy Act (RCW 43.21C).

2. Provide GMA 60-day notice of intent to adopt

For local governments planning under the Growth Management Act, notify ECOLOGY and the Department of Commerce of intent to adopt the SMP amendment at least 60 days in advance of final local approval, pursuant to RCW 36.70A.106.

3. Hold public hearing

Hold at least one public hearing prior to local adoption of the draft SMP or Findings of Adequacy, consistent with the requirements of WAC 173-26-100 or WAC 173-26-104.

4. Prepare a responsiveness summary

Prepare a summary responding to all comments received during the public hearing and the public comment period. The names and mailing addresses of all interested parties providing comment shall be compiled.

5. Adopt SMP and submit to ECOLOGY

Complete the adoption process for the SMP update under either WAC 173-26-100 or WAC 173-26-104 and submit the locally-adopted Draft SMP amendment or Findings of Adequacy and Periodic Review Checklist to ECOLOGY under WAC 173-26-110.

Overall Goal:

Periodic Review Checklist and final draft SMP amendment or Findings of Adequacy.

Agreement No: SEASMP-2123-WhiSal-00151
 Project Title: Shoreline Master Program – Periodic Review
 Recipient Name: City of White Salmon

RECIPIENT INFORMATION

Organization Name: City of White Salmon

Federal Tax ID: 91-6001528
 DUNS Number: 023422124 UEI Number: LXXCJLJMJAB9

Mailing Address: PO Box 2139
 White Salmon, Washington 98672

Physical Address: 100 N. Main

Organization Email: janb@ci.white-salmon.wa.us
 Organization Fax: (509) 493-1231

Contacts

<p>Project Manager</p>	<p>Jan Brending Clerk Treasurer</p> <p>100 N. Main White Salmon, Washington 98672 Email: janb@ci.white-salmon.wa.us Phone: (509) 493-1133</p>
<p>Billing Contact</p>	<p>Jan Brending Clerk Treasurer</p> <p>100 N. Main White Salmon, Washington 98672 Email: janb@ci.white-salmon.wa.us Phone: (509) 493-1133</p>
<p>Authorized Signatory</p>	<p>Jan M Brending Clerk Treasurer</p> <p>100 N. Main White Salmon, Washington 98672 Email: janb@ci.white-salmon.wa.us Phone: (509) 493-1133</p>

Agreement No: SEASMP-2123-WhiSal-00151
Project Title: Shoreline Master Program – Periodic Review
Recipient Name: City of White Salmon

ECOLOGY INFORMATION

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

Physical Address: Shorelands
300 Desmond Drive SE
Lacey, WA 98503

Contacts

Project Manager	Chelsea Benner 1250 W Alder St. Union Gap, Washington 98903-0009 Email: cheb461@ecy.wa.gov Phone: (509) 454-3619
Financial Manager	Cindy James PO Box 47600 Olympia, Washington 98504-7600 Email: cjam461@ecy.wa.gov Phone: (360) 280-8645

Agreement No: SEASMP-2123-WhiSal-00151
 Project Title: Shoreline Master Program – Periodic Review
 Recipient Name: City of White Salmon

SCOPE OF WORK

Task Number: 1 **Task Cost:** \$0.00

Task Title: 1. Project Oversight: Coordination, Management, and Administration

Task Description:

The RECIPIENT will provide necessary project oversight to complete the scope of work in compliance with this ECOLOGY agreement, which includes project coordination, project management, and project administration.

- A. The RECIPIENT will coordinate with ECOLOGY throughout the SMP review process. The RECIPIENT will provide ECOLOGY opportunities to review draft deliverables at appropriate intervals. ECOLOGY will provide ongoing technical assistance, and will evaluate consistency of deliverables with the Shoreline Management Act and applicable guidelines throughout the review process.
- B. The RECIPIENT will coordinate with other applicable federal, state and local agencies, neighboring jurisdictions, and Indian tribes as provided in the Guidelines and SMA procedural rules. In addition, the RECIPIENT will consult with other appropriate entities which may have useful information if necessary.
- C. The RECIPIENT will conduct project management activities including compliance with state statutes and rules, project scheduling, adherence to the scope of work, timelines, and due dates; request for, and if applicable, conducting the competitive procurement process including preparation of contractor bidding documents, advertisements, and grant monitoring.
- D. The RECIPIENT will submit quarterly progress reports and payment requests (PRPRs) with supporting documentation; maintain project records; and submit ECOLOGY-approved deliverables by the due dates established between ECOLOGY and the RECIPIENT.

Task Goal Statement:

Properly manage and fully document the project in accordance with ECOLOGY's grant administration requirements.

Task Expected Outcome:

Timely and complete submittal of requests for reimbursement, quarterly progress reports and recipient closeout report. Properly maintained project documentation.

Recipient Task Coordinator: Jan Brending

1. Project Oversight: Coordination, Management, and Administration

Deliverables

Number	Description	Due Date
1.1	Progress reports are due quarterly.	
1.2	Recipient Close Out Report	06/30/2023

Agreement No: SEASMP-2123-WhiSal-00151
 Project Title: Shoreline Master Program – Periodic Review
 Recipient Name: City of White Salmon

SCOPE OF WORK

Task Number: 2 **Task Cost:** \$0.00

Task Title: 2. Secure Consultant Services, If Needed

Task Description:

If applicable, the RECIPIENT will:

A. Secure qualified consultant services

In accordance with the RECIPIENT or State of Washington procurement procedures, the RECIPIENT will enter into a contract with the selected consultant(s) and prepare a sub agreement in accordance with the scope of work in this agreement.

Task Goal Statement:

To ensure the RECIPIENT has qualified personnel to conduct the scope of this project.

Task Expected Outcome:

If applicable, signed contract and sub-agreement with consultant(s).

Recipient Task Coordinator: Jan Brending

2. Secure Consultant Services, If Needed

Deliverables

Number	Description	Due Date
2.1	Final signed consulting contract. Upload to EAGL per the date in the Deliverable Due Dates form.	
2.2	Update in quarterly progress report.	

Agreement No: SEASMP-2123-WhiSal-00151
 Project Title: Shoreline Master Program – Periodic Review
 Recipient Name: City of White Salmon

SCOPE OF WORK

Task Number: 3 **Task Cost:** \$2,000.00

Task Title: 3. Public Participation

Task Description:

The RECIPIENT will:

A. Develop a Public Participation Plan

Prepare and disseminate a public participation plan to invite and encourage public involvement in the SMP periodic review consistent with WAC 173-26-090. The public participation plan should include applicable local requirements such as planning commission review and formal hearings, as well as applicable state notice requirements.

B. Conduct public participation activities

Implement the public participation plan throughout the course of the SMP periodic review process.

Task Goal Statement:

To inform and involve all stakeholders in the SMP periodic review process.

Task Expected Outcome:

Continuous public participation activities throughout the SMP periodic review process.

Recipient Task Coordinator: Jan Brending

3. Public Participation

Deliverables

Number	Description	Due Date
3.1	Public Participation Plan. Upload to EAGL per the date in the Deliverable Due Dates form.	
3.2	Updates of public involvement activities in progress reports.	

Agreement No: SEASMP-2123-WhiSal-00151
Project Title: Shoreline Master Program – Periodic Review
Recipient Name: City of White Salmon

SCOPE OF WORK

Task Number: 4 **Task Cost:** \$6,200.00

Task Title: 4. Review Shoreline Master Program and Draft Revisions, If Needed

Task Description:

The RECIPIENT will:

A. Review the SMP to determine if revisions are needed

1. Review amendments to chapter 90.58 RCW and Ecology rules that have occurred since the Shoreline Master Program was last amended, and determine if local amendments are needed to maintain compliance. Ecology will provide a checklist of legislative and rule amendments to assist local governments with this review.
2. Review changes to the comprehensive plan and development regulations to determine if the Shoreline Master Program policies and regulations remain consistent with them. Document the consistency analysis to support proposed changes to the Shoreline Master Program or Findings of Adequacy.
3. Conduct additional analysis deemed necessary to address changing local circumstances, new information or improved data.

B. Draft revised SMP goals, policies and regulations, or prepare Findings of Adequacy

1. Prepare amended goals and policies or regulations identified through the review process. Use the checklist to identify where in the SMP changes are made to address applicable statutory or regulatory changes.
2. Where the review conducted under Task 4A concludes no changes are necessary, prepare draft Findings of Adequacy.

Task Goal Statement:

To review the SMP to determine if changes are necessary, and revise the SMP if changes are deemed necessary.

Task Expected Outcome:

A completed Periodic Review Checklist documenting the initial staff review of the SMP, and either initial draft SMP amendments or draft Findings of Adequacy.

Recipient Task Coordinator: Jan Brending

Agreement No: SEASMP-2123-WhiSal-00151
 Project Title: Shoreline Master Program – Periodic Review
 Recipient Name: City of White Salmon

4. Review Shoreline Master Program and Draft Revisions, If Needed

Deliverables

Number	Description	Due Date
4.1	A Periodic Review Checklist documenting consideration of statutory amendments, and internal consistency review. Upload to EAGL per the date in the Deliverable Due Dates form.	
4.2	Initial draft SMP amendments or Findings of Adequacy and supporting documentation. Upload to EAGL per the date in the Deliverable Due Dates form.	

DRAFT

Agreement No: SEASMP-2123-WhiSal-00151
 Project Title: Shoreline Master Program – Periodic Review
 Recipient Name: City of White Salmon

SCOPE OF WORK

Task Number: 5 **Task Cost:** \$3,000.00

Task Title: 5. Final Draft SMP or Findings of Adequacy

Task Description:

The RECIPIENT will:

A. Conduct public review process

Conduct a local public review process for the proposed Shoreline Master Program as provided in the SMA and WAC 173-26. Where amendments to the SMP are proposed they shall contain applicable shoreline goals, policies, or regulations with copies of any provisions adopted by reference. Where no changes are needed, the local process will include a formal Findings of Adequacy.

B. Assemble final draft amendment or Findings of Adequacy

Assemble a complete SMP final draft amendment in preparation for review and approval by the local jurisdictional governing body. Where the review determines that no changes are needed, the Recipient will prepare a formal Findings of Adequacy.

Task Goal Statement:

Complete a Shoreline Master Program final draft amendment or Findings of Adequacy.

Task Expected Outcome:

A Shoreline Master Program final draft amendment or Findings of Adequacy.

Recipient Task Coordinator: Jan Brending

5. Final Draft SMP or Findings of Adequacy

Deliverables

Number	Description	Due Date
5.1	Updates of public review process activities in progress report.	
5.2	Submit an SMP final draft amendment or Findings of Adequacy, with relevant supporting documentation and a complete Periodic Review checklist. Upload to EAGL per the date in the Deliverable Due Dates form.	

Agreement No: SEASMP-2123-WhiSal-00151
 Project Title: Shoreline Master Program – Periodic Review
 Recipient Name: City of White Salmon

BUDGET

Funding Distribution EG220632

NOTE: *The above funding distribution number is used to identify this specific agreement and budget on payment remittances and may be referenced on other communications from ECOLOGY. Your agreement may have multiple funding distribution numbers to identify each budget.*

Funding Title: Model Toxic Control Operating Account (MTCOA) Funding Type: Grant
 Funding Effective Date: 07/01/2021 Funding Expiration Date: 06/30/2023

Funding Source:

Title: Model Toxics Control Operating Account (MTCOA)
 Fund: FD
 Type: State
 Funding Source %: 100%
 Description: Model Toxics Control Operating Account (MTCOA)

Approved Indirect Costs Rate: Approved State Indirect Rate: 0%
 Recipient Match %: 0%
 InKind Interlocal Allowed: No
 InKind Other Allowed: No
 Is this Funding Distribution used to match a federal grant? No

Model Toxic Control Operating Account (MTCOA)	Task Total
1. Project Oversight: Coordination, Management, and Administration	\$ 0.00
2. Secure Consultant Services, If Needed	\$ 0.00
3. Public Participation	\$ 2,000.00
4. Review Shoreline Master Program and Draft Revisions, If Needed	\$ 6,200.00
5. Final Draft SMP or Findings of Adequacy	\$ 3,000.00

Total: \$ 11,200.00

Agreement No: SEASMP-2123-WhiSal-00151
 Project Title: Shoreline Master Program – Periodic Review
 Recipient Name: City of White Salmon

Funding Distribution Summary

Recipient / Ecology Share

Funding Distribution Name	Recipient Match %	Recipient Share	Ecology Share	Total
Model Toxic Control Operating Account (MTCOA)	0.00 %	\$ 0.00	\$ 11,200.00	\$ 11,200.00
Total		\$ 0.00	\$ 11,200.00	\$ 11,200.00

AGREEMENT SPECIFIC TERMS AND CONDITIONS

N/A

SPECIAL TERMS AND CONDITIONS

Deliverable Due Date Form:

The RECIPIENT will negotiate the task deliverable due dates with the ECOLOGY Project Manager, and the ECOLOGY Project Manager will enter the information in the Deliverable Due Date EAGL form. The RECIPIENT will keep track of these due dates, and will note any date changes on the quarterly progress reports. The Deliverable Due Date form can be found on the Application Menu - Forms page in EAGL. (Note: This form does not automatically print out with the agreement.)

GENERAL FEDERAL CONDITIONS

If a portion or all of the funds for this agreement are provided through federal funding sources or this agreement is used to match a federal grant award, the following terms and conditions apply to you.

A. CERTIFICATION REGARDING SUSPENSION, DEBARMENT, INELIGIBILITY OR VOLUNTARY

EXCLUSION:

1. The RECIPIENT/CONTRACTOR, by signing this agreement, certifies that it is not suspended, debarred, proposed for debarment, declared ineligible or otherwise excluded from contracting with the federal government, or from receiving contracts paid for with federal funds. If the RECIPIENT/CONTRACTOR is unable to certify to the statements contained in the certification, they must provide an explanation as to why they cannot.
2. The RECIPIENT/CONTRACTOR shall provide immediate written notice to ECOLOGY if at any time the RECIPIENT/CONTRACTOR learns that its certification was erroneous when submitted or had become erroneous by reason of changed circumstances.
3. The terms covered transaction, debarred, suspended, ineligible, lower tier covered transaction, participant, person, primary covered transaction, principal, proposal, and voluntarily excluded, as used in this clause, have the meaning set out in the Definitions and Coverage sections of rules implementing Executive Order 12549. You may contact ECOLOGY for assistance in obtaining a copy of those regulations.
4. The RECIPIENT/CONTRACTOR agrees it shall not knowingly enter into any lower tier covered transaction with a person who is proposed for debarment under the applicable Code of Federal Regulations, debarred, suspended, declared ineligible, or voluntarily excluded from participation in this covered transaction.
5. The RECIPIENT/CONTRACTOR further agrees by signing this agreement, that it will include this clause titled

Agreement No: SEASMP-2123-WhiSal-00151
 Project Title: Shoreline Master Program – Periodic Review
 Recipient Name: City of White Salmon

“CERTIFICATION REGARDING SUSPENSION, DEBARMENT, INELIGIBILITY OR VOLUNTARY EXCLUSION” without modification in all lower tier covered transactions and in all solicitations for lower tier covered transactions.

6. Pursuant to 2CFR180.330, the RECIPIENT/CONTRACTOR is responsible for ensuring that any lower tier covered transaction complies with certification of suspension and debarment requirements.
7. RECIPIENT/CONTRACTOR acknowledges that failing to disclose the information required in the Code of Federal Regulations may result in the delay or negation of this funding agreement, or pursuance of legal remedies, including suspension and debarment.
8. RECIPIENT/CONTRACTOR agrees to keep proof in its agreement file, that it, and all lower tier recipients or contractors, are not suspended or debarred, and will make this proof available to ECOLOGY before requests for reimbursements will be approved for payment. RECIPIENT/CONTRACTOR must run a search in <http://www.sam.gov> and print a copy of completed searches to document proof of compliance.

B. FEDERAL FUNDING ACCOUNTABILITY AND TRANSPARENCY ACT (FFATA) REPORTING REQUIREMENTS:

CONTRACTOR/RECIPIENT must complete the FFATA Data Collection Form (ECY 070-395) and return it with the signed agreement to ECOLOGY.

Any CONTRACTOR/RECIPIENT that meets each of the criteria below must report compensation for its five top executives using the FFATA Data Collection Form.

- Receives more than \$25,000 in federal funds under this award.
- Receives more than 80 percent of its annual gross revenues from federal funds.
- Receives more than \$25,000,000 in annual federal funds.

Ecology will not pay any invoices until it has received a completed and signed FFATA Data Collection Form. Ecology is required to report the FFATA information for federally funded agreements, including the required DUNS number, at www.fsr.gov <http://www.fsr.gov> within 30 days of agreement signature. The FFATA information will be available to the public at www.usaspending.gov <http://www.usaspending.gov>.

For more details on FFATA requirements, see www.fsr.gov <http://www.fsr.gov>.

C. FEDERAL FUNDING PROHIBITION ON CERTAIN TELECOMMUNICATIONS OR VIDEO SURVEILLANCE SERVICES OR EQUIPMENT:

As required by 2 CFR 200.216, federal grant or loan recipients and subrecipients are prohibited from obligating or expending loan or grant funds to:

1. Procure or obtain;
2. Extend or renew a contract to procure or obtain; or
3. Enter into a contract (or extend or renew a contract) to procure or obtain equipment, services, or systems that use covered telecommunications equipment, video surveillance services or services as a substantial or essential component of any system, or as critical technology as part of any system. As described in [Public Law 115-232](https://www.govinfo.gov/content/pkg/PLAW-115publ232/pdf/PLAW-115publ232.pdf) <https://www.govinfo.gov/content/pkg/PLAW-115publ232/pdf/PLAW-115publ232.pdf>, section 889, covered telecommunications equipment is telecommunications equipment produced by Huawei Technologies Company or

Agreement No: SEASMP-2123-WhiSal-00151
Project Title: Shoreline Master Program – Periodic Review
Recipient Name: City of White Salmon

Corporation (or any subsidiary or affiliate of such entities).

Recipients, subrecipients, and borrowers also may not use federal funds to purchase certain prohibited equipment, systems, or services, including equipment, systems, or services produced or provided by entities identified in section 889, are recorded in the [System for Award Management \(SAM\)](https://sam.gov/SAM/) <<https://sam.gov/SAM/>> exclusion list.

DRAFT

Agreement No: SEASMP-2123-WhiSal-00151
 Project Title: Shoreline Master Program – Periodic Review
 Recipient Name: City of White Salmon

GENERAL TERMS AND CONDITIONS

Pertaining to Grant and Loan Agreements With the state of Washington, Department of Ecology

GENERAL TERMS AND CONDITIONS

For DEPARTMENT OF ECOLOGY GRANTS and LOANS

06/24/2021 Version

1. ADMINISTRATIVE REQUIREMENTS

- a) RECIPIENT shall follow the "Administrative Requirements for Recipients of Ecology Grants and Loans – EAGL Edition." (<https://fortress.wa.gov/ecy/publications/SummaryPages/1701004.html>)
- b) RECIPIENT shall complete all activities funded by this Agreement and be fully responsible for the proper management of all funds and resources made available under this Agreement.
- c) RECIPIENT agrees to take complete responsibility for all actions taken under this Agreement, including ensuring all subgrantees and contractors comply with the terms and conditions of this Agreement. ECOLOGY reserves the right to request proof of compliance by subgrantees and contractors.
- d) RECIPIENT's activities under this Agreement shall be subject to the review and approval by ECOLOGY for the extent and character of all work and services.

2. AMENDMENTS AND MODIFICATIONS

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

3. ACCESSIBILITY REQUIREMENTS FOR COVERED TECHNOLOGY

The RECIPIENT must comply with the Washington State Office of the Chief Information Officer, OCIO Policy no. 188, Accessibility (<https://ocio.wa.gov/policy/accessibility>) as it relates to "covered technology." This requirement applies to all products supplied under the Agreement, providing equal access to information technology by individuals with disabilities, including and not limited to web sites/pages, web-based applications, software systems, video and audio content, and electronic documents intended for publishing on Ecology's public web site.

4. ARCHAEOLOGICAL AND CULTURAL RESOURCES

RECIPIENT shall take all reasonable action to avoid, minimize, or mitigate adverse effects to archaeological and historic archaeological sites, historic buildings/structures, traditional cultural places, sacred sites, or other cultural resources, hereby referred to as Cultural Resources.

The RECIPIENT must agree to hold harmless ECOLOGY in relation to any claim related to Cultural Resources discovered, disturbed, or damaged due to the RECIPIENT's project funded under this Agreement.

RECIPIENT shall:

- a) Contact the ECOLOGY Program issuing the grant or loan to discuss any Cultural Resources requirements for their project:
 - Cultural Resource Consultation and Review should be initiated early in the project planning process and must be completed prior to expenditure of Agreement funds as required by applicable State and Federal requirements.
 - * For state funded construction, demolition, or land acquisitions, comply with Governor Executive Order 21-02, Archaeological and Cultural Resources.
 - For projects with any federal involvement, comply with the National Historic Preservation Act of 1966 (Section 106).

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

RECIPIENT shall:

- Keep the IDP at the project site.
 - Make the IDP readily available to anyone working at the project site.
 - Discuss the IDP with staff, volunteers, and contractors working at the project site.
 - Implement the IDP when Cultural Resources or human remains are found at the project site.
- c) If any Cultural Resources are found while conducting work under this Agreement, follow the protocol outlined in the project IDP.
- Immediately stop work and notify the ECOLOGY Program, who will notify the Department of Archaeology and Historic Preservation at (360) 586-3065, any affected Tribe, and the local government.
- d) If any human remains are found while conducting work under this Agreement, follow the protocol outlined in the project IDP.
- Immediately stop work and notify the local Law Enforcement Agency or Medical Examiner/Coroner's Office, the Department of Archaeology and Historic Preservation at (360) 790-1633, and then the ECOLOGY Program.
- e) Comply with RCW 27.53, RCW 27.44, and RCW 68.50.645, and all other applicable local, state, and federal laws protecting Cultural Resources and human remains.

5. ASSIGNMENT

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

6. COMMUNICATION

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

7. COMPENSATION

- a) Any work performed prior to effective date of this Agreement will be at the sole expense and risk of the RECIPIENT. ECOLOGY must sign the Agreement before any payment requests can be submitted.
- b) Payments will be made on a reimbursable basis for approved and completed work as specified in this Agreement.
- c) RECIPIENT is responsible to determine if costs are eligible. Any questions regarding eligibility should be clarified with ECOLOGY prior to incurring costs. Costs that are conditionally eligible require approval by ECOLOGY prior to expenditure.
- d) RECIPIENT shall not invoice more than once per month unless agreed on by ECOLOGY.
- e) ECOLOGY will not process payment requests without the proper reimbursement forms, Progress Report and supporting documentation. ECOLOGY will provide instructions for submitting payment requests.
- f) ECOLOGY will pay the RECIPIENT thirty (30) days after receipt of a properly completed request for payment.
- g) RECIPIENT will receive payment through Washington State's Office of Financial Management's Statewide Payee Desk. To receive payment you must register as a statewide vendor by submitting a statewide vendor registration form and an IRS W-9 form at website, <https://ofm.wa.gov/it-systems/statewide-vendorpayee-services>. If you have questions about the vendor registration process, you can contact Statewide Payee Help Desk at (360) 407-8180 or email PayeeRegistration@ofm.wa.gov.
- h) ECOLOGY may, at its sole discretion, withhold payments claimed by the RECIPIENT if the RECIPIENT fails to satisfactorily comply with any term or condition of this Agreement.
- i) Monies withheld by ECOLOGY may be paid to the RECIPIENT when the work described herein, or a portion thereof, has been completed if, at ECOLOGY's sole discretion, such payment is reasonable and approved according to this Agreement, as appropriate, or upon completion of an audit as specified herein.
- j) RECIPIENT must submit within thirty (30) days after the expiration date of this Agreement, all financial, performance, a

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other reports required by this Agreement. Failure to comply may result in delayed reimbursement.

8. COMPLIANCE WITH ALL LAWS

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

- a) RECIPIENT agrees to comply with all applicable laws, regulations, and policies of the United States and the State of Washington which affect wages and job safety.
- b) RECIPIENT agrees to be bound by all applicable federal and state laws, regulations, and policies against discrimination.
- c) RECIPIENT certifies full compliance with all applicable state industrial insurance requirements.
- d) RECIPIENT agrees to secure and provide assurance to ECOLOGY that all the necessary approvals and permits required by authorities having jurisdiction over the project are obtained. RECIPIENT must include time in their project timeline for the permit and approval processes.

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

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

9. CONFLICT OF INTEREST

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

10. CONTRACTING FOR GOODS AND SERVICES

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

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

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

11. DISPUTES

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

- a) RECIPIENT notifies the funding program of an appeal request.
- b) Appeal request must be in writing and state the disputed issue(s).
- c) RECIPIENT has the opportunity to be heard and offer evidence in support of its appeal.
- d) ECOLOGY reviews the RECIPIENT's appeal.
- e) ECOLOGY sends a written answer within ten (10) business days, unless more time is needed, after concluding the review.

The decision of ECOLOGY from an appeal will be final and conclusive, unless within thirty (30) days from the date of such

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decision, the RECIPIENT furnishes to the Director of ECOLOGY a written appeal. The decision of the Director or duly authorized representative will be final and conclusive.

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

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

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

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

12. ENVIRONMENTAL DATA STANDARDS

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

- Use ECOLOGY's QAPP Template/Checklist provided by the ECOLOGY, unless ECOLOGY Quality Assurance (QA) officer or the Program QA coordinator instructs otherwise.
- Follow ECOLOGY's Guidelines for Preparing Quality Assurance Project Plans for Environmental Studies, July 2004 (Ecology Publication No. 04-03-030).
- Submit the QAPP to ECOLOGY for review and approval before the start of the work.

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

<http://www.ecy.wa.gov/eim>.

c) RECIPIENT shall follow ECOLOGY's data standards when Geographic Information System (GIS) data is collected and processed. Guidelines for Creating and Accessing GIS Data are available at:

<https://ecology.wa.gov/Research-Data/Data-resources/Geographic-Information-Systems-GIS/Standards>. RECIPIENT, when requested by ECOLOGY, shall provide copies to ECOLOGY of all final GIS data layers, imagery, related tables, raw data collection files, map products, and all metadata and project documentation.

13. GOVERNING LAW

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

14. INDEMNIFICATION

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

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

15. INDEPENDENT STATUS

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

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16. KICKBACKS

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

17. MINORITY AND WOMEN'S BUSINESS ENTERPRISES (MWBE)

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

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

- a) Include qualified minority and women's businesses on solicitation lists whenever they are potential sources of goods or services.
- b) Divide the total requirements, when economically feasible, into smaller tasks or quantities, to permit maximum participation by qualified minority and women's businesses.
- c) Establish delivery schedules, where work requirements permit, which will encourage participation of qualified minority and women's businesses.
- d) Use the services and assistance of the Washington State Office of Minority and Women's Business Enterprises (OMWBE) (866-208-1064) and the Office of Minority Business Enterprises of the U.S. Department of Commerce, as appropriate.

18. ORDER OF PRECEDENCE

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

19. PRESENTATION AND PROMOTIONAL MATERIALS

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

- a) If requested, RECIPIENT shall provide a draft copy to ECOLOGY for review and approval ten (10) business days prior to production and distribution.
- b) RECIPIENT shall include time for ECOLOGY's review and approval process in their project timeline.
- c) If requested, RECIPIENT shall provide ECOLOGY two (2) final copies and an electronic copy of any tangible products developed.

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

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

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

20. PROGRESS REPORTING

- a) RECIPIENT must satisfactorily demonstrate the timely use of funds by submitting payment requests and progress reports

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ECOLOGY. ECOLOGY reserves the right to amend or terminate this Agreement if the RECIPIENT does not document timely use of funds.

- b) RECIPIENT must submit a progress report with each payment request. Payment requests will not be processed without a progress report. ECOLOGY will define the elements and frequency of progress reports.
- c) RECIPIENT shall use ECOLOGY's provided progress report format.
- d) Quarterly progress reports will cover the periods from January 1 through March 31, April 1 through June 30, July 1 through September 30, and October 1 through December 31. Reports shall be submitted within thirty (30) days after the end of the quarter being reported.
- e) RECIPIENT must submit within thirty (30) days of the expiration date of the project, unless an extension has been approved by ECOLOGY, all financial, performance, and other reports required by the Agreement and funding program guidelines. RECIPIENT shall use the ECOLOGY provided closeout report format.

21. PROPERTY RIGHTS

- a) Copyrights and Patents. When the RECIPIENT creates any copyrightable materials or invents any patentable property under this Agreement, the RECIPIENT may copyright or patent the same but ECOLOGY retains a royalty free, nonexclusive, and irrevocable license to reproduce, publish, recover, or otherwise use the material(s) or property, and to authorize others to use the same for federal, state, or local government purposes.
- b) Publications. When the RECIPIENT or persons employed by the RECIPIENT use or publish ECOLOGY information; present papers, lectures, or seminars involving information supplied by ECOLOGY; or use logos, reports, maps, or other data in printed reports, signs, brochures, pamphlets, etc., appropriate credit shall be given to ECOLOGY.
- c) Presentation and Promotional Materials. ECOLOGY shall have the right to use or reproduce any printed or graphic materials produced in fulfillment of this Agreement, in any manner ECOLOGY deems appropriate. ECOLOGY shall acknowledge the RECIPIENT as the sole copyright owner in every use or reproduction of the materials.
- d) Tangible Property Rights. ECOLOGY's current edition of "Administrative Requirements for Recipients of Ecology Grants and Loans," shall control the use and disposition of all real and personal property purchased wholly or in part with funds furnished by ECOLOGY in the absence of state and federal statutes, regulations, or policies to the contrary, or upon specific instructions with respect thereto in this Agreement.
- e) Personal Property Furnished by ECOLOGY. When ECOLOGY provides personal property directly to the RECIPIENT for use in performance of the project, it shall be returned to ECOLOGY prior to final payment by ECOLOGY. If said property is lost, stolen, or damaged while in the RECIPIENT's possession, then ECOLOGY shall be reimbursed in cash or by setoff by the RECIPIENT for the fair market value of such property.
- f) Acquisition Projects. The following provisions shall apply if the project covered by this Agreement includes funds for the acquisition of land or facilities:
 - 1. RECIPIENT shall establish that the cost is fair value and reasonable prior to disbursement of funds provided for in this Agreement.
 - 2. RECIPIENT shall provide satisfactory evidence of title or ability to acquire title for each parcel prior to disbursement of funds provided by this Agreement. Such evidence may include title insurance policies, Torrens certificates, or abstracts, and attorney's opinions establishing that the land is free from any impediment, lien, or claim which would impair the uses intended by this Agreement.
- g) Conversions. Regardless of the Agreement expiration date, the RECIPIENT shall not at any time convert any equipment, property, or facility acquired or developed under this Agreement to uses other than those for which assistance was originally approved without prior written approval of ECOLOGY. Such approval may be conditioned upon payment to ECOLOGY of that portion of the proceeds of the sale, lease, or other conversion or encumbrance which monies granted pursuant to this Agreement bear to the total acquisition, purchase, or construction costs of such property.

22. RECORDS, AUDITS, AND INSPECTIONS

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

All records shall:

- a) Be kept in a manner which provides an audit trail for all expenditures.
 - b) Be kept in a common file to facilitate audits and inspections.
 - c) Clearly indicate total receipts and expenditures related to this Agreement.
 - d) Be open for audit or inspection by ECOLOGY, or by any duly authorized audit representative of the State of Washington, for a period of at least three (3) years after the final grant payment or loan repayment, or any dispute resolution hereunder.
- RECIPIENT shall provide clarification and make necessary adjustments if any audits or inspections identify discrepancies in the records.

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

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

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

23. RECOVERY OF FUNDS

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

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

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

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

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

24. SEVERABILITY

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

25. STATE ENVIRONMENTAL POLICY ACT (SEPA)

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

26. SUSPENSION

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

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27. SUSTAINABLE PRACTICES

In order to sustain Washington's natural resources and ecosystems, the RECIPIENT is fully encouraged to implement sustainable practices and to purchase environmentally preferable products under this Agreement.

- a) Sustainable practices may include such activities as: use of clean energy, use of double-sided printing, hosting low impact meetings, and setting up recycling and composting programs.
- b) Purchasing may include such items as: sustainably produced products and services, EPEAT registered computers and imaging equipment, independently certified green cleaning products, remanufactured toner cartridges, products with reduced packaging, office products that are refillable, rechargeable, and recyclable, 100% post-consumer recycled paper, and toxic free products.

For more suggestions visit ECOLOGY's web page, Green Purchasing,
<https://ecology.wa.gov/Regulations-Permits/Guidance-technical-assistance/Sustainable-purchasing>.

28. TERMINATION

a) For Cause

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

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

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

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

b) For Convenience

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

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

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

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

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

c) By Mutual Agreement

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

d) In Event of Termination

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

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

29. THIRD PARTY BENEFICIARY

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

30. WAIVER

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

End of General Terms and Conditions

File Attachments for Item:

E. Utility Easement and Memorandum of Agreement - WA Department of Natural Resources and City of White Salmon



CONSENT AGENDA MEMO

Needs Legal Review: Yes
Meeting Date: April 6, 2022
Agenda Item: Utility Easement and Memorandum of Agreement, Department of Natural Resources
Presented By: Jan Brending, Clerk Treasurer

Action Required

Authorization for mayor to sign Utility Easement and Memorandum of Agreement between the City of White Salmon and the Washington Department of Natural Resources.

Proposed Motion

None unless the agenda item is pulled from the Consent Agenda. If pulled from the Consent Agenda the following motion is recommended:

Motion to authorize the mayor to sign Utility Easement and Memorandum of Agreement between the City of White Salmon and the Washington Department of Natural Resources.

Explanation of Issue

The City has been working with the Washington Department of Natural Resources to clarify utility easements related to the Transmission Main Replacement Phase I project. Agreements on the language of the utility easement and a memorandum of agreement have been reached. Final documents will be provided prior to the April 6 meeting.

Recommendation of Staff/Committee

Staff recommends authorizing the mayor to sign Utility Easement and Memorandum of Agreement between the City of White Salmon and the Washington Department of Natural Resources.

File Attachments for Item:

A. Workshop - Proposed Amendments to WSMC Chapter 17.75, Residential Planned Unit Development (R-PUD); WSMC 19.10.040, Project Permit Application Framework; and WSMC 17.81 Site and Building Plan Review

1. Presentation

2. Discussion



CITY OF WHITE SALMON

MEMORANDUM

Meeting Date:	April 6, 2022	Meeting Title:	City Council
Submitting Department:	Planning Department	Presenter:	Brendan Conboy, City Planner
Agenda Item:	Work Session - Text Amendments: WSMC Ch. 19.10; WSMC Ch. 17.81; WSMC Ch. 17.75	Public Comment:	No

Purpose and Policy Considerations

Staff has identified the following sections of the White Salmon Municipal Code for text amendments:

- WSMC Ch. 17.75 R-PUD Residential Planned Unit Developments
- WSMC Ch. 17.81 Site and Building Plan Review
- WSMC Ch. 19.10 Administration of Land Development Regulations

Following the work session staff will bring the proposed amendments back before the City Council at a public hearing on April 20th, 2022.

Assessment

Staff proposes minor edits to Ch. 17.75 R-PUD Residential Planned Unit Developments in order to encourage the use of the tool where certain requirements have caused roadblocks for would be developers of housing. Caps on affordable housing within the tool do not meet the current realities of building. Clarification of requirements for Homeowner’s Associations and development agreements are also proposed.

Staff proposes to amend WSMC Title 19 Administration of Land Development Regulations and WSMC Ch. 17.81 Site and Building Plan Review in order to create a more robust review process for all Type II land use decisions. Type II land use decisions currently include Site Plan review, Short Plats, Conditional Uses, and Variances. Staff and the Planning Commission recommend changes to the development review process which would require all development requiring site plan review to be approved by the Planning Commission (with minor exceptions) and any development greater than 10,000 square feet of gross floor area or involving a Planned Unit Development to require City Council approval.

Comprehensive Plan Goals and Policies

On August 18, 2021, The City Council enacted [Ordinance 2021-08-1084](#), Adopting Revised Comprehensive Plan. Relevant Goals and Policies are:

GOAL LU-1: Establish and maintain a land use pattern that accommodates the current and future needs of the City and provides housing and employment choices that are cohesive with the community’s vision.

Policy LU-1.1: Promote new development in areas with existing public services and near transportation networks and essential facilities, to better support a variety of housing and employment choices. Discourage suburban sprawl and “leapfrog”



CITY OF WHITE SALMON

MEMORANDUM

development by promoting redevelopment or infill development to support the efficient use of land downtown, and near the hospital commercial area.

Policy LU-1.2: Revise White Salmon's Land Use Map to provide clear guidance to property owners on which lands can accommodate future residential, commercial, and industrial growth consistent with the City's vision.

Policy LU-1.3: Encourage mixed-use development, with residential and commercial components, that fosters small business development, an increase in net new housing and employment opportunities and a walkable, compact community that reduces car trips.

Chapter 17.75 RESIDENTIAL PLANNED UNIT DEVELOPMENT (R-PUD)

17.75.010 Purpose.

The purpose of this chapter is to provide regulations and procedures to guide residential planned unit development in order to:

- A. Provide flexibility and support for implementation of innovative residential site plans that address diversity in housing types;
- B. Ensure efficient and adequate provision/extension of services in areas where a variety of low density residential and higher density residential uses can co-exist;
- C. Provide opportunities for households of various sizes, ages, and incomes by promoting diversity in the size, type and price of new residential development in the city;
- D. Provide for development of compatible streetscapes and carefully designed lot configuration that accommodates a density comparable with densities permitted in the R-1, R-2, and R-3 zones;
- E. Facilitate efficient use of land through the application of flexible standards to provide opportunities for permitting innovative and diversified living environments that master plan and employ a creative placement of structures, provision for open space and access ways, etc.;
- F. Preserve existing landscape features including established trees, vegetation, and drainage ways by supporting planned developments that consider and respond to valuable or unique site characteristics.

(Ord. No. 2012-11-905, 11-26-2012; Ord. No. 2016-10-994, § 1, 10-19-2016)

17.75.015 Permitted location and size of R-PUD.

R-PUDs may be permitted in any residential zone on a parcel or contiguous tract of two acres or more.

(Ord. No. 2012-11-905, 11-26-2012; Ord. No. 2016-10-994, § 1, 10-19-2016)

17.75.020 Permitted uses in R-PUD.

Uses listed in each underlying zone within the project area may be permitted in the R-PUD. Alternative housing types are permitted subject to specified development criteria.

- A. Planned uses that can be permitted include:
 - 1. Residential units, either single-family detached or attached units, including planned clusters of cottage dwellings, ADUs, and/or town houses, on their own or in combination with some multifamily as long as all dwelling types meet the applicable definitions and standards in the zoning ordinance;
 - 2. All accessory and conditional uses permitted in residential districts;
 - 3. Recreational facilities, tennis courts, playgrounds, and community halls.

(Ord. No. 2012-11-905, 11-26-2012)

17.75.030 Permitted modifications and conditions of approval.

- A. Planned unit residential developments may be permitted to modify the zoning and subdivision requirements of Title 16 and the balance of Title 17 if consistent with the purposes expressed in Section 17.75.010 and the other applicable requirements of this chapter, except:
1. Exterior setbacks from public streets along the perimeter of the R-PUD unless set back averaging is requested and approved as shown on a preliminary plat and implemented in accordance with the binding site plan;
 2. Surveying standards;
 3. Engineering design and construction standards of public improvements (not including street right-of-way width and street development standards); and
 4. Stormwater and erosion control standards within the gross development area as a whole.
- B. Modifications of setbacks and other standards in the underlying zones must be shown clearly on a binding site plan prior to final plat recordation.

(Ord. No. 2012-11-905, 11-26-2012)

17.75.040 R-PUD development standards.

- A. Size and permitted location of residential planned unit development (R-PUD) must comply with the following:
1. The subject parcel must be a single lot or contiguous tract of land greater than or equal to two acres.
 2. The subject lot or tract of land must be located in a residential zone RL or R-1 zone.
- B. Permitted Density.
1. The number of single-family dwelling units permitted in an R-PUD may be increased above the number permitted in the RL (single-family large lot residential) zone as follows:
 - a. Maximum dwelling unit density shall not exceed nine units per acre (max density likely to be accommodated in R-1, ~~R-2, or R-3~~ zones);
 - b. Maximum permissible density is presumed to be site and design dependent and approval of development at the maximum permissible density is not assured in every instance;
 - c. Burden is on the applicant to demonstrate that innovative site planning techniques can be employed to accommodate densities comparable with densities provided for in other city residential zones in a manner that is responsive to the specific characteristics of the R-PUD site .
 2. The permitted density shall be computed to reflect the net density as follows:
 - a. Determine the gross development area—subtract from the total site area all land unsuitable for development e.g., wetland, flood hazard areas, steep or unstable slopes, and publicly owned land.
 - b. Determine the net development area, net area—subtract from the gross development area the actual percentage of area devoted to the street system to a maximum of twenty percent of the gross development area.
 - c. Determine the permitted number of dwelling units—divide the net development area (in acres) by eight.

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- d. ~~Eight nine~~ units per acre is the maximum permitted density for an R-PUD approved in the R-L and R-1 low density residential zones.
3. The average lot size of single-family dwellings in the R-PUD shall not be less than two thousand square feet.
 4. Density bonus of up to twenty percent (rounded to the nearest whole number) over R-PUD density permitted by this subsection (see B.1. and 2. for the RL zone), may be allowed for provision of affordable housing for low and moderate income families (those who have family income of not more than ~~sixty eighty~~ [P2] percent of Klickitat County median household income), with appropriate recorded CC&Rs and/or deed restrictions which define such affordable housing as follows and require that the housing remain affordable. ~~For the purpose of this chapter, such affordable housing is defined as residential housing for home ownership where the occupants pay no more than thirty percent of said gross family income for total housing costs, including utilities other than telephone and cable/satellite television~~ [P3]. R-PUDs in the R1, ~~R2, and R3~~-zone are also eligible for this density bonus above the base density permitted in these zones.
 5. Protection of Trees. Master planning a larger site provides the opportunity to maintain some valuable native vegetation. A tree inventory shall be completed and submitted with the preliminary master plan. Native trees measuring eight inch caliper or greater measured four feet from ground level (dbh) shall be shown on the inventory and clearly identified for preservation or removal. Large native trees should be preserved wherever practicable in the common areas. Where the ~~decision maker~~ administrator determines it is impracticable or unsafe to preserve these larger trees, the applicant may be allowed to remove the trees.

If the developer determines it is necessary to remove more than half the large native trees shown on the site inventory, the developer can be permitted to do so as long as the trees removed are replaced by new native trees in accordance with an approved landscape plan that includes new plantings at least two inches to two and one-half inches in caliper.

Where this requirement would cause an undue hardship, the requirement may be modified in a manner which reasonably satisfies the purpose and intent of this section. Conditions may be imposed to avoid disturbance to tree roots by grading activities and to protect trees and other significant vegetation identified for retention from harm. Such conditions may include, if necessary, the advisory expertise of a qualified consulting arborist or horticulturist both during and after site preparation, and a special maintenance/management program to provide protection to the resource as recommended by the arborist or horticulturist.

C. Dimensional and Improvement Requirements.

1. Building setbacks may be modified in accordance with approval of a binding site plan with the following exceptions:
 - a. Single- and multifamily dwellings must meet setbacks and height limits required in the zone in which they are located with respect to the outside perimeter of the R-PUD.
 - b. Setback averaging will be allowed from internal lot lines and may be allowed from external lot lines where adjoining parcels are located along the opposite side of a street or where setback averaging is determined to improve the traffic safety and flow, streetscape and/or to be otherwise compatible with surrounding uses.
 - c. Standard building setbacks from lot lines through the interior of the R-PUD shall be:

Setback	Dimension
Front and rear	10 feet*

Side	5 feet (except town house common walls)
Side (corner)	10 feet

* A minimum eighteen foot driveway length shall be maintained inside of curb and sidewalk where a driveway curb cut is provided. This shall be done to eliminate the parking of vehicles on or over curbs or sidewalks.

2. Street width, street alignment, ROW width, and other street design standards shall comply with the subdivision ordinance unless access routes through the R-PUD are to serve primarily low volume local traffic. Low volume would be less than four hundred average daily trips. Local road means a road primarily serving a destination in or adjacent to the proposed development and not collecting traffic from other local roads or transporting through traffic. (American Association of State Highway and Transportation Officials, Guidelines for Geometric Design of Very Low Volume Roads, 2005 as hereafter amended.)

If streets within the R-PUD are determined to be low volume local roads and emergency vehicle access and safety and traffic flow issues are addressed, then alternate street standards may be deemed acceptable if approved by the public works director. The possibility of flexibility in street design standards shall be considered initially in a preapplication conference prior to completing an application. Notwithstanding, private streets shall have a minimum improved width ~~of ten feet for each lane of traffic~~ that meets state fire code, not to include street parking and one-way streets shall be required to provide for fourteen feet of lane width not to include parking.

3. Engineering design and construction standards for all other public improvements, such as water, sewer, on site stormwater retention, etc., will not be modified for R-PUDs.
4. Comprehensive parking plans are required. Off-street parking shall be provided in accordance with the requirements of the base zone in which the development is located and in accordance with parking requirements for specific dwelling types. Additional off street parking may be required in lieu of on street parking if street widths are decreased to preclude on street parking. Shared parking may be accepted to meet additional residential parking required due to an absence of on street parking as long as it can be demonstrated to adequately serve demands of the planned residential development.

D. Homeowners Association, Common Facilities, Open Space, Roads, Easements.

1. In any R-PUD a minimum of fifteen percent of the net development area shall be established, maintained and preserved as open space and community facilities by the landowner until such obligations are vested in ~~the a~~ R-PUD homeowners' association pursuant to RCW Chapter 64.38, or through a development agreement with an authorized and willing entity per RCW 36.70B.170 and this chapter. If a homeowners' association is required tThe landowner shall establish a Washington nonprofit corporation ~~for the R-PUD homeowners' association and w-~~ Within three years of R-PUD approval, ownership and maintenance of all open space, common areas and common facilities shall be vested in the homeowners' association. Common area or amenities established by easement over private lots, may be considered part of the open space and community facility calculation if such easements provide continuing irrevocable community benefits. Articles and bylaws of the homeowners' association and CC&Rs in a form acceptable to the city attorney shall be recorded with the county auditor and shall be binding on all heirs, successors and transferees of landowner, guaranteeing the following:
 - a. The continued use of such land consistent with the R-PUD approval;
 - b. Continuity of maintenance of roads, landscaping, irrigation, public facilities and open space;
 - c. Availability of funds required for such maintenance;

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- d. Adequate insurance protection of community facilities; and
 - e. That all conditions of R-PUD approval continue to be met and maintained.
2. Open space provided in the R-PUD shall be planned to provide for connectivity with and enhancement of other public improvements, park lands, natural areas or community amenities. Open space means an area intended for common use and shall be designed for outdoor living and recreation or the retention of an area in its natural state. Open space may include swimming pools, recreation courts, gazebos and patios, open landscaped areas and community gardens, and green belts with pedestrian and bicycle trails. Open space does not include off street parking, service, or loading areas.
 3. Direction to Plant Natives. Planting plans for common areas shall be developed with a predominance of drought tolerant and native vegetation. Owners of independently owned parcels are encouraged to plant natives. Planting of native and drought tolerant species in the common areas is required as a means to decrease water demands for irrigation and increase the survivability of selected plant materials.
 4. Landowner shall be required to grant appropriate easements to the city for repair, replacement and maintenance of city utilities and services installed within the R-PUD.
 5. At the option of the city or applicant, conditions of approval and other standards can be addressed through a development agreement pursuant to RCW Chapter 36.70B in lieu of or in conjunction with CC&Rs.

(Ord. No. 2012-11-905, 11-26-2012; Ord. No. 2016-10-994, § 1, 10-19-2016)

17.75.050 R-PUD approval criteria.

An applicant requesting approval of an R-PUD has the burden of proving, by a preponderance of the evidence that:

- A. All applicable standards have been met, modified or can be adequately addressed by conditions of approval;
- B. The master plan uses an innovative approach to meet the purposes stated in Section 17.75.010, e.g., it integrates a variety of residential uses, provides community and public benefits, protects existing natural resources, and provides adequate and efficient public services and utilities;
- C. The streets, buildings, open space, public facilities and landscaping are designed and located to preserve existing trees, topography and natural drainage. Building design may be met through the provision of clear design guidelines and setback standards.
- D. Structures located on the site are located on ground that is not subject to instability;
- E. Public services will not be over burdened by the proposed development:
 1. The R-PUD plan shall provide direct access to collector or through streets or demonstrate that minor or local streets have the capacity to carry increased traffic to collector or through streets.
 2. The applicant shall work with the director of public works and/or city engineer to confirm adequacy of water, sanitary sewer, on site surface/stormwater, and all other utilities. If improvements are determined necessary to accommodate increased demand, improvements will be made at the developer's expense or the city and developer may enter into a development agreement pursuant to RCW 36.70B.170(4) and other relevant provisions of RCW Chapter 36.70B. All utilities shall be constructed to city approved standards of design, consistent with accepted engineering practices. All utilities shall be underground only.

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3. An applicant shall submit proof of adequacy of services including but not limited to: fire and police protection, schools, health care.
- F. Incorporation of Existing Dwelling(s) can be accommodated in an R-PUD. An existing detached or attached single-family dwelling that is incorporated into an R-PUD as a residence and is nonconforming, with respect to the standards of the general R-PUD or special use sections, shall be permitted to remain on a R-PUD site. Noncompliance of the structure may not be increased unless the proposed change is determined by the city to be consistent in character, scale and design with the R-PUD as controlled by the binding site plan. If an existing dwelling is retained it is counted as a standard single-family dwelling for density calculations unless it complies with the size requirements to be counted as a special use cottage or accessory dwelling.

(Ord. No. 2012-11-905, 11-26-2012)

17.75.060 Submittal requirements and review procedures.

- A. R-PUD applications shall be reviewed as a subdivision application subject to Title 16 and site plan review pursuant to Chapter 17.81. A pre-submission conference pursuant to Title 19 will help identify application requirements and a neighborhood meeting is required.
- B. Applicant shall comply with application requirements of Title 19 and include the following additional tabular data and mapped items:
1. Existing zoning;
 2. Total site area;
 3. Gross project area;
 4. Net project area;
 5. Total number of dwelling units proposed or lots created;
 6. Residential density calculation;
 7. Open space, common area, and facilities calculation;
 8. General description of natural setting and/or aerial and other photos of the site;
 9. Proposed development schedule and any plans to phase development;
 10. Resulting type of ownership, plans to rent [or] sell and type of ownership planned for common areas;
 11. Site maps with graphic scale and north arrow, and topography shown at five-foot intervals, water bodies, critical areas, and important natural features including rock outcroppings, steep slopes, and flood hazard areas;
 12. Preliminary location and function of all buildings, including heights, nearest setbacks and closest distance between structures, or building envelopes [P4] based upon setback standards;
 13. Location and measurement, where applicable, of other proposed improvements;
 14. Preliminary landscape diagram identifying use areas, general types of landscape treatment, and areas of irrigated versus drought tolerant vegetation;
 15. Tree survey indicating location of all native trees measuring eight-inch caliper or greater measured four feet from ground and identifying inventoried trees to be removed and to be protected;
 16. Preliminary grading plan showing areas of substantial grading or recontouring;

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17. Any additional information required by staff and planning commission as necessary to evaluate the character and impact of the proposed R-PUD development;
 18. Initial lighting diagram indicating areas of the site to be lighted at night and/or lighting design guidelines for individual lots. ~~and a qualitative discussion of the type of lighting planned for those areas~~ All lighting shall conform to the standards of WSMC Ch. 8.040 Outdoor Lighting;
 19. Record of neighborhood meeting;
 20. Standards which applicant requests be modified and reasons for the modification; and
 21. Applicant's proposed conditions of approval.
- C. If the proposed site is within shoreline management jurisdiction an application for shoreline substantial development permit along with any other permits required, such as a flood plain permit or other local, state, or federal permits shall be filed.
 - D. An environmental checklist shall be completed.
 - E. A completed application shall be evaluated by staff, including emergency personnel, and it shall be reviewed at a public hearing held by the planning commission. If an environmental impact statement is required the final EIS shall be available for at least ten days before the hearing on the proposal.
 - F. Site Grading and Clearing. Grading and site clearing in preparation for planned development shall not commence prior to approval of a preliminary master plan. This requirement is necessary to ensure that all necessary erosion control measures are in place prior to disturbance and is intended to limit disturbance to that necessary to accommodate the approved planned development.
 - G. Review of a R-PUD application follows the Type III review procedures in Title 19. City staff and the applicant shall be available. Staff may provide supplemental information and respond to questions from the city council. The city council may approve the preliminary plat with some or all of the planning commission's recommended conditions, and may impose additional conditions. The city council may remand the application to the planning commission to address specific articulated concerns of the city council and/or the council's proposed changes to the preliminary plat and/or conditions. The council may deny the application upon findings of noncompliance with applicable standards. The city council may direct staff or the city attorney to draft proposed form of findings and decision for review and consideration as specified at regularly scheduled council meeting not more than six weeks hence.
 - H. If the preliminary plat is approved, the applicant shall have five years with the opportunity to extend preliminary approval if deemed reasonable by the city to do so. Final binding site plan shall be submitted in accordance with Chapter 16.30 and Sections 17.81.090 through 17.81.100. If a binding site plan cannot be recorded within the initial five years, the applicant shall make written request for extension prior to the close of the two year recording period, and may be granted an additional year upon demonstration of good faith effort to file the site plan. Evaluation of requested extensions will include consideration of whether land use regulations affecting the application have changed since the decision was originally made. Where possible and applicable; extensions of final binding site plan approval shall be coordinated with timeframes for final subdivision plats submittal and approval.
 - I. If the development is phased the final binding site plans and plat for each phase may be reviewed independently in accordance with the approved time frame.
 - J. A preliminary binding site plan of an R-PUD and all accompanying documents, together with CC&Rs or development agreement approved by the city attorney. Prior to recordation of Final Plat, a binding site plan the site to development in accordance with all the terms and conditions of approval shall be recorded by the county auditor, at the applicant's expense.

(Ord. No. 2012-11-905, 11-26-2012)

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17.75.070 R-PUD application costs/compliance required before building permits.

A R-PUD applicant shall pay for all costs incurred by the city in processing the R-PUD application including legal, engineering and planning costs. In addition, the city may require engineering or transportation studies or plans which shall be provided at applicant's expense. No building permits shall be issued until all such fees have been paid and all approval requirements and conditions have been satisfied. An initial deposit to cover estimated costs shall be paid by applicant prior to the city's processing of the R-PUD application.

(Ord. No. 2012-11-905, 11-26-2012)

17.75.080 Alternative housing types—Cottage dwellings, townhouse, and ADUs within an R-PUD.

Alternative housing types and lot configurations may be employed in the R-PUD. Alternative housing types must meet the following site and structural requirements.

- A. Cottage Dwelling Units and Lots. Cottage development is an acceptable housing type for an R-PUD. Cottage infill standards and criteria in Chapter 17.73 must be met and though lot and structure sizes may be smaller; density limitations of the R-PUD continue to apply to this housing type in all residential zones.
- B. Townhouse Dwellings and Lots. Town houses are an acceptable housing type within an R-PUD. Town house design standards and review criteria (Section 17.68.1[5]0) must be met, the setbacks and density provisions in the zone in which the R-PUD is located continue to apply.
- C. Accessory Dwelling Units. Accessory dwelling units may be approved within an R-PUD. Such approval must be granted as part of the R-PUD site plan review process and in accordance with design standards and criteria applicable to ADUs (Chapter 17.64). An ADU within an R-PUD does not count toward the overall density count in an R-PUD as long as it complies with all ADU size and use limitations (Chapter 17.64) and is located on a common lot with a principal dwelling.

(Ord. No. 2012-11-905, 11-26-2012; Ord. No. 2016-10-994, § 1, 10-19-2016)

17.75.110 Alternative housing type provisions—Cottage, townhouse, and accessory dwelling unit designs.

The R-PUD ordinance is created to support design innovation. Design standards and approval criteria provide essential guidance to applicants and administrators but not every circumstance can be anticipated in the drafting of standards and criteria. The city recognizes that cottages and ADUs, in particular, could be designed in alternate ways that still achieve the overall objectives of the R-PUD. An applicant may request approval of a variation on specific standards during R-PUD review. A specific request for variation is not subject to variance criteria. Approval of a specific variation may only be granted with findings that the specific variation requested ~~provides for an equal or better way to meet~~meets or exceeds the purpose of the written standard.

(Ord. No. 2012-11-905, 11-26-2012)

17.75.120 Neighborhood meeting required.

Any residential planned unit development application requires a specially noticed neighborhood meeting to be held and documented prior to completion of the development application and before any public hearing is scheduled. Such meeting shall comply with Section 17.74.120 - Special use—Neighborhood meeting requirements.

(Ord. No. 2012-11-905, 11-26-2012)

Chapter 17.81 SITE AND BUILDING PLAN REVIEW

17.81.010 Definitions.

As used in this chapter, the following terms are defined:

- A. "Existing use" means that use, or uses, to which a parcel of land is currently subject, or has been subject within two years of the proposal. A lot may have more than one "existing use."
- B. "Improvement" means addition to a site such as, but not limited to, utility lines, roadways, walkways, drainage devices, paving, grading and/or excavating which changes the natural topography of the site.
- C. "Modified proposal" means an amended proposal showing modifications which directly address the reasons for its original rejection.
- D. "Normal maintenance or repair" means that work which is necessary or intended to maintain a structure at the same level of soundness, livability and appearance that it originally held.
- E. "Significant change in use of site" means one which creates a change or increase in usage of city utilities, or would cause a different pattern or amount of public use of the structure, available parking or traffic, or increase sources of public nuisance factors.
- F. "Substantial change of appearance of a structure" means modification of the structure's profile (elevation) or footprint that increases the height or width or length of the structure's profile by more than four feet or increases the structure's footprint by more than one hundred twenty square feet, (Ord. 710 § 005, 1994).

[G. Building envelope here?](#)

(Ord. No. 2012-11-905, 11-26-2012)

17.81.020 Purpose.

The purpose of a site plan review is to ensure:

- A. That all new development is in accordance with applicable standards and regulations;
- B. Compatibility is achieved between new developments, existing uses and future developments;
- C. That development proposals will comply with density requirements and design standards which have been adopted for applicable zoning district(s); with environmental requirements; and with standards of public safety;
- D. Opportunity for public awareness of new development proposals and opportunities for public comment are provided when discretion is exercised in a site plan review.

(Ord. No. 2012-11-905, 11-26-2012)

17.81.030 Title.

The planning commission is designated as the site plan review committee. ~~The site plan review committee reviews~~ for site plans referred to the committee as a Type II project review per Chapter 19.10.230. The city council

is designated as the site plan review committee for site plans referred to the committee as a Type III project review per Chapter 19.10.230. The planning administrator shall decide site plan review for applications specified in Section 17.81.060.

(Ord. No. 2012-11-905, 11-26-2012)

17.81.040 When required.

Site plan review and approval shall be required prior to:

- A. Site preparation, e.g., grading, or construction of improvements;
- B. A significant change in use of a building or other structure;
- C. Construction of ~~any~~ new buildings or structures;
- D. Remodeling of an existing building, structure, roadway and parking area within the city; or
- E. Significant change in use of a site.

Exceptions.

- 1. All single family uses permitted in RL, R-1, R-2, and R-3 zones;
- 2. Minor construction which does not substantially change the appearance of the structure such as:
 - a. Normal maintenance or repair;
 - b. Construction such as roof or siding replacement
- 3. Changes in the use of an existing building from one permitted use to another. At the discretion of the staff, a site plan review may be waived if the overall character or use of the site is not significantly altered by the change in use and anticipated impact of the use does not alter applicable standards.

The provisions of this chapter shall apply equally to public and private projects or proposals, except that city projects shall be exempt from the fee requirements.

(Ord. No. 2012-11-905, 11-26-2012)

17.81.050 Application.

The application shall consist of a project description, a site plan, a preliminary building plan, an environmental checklist, if applicable, and a filing fee. The site plan and preliminary building plan shall be submitted as originals plus four copies. Additional copies may be requested if needed.

- A. Project Description. Shall be a brief description of the development proposal, including the following:
 - 1. Names, addresses and phone numbers of owner, developer and architect or engineer;
 - 2. Proposed use of the land and building: Nature of the business or activity;
 - 3. Existing uses of neighboring lands within two hundred feet of the site;
 - 4. Estimated number of employees at full employment;
 - 5. Estimated number of customers/visitors, describing variations that may occur due to season, etc.;
 - 6. Number and type of deliveries and delivery vehicles;
 - 7. Type of waste and manner of storage and removal;

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8. Utilities and volume of use expected;
 9. Nuisance aspects, such as noise, smoke, odors, etc.;
 10. Hazardous aspects, such as chemicals, heavy metals;
 11. Estimated dates of construction start and completion;
 12. Legal description of the lot or lots; and
 13. Estimated cost of project.

B. Site Plan. Shall be a detailed drawing or drawings containing the following information:

1. Name of owner, developer and architect or engineer;
2. North arrow, scale and title of proposed project;
3. Complete lot or lots, legal boundaries and markers;
4. All existing and proposed buildings and structures showing outside limits and dimensions;
5. Proposed site drainage plan;
6. Existing and proposed utilities;
7. Elevation contours every two feet, or at staff discretion, including maximum extent of grading.

NOTE: a grading and erosion control plan may also be required at discretion of city staff;

8. Location and design of signs;
9. Refuse storage areas with screening provisions;
10. Landscaping;
11. Sufficient clear space on the face of the plan to accommodate the city stamp, in event of approval (three inches by three inches);
12. All existing and proposed means of vehicular and pedestrian ingress and egress to and from the site and structures, the size and location of driveways, streets, roads, curbs, parking lots and pedestrian pathways and sidewalks, and bike paths;
13. Natural features;
14. Fences, light poles, and exterior light fixtures.

C. Building Plan.

1. Preliminary floor plans, elevations and descriptive sections of all proposed buildings and structures. Materials and finishes shall be indicated. The preliminary plans shall be sufficiently detailed to show the size, shape, uses and character of the intended buildings and structures.

Note: Complete and detailed plans and specifications for all proposed buildings and structures shall be submitted to the city building official at the time of applying for building permits for the approved proposal or portion thereof.

D. Environmental checklist, unless the proposed project is exempt under SEPA Rules, an environmental checklist must be completed and submitted to the city along with the applicable fee. This fee is nonrefundable.

E. Other Permits. Final approval of the site and building plan review will be contingent upon issuance of any other applicable environmental permits, such as shorelines, hydraulics, septic tank and water quality permits.

F. Filing Fee. An application fee as set forth in Chapter 3.3[6] of this code for site plan review is required at the time of submittal of the proposal.

(Ord. No. 2012-11-905, 11-26-2012)

17.81.060 Review process.

A. An application for a site and building plan review ~~may shall~~ be processed according to Type I-b by the Planning Administrator or their designee after a determination ~~land~~ regarding land use decisions established in Chapter 19.10, Land Use Administrative Procedures for ~~projects that the following:~~

1. ~~Comply with the permitted uses for the subject zone district~~ Site preparation, e.g., grading, or construction of improvements;
2. ~~Do not include a use classified as a use permitted subject to site plan review~~ Remodeling of an existing building, structure, roadway and parking area within the city; and
3. ~~Clearly require no modification or alteration of applicable standards~~ Short plat subdivisions in residential zones.

The Planning Administrator or their designee may choose to elevate an application to Type II review before the Planning Commission, or Type III review before the city council at their discretion.

B. An application for a site and building plan review shall be processed according to Type II land use decisions established in Chapter 19.[10], Land Use Administrative Procedures for projects that include:

1. ~~Include a use classified as a use permitted subject to standards and/or site plan review;~~ A significant change in use of a building or other structure;
2. Construction of any new building or structure less than or equal to 10,000 square feet Gross Floor Area;
3. Short plat subdivision in a Commercial zone;
4. Significant change in use of a site; or
5. Include a use classified as a conditional use in its zone district.

The Planning Administrator or their designee may choose to elevate an application to Type III review before the city council at their discretion.

C. An application for a site and building plan review shall be processed according to Type III land use decisions established in Chapter 19.[10], Land Use Administrative Procedures for projects that include:

1. Construction of any new building or structure greater than 10,000 square feet Gross Floor Area;
2. Involve a Planned Unit Development (PUD) or other review process triggering the need for a binding site plan;
3. Requiring a change in zone;

DC. In addition to review under all requirements of Chapter [19.10], based on comments from city departments and applicable agencies, the city shall review the proposal subject to the criteria contained in this chapter, and shall approve any such proposal only when consistent with all of the provisions of this chapter.

ED. Amendment of Site Plan. A site plan approved by the city may be amended by the same procedures provided under this chapter for original plan approval. The fee may be waived for amendments submitted within one year of the date of approval on the original site plan and for relatively minor new work including, but not limited to work such as, a fence, refuse enclosure, or other minor changes. If a building permit has been

issued for an approved project, an amended site plan shall require a new building permit unless waived by the building official, (Ord. 839 § 3, 2003: Ord. 710 § 040, 1994).

(Ord. No. 2012-11-905, 11-26-2012)

17.81.070 Optional phased development plan.

- A. Whenever a planned use of land is to be implemented in phases over a period of years, the applicant shall request review and approval of the phased development plan.
- B. In the case of a phased development, each phase shall be subject separately to the two year performance standard provided in Section 17.81.090 unless a modified time frame is expressly stated in the land use decision approving the project. The starting and completion dates of each phase shall be stated in the application, (Ord. 710 § 050, 1994).

(Ord. No. 2012-11-905, 11-26-2012)

17.81.090 Expiration of approval.

The approval of a site and building plan shall be revoked and nullified if within two years of the date the city approved the plan, construction has not been started or is not substantially completed, (Ord. 710 § 070, 1994).

(Ord. No. 2012-11-905, 11-26-2012)

17.81.100 Extension of approval.

The approval of a site plan may be extended for another year provided that:

- A. Within the initial two year approval period, the applicant requests in writing a time extension, stating his reasons for the extension request; and
- B. No change has been made in the plan; and
- C. No significant change has been made to the standards and criteria applicable to the proposed application since its original submittal; and
- C. A fee may be charged by the city in accordance with the city fee schedule at the time extension is made.

(Ord. No. 2012-11-905, 11-26-2012)

17.81.110 Approved site plan is binding—Penalty.

- A. Any development or use which fails to conform to the approved plan shall be a violation of this chapter punishable as provided in [Chapter] 17.92, below. Upon verification by the city building official that development has proceeded or a use or structure has been altered in a manner so as not to conform to the finally approved and signed plan, he shall issue and enforce a stop-work order halting any and all construction on a lot, parcel, or tract of land and/or enforcement proceedings may begin.
- B. Any use of land which requires site and building plan review and approval as provided in this chapter, for which such review and approval is not obtained shall constitute a violation of this chapter. It shall be unlawful for any person, firm, or corporation to erect, construct, enlarge, alter, repair, move, improve,

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remove, convert or demolish, equip, occupy, or maintain any building or structure in the city, or cause the same to be done, contrary to, or in violation of any of the provisions of this chapter.

(Ord. No. 2012-11-905, 11-26-2012)

17.81.120 Utility construction.

The developer shall be responsible for construction of all utilities within the boundaries of the proposed development. Where connection with public infrastructure is planned the method and design of connection shall be approved prior to construction and will be subject to inspection while the point of connection is still easily visible.

(Ord. No. 2012-11-905, 11-26-2012)

Title 19

ADMINISTRATION OF LAND DEVELOPMENT REGULATIONS

Chapter 19.10 LAND DEVELOPMENT ADMINISTRATIVE PROCEDURES

ARTICLE I TYPES OF PROJECT PERMIT APPLICATIONS

19.10.010 Purpose and definitions.

- A. Purpose. White Salmon adopts its comprehensive plan and development regulations pursuant to RCW 35A.63, Planning and Zoning in Code Cities. In enacting this chapter, and pursuant to RCW 36.70B.150, the city council intends to establish a mechanism for implementing most of the provisions of Chapter 36.70B RCW (the Regulatory Reform Act) regarding compliance, conformity, and consistency of proposed projects with the city's adopted comprehensive plan and development regulations.
- B. Definitions. The following definitions shall apply throughout this chapter:
1. "Administrator" means the city planning administrator as designated by the city council.
 2. "Aggrieved party" means a party of record who can demonstrate the following: (a) the land use decision will prejudice the person; (b) the asserted interests are among those the city is required by city code to consider in making a land use decision; and (c) a decision on appeal in favor of the person would substantially eliminate or redress the prejudice alleged to be caused by the land use decision.
 3. "Closed record hearing" means an administrative closed record hearing before the city council based upon the record following an open record hearing on a project permit application. The hearing is on the record with no new evidence or information allowed to be submitted. In an appeal, at the city council's discretion, the council may allow argument based upon the record established at the open record hearing.
 4. "Days" means calendar days.
 5. "Effective date of decisions" means all preliminary and final decisions shall be effective on the date stated in Section 19.10.280(B).
 6. "Effective date of notices" means all notices provided to applicants and any members of the public shall be effective on the date deposited in the mail and when first published or posted on properties.
 7. "Open record hearing" means a hearing, conducted by a single hearing body, that creates the record through testimony and submission of evidence and information. An open record hearing may be held prior to a decision on a project permit to be known as an "open record predecision hearing." An open record hearing may be held on an appeal, to be known as an "open record appeal hearing," if no open record predecision hearing has been held on the project permit.
 8. "Parties of record" means the land use permit applicant, persons who have testified at an open record hearing, and any persons who have submitted written comments concerning the application that form part of the public record that is considered at the open record hearing (excluding persons who only signed petitions or mechanically produced form letters).

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9. "Project permit" or "project permit application" means any land use or environmental permit or license required from the city for a project action, including but not limited to land divisions, planned unit developments, conditional uses, shoreline substantial development permits, permits or approvals required by the Critical Areas Ordinance (Chapter 18.10 of this code), site-specific rezones authorized by the White Salmon comprehensive plan or a formally adopted subarea plan, but excluding the adoption or amendment of the White Salmon comprehensive plan, a subarea plan, or development regulations except as otherwise specifically included in this subsection.
 10. "Public meeting" means an informal meeting, hearing, workshop, or other public gathering of people to obtain comments from the public or other agencies on a proposed project permit prior to a decision. A public meeting may include, but is not limited to, a city council meeting, or a scoping meeting on a draft environmental impact statement. A public meeting does not include an open record hearing. The proceedings at a public meeting may be recorded and a report or recommendation may be included in the local government's project permit application file.

(Ord. No. 2012-11-907, § 1, 11-26-2012)

19.10.020 Procedures for processing development project permits.

For the purpose of project permit processing, all development permit applications shall be classified as one of the following: Type I-A, Type I-B, Type II, Type III or Type IV. Legislative decisions are Type V actions, and are addressed in Section 19.10.060. Exemptions from the requirements of project permit application processing are contained in Section 19.10.080.

(Ord. No. 2012-11-907, § 1, 11-26-2012)

19.10.030 Determination of proper type of procedure.

- A. Determination by Planning Administrator. The planning administrator or his or her designee (hereinafter the "Administrator") shall determine the proper procedure for all development applications. If there is a question as to the appropriate type of procedure, the administrator shall resolve it in favor of the higher procedure type number.
- B. Optional Consolidated Permit Processing. An application that involves two or more procedures may be processed collectively under the highest numbered procedure required for any part of the application or processed individually under each of the procedures identified by the code. The applicant may determine whether the application shall be processed collectively or individually. If the application is processed under the individual procedure option, the highest numbered type procedure must be processed prior to the subsequent lower numbered procedure. For purposes of this section, "highest number" is Type V and lowest number is Type I (or Type I-A).
- C. Decision Maker(s). Applications processed in accordance with subsection B of this section which have the same highest numbered procedure but are assigned different hearing bodies shall be heard collectively by the highest decision-maker(s). The city council is the highest, followed by the planning commission, and then the administrator. Joint public hearings with other agencies shall be processed according to Section 19.10.050.
- D. SEPA Review. Project review conducted pursuant to the State Environmental Policy Act (SEPA), Chapter 43.21C RCW, shall occur concurrently with project review set forth in this chapter. The SEPA review process, including all public comment procedures, is set forth in Chapter 18.20 of this code. Nothing contained in this chapter shall be construed to restrict the need for full environmental review in accordance with Chapters 18.10 (Critical Areas Ordinance) and 18.20 (Environmental Protection/SEPA Review).

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(Ord. No. 2012-11-907, § 1, 11-26-2012)

19.10.040 Project permit application framework.

Table 1—Permits/Decisions

Type I-A	Type I-B	Type II	Type III	Type IV	Type V
Building permits	Site and building plan review (1)	Site and building plan review (2)	<u>Site and building plan review (3)</u>	Final plat	Development regulations
Short plat (simple)	Boundary line adjustment	Short plat (defer to PC)	Preliminary PUD	Final PUD	Zoning text and map amendments
Grading permits	Conditional use (simple)	Conditional use	Site specific rezone		Comprehensive plan text and map amendments
Manufactured home placement permit		<u>Zoning variances</u>	Preliminary plat for full subdivision		Shoreline Master Program amendments
Permitted uses not requiring notice of application			Shoreline permits: substantial development, conditional use, or variances		Annexations

Procedure Project Permit Applications (Type I – IV)						Legislative
	Type I-A	Type I-B	Type II	Type III	Type IV	Type V
Notice of application:	No	Yes	Yes	Yes	Yes	Yes
Recommendation made by: <u>commission</u>	N/A	N/A	Administrator	Planning commission	Administrator	Planning <u>commission</u>
Final decision made by:	Administrator	Administrator	Planning commission (2)	City council	City council	City council

Open record public hearing	No	No	Yes	Yes (3)	No	Yes (4)
Administrative appeal	Yes (5)	Yes (6), closed record before planning commission	Yes (6), closed record before city council	N/A	N/A	N/A
Judicial appeal	Yes	No	No	Yes	Yes	Yes

- (1) The administrator may makes the final decision on some site and building plan review applications considering the degree of discretion to be employed as specified in Chapter 17.81. ~~Implementation of clear and objective standards and review of site plans for uses already approved for land use permits will typically be subject to type I-B review while site plans addressing more subjective concerns and criteria will follow type II procedure.~~

Table 2—Action Type

- (2) ~~The administrator may make the final decision on some applications, as specified in Chapter 17.81. The planning commission shall make the final determination for all site plan review within the parameters of Type II review as specified in Chapter 17.81.~~
- (3) ~~The city council shall make the final determination for all site plan review within the parameters of Type III review as specified in Chapter 17.81.~~ Open record hearings will be held before the planning commission to make recommendations to city council.
- (4) Open record hearings will be held both before planning commission to make recommendations to city council, and before city council for final decision.
- (5) Appeal provisions specified in Section 19.10.290 Appeal of administrative interpretations and approvals.
- (6) The planning commission will hear appeals of staff decisions; the city council will hear appeals of planning commission decisions. Both appeals are closed record hearings.

Summary of Decision Making:

Type I-A — Administrative without notice; administrative appeal by applicant only.

Type I-B — Administrative without notice; administrative appeal by the applicant only; appealable to the planning commission.

Type II — Planning commission review. Notice and open record hearing before the planning commission. Planning commission makes the final decision subject to a right of appeal.

Type III — Planning commission makes a recommendation to city council. City council makes the final decision. Notice and public hearings will be held both before the planning commission to make recommendations to city council, and before city council for final decision.

Type IV — Notice and decision by city council during regular council meeting.

Type V — Notice and public hearing before planning commission, with planning commission recommendation to city council. City council also provides notice and public hearing before making final legislative decision.

(Ord. No. 2012-11-907, § 1, 11-26-2012; Ord. No. 2016-10-996, § 1, 10-19-2016; Ord. No. 2017-05-1007, § 2, 5-3-2017)

19.10.050 Joint public hearings (other public agency hearings).

- A. Administrator's Decision to Hold Joint Hearing. The administrator may combine any public hearing on a project permit application with any hearing that may be held by another local, state, regional, federal, or other agency, on the proposed action, as long as: (1) the hearing is held within the city limits; and (2) the requirements of subsection C of this section are met.
- B. Applicant's Request for a Joint Hearing. The applicant may request that the public hearing on a permit application be combined as long as the joint hearing can be held within the time periods set forth in this chapter. In the alternative, the applicant may agree to a particular schedule if additional time is needed in order to complete the hearings.
- C. Prerequisite to Joint Public Hearing. A joint public hearing may be held with another local, state, regional, federal or other agency and the city, as long as:
 - 1. The other agency is not expressly prohibited by statute from doing so;
 - 2. Sufficient notice of the hearing is given to meet each of the agencies' adopted notice requirements as set forth in statute, ordinance, or rule; and
 - 3. The agency has received the necessary information about the proposed project from the applicant in enough time to hold its hearing at the same time as the local government hearing.

(Ord. No. 2012-11-907, § 1, 11-26-2012)

19.10.060 Legislative decisions.

- A. Decision. The following decisions are legislative, and are not subject to the procedures in this chapter, unless otherwise specified:
 - 1. Zoning code text, development regulations and zoning district amendments;
 - 2. Area-wide rezones to implement city policies contained within the White Salmon comprehensive plan and any amendments thereto;
 - 3. Adoption of the White Salmon comprehensive plan and any plan amendments;
 - 4. Annexations;
 - 5. Shoreline master program (SMP) amendments; and
 - 6. All other master land use and utility plans and amendments thereto.
- B. Except as otherwise provided in this chapter, the administrative procedures for the legislative decisions specified in this section are set forth in Chapter 19.60 of this code.

(Ord. No. 2012-11-907, § 1, 11-26-2012)

19.10.070 Legislative enactments not restricted.

Nothing in this chapter or the permit processing procedures shall limit the authority of the city to make changes to the White Salmon comprehensive plan as part of an annual revision process, the city's development regulations, or to undertake any other legislative actions.

(Ord. No. 2012-11-907, § 1, 11-26-2012)

19.10.080 Exemptions from project permit application processing.

- A. Whenever a permit or approval in the White Salmon Municipal Code has been designated as a Type I-A, I-B, II, III or IV permit, the procedures in this title shall be followed in project permit processing. The following permits or approvals are specifically excluded from the procedures set forth in this title:
1. Landmark designations;
 2. Street vacations;
 3. Public works projects identified as planned actions in the White Salmon comprehensive plan or any amendments thereto. Planned actions are those public or private projects specifically identified by city ordinance or resolution adopted after environmental review conducted in conjunction with the adoption or amendment of the White Salmon comprehensive plan.
- B. Pursuant to RCW 36.70B.140(2), Type I-A permits, including but not limited to building permits, or other construction permits, or similar administrative approvals categorically exempt from environmental review under SEPA (Chapter 43.21C RCW and Chapter 197-11 WAC), or permits/approvals for which environmental review has been completed in connection with other project permits shall be processed and permitted within one hundred twenty calendar days (subject to Section 19.10.110). However, Type I-A permits are not subject to other requirements of this chapter, and are excluded from the following procedures as defined in this section:
1. Determination of completeness;
 2. Notice of application;
 3. Except as provided in RCW 36.70B.140, optional consolidated project permit review processing;
 4. Single report stating that all of the decisions and recommendations made as of the date of the report do not require an open public record hearing;
 5. Notice of Decision. Unless the time deadlines are waived in writing by the applicant, the Type I-A permit shall be processed within one hundred twenty calendar days after the applicant files complete application, subject to the provisions of Section 19.10.110.

(Ord. No. 2012-11-907, § 1, 11-26-2012)

ARTICLE II TYPE I—IV PROJECT PERMIT APPLICATIONS

19.10.090 Preapplication conference.

- A. Recommended Conference. It is recommended that applicants for project permit Type I-A actions proposing impervious surfaces equal to or exceeding five thousand square feet and/or nonsingle-family structures five thousand square feet or more, Type II, and Type III actions schedule and attend a preapplication conference

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with the administrator. The purpose of the preapplication conference is to acquaint the applicant with the requirements of the White Salmon Municipal Code and to allow the administrator to provide the applicant with preliminary comments based upon the applicant's preliminary sketch of the proposal.

- B. Assurances Unavailable. It is impossible for the conference to be an exhaustive review of all potential issues. The discussions at the conference shall not bind or prohibit the city's future application or enforcement of all applicable law and ordinances. No statements or assurances made by city representatives shall in any way relieve the applicant of his or her duty to submit an application consistent with all relevant requirements of city, state, and federal codes, laws, regulations and land use plans.
- C. Optional Conferences. Preapplication conferences for all other types of applications not specified in this section are optional, and requests for conferences will be considered on a time-available basis by the director.

(Ord. No. 2012-11-907, § 1, 11-26-2012)

19.10.100 Development permit application.

- A. Applications for project permits shall be submitted upon forms provided by the city. The applicant is encouraged to schedule a presubmittal conference with the city prior to submittal of the application.
- B. An application shall consist of all materials required by the applicable development regulations, and shall include the following general information:
 - 1. A completed project permit application form, including SEPA checklist submitted pursuant to White Salmon Municipal Code (WSMC) Title 18.20 Environmental Protection/SEPA Review;
 - 2. A verified statement by the applicant that the property affected by the application is in the exclusive ownership of the applicant, or that the applicant has submitted the application with the written consent of all owners of the affected property. A photocopy of the property deed shall be provided;
 - 3. A property and/or legal description of the site for all applications, as required by the applicable development regulations;
 - 4. The applicable fees;
 - 5. A site plan, showing the location of all proposed lots and points of access and identifying all easements, deeds, restrictions, or other encumbrances restricting the use of the property, if applicable;
 - 6. Any supplemental information or special studies identified by the city.
- C. In addition to the requirements set forth in subsections A and B of this section, complete application requirements for the following land use permits are set forth in the following sections of the White Salmon Municipal Code:
 - [1.] Construction and Grading permits, see Chapter 13.01 of this code;
 - [2.] Boundary Line Adjustments, see [Title] 16 of this code;
 - [3.] Short Plats, see [Title] 16 of this code;
 - [4.] Preliminary Plat, see [Title] 16 of this code for contents of preliminary plat and notice to owners of contiguous land;
 - [5.] Planned Unit and Cottage Developments, see Chapters 16 and 17 of this code;
 - [6.] Site and Building Plan Review, see Chapter 17.80 of this code;
 - [7.] Conditional Uses, see Chapter 17.80 of this code;

[8.] Final Plats, see [Title] 16 of this code;

[9.] Amendments and Rezones, see Chapter 17.88 of this code;

[10.] Shoreline Substantial Development, Conditional Use, or Variance Permits, see WAC 173-27-180.

D. The city may waive specific submittal requirements determined to be unnecessary for review of an application. In such event, the city shall document the waiver in the project file.

(Ord. No. 2012-11-907, § 1, 11-26-2012)

**19.10.110 Submission and acceptance of application—Determination of completeness—
Additional information and project revisions.**

- A. **Determination of Completeness.** Within twenty-eight calendar days after receiving a project permit application, the city shall mail a determination to the applicant which states either: (1) that the application is complete; or (2) that the application is incomplete and what is necessary to make the application complete.
- B. **Identification of Other Agencies with Jurisdiction.** To the extent known by the city, other agencies with jurisdiction over the project permit application shall be identified in the city's determination required by subsection A of this section.
- C. **Incomplete Application Procedure.**
1. If the applicant receives a determination from the city that an application is not complete or that additional information is required, the applicant shall have one hundred twenty calendar days to submit the necessary information to the city. Within fourteen calendar days after an applicant has submitted the requested additional information, the city shall make the determination as described in subsection A of this section and notify the applicant in the same manner.
 2. If the applicant either refuses in writing to submit additional information or does not submit the required information within the one hundred twenty-day period, the director shall make a determination that the application has been abandoned and is therefore withdrawn.
 3. In those situations where the administrator has deemed an application withdrawn because the applicant has failed to submit the required information within the necessary time period, the applicant will forfeit the application fee.
- D. **City's Failure to Provide a Determination of Completeness.** A project permit application shall be deemed complete under this section if the city does not provide a written determination to the applicant that the application is incomplete as provided in subsection A of this section. Notwithstanding a failure to provide a determination of completeness, the city may request additional information as provided in subsection F of this section.
- E. **Date of Acceptance of Application.** When the project permit application is determined to be complete, the director shall accept it and note the date of acceptance.
- F. **Additional Information.** A project permit application is complete for purposes of this section when it meets the submission requirements in Section 19.10.100, as well as the submission requirements contained in the applicable development regulations. This determination of completeness shall be made when the application is sufficient for continued processing even though additional information may be required or project modifications may be undertaken after submittal. The city's determination of completeness shall not preclude the city from requiring additional information, that the applicant correct plans or perform studies at any time if new information is required for project review, or if there are substantial changes in the proposed action. No application shall be deemed complete before all applicable application review fees stipulated by Chapter 3.36 WSMC as well as fees applicable to other applicable review processes are collected.

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1. Any period during which the city has requested the applicant to correct plans, perform required studies, or provide additional information shall be excluded from the time period provided in this chapter.
 2. The time period for requiring additional information shall be calculated from the date the city notifies the applicant of the need for additional information until the earlier of: (a) the date the city determines whether the information satisfies the request for information; or (b) fourteen calendar days after the date the information has been provided to the city.
- G. Effect of Project Permit Application Revisions—Substantial Revisions. If, in the judgment of the administrator, the content of an application is so substantially revised by an applicant, either voluntarily or to conform with applicable standards and requirements, that such revised proposal constitutes a substantially different proposal than that originally submitted, the administrator shall deem the revised proposal to be a new application.
1. In reaching a decision whether a revision is substantial, the director shall consider the relative and absolute magnitude of the revision, the environmental sensitivity of the site, any changes in location of significant elements of the project and their relation to public facilities, surrounding lands and land uses and the stage of review of the proposal.
 2. Lesser revisions that would not constitute substantial revisions during early stages of review may be substantial during later stages due to the reduced time and opportunity remaining for interested parties to review and comment upon such changes.
 3. Written notice of such determination of substantial revision shall be provided to the applicant and all parties of record, including the reasons for the administrator's decision.
 4. A determination that any revision is substantial shall result in the time periods set forth in this chapter starting from the date at which the revised project application is determined to be complete. The revised project application shall be subject to all laws, regulations, and standards in effect on the date of the determination of completeness of the substantial revision.

(Ord. No. 2012-11-907, § 1, 11-26-2012)

19.10.120 Referral and review of development permit applications.

Upon acceptance of a complete application, the administrator shall do the following:

- A. Transmit a copy of the application, or appropriate parts of the application, to each affected agency and city department for review and comment, including those agencies responsible for determining compliance with state and federal requirements. The affected agencies and city departments shall have ten calendar days to comment. The administrator may grant an extension of time if needed.
- B. Environmental Review. Developments and planned actions subject to the State Environmental Policy Act (SEPA), Chapter 43.21C RCW, shall be reviewed in accordance with the policies and procedures contained in Chapter 18.20 of this code and Chapter 197-11 WAC. SEPA review shall be conducted concurrently with development project review. The following are exempt from concurrent review:
 1. Projects categorically exempt from SEPA; and
 2. Components of planned actions previously reviewed and approved in the White Salmon comprehensive plan or amendments thereto to the extent permitted by law and consistent with the SEPA environmental determination for the planned action.
- C. If a Type III procedure is required, the administrator shall provide for notice and hearing as set forth in Sections 19.10.150 through 19.10.190 of this code.

(Ord. No. 2012-11-907, § 1, 11-26-2012)

19.10.130 Scope of project review.

- A. Fundamental land use planning choices made in adopted comprehensive and subarea plans and development regulations shall serve as the foundation for project review. The review of a proposed project's consistency with applicable development regulations, or in the absence of applicable regulations the adopted White Salmon comprehensive plan or subarea plan(s), under Section 19.10.140 of this code shall incorporate the determinations under this section.
- B. During project review, the administrator or any subsequent reviewing body shall determine whether the items listed in this subsection are defined in the development regulations applicable to the proposed project or, in the absence of applicable regulations, the adopted White Salmon comprehensive plan or subarea plan(s). At a minimum, such applicable regulations or plans shall be determinative of the:
 - 1. Type of land use permitted at the site, including uses that may be allowed under certain circumstances, such as conditional uses, if the criteria for their approval have been satisfied;
 - 2. Density of residential development; and
 - 3. Availability and adequacy of public facilities identified in the White Salmon comprehensive plan, if the plan or development regulations provide for funding of these facilities.
- C. During project review, the administrator shall not reexamine alternatives to or hear appeals on the items identified in subsection B of this section.
- D. The administrator may determine that the requirements for environmental analysis and mitigation measures in development regulations and other applicable laws provide adequate mitigation for some or all of the project's specific probable significant adverse environmental impacts to which the requirements apply. In making this determination, the administrator shall:
 - 1. Determine if the applicable regulations require measures that are sufficient to adequately address site-specific, probable significant adverse environmental impacts identified through project application review; and
 - 2. Determine whether additional studies are required and/or whether the project permit application should be conditioned with additional mitigation measures.
- E. Nothing in this section limits the authority of the city to approve, condition, or deny a project as provided in its development regulations adopted under Chapter 35A.63 RCW and in its policies and criteria adopted under RCW 43.21C.060, including project review under Chapters 18.10 (Critical Areas Ordinance) and 18.20 (Environmental Protection/SEPA Review) of this code.

(Ord. No. 2012-11-907, § 1, 11-26-2012)

19.10.140 Project consistency.

- A. A proposed project's consistency with development regulations adopted under Chapter 35A.63 RCW or, in the absence of applicable development regulations, the appropriate elements of the White Salmon comprehensive plan or subarea plan adopted under Chapter 35A.63 RCW shall be determined by consideration of:
 - 1. The type of land use;
 - 2. The level of development, such as units per acre or other measures of density;

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3. Infrastructure, including public facilities and services needed to serve the development; and
 4. The character of the development, such as development standards.
- B. In determining consistency, the determinations made pursuant to Section 19.10.130 shall be controlling.
 - C. For purposes of this section, the term "consistency" shall include all terms used in this chapter and Chapter 36.70A RCW to refer to performance in accordance with this chapter and Chapter 36.70A RCW, including but not limited to compliance, conformity, and consistency.
 - D. Nothing in this section requires documentation, dictates procedures for considering consistency, or limits the administrator from asking more specific or related questions with respect to any of the four main categories listed in subsections (A)(1) through (4) of this section.

(Ord. No. 2012-11-907, § 1, 11-26-2012)

ARTICLE III PUBLIC NOTICE

19.10.150 Notice of application.

- A. Time of Issuance. Within fourteen calendar days of issuing the determination of completeness, the administrator shall issue a notice of application on all Type III project permit applications. If an open record predecision public hearing is required or requested, the notice of application shall be issued at least thirty calendar days prior to the hearing.
- B. SEPA Exempt Projects. A notice of application shall not be required for project permits that are categorically exempt under SEPA, unless a public comment period or an open record predecision hearing is required.
- C. The notice of application shall be posted on the subject property and at City Hall. The notice of application shall be issued prior to and is not a substitute for the required notice of a public hearing.
- D. Contents. The notice of application shall include:
 1. The name of the applicant;
 2. The date of application, the date of the determination of completeness for the application and the date of the notice of application;
 3. The street address location of the project or, if unavailable, the location in reference to roadway intersections;
 4. A description of the proposed project action and a list of the project permits included in the application;
 5. The identification of other permits required by other agencies with jurisdiction not included in the application, to the extent known by the city;
 6. The identification of existing environmental documents that evaluate the proposed project, and, if not otherwise stated on the document providing notice of application, the location where the application and any studies can be reviewed;
 7. The name of the city staff contact and telephone number;
 8. A statement of the limits of the public comment period, which shall be ten calendar days following the date of notice of application (or thirty calendar days if the application involves a shoreline master program permit), and statements of the right of any person to comment on the application, receive

notice of and participate in any hearings, request copy of the decision once made, and any appeal rights;

9. The date, time, place and type of hearing, if applicable, and scheduled prior to issuance of the notice of application;
 10. A statement of the preliminary determination of consistency with applicable development regulations and the White Salmon comprehensive plan, if one has been made at the time of notice, and of those development regulations that will be used for project mitigation and determination of consistency as provided in Section 19.10.140 of this code;
 11. Any other information determined appropriate by the city, such as the city's pending SEPA threshold determination or a statement advising that a final environmental determination shall be made following a comment period;
 12. If a local government has made a determination of significance under Chapter 43.21C RCW concurrently with the notice of application, the notice of application shall be combined with the determination of significance and scoping notice. Nothing in this section prevents a determination of significance and scoping notice from being issued prior to the notice of application;
 13. A statement that the final decision on the application will be made within one hundred twenty days from the date of the determination of completeness.
- E. Public Comment on the Notice of Application. All public comments on the notice of application must be received in City Hall by five o'clock p.m. on the last day of the comment period. Comments may be mailed, personally delivered or sent by facsimile. Comments should be as specific as possible. Public comments may be provided at any time up to and during the public hearing. However, the city cannot ensure that comments provided after the comment period on the notice of application will be considered and addressed in staff reports on Type III projects. The SEPA threshold determination shall not be issued until after the expiration of the comment period following the notice of application. Regardless of the expiration of the notice of application comment period, any interested party may comment upon the SEPA threshold determination pursuant to applicable SEPA regulations.

(Ord. No. 2012-11-907, § 1, 11-26-2012)

19.10.160 Methods of public notice of application.

- A. The city shall provide the public notice of application for a project permit by posting the property and by publication in the city's official newspaper, as provided in this section, unless otherwise provided in this chapter.
1. Posting. Posting of the property for site-specific proposals shall consist of one or more notice boards posted by the city as follows:
 - a. A single notice board shall be placed:
 - i. At the midpoint of the site street frontage or as otherwise to allow for maximum visibility; and
 - ii. Where it is completely visible to pedestrians and vehicle traffic.
 - b. Additional notice boards may be required when:
 - i. The site does not abut a public road;
 - ii. A large site abuts more than one public road; or
 - iii. The administrator determines that additional notice boards are necessary to provide adequate public notice.

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- c. Notice boards shall be:
 - i. Maintained in good condition by the applicant during the notice period;
 - ii. In place at least ten calendar days prior to the date of hearing or decision; and
 - iii. Removed within fifteen calendar days after the end of the notice period.
 - 2. Published Notice. Published notice shall include at least the project's street address or location, project description, type of permit(s) required, comment period dates, and location where the complete application may be reviewed in a newspaper of general circulation in the county.

(Ord. No. 2012-11-907, § 1, 11-26-2012)

19.10.170 Shoreline master program (SMP) permits.

SMP permits require notice as provided in WAC 173-27-110 and additional mailing of the notice as provided herein:

- A. Mailing. The notice of application shall be mailed to the latest recorded real property owners as shown by the records of the county assessor within at least three hundred feet of the boundary of the property upon which the development is proposed.
- B. Content of SMP Notice. Except as provided in subsection C of this section, the content of SMP notices shall be identical to the notice set forth in WAC 173-27-110.
- C. SMP Comment Period. The public may provide comments for thirty calendar days after the notice of publication date. (SMP notice is twenty calendar days longer than the comment period for other Type III permits as required by RCW 90.58.140.) A notice of application for a shoreline substantial development permit shall notify the public of the thirty-day comment period.

(Ord. No. 2012-11-907, § 1, 11-26-2012)

19.10.180 Optional additional public notice.

- A. As optional methods of providing public notice of any project permits, the city may:
 - 1. Notify the public or private groups with known interest in a certain proposal or in the type of proposal being considered;
 - 2. Notify the news media;
 - 3. Place notices in appropriate regional or neighborhood newspapers or trade journals;
 - 4. Publish notice in agency newsletters or send notice to agency mailing lists, either general lists or lists for specific proposals or subject areas;
 - 5. Mail to neighboring property owners; and
 - 6. Place notices on the Internet.
- B. The city's failure to provide the optional notice as described in this subsection shall not be grounds or invalidation of any permit decision.

(Ord. No. 2012-11-907, § 1, 11-26-2012)

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19.10.190 Notice of public hearing.

- A. Content of Notice of Public Hearing for All Types of Applications. The notice given of a public hearing required in this chapter shall contain:
1. The name and address of the applicant or the applicant's representative;
 2. Description of the affected property, including the street address (if any) and either a vicinity location (including roadway intersections) or written description, other than a legal description, reasonably sufficient to inform the public of the location;
 3. The date, time and place of the hearing;
 4. A description of the nature of the proposed use or development;
 5. A statement that all interested persons may appear at the hearing and provide oral or written comments or testimony;
 6. Where information may be examined, and when and how written comments addressing findings required for a decision by the hearing body may be submitted;
 7. The name of the city staff contact or representative and the telephone number where additional information may be obtained;
 8. That a copy of the application and staff report, and all documents and evidence relied upon by the applicant and applicable criteria are available for inspection at City Hall at no cost.
- B. Mailed Notice. Mailed notice of the public hearing shall be provided as follows:
1. Type I-A, Type I-B, Type IV, and Type V Actions. No mailed public notice is required.
 2. Type II Permits - Limited Public Notice. A notice of development application for a Type II permit shall be sent by mail by the administrator. The applicant is responsible for mailing costs of said notice and shall obtain the official list of names and addresses from the county assessor's office. If the applicant/owner of the proposed project permit owns contiguous property to the project, notice shall apply to the boundaries of such contiguous parcels. Public notice shall be mailed to the property owner(s), applicant(s), authorized agents, and also to all owners of adjacent properties that abut the subject property or properties under contiguous ownership of the owner/applicant of the subject permit not fewer than ten nor more than forty-five days prior to the closed record public hearing. For the purposes of this section, properties separated by public right-of-way are considered to be adjacent properties.
 3. Type III Actions. The notice of public hearing shall be mailed to:
 - a. The applicant;
 - b. All owners of property within three hundred feet of any portion of the subject property; and
 - c. Any person who submits written comments on an application.
 4. Type III Preliminary Plat Actions. In addition to the notice for Type III actions above, additional notice for preliminary plats and proposed land divisions shall be provided as follows:
 - a. Notice of the filing of a preliminary plat application of a proposed land division located adjoining the city's municipal boundaries shall be given to the appropriate county officials;
 - b. Notice of the filing of a preliminary plat application of a proposed land division located adjacent to the right-of-way of a state highway shall be given to the Washington State Secretary of Transportation, who must respond within fifteen calendar days of such notice;

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- c. Special notice of the hearing shall be given to adjacent landowners by any other reasonable method the city deems necessary. Adjacent landowners are the owners of real property, as shown by the records of the county assessor, located within three hundred feet of any portion of the boundary of the proposed land division. If the owner of the real property which is proposed to be subdivided owns another parcel or parcels of real property which lie adjacent to the real property proposed to be subdivided, mailed notice under RCW 58.17.090(1)(b) and this section shall be given to owners of real property located within three hundred feet of any portion of the boundaries of such adjacently located parcels of real property owned by the owner of the real property proposed to be subdivided.
 - 5. Type V Actions. For Type V legislative actions, the city shall publish notice at City Hall and by one publication in a newspaper of general circulation in the county at least ten days before the hearing and all other notice required by city code and RCW 35.23.221.
 - 6. General Procedure for Mailed Notice of Public Hearing. All public notices shall be deemed to have been provided or received on the date the notice is deposited in the mail or personally delivered, whichever occurs first.
- C. Procedure for Posted or Published Notice of Public Hearing.
- 1. Posted notice of the public hearing is required for all Type II and Type III project permit applications. The posted notice shall be posted as required by Section 19.10.160(A)(1) of this code.
 - 2. Published notice is required for all procedures involving an open record public hearing. The published notice shall be published in a newspaper of general circulation in the county. Published notice is not required for closed record public hearings before the city council, as no new testimony or evidence is allowed at such hearings. Mailed notice of the closed record public hearing shall be provided for all parties of record.
- D. Time and Cost of Notice of Public Hearing.
- 1. Notice of a public hearing shall be mailed, posted and first published not less than ten nor more than forty-five calendar days prior to the hearing date. Any posted notice shall be removed within fifteen calendar days following the public hearing.
 - 2. All costs associated with the public notice shall be borne by the applicant.

(Ord. No. 2012-11-907, § 1, 11-26-2012; Ord. No. 2015-12-979, § 1, 12-2-2015)

ARTICLE IV PROJECT REVIEW AND APPROVAL PROCESS

19.10.200 Administrative approvals without notice (Type I-A).

- A. The administrator may approve, approve with conditions, or deny (with or without prejudice) all Type I-A permit applications without notice.
- B. The administrator's decisions under this section shall be final on the date issued.

(Ord. No. 2012-11-907, § 1, 11-26-2012)

19.10.210 Administrative approvals subject to notice (Type I-B).

- A. The administrator may grant approval, preliminary approval, or approval with conditions, or may deny (with or without prejudice) all Type I-B permit applications, subject to the notice and appeal requirements of this section. The administrator shall issue written findings and conclusions supporting Type I-B decisions.
- B. Final Administrative Approvals. Administrative decisions under this section shall become final subject to the following:
 - 1. An applicant may appeal the decision to the planning commission; provided, that a written appeal is filed within thirty calendar days after the notice of the decision.
 - 2. If no appeal is submitted, the preliminary approval becomes final at the expiration of the notice period.
 - 3. If a written notice of appeal is received within the specified time the matter will be referred to the planning commission for a public hearing. The decision of the planning commission shall be the final city decision.

(Ord. No. 2012-11-907, § 1, 11-26-2012)

19.10.220 City council action.

- A. Actions. Upon receiving a recommendation from the planning commission, an appeal of a planning commission's decision or notice of any other matter requiring the council's attention, the council shall perform the following actions as appropriate:
 - 1. Hold a closed record public hearing and make a decision on a planning commission recommendation;
 - 2. Hold a closed record public hearing and make a decision on an appeal of a planning commission decision;
 - 3. Hold an open record public hearing and make a decision on a legislative matter (Type V action);
 - 4. Make a decision on Type IV actions;
 - 5. At the council's discretion, hold a public hearing and make a decision on the following matters: other matters not prohibited by law.
- B. Decisions. The city council shall make its decision by motion, resolution, or ordinance as appropriate. In its decision regarding appeals of planning commission decisions, the city council shall adopt written findings and conclusions (either those rendered by the planning commission or findings and conclusions prepared by the council).
 - 1. A city council decision on a planning commission recommendation or on an appeal of a planning commission decision following a closed record public hearing shall include one of the following actions:
 - a. Approve as recommended;
 - b. Approve with additional conditions;
 - c. Modify, with or without the applicant's concurrence; provided, that the modifications do not:
 - i. Enlarge the area or scope of the project;
 - ii. Increase the density or proposed building size; or
 - iii. Significantly increase adverse environmental impacts as determined by the responsible official;

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- d. Deny without prejudice (reallocation or resubmittal is permitted);
 - e. Deny with prejudice (reapplication or resubmittal is not allowed for one year); or
 - f. Remand for further proceedings and/or evidentiary hearing in accordance with Section 19.10.270 of this code.
2. A council decision following a closed record appeal hearing shall include one of the following actions:
 - a. Grant the appeal in whole or in part;
 - b. Deny the appeal in whole or in part; or
 - c. Remand for further proceedings and/or evidentiary hearing in accordance with Section 19.10.270 of this code.
 3. A council decision on a Type IV action shall include one of the following actions:
 - a. Approve;
 - b. Approve with conditions in accordance with the White Salmon Municipal Code or other regulations; or
 - c. Deny without prejudice (reapplication or resubmittal is permitted).

(Ord. No. 2012-11-907, § 1, 11-26-2012)

19.10.230 Planning commission review and decision (Type II).

- A. The planning commission shall review and make findings, conclusions and issue final decisions on all Type II permit applications.
- B. Staff Report. The administrator shall prepare a staff report on the proposed development or action summarizing the comments and recommendations of city departments, affected agencies and special districts, and evaluating the development's consistency with the city's development code, adopted plans and regulations. If requested by the planning commission, the staff report shall include proposed findings, conclusions and recommendations for disposition of the development application. The staff report shall include and consider all written public comments on the application.
- C. Planning Commission Hearing. The planning commission shall conduct a public hearing on Type II development proposals for the purpose of taking testimony, hearing evidence, considering the facts germane to the proposal, and evaluating the proposal for consistency with the city's development code, adopted plans and regulations. Notice of the planning commission hearing shall be in accordance with Section 19.10.190. All appeals of administrative project permit decisions shall be considered together with the decision on the project application in a single, consolidated public hearing.
- D. Required Findings. In addition to the approval criteria listed in this code, the planning commission shall not approve a proposed development unless it first makes the following findings and conclusions:
 1. The development is consistent with the White Salmon comprehensive plan and meets the requirements and intent of the White Salmon Municipal Code;
 2. The development is not detrimental to the public health, safety and welfare;
 3. The development adequately mitigates impacts identified under Chapters 18.10 (Critical Areas Ordinance) and 18.20 (Environmental Protection/SEPA Review) of this code; and
 4. For land division applications, findings and conclusions shall be issued in conformance with White Salmon Municipal Code Title 16 and RCW 58.17.110.

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E. Final Decision. In the planning commission's decision regarding Type II actions, it shall adopt written findings and conclusions.

1. The planning commission's decision following closure of an open record public hearing shall include one of the following actions:

- a. Approve;
- b. Approve with conditions;
- c. Deny without prejudice (reapplication or resubmittal is permitted); or
- d. Deny with prejudice (reapplication or resubmittal is not allowed for one year).

2. The decision shall be a final decision, appealable in accordance with Sections 19.10.300 and 19.10.310 of this code.

(Ord. No. 2012-11-907, § 1, 11-26-2012)

19.10.235 Planning commission review and recommendation (Type III).

A. The planning commission shall review and make findings, conclusions and issue recommendations on all Type III permit applications.

B. Staff Report. The administrator shall prepare a staff report on the proposed development or action summarizing the comments and recommendations of city departments, affected agencies and special districts, and evaluating the development's consistency with the city's development code, adopted plans and regulations. If requested by the planning commission, the staff report shall include proposed findings, conclusions and recommendations for disposition of the development application. The staff report shall include and consider all written public comments on the application.

C. Planning Commission Hearing. The planning commission shall conduct a public hearing on Type III development proposals for the purpose of taking testimony, hearing evidence, considering the facts germane to the proposal, and evaluating the proposal for consistency with the city's development code, adopted plans and regulations. Notice of the planning commission hearing shall be in accordance with Section 19.10.190 of this code.

D. Required Findings. In addition to the approval criteria listed in this code, the planning commission shall not recommend approval of a proposed development unless it first makes the following findings and conclusions:

1. The development is consistent with the White Salmon comprehensive plan and meets the requirements and intent of the White Salmon Municipal Code;
2. The development is not detrimental to the public health, safety and welfare;
3. The development adequately mitigates impacts identified under Chapters 18.10 (Critical Areas Ordinance) and 18.20 (Environmental Protection/SEPA Review) of this code; and
4. For land division applications, findings and conclusions shall be issued in conformance with Sections 19.10.230 Planning commission review and decision (Type II) and 19.10.235 Planning commission review and recommendation (Type III) of this title, and RCW 58.17.110.

E. Recommendation. In the planning commission's recommendation decision regarding Type III actions, it shall adopt written findings and conclusions. The planning commission's recommendation following closure of an open record public hearing shall include one of the following actions:

1. Recommend approval;

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2. Recommend approval with conditions; or
 3. Recommend denial.

(Ord. No. 2012-11-907, § 1, 11-26-2012)

19.10.240 Procedures for public hearings.

Public hearings shall be conducted in accordance with the hearing body's rules of procedure and shall serve to create or supplement an evidentiary record upon which the body will base its decision. Questions directed to the staff or the applicant shall be posed by the chair at its discretion. In cases where scientific standards and criteria affecting project approval are at issue, the chair shall allow orderly cross-examination of expert witnesses presenting reports and/or scientific data and opinions. The hearing body may address questions to any party who testifies at a public hearing. The chair shall open the public hearing and, in general, observe the following sequence of events:

- A. Staff presentation, including submittal of any administrative reports. Members of the hearing body may ask questions of the staff.
- B. Applicant presentation, including submittal of any materials. Members of the hearing body may ask questions of the applicant.
- C. Testimony or comments by the public germane to the matter.
- D. Rebuttal, response or clarifying statements by the staff and the applicant.
- E. The evidentiary portion of the public hearing shall be closed and the hearing body shall deliberate on the matter before it.

(Ord. No. 2012-11-907, § 1, 11-26-2012)

19.10.250 Procedures for closed record hearings and appeals.

Closed record hearings on planning commission appeals shall be conducted in accordance with the city council's rules of procedure and shall serve to provide argument and guidance for the body's decision. Closed record hearings shall be conducted generally as provided for other public hearings. Except as provided in Section 19.10.270 of this code, no new evidence or testimony shall be given or received. The parties to an appeal of a planning commission decision may submit timely written statements or arguments.

(Ord. No. 2012-11-907, § 1, 11-26-2012)

19.10.260 Reconsideration.

A party of record at a public hearing or closed record appeal may seek reconsideration only of a final decision by filing a written request for reconsideration with the administrator within five calendar days of the oral announcement of the final decision. The request shall comply with Section 19.10.310(B) of this code. The council or hearing body shall consider the request at its next regularly scheduled meeting, without public comment or argument by the party filing the request. If the request is denied, the previous action shall become final. If the request is granted, the council or hearing body may immediately revise and reissue its decision or may call for argument in accordance with the procedures for closed record appeals. Reconsideration should be granted only when an obvious legal error has occurred or a material factual issue has been overlooked that would change the previous decision.

(Ord. No. 2012-11-907, § 1, 11-26-2012)

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19.10.270 Remand.

In the event the city council determines that the public hearing record, the record on appeal as applicable, are insufficient or otherwise flawed, the council may remand the matter back to the planning commission or administrator, as applicable, to correct the deficiencies. The council shall specify the items or issues to be considered and the time frame for completing the additional work.

(Ord. No. 2012-11-907, § 1, 11-26-2012)

19.10.280 Final decision—Exclusions to one hundred twenty-day deadline.

- A. Time. The final decision on a development proposal shall be made within one hundred twenty calendar days from the date of the determination of completeness. In determining the number of calendar days that have elapsed after the determination of completeness, the following periods shall be excluded:
1. Any time needed to amend the White Salmon comprehensive plan or development regulations;
 2. Pursuant to Section 19.10.110(F) of this code, any time required to correct plans, perform studies or provide additional information; provided, that within fourteen calendar days of receiving the requested additional information, the administrator shall determine whether the information is adequate to resume the project review;
 3. Pursuant to Section 19.10.110(G) of this code, substantial project revision(s) made or requested by an applicant, in which case the one hundred twenty calendar days will be calculated from the time that the city determines the revised application to be complete and issues a new determination of completeness in accordance with Section 19.10.110(A) of this code;
 4. All time required for the preparation and review of an environmental impact statement;
 5. Any time needed to process an application for projects involving the siting of an essential public facility;
 6. An extension of time mutually agreed upon by the city and the applicant;
 7. Any remand to the planning commission.
- B. Effective Date. The final decision of the council or hearing body shall be effective on the date stated in the decision, motion, resolution, or ordinance; provided, that the appeal periods shall be calculated from the date of issuance of the land use decision, as provided in the Land Use Petition Act, Chapter 36.70C RCW. For the purposes of this chapter, the date on which a land use decision is issued is:
1. Three days after a written decision is mailed by the city or, if not mailed, the date on which the city provides notice that a written decision is publicly available;
 2. If the land use decision is made by ordinance or resolution by the city council sitting in a quasi-judicial capacity, the date the city council passes the ordinance or resolution; or
 3. If neither subsection (B)(1) nor (2) of this section applies, the date the decision is entered into the public record.
- C. Notice of Decision. Upon issuance of the final decision, administrator shall mail or hand deliver a copy of the final decision to the applicant, any persons who have filed a written request for a copy of the decision, and to all persons who submitted substantive written comments on the application. The notice of decision shall include a statement of the threshold determination made under Chapter 18.20 (Environmental Protection/SEPA Review) of this code and the procedures for an appeal (if any) of the permit decision or recommendation.

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- D. Notice of Delayed Decision. If the city is unable to issue its final decision within the time limits provided in this chapter, the city will provide written notice of this fact to the applicant. The notice shall contain a statement of reasons why the time limits have not been met and an estimated date for issuance of the final decision.

(Ord. No. 2012-11-907, § 1, 11-26-2012)

ARTICLE V APPEALS

19.10.290 Appeal of administrative interpretations and approvals (Type I-A and I-B).

Administrative interpretations may be appealed, by applicants or parties of record, to the planning commission. Type I-A approvals may be appealed to the planning commission in accordance with Section 19.10.200. The decision is final on the date issued and no notice of the decision is required. Type I-B approvals may be appealed to the planning commission in accordance with Section 19.10.210 Administrative approvals subject to notice (Type I-B) of this title.

(Ord. No. 2012-11-907, § 1, 11-26-2012)

19.10.300 Appeal of planning commission decisions (Type II)—Standing to appeal.

Planning commission decisions may be appealed by parties of record from the open record hearing to the city council. "Parties of record" include: the land use permit applicant; persons who have testified at the open record hearing; and any persons who have submitted written comments concerning the application that forms part of the public record that is considered at the open record hearing (excluding persons who only signed petitions or mechanically produced form letters).

(Ord. No. 2012-11-907, § 1, 11-26-2012)

19.10.310 Appeals—Procedure.

- A. Filing. Every appeal of an administrative decision, as well as planning commission decisions, shall be filed with the administrator within thirty calendar days after the date of the recommendation or decision of the matter being appealed; provided, however, appeals of Type II decisions shall be filed within the time periods set forth in Section 19.10.210 of this code (thirty calendar days) and SEPA appeals shall be filed in accordance with Chapter 18.20 (Environmental Protection/SEPA Review) of this code (ten calendar days). A notice of appeal shall be delivered to City Hall by mail or personal delivery, and must be received by five o'clock p.m. on the last business day of the appeal period, with the required appeal fee.
- B. Contents. The notice of appeal shall contain a concise statement identifying:
1. The decision being appealed;
 2. The name and address of the appellant and his or her interest(s) in the matter;
 3. The specific reasons why the appellant believes the decision to be wrong. The appellant shall bear the burden of proving the decision was wrong;
 4. The desired outcome or changes to the decision; and
 5. The Appeal Fee. All requests for reconsideration filed pursuant to Section 19.10.260 of this code shall contain all information required in this section.

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- C. Any notice of appeal not in full compliance with this section shall not be considered, and the appellant shall be so notified.

(Ord. No. 2012-11-907, § 1, 11-26-2012)

19.10.320 Judicial appeal.

- A. Appeals from the final decision of the city council and appeals from any other final decisions specifically authorized (subject to timely exhaustion of all administrative remedies) shall be made to Superior Court within twenty-one calendar days of the date the decision or action became final, as defined in Section 19.10.280(B) of this code, unless another time period is established by state law or local ordinance. All appeals must conform with procedures set forth in Chapter 36.70C RCW.
- B. Notice of the appeal and any other pleadings required to be filed with the court shall be served on the city clerk, and all persons identified in RCW 36.70C.040, within the applicable time period. This requirement is jurisdictional.
- C. The cost of transcribing and preparing all records ordered certified by the court or desired by the appellant for such appeal shall be borne by the appellant. Prior to the preparation of any records, the appellant shall post with the city clerk an advance fee deposit in the amount specified by the city clerk. Any overage will be promptly returned to the appellant.

(Ord. No. 2012-11-907, § 1, 11-26-2012)

19.10.330 Effective date—Severability.

- A. **Effective Date.** This chapter shall be effective on December 1, 2012; provided, however, all complete land development applications meeting all requirements of the White Salmon Municipal Code filed on or after December 1, 2012 shall be subject to the requirement of a single, consolidated open record public hearing, including the requirements set forth in Sections 19.10.200 through 19.10.320 of this code.
- B. **Conflict with Other Procedures.** In the event of a conflict in project application and/or public hearing procedures found elsewhere in the White Salmon Municipal Code or found in the White Salmon shoreline master program, and the requirements of this chapter, the requirements and procedures set forth in this chapter shall prevail.
- C. **Severability.** If any clause, sentence, paragraph, section or part of this chapter or its application to any person or circumstance is held to be invalid or unconstitutional by a court of competent jurisdiction, such order or judgment shall not affect the validity or constitutionality of the remainder of any part of this chapter. To this end, the provisions of each clause, sentence, paragraph, section or part of this law are declared severable.

(Ord. No. 2012-11-907, § 1, 11-26-2012)

19.10.340 Land development permit and appeal fees.

Land use permit and appeal fees are set in Chapter 3.36 WSMC.

(Ord. No. 2012-11-907, § 1, 11-26-2012)

Chapter 19.20 COMPREHENSIVE PLAN AND DEVELOPMENT REGULATION AMENDMENTS

19.20.010 Purpose and definitions.

- A. Purpose. The purpose of this chapter is to establish the type of action, procedures for suggesting amendments, and to encourage public participation for comprehensive plan, subarea plan, and development regulation amendments.
- B. Definitions. The following definitions shall apply throughout this chapter:
1. "Comprehensive land use plan" or "comprehensive plan" means a generalized coordinated land use policy statement of the city of White Salmon that is adopted pursuant to RCW 35A.63.
 2. "Development regulation" means the controls placed on development or land use activities by the city, including, but not limited to, zoning ordinances, critical areas ordinances, shoreline master programs, official controls, planned unit development ordinances, and land division ordinances together with any amendments thereto. A development regulation does not include a decision to approve a project permit application, even though the decision may be expressed in a resolution or ordinance of the city council.
 3. "Subarea plan" means a section of the comprehensive plan which contains specific policies, guidelines, and criteria adopted by the council to guide land development, transportation facilities, community facilities, infrastructure, and capital improvement decisions within specific subareas of the city. The subareas of the city shall consist of natural homogenous communities, distinctive geographic areas, or other districts having unified interest.

(Ord. No. 2012-11-907, § 1, 11-26-2012)

19.20.020 Type of action.

An amendment to the comprehensive plan, a subarea plan, or the development regulations is a Type V (legislative) action and shall be considered in accordance with the procedures for such actions as set forth in this chapter. Criteria and considerations for amendments to the comprehensive plan are listed in the plan.

(Ord. No. 2012-11-907, § 1, 11-26-2012)

19.20.030 Application.

- A. An amendment to the comprehensive plan, a subarea plan, or the development regulations may be initiated by the city council, planning commission, planning administrator, or an owner(s) of real property within the city.
- B. An application made by a private party for a comprehensive plan, subarea plan, or development regulation amendment shall contain the following:
1. Name, address and telephone number of the person(s) suggesting the amendment;
 2. Citation of the specific text, map, or other illustration suggested to be amended;

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3. The suggested amendment such as the proposed amendatory language, if applicable, with new language underlined and language proposed for deletion in strikeout;
 4. A statement of how the amendment is in the public interest;
 5. In the case of an amendment to the development regulations, a statement of how the amendment complies with the comprehensive plan;
 6. In the case of an amendment to the comprehensive land use plan map, a statement explaining how the subject parcels are physically suitable for the requested land use designation(s) and the anticipated land use development(s), including, but not limited to, access, provision of utilities, compatibility with neighboring land uses, and absence of physical constraints, and all materials specified in Chapter 17.88.040;
 7. Any additional information deemed reasonably necessary by the administrator to evaluate the proposed amendment; and
 8. Application fee(s) as established in Chapter 3.36 Land Use of Title 3 Revenue and Finance, WSMC.

(Ord. No. 2012-11-907, § 1, 11-26-2012)

19.20.040 Timing and process for consideration of suggested amendments.

- A. Comprehensive plan and subarea plan amendments (text and map) shall be considered once annually. All amendments requested by the city or private parties shall be reviewed concurrently to ensure that the integrity of the comprehensive plan or subarea plan is preserved. All plan amendments are to be provided in writing and are to be submitted no later than December 31st of every year. Plan amendments shall be considered by the planning commission no later than April 30th of the following year and by the city council within sixty days of receipt of the recommended amendments.
- B. Development regulation amendments may be initiated at any time.
- C. The planning commission shall make recommendations to the city council on all comprehensive plan matters, including amendments to the plan text and map, development regulations, and subarea plans.
- D. Suggested amendments shall be considered by the city council or planning commission, in duly advertised public hearings, public meetings, workshops, and other settings as warranted to ensure that each suggested amendment is thoroughly deliberated. Continued hearings may be held at the discretion of the city but no additional notices need be published.
- E. Upon completion of the hearing or hearings on amendments to the comprehensive plan or subarea plan, the planning commission shall transmit a copy of its recommendations to the legislative body through the planning administrator, who shall acknowledge receipt thereof and direct the clerk to certify thereon the date of receipt.

(Ord. No. 2012-11-907, § 1, 11-26-2012)

19.20.050 Public participation.

- A. The public shall be made aware of the opportunity to suggest plan amendments and to comment on suggested amendments through methods including, but not limited to, direct mailings, newsletter and newspaper articles, legal advertisements, and notices posted in public places.
- B. At least one public hearing shall be held on any proposed amendment. Public notice requirements shall be as set forth in Sections 19.10.150 through 19.10.190 of the preceding chapter.

(Supp. No. 23)

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(Ord. No. 2012-11-907, § 1, 11-26-2012)

19.20.060 Criteria for approval.

In order for an amendment to be approved, the council must find that:

- A. The suggested amendment is in the public interest;
- B. The suggested amendment is consistent with the provisions of the White Salmon comprehensive land use plan;
- C. In the case of an amendment to the comprehensive land use plan map, the subject parcels are physically suitable for the requested land use designation(s) and the anticipated land use development(s), including, but not limited to, access, provision of utilities, compatibility with neighboring land uses, and absence of physical constraints; and
- D. The suggested amendment addresses a need which was improperly or inadequately addressed by the present text or map.

(Ord. No. 2012-11-907, § 1, 11-26-2012)

19.20.070 Council action.

- A. For comprehensive plan and subarea plan amendments, the city council shall consider a recommended amendment within sixty days of its receipt.
- B. After considering any recommendations and public comments, the council shall approve, approve with modifications, disapprove, or remand the proposed amendment to the planning commission for further proceedings based on the criteria required by this chapter and any other applicable provisions. If the city council remands the proposed amendment, it shall specify the time in which the planning commission shall report back to the city council its findings and recommendations on matters referred to it.
- C. Any amendment to the comprehensive plan or a subarea plan shall be adopted by resolution. An affirmative vote of not less than a majority of the total members of the city council shall be required for adoption of a resolution to amend the comprehensive plan.
- D. Any amendment to the development regulations shall be adopted by ordinance. [An] affirmative vote of not less than a majority of the total members of the city council shall be required for adoption of an ordinance.

(Ord. No. 2012-11-907, § 1, 11-26-2012)

19.20.080 Denial of suggested amendments.

When a suggested amendment to the comprehensive plan, a subarea plan, or development regulations is denied, the same amendment shall not be considered again for a period of at least one year, unless the city council determines that the amendment meets one of the two following criteria:

- A. The amendment is essential to allow the siting of an employer who will bring more than twenty-five jobs into the community within one year; or
- B. The city council declares a state of emergency and adopts findings which clearly demonstrate that the amendment is essential to preserve or promote the general health, safety, or welfare of the city and/or its residents.

(Ord. No. 2012-11-907, § 1, 11-26-2012)

(Supp. No. 23)

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File Attachments for Item:

B. Ordinance 2022-04-1100, Amending WSMC 3.24.25, USDA Rural Development, Jewett Water Main Improvements

1. Presentation and Discussion
2. Action



AGENDA MEMO

Needs Legal Review: Yes
Meeting Date: April 6, 2022
Agenda Item: Ordinance 2022-04-1100, Amending WSMC 3.24.25, USDA Rural Development, Jewett Water Main Improvements
Presented By: Jan Brending, Clerk Treasurer

Action Required

Adoption of Ordinance 2022-04-1100, Amending WSMC 3.24.25 USDA Rural Development, Jewett Water Main Improvements.

Proposed Motion

Motion to adopt Ordinance 2022-04-1100, Amending WSMC 3.24.25 USDA Rural Development, Jewett Water Main Improvements.

Explanation of Issue

In 2019, the city established the USDA Rural Development Jewett Water Main Improvements Fund. USDA Rural Development requires that a separate fund be set up to manage revenue and expenditures for USDA funded projects. The proposed amendment changes the name of the fund to USDA Loan Fund so that the fund can be used over time for a variety of projects that may receive USDA funding.

Recommendation of Staff/Committee

Staff recommends adoption of Ordinance 2022-04-1100, Amending WSMC 3.24.25 USDA Rural Development, Jewett Water Main Improvements.

ORDINANCE NO. 2022-04-1100
AN ORDINANCE AMENDING WHITE SALMON MUNICIPAL CODE 3.24.225,
CREATING A USDA LOAN FUND

WHEREAS, the City of White Salmon has been received funding for infrastructure improvements from USDA Rural Development; and

WHEREAS, USDA Rural Development requires the city to establish a construction account for all funds related to the USDA Rural Development funded projects; and

NOW THEREFORE, THE CITY COUNCIL OF THE CITY OF WHITE SALMON DO HEREBY ORDAIN as follows:

SECTION 1. WSMC 3.24.225 USDA Rural Development, Jewett Water Main Improvements is amended as follows:

3.24.225 USDA Rural Development, ~~Jewett Water Main Improvements~~ Loan Fund

There is created and established a fund to be designated as the “USDA ~~Rural Development Jewett Water Main Improvements~~ USDA Loan Fund.” The purpose of this fund is pay for construction costs, including construction engineering costs, associated with ~~the Jewett Water Main Improvement project~~ infrastructure improvement projects funded by USDA Rural Development and to receipt any loan receipts from USDA Rural Development. Any interest accrued on the fund shall be credited to the fund.

Section 2: Severability.

That if any clause, section, or other part of this Ordinance shall be held invalid or unconstitutional by any court of competent jurisdiction, the remainder of this Ordinance shall not be affected thereby, but shall remain in full force and effect.

Section 3: Effective Date.

This ordinance shall take effect five days following the date of its publication by summary.

PASSED by the City Council of the City of White Salmon at its regular meeting this 6th day of April 2022.

Marla Keethler, Mayor

APPROVED AS TO FORM:

ATTEST:

Kenneth B. Woodrich, City Attorney

Jan Brending, Clerk/Treasurer

File Attachments for Item:

C. Ordinance 2022-04-1101, Water Revenue Bond Anticipation Note, 2022

1. Presentation and Discussion

2. Action



AGENDA MEMO

Needs Legal Review: Yes
Meeting Date: April 6, 2022
Agenda Item: Ordinance 2022-04-1101, Water Revenue Bond Anticipation Note, 2022
Presented By: Jan Brending, Clerk Treasurer

Action Required

Adoption of Ordinance 2022-04-1101, Water Revenue Bond Anticipation Note, 2022

Proposed Motion

Motion to adopt Ordinance 2022-04-1101 Providing for the Issuance and Sale of a Revenue Bond Anticipation Note to Evidence a Non-Revolving Line of credit for the Purpose of Providing Interim Financing for Improvements to the Water Utility of the City in the Principal Amount of Not to Exceed \$2,333,000; Providing the Form, Terms and Maturity of the Note; Authorizing the Designated City Representative to Manage the Non-Revolving Line of Credit; and Approving the Sale of the Note.

Explanation of Issue

The city is required to adopt an ordinance related to the issuance and sale of a revenue bond anticipation note for our non-revolving line of credit for interim financing. The attached ordinance has been prepared by the city's bond counsel K&L Gates LLP.

Recommendation of Staff/Committee

Staff recommends adoption of Ordinance 2022-04-1101, Providing for the Issuance and Sale of Revenue Bond Anticipation Note in the Principal Amount not to Exceed \$2,333,000.

CITY OF WHITE SALMON, WASHINGTON
WATER REVENUE BOND ANTICIPATION NOTE, 2022
(NON-REVOLVING LINE OF CREDIT)

Not to exceed \$2,333,000

ORDINANCE NO. 2022-04-1101

AN ORDINANCE OF THE CITY OF WHITE SALMON, WASHINGTON, PROVIDING FOR THE ISSUANCE AND SALE OF A REVENUE BOND ANTICIPATION NOTE TO EVIDENCE A NON-REVOLVING LINE OF CREDIT FOR THE PURPOSE OF PROVIDING INTERIM FINANCING FOR IMPROVEMENTS TO THE WATER UTILITY OF THE CITY IN THE PRINCIPAL AMOUNT OF NOT TO EXCEED \$2,333,000; PROVIDING THE FORM, TERMS AND MATURITY OF THE NOTE; AUTHORIZING THE DESIGNATED CITY REPRESENTATIVE TO MANAGE THE NON-REVOLVING LINE OF CREDIT; AND APPROVING THE SALE OF THE NOTE.

PASSED: APRIL 6, 2022

Prepared By:

K&L GATES LLP
Seattle, Washington

CITY OF WHITE SALMON

Ordinance No. 2022-04-1101

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CITY OF WHITE SALMON, WASHINGTON

WATER REVENUE BOND ANTICIPATION NOTE, 2022
(NON-REVOLVING BANK LINE OF CREDIT)

Not to exceed \$2,333,000

ORDINANCE NO. 2022-04-1101

AN ORDINANCE OF THE CITY OF WHITE SALMON, WASHINGTON, PROVIDING FOR THE ISSUANCE AND SALE OF A REVENUE BOND ANTICIPATION NOTE TO EVIDENCE A NON-REVOLVING LINE OF CREDIT FOR THE PURPOSE OF PROVIDING INTERIM FINANCING FOR IMPROVEMENTS TO THE WATER UTILITY OF THE CITY IN THE PRINCIPAL AMOUNT OF NOT TO EXCEED \$2,333,000; PROVIDING THE FORM, TERMS AND MATURITY OF THE NOTE; AUTHORIZING THE DESIGNATED CITY REPRESENTATIVE TO MANAGE THE NON-REVOLVING LINE OF CREDIT; AND APPROVING THE SALE OF THE NOTE.

WHEREAS, the City of White Salmon, Washington (the “City”) operates a water supply and distribution system as part of its water utility (the “Water System”) which is in need of improvements (as hereinafter described more fully, the “Project”); and

WHEREAS, long-term financing for the Project will be provided by a loan from the United States Department of Agriculture, Rural Development (the “Government”), evidenced by a revenue bond secured by a pledge of Water System revenue (the “Bond”); and

WHEREAS, the City now wishes to undertake the Project and requires interim financing pending issuance and sale of the Bond to the Government; and

WHEREAS, the City is authorized by chap. 39.50 RCW to issue a bond anticipation note (the “Note”) pending the issuance of the Bond and is authorized by RCW 39.46.050 to establish a line of credit with a qualified public depository to be drawn upon in exchange for the Note; and

WHEREAS, the City has received the offer of Cashmere Valley Bank (the “Bank”), dated April 6, 2022 (the “Commitment Letter”), to provide a non-revolving line of credit to be evidenced by the Note authorized herein under the terms set forth herein and in the Commitment Letter; and

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF WHITE SALMON, WASHINGTON, DO HEREBY ORDAIN, as follows:

Section 1. Definitions. As used in this ordinance the following terms shall have the following meanings:

Authorized Officer means the Mayor or Clerk/Treasurer of the City.

Bank means Cashmere Valley Bank, Cashmere, Washington, and any business successor thereto.

Bond means the water revenue bond of the City to be issued to the Government to provide permanent financing for the Project.

City means the City of White Salmon, Washington, a municipal corporation duly organized and existing under and by virtue of the laws of the State of Washington.

City Clerk/Treasurer means the City Clerk/Treasurer of the City of White Salmon, or his/her successor in functions, if any.

Code means the Internal Revenue Code of 1986, as amended, and the applicable regulations promulgated thereunder.

Commitment Letter means the letter from the Bank dated April 6, 2022, offering to purchase the Note.

Construction Fund means the special fund of the City designated as the “USDA Loan Fund”, pursuant to Ordinance No. 2022-04-1100 of the City, adopted April 6, 2022, into which proceeds of Draws shall be deposited to pay costs of the Project.

Costs of Maintenance and Operation means all normal operating expenses, current maintenance expenses, expenses of reasonable upkeep and repairs, insurance and administrative expense as pro rata budget charges for City departments where such charges represent a reasonable distribution or share of actual cost; but exclude depreciation, payments for debt service or into reserve accounts, costs of capital additions to or replacements of the Water System, municipal taxes, or payments to the City in lieu of taxes.

Council means the general legislative authority of the City as the same shall be duly and regularly constituted from time to time.

Debt Service Fund means the special fund of the City designated as the “Water Bond Redemption Fund” established by Ordinance No. 2012-05-888 and codified at Section 3.24.151 WMCH to pay and secure the payment of all Parity Bonds.

Draw or Draws means incremental draws in an amount \$25,000 or greater on the Note requested by the City in substantially the form attached to the Commitment Letter and as approved by the Government and the Bank.

Draw Period Interest Rate means a fixed rate of 1.85% per annum commencing on the Initial Draw Date through the Maturity Date calculated on a basis of 30/360 with 12 months consisting of 30 days each.

Future Parity Bonds means any revenue bonds of the City issued after the date of the issuance of the Bond and having a lien upon the money in the Water Fund for the payment of the principal thereof and interest thereon equal to the lien upon such revenue and money for the payment of the principal of and interest on the Outstanding Parity Bonds.

Government means the United States Department of Agriculture, Rural Development.

Gross Revenue means all earnings and revenue, except ULID Assessments, received by the City from the operation of the Water System, including proceeds from the sale, lease or other disposition of any of the properties or facilities of the Water System, and the income from investments of money in the Water Fund and any bond fund or from any other investment thereof except the income from investments irrevocably pledged to the payment of revenue bonds pursuant to a plan of retirement or refunding. The term “Gross Revenue” does not include grants or bond proceeds, but does include federal or state reimbursements of operating expenses to the extent that such expenses are included as “Costs of Maintenance and Operation” of the Water System.

Initial Draw Date means the date of the first Draw on the Note.

Letter of Conditions means the Government’s Letter of Conditions dated June 15, 2021, and as it may be amended and supplemented from time to time.

Loan Draw Record means the administrative record kept by the Bank to record the date and dollar amounts of the Draws on the Note made by the City.

Maturity Date means December 1, 2023, or such prior date chosen by the City within the maximum allowed maturity provided by the Government, and may be extended for up to twelve (12) additional months pursuant to the terms hereof and of the Commitment Letter.

Net Revenue of the Water System means the Gross Revenue of the Water System, less the Costs of Maintenance and Operation.

Note means the City of White Salmon, Washington, Water Revenue Bond Anticipation Note, 2022, issued pursuant to this ordinance.

Note Registrar means the Treasurer, as authenticating agent, paying agent, and registrar for the Note.

Outstanding Parity Bonds means (i) the City’s Water Revenue Bond, 2015, of the City issued in the principal amount of \$405,000 pursuant to Ordinance No. 2015-04-964, as amended by Ordinance No. 2015-09-975, and (ii) the City’s Water Revenue Bond, 2021, of the City issued in the principal amount of \$2,731,000 pursuant to Ordinance No. 2021-02-1073.

Outstanding Principal Balance of the Note means, on any particular day, the aggregate of all funds that the City has Drawn from the Bank under the Note to that day, less the aggregate of all principal payments on the Note made by the City on or before that day.

Parity Bonds means the Outstanding Parity Bonds and any Future Parity Bonds.

Project means the plan of additions and betterments to and extensions to the Water System specified and adopted in Section 2 of this ordinance.

Water Fund means the Water Fund of the City.

Treasurer means the City Clerk/Treasurer, or the successor or successors to the duties of such officer.

Water System means the existing water supply and distribution system and all additions and betterments thereto and extensions thereof for as long as any Parity Bonds remain outstanding.

Rules of Interpretation. In this ordinance, unless the context otherwise requires:

(a) The terms “hereby,” “hereof,” “hereto,” “herein,” “hereunder” and any similar terms, as used in this ordinance, refer to this ordinance as a whole and not to any particular article, section, subdivision or clause hereof, and the term “hereafter” shall mean after, and the term “heretofore” shall mean before, the date of this ordinance;

(b) Words of the masculine gender shall mean and include correlative words of the feminine and neuter genders and words importing the singular number shall mean and include the plural number and vice versa;

(c) Words importing persons shall include firms, associations, partnerships (including limited partnerships), trusts, corporations and other legal entities, including public bodies, as well as natural persons;

(d) Any headings preceding the text of the several articles and sections of this ordinance, and any table of contents or marginal notes appended to copies hereof, shall be solely for convenience of reference and shall not constitute a part of this ordinance, nor shall they affect its meaning, construction or effect;

(e) All references herein to “articles,” “sections” and other subdivisions or clauses are to the corresponding articles, sections, subdivisions or clauses hereof; and

(f) Words importing the singular number include the plural number and vice versa.

Section 2. The Project. The Council has specified and adopted a Water System Plan for municipal water system improvements, including the reconstruction of several City streets and replacements and upgrades to below grade utilities in those streets, including certain improvements to facilities of the Water System to install approximately 12,500 feet of nominal 16-inch inside diameter high-water line and approximately 80 feet of 12-inch inside diameter ductile iron water line in 24-inch casing, valves and fittings, combination air/vacuum valve assemblies and manholes, bridge crossing work, restoration work, and testing, together with all other work as referred to in the Letter of Conditions (the “Project”).

Section 3. Authorization of Bond. The City hereby authorizes the issuance of a water revenue bond of the City, to be issued to the Government under the terms and conditions set forth in the Letter of Conditions (the “Bond”). The Bond shall be issued in the principal amount of not

to exceed \$2,333,000 (or so much thereof as has been Drawn), shall be payable solely from the City's revenue bond redemption fund and Net Revenue of the Water System and shall be payable with interest at the rate set forth in said Letter of Conditions. The exact date, form, terms and maturities of the Bond shall be as hereafter fixed by ordinance of the City Council.

Section 4. Authorization of Note. For the purpose of providing interim financing for the Project pending its completion and issuance and sale of the Bond, the City shall issue its revenue bond anticipation note as a non-revolving line of credit in an aggregate principal amount of not to exceed \$2,333,000. The Note shall be designated "City of White Salmon, Washington, Water Revenue Bond Anticipation Note, 2022," shall be dated as of the date of its original issuance, shall be fully registered as to both principal and interest, shall be in the denomination of \$2,333,000; provided that the principal amount due and owing thereunder shall be measured by the total Draws made, as evidenced by the Loan Draw Record, shall be numbered N-1, and shall bear interest on unpaid principal from the date of each Draw (hereinafter described) at the Draw Period Interest Rate, calculated on a basis of 30/360 with 12 months consisting of 30 days each. Interest on a particular principal amount Drawn on the line of credit established hereunder shall be payable semiannually on June 1 and December 1, commencing June 1, 2022, or the first June 1 or December 1 after the Initial Draw Date on the Note, with a final payment on the Note's Maturity Date, or earlier prepayment in full of the Note. Principal of and all accrued interest on the Note shall be due and payable on the Maturity Date to the extent not prepaid at an earlier date.

The Maturity Date of the Note may be extended for up to an additional twelve (12) months with the agreement of the City and the Bank. If the Maturity Date of the Note is extended pursuant to the terms herein and in the Commitment Letter, all outstanding interest on the bond as of the original Maturity Date shall be paid as of such date, and the City shall pay the Bank the fee as described in the Commitment Letter or in the agreement of the City and Bank. The Draw Period Interest Rate may be redetermined on the original Maturity Date for the extended period beginning the day after the original Maturity Date to the extended Maturity Date, as agreed by the City and the Bank.

The Treasurer shall be the "Note Registrar." The Note is not intended to be a revolving obligation; the principal amount outstanding under the Note may never exceed \$2,333,000, and principal amounts repaid may not be reborrowed. The available principal of the Note shall be disbursed as borrowings from time to time by the Bank upon request from an Authorized Officer in substantially the form of Exhibit A to the Commitment Letter, subject to approval by the Bank and the Government (each such disbursement herein referred to as a "Draw"), as provided in Section 9 of this ordinance. The City shall use best efforts to deliver Draw requests to the Bank two days prior to the requested disbursement date, and in no case later than 11 a.m. Pacific Time on the requested disbursement date. A Draw request must be accompanied by an approval of the Draw amount from an authorized representative of the Government. Draws shall be recorded in such form as the City and the Bank may agree. Interest on each Draw shall accrue from the date of the Draw and shall be computed on the basis as described above on the principal amount of the Draw outstanding for the actual number of days the principal amount of the Draw is outstanding.

The proceeds of any Draw shall be deposited into the Construction Fund and shall be expended solely to pay the costs of the Project and financing costs.

Both principal of and interest on the Note shall be payable in lawful money of the United States of America. Upon the final payment of all principal and interest on the Note, the Note shall be surrendered to the Note Registrar for cancellation. The Note shall not be transferable, except in whole (i) to a successor to the business or assets of the Bank or (ii) to a “qualified institutional buyer” as such is defined in Rule 144A of the Securities Act of 1933. The Note shall be an obligation only of the Debt Service Fund and shall be payable and secured as provided herein. The Note is not a general obligation of the City.

Section 5. Prior Redemption. The Note may be prepaid, in whole or in part, at any time, upon conditions as stated in the Commitment Letter.

Section 6. Priority of Payments from the Water Fund. There has heretofore been created a special fund of the City designated as the Water Fund of the City (herein referred to as the “Water Fund”). All of the Gross Revenue of the Water System shall be deposited in the Water Fund as collected. The Water Fund shall be held separate and apart from all other funds and accounts of the City, and the Gross Revenue of the Water System deposited in such Fund shall be used only for the following purposes and in the following order of priority:

First, to pay the costs of maintenance and operation;

Second, to make all payments required to be made into the Bond Fund to pay principal of and interest on any Parity Bonds;

Third, to make all payments required to be made into the Water Bond Reserve Fund established by Ordinance No. 2012-05-888 and codified at Section 3.24.152 WSMC to secure the payment of all Parity Bonds;

Fourth, to make all payments required by subsequent ordinances of the City to be made out of Gross Revenue into any revenue bond redemption fund or revenue warrant redemption fund and debt service account or reserve account created to pay and secure the payment of the principal of and interest on any revenue bonds or revenue warrants of the City having a lien upon the Gross Revenue junior and inferior to the lien thereon of the Parity Bonds; and

Fifth, to make all payments required to be made into the Short-Lived Asset Reserve Fund created by the City; and

Sixth, to retire by redemption or purchase in the open market any outstanding revenue bonds or revenue warrants of the City, to make necessary additions, betterments, improvements and repairs to or extensions and replacements of the Water System, or for any other lawful City purpose.

Section 7. Debt Service Fund. The City has created its “Water Bond Redemption Fund” established by Ordinance No. 2012-05-888 and codified at Section 3.24.151 WMCH to pay and secure the payment of all Parity Bonds (the “Debt Service Fund”). The Debt Service Fund shall be held separate and apart from all other funds and accounts of the City and shall be a trust fund for the owner of the Note.

The City hereby irrevocably obligates and binds itself for as long as the Note remains outstanding to set aside and pay into the Debt Service Fund out of the proceeds of sale of the Bond, proceeds of other short-term obligations, or from Gross Revenue of the Water System or moneys in the Water Fund available therefor after payment of the amounts identified in paragraphs First through Fifth of Section 6 of this ordinance, on or prior to the maturity of the Note in an amount sufficient to pay and redeem the principal of and interest on the Note as the same shall become due.

The City hereby covenants that it will issue the Bond or another refunding water revenue obligation or obligations in an amount sufficient, with other moneys of the City, legally available and specifically set aside for such purpose, to pay the principal of and interest on the Note when due and on or prior to the Maturity Date.

The City further covenants that, simultaneously with the receipt of such proceeds of sale of the Bond to the Government, it will pay into the Debt Service Fund moneys sufficient to pay the principal of and interest on the Note and will apply said moneys to the payment of the Note in accordance with its terms.

Said amounts so pledged to be paid into the Debt Service Fund, are hereby declared to be a prior lien and charge upon the Gross Revenue superior to all other charges of any kind or nature whatsoever, subject only to the payments provided in paragraphs First through Fifth of Section 6 of this ordinance.

Section 8. Sufficiency of Gross Revenue. The corporate authorities of the City hereby declare that in fixing the amounts to be paid into the Debt Service Fund as aforesaid they have exercised due regard to the expenses of maintenance and operation of the Water System and the charges necessary to pay and secure the payment of the principal of and interest on the Outstanding Parity Bonds and have not obligated the City to set aside and pay into said Debt Service Fund a greater amount of the Gross Revenue than in their judgment will be available over and above such expenses of maintenance and operation and the amounts necessary to pay the principal of and interest on the Outstanding Parity Bonds and the Note.

Section 9. Disposition of Proceeds of the Note. The City maintains a capital facilities improvement fund, defined in this Ordinance as the Construction Fund. The money derived from Draws shall be deposited in the Construction Fund and shall be expended solely to pay costs of the Project and costs of issuing and delivering the Note, as authorized herein. Following the execution and delivery of the Note, an Authorized Officer shall notify the Bank in writing each time that a Draw is required to pay costs of the Project or costs of issuance of the Note, subject to the Bank's and the Government's approval. A request for a Draw may be made in writing by an Authorized Officer in any manner approved by the Bank and the Authorized Officer. The Bank will then notify the City of its intent to wire transfer a Draw or pay by check (including the dollar amount of the Draw and the date on which the Draw amount will be wired or paid by check to the City for deposit into the Construction Fund). It is anticipated that Draws will be on no more than a monthly basis. The Draws under the Note shall be used, together with other moneys on deposit therein and available therefor, for the undertaking of the Project and for paying all expenses incidental thereto (including but not limited to costs of issuance of the Note, engineering, financing, legal or any other incidental costs) and for repaying any advances heretofore or hereafter

made on account of such costs or for redeeming the Note. Interest earned and income or profits derived by virtue of investments of moneys in the Construction Fund may remain in the Construction Fund and may be used for the payment of Project costs. Upon the completion of the Project and the payment of all costs thereof, including the payment of all retainages for construction, the balance on hand in the Construction Fund shall be transferred to City fund(s) or otherwise disbursed as required under grant/loan contracts, and the Construction Fund shall be closed.

Section 10. Tax Covenants. The City hereby covenants that it will not make any use of the proceeds of sale of the Note or any other funds of the City which may be deemed to be proceeds of such Note pursuant to Section 148 of the Code which will cause the Note to be an “arbitrage bond” within the meaning of said section and said Regulations. The City will comply with the requirements of Section 148 of the Code (or any successor provision thereof applicable to the Note) and the applicable Regulations thereunder throughout the term of the Note.

The City further covenants that it will not take any action or permit any action to be taken that would cause the Note to constitute “private activity bonds” under Section 141 of the Code.

The City hereby designates the Note as a “qualified tax exempt obligation” under Section 265(b) of the Code for investment by financial institutions. The City does not anticipate issuing more than \$10,000,000 in qualified tax-exempt obligations during 2022.

Section 11. General Covenants. The City hereby covenants and agrees with the owner of the Note from time to time, as follows:

(a) The City will establish, maintain, and collect rates and charges for water system service furnished for as long the Note is outstanding, that it will make available for the payment of the principal of and interest on all of such notes as the same shall become due an amount equal to the amount required in any calendar year hereafter for the payment of all of such principal and interest after normal costs of maintenance and operation of the Water System have been paid, but before depreciation.

(b) The City will at all times maintain and keep the Water System in good repair, working order and condition, and also will at all times operate the Water System and the business in connection therewith in an efficient manner and at a reasonable cost.

(c) The City will keep proper books of account for the Water System in accordance with rules and regulations of any governmental entity having jurisdiction, including the Division of Municipal Corporations of the Auditor’s Office of the State of Washington. Said books of account will be audited every two years as required by law and an annual report, which will be available to the owner of the Note, will be prepared after the close of each fiscal year showing in reasonable detail the balance sheet and income and expense statement for the year and the general financial condition of the Water System.

Section 12. Lost, Stolen or Destroyed Note. In case the Note shall be lost, stolen or destroyed, the City may execute and deliver a new Note of like date, number and tenor to the Bank thereof upon the Bank’s paying the expenses and charges of the City in connection therewith and

upon its filing with the Treasurer of the City evidence satisfactory to said Treasurer that such Note was actually lost, stolen or destroyed.

Section 13. Form of Note and Registration Certificate. The Note shall be in substantially the following form:

NO. N-1 UNITED STATES OF AMERICA not to exceed \$2,333,000
(or as much thereof as is shown on the attached Loan Draw Record)

STATE OF WASHINGTON
CITY OF WHITE SALMON
WATER REVENUE BOND ANTICIPATION NOTE, 2022

INTEREST RATE: Draw Period Interest Rate, as provided in the Ordinance.
MATURITY DATE: December 1, 2023, or such prior date chosen by the City within the maximum allowed maturity provided by the Government, or as extended as provided in the Ordinance.
REGISTERED OWNER: CASHMERE VALLEY BANK
117 APLETS WAY
CASHMERE, WA 98815
TAX IDENTIFICATION #: 91-0168460
PRINCIPAL AMOUNT: TWO MILLION, THREE HUNDRED THIRTY-THREE THOUSAND AND NO/100 DOLLARS (or so much as been Drawn hereunder)

The CITY OF WHITE SALMON, WASHINGTON (the “City”), hereby acknowledges itself to owe and for value received promises to pay, but solely from the sources identified herein, to the Registered Owner identified above, or registered assigns on the Maturity Date, the Principal Amount, together with interest thereon at the Draw Period Interest Rate, as defined in Ordinance No. 2022-04-1101 of the City (the “Ordinance”), calculated on a basis of 30/360 with 12 months consisting of 30 days each. Interest shall be payable semiannually on June 1 and December 1, commencing June 1, 2022, or the first June 1 or December 1 after the Initial Draw Date on the Note, and on the Maturity Date, to the extent not prepaid. Installments of the principal of and interest on this note shall be paid by check or draft of the City mailed on the date such principal and interest is due or by electronic funds transfer made on the date such interest is due to the Registered Owner at the address shown above. Upon final payment of all installments of principal

and interest thereon, this note shall be submitted to the Note Registrar (the Treasurer of the City) for cancellation and surrender.

This note shall not be valid or become obligatory for any purpose or be entitled to any security or benefit under the Ordinance until the Certificate of Authentication hereon shall have been manually signed by the Note Registrar. The definitions contained in the Ordinance shall apply to capitalized terms contained herein.

The City hereby irrevocably covenants and agrees with the Registered Owner of this note that it will keep and perform all the covenants of this note and of the Ordinance to be by it kept and performed. Reference is hereby made to the Ordinance for a complete statement of such covenants and for the definition of capitalized terms used herein.

This note is issued under and in accordance with the provisions of the Constitution and applicable statutes of the State of Washington and resolutions and ordinances of the City, including the Ordinance, for the purpose of providing interim financing for certain improvements to the Water System. This note is issued in anticipation of the issuance of a revenue bond (the "Bond") authorized by the City.

Both principal of and interest on this note are payable solely out of the special fund of the City known as the "Water Debt Service Fund" (the "Debt Service Fund"). The City does hereby pledge and bind itself to set aside and pay into the Debt Service Fund the amount required by the Ordinance to be paid therein from the proceeds of the Bond (as authorized in the Ordinance) or from the sources and in the priority specified in the Ordinance. The City further pledges that it will issue the Bond on or prior to the maturity of this note, and use the proceeds thereof to redeem this note. This note is not a general obligation of the City.

This note may be prepaid at any time, in whole or in part.

This note is not transferable, except as provided in the Ordinance.

This note is not a "private activity bond" as such term is defined in the Internal Revenue Code of 1986, as amended (the "Code"). This note is a qualified tax-exempt obligation under Section 265(b) of the Code for banks, thrift institutions and other financial institutions.

It is hereby certified that all acts, conditions and things required by the Constitution and statutes of the State of Washington to exist, to have happened, been done and performed precedent to and in the issuance of this note have happened, been done and performed and that the issuance of this note does not violate any constitutional, statutory or other limitation upon the amount of indebtedness that the City may incur.

IN WITNESS WHEREOF, the City of White Salmon, Washington, has caused this note to be signed, executed by the manual or facsimile signature of the Mayor, and authenticated by the City Clerk/Treasurer, as of this ____ day of _____, 2022.

CITY OF WHITE SALMON,
WASHINGTON

/s/ manual or facsimile signature
Mayor

ATTEST:

/s/ manual or facsimile signature
Clerk/Treasurer of the City

The Note Registrar’s Certificate of Authentication on the Note shall be in substantially the following form:

CERTIFICATE OF AUTHENTICATION

Date of Authentication:

This note is the note described in the within-mentioned Ordinance and is the Water Revenue Bond Anticipation Note, 2022, of the City, dated _____, 2022.

CITY OF WHITE SALMON
TREASURER, as Registrar

By _____

Section 14. Execution. The Note shall be executed on behalf of the City with the manual or facsimile signatures of the Mayor and Clerk/Treasurer of the City. The Certificate of Authentication on the Note shall be signed manually by the Note Registrar.

In case any officer whose signature shall appear on the Note shall cease to be an officer before the delivery of such Note, such signature shall nevertheless be valid and sufficient for all purposes, and such Note may be authenticated and delivered as if such officer had remained in office until such delivery.

The Note shall not be valid for any purpose unless Certificate of Authentication in the form hereinafter specified in Section 13 has been manually executed by the Note Registrar. Such Certificate of Authentication shall be conclusive evidence that the Note so authenticated has been duly executed, authenticated and delivered hereunder and is entitled to the benefits of this ordinance.

Section 15. Sale of Note. The Note shall be sold to the Bank in accordance with its Commitment Letter, which by this reference is hereby incorporated herein, and the acceptance of

such proposal is hereby ratified and confirmed. A loan fee of \$550 is authorized to be paid to the Bank.

The proper officials of the City are hereby authorized and directed to do all things necessary for the prompt execution and delivery of the Note and the items required to be delivered to the Bank under the terms of the Commitment Letter and for proper use and application of the proceeds of sale thereof. In furtherance of the foregoing, the Authorized Officer is authorized to approve and enter into agreements for the payment of costs of issuance, including fees and expenses of the Bank and other retained services, including Bond Counsel, and other expenses customarily incurred in connection with issuance and sale of a note.

Section 16. No Undertaking to Provide Ongoing Disclosure; Information to be Provided to Bank. The Note is not subject to Rule 15c2-12 of the Securities and Exchange Commission under the Securities Exchange Act of 1934, and the City makes no undertaking regarding ongoing disclosure with respect to the Note.

As long as the Note is outstanding and held by the Bank, the City will provide to the Bank its annual financial report (to the extent such report is not available on the Electronic Municipal Market Access website of the Municipal Securities Rulemaking Board (“EMMA”)), and such financial information of the City as the Bank from time to time may reasonably request.

Section 17. Declaration of Official Intent. The City hereby official declares its intent under Treasury Regulation Section 1.150-2 to reimburse expenditures in an amount not to exceed \$2,333,000 for costs of the Project incurred by the City prior to the date Note proceeds become available for such reimbursement or payment of Project costs.

Section 18. Severability. If any one or more of the covenants or agreements provided in this resolution to be performed on the part of the City shall be declared by any court of competent jurisdiction to be contrary to law, then such covenant or covenants, agreement or agreements, shall be null and void and shall be deemed separable from the remaining covenants and agreements in this resolution and shall in no way affect the validity of the other provisions of this resolution or of the Note.

Section 19. Prior Acts. All acts taken pursuant to the authority of this resolution but prior to its effective date are hereby ratified and confirmed.

Section 20. Effective Date. This resolution shall be effective from and after its adoption as provided by law.

PASSED by the City Council at a regular open public meeting thereof, held on the 6th day of April, 2022.

CITY OF WHITE SALMON,
WASHINGTON

David Poucher, Mayor

ATTEST:

Jan Brending, City Clerk/Treasurer

APPROVED AS TO FORM:

Kenneth B. Woodrich, City Attorney

CERTIFICATE

I, the undersigned, Clerk of the City of White Salmon, Washington (the “City”), DO
HEREBY CERTIFY:

1. That the attached Ordinance No. 2022-04-1101 (herein called the “Ordinance”) is a true and correct copy of an ordinance of the City as finally passed at a regular meeting of the City Council held on the 6th day of April, 2022, and duly recorded in my office.

2. That said meeting was duly convened and held in all respects in accordance with law, and to the extent required by law, due and proper notice of such meeting was given; that a quorum of the City Council was present throughout the meeting and a legally sufficient number of members of the City Council voted in the proper manner for the passage of the Ordinance; that all other requirements and proceedings incident to the proper passage of the Ordinance have been duly fulfilled, carried out and otherwise observed, and that I am authorized to execute this certificate.

IN WITNESS WHEREOF, I have hereunto set my hand this 6th day of April, 2022.

Jan Brending, City Clerk/Treasurer

File Attachments for Item:

D. Note Purchase Agreement, Cashmere Valley Bank

1. Presentation and Discussion

2. Action



AGENDA MEMO

Needs Legal Review: Yes
Meeting Date: April 6, 2022
Agenda Item: Note Purchase Agreement with Cashmere Valley Bank
Presented By: Jan Brending, Clerk Treasurer

Action Required

Authorization to sign Note Purchase Agreement with Cashmere Valley Bank for principal amount not to exceed \$2,777,000.

Proposed Motion

Motion to authorize the mayor to sign Note Purchase Agreement with Cashmere Valley Bank for interim financing for the principal amount not to exceed \$2,777,000.

Explanation of Issue

Staff will provide the formal Note Purchase Agreement with Cashmere Valley Bank prior to the meeting on April 6. The city council previously authorized using Cashmere Valley Bank for interim financing for the Transmission Main Line Replacement Phase I.

Recommendation of Staff/Committee

Staff recommends authorizing signing the Note Purchase Agreement with Cashmere Valley Bank.