



## WENATCHEE CITY COUNCIL

Thursday, July 12, 2018

Wenatchee City Hall  
129 South Chelan  
Wenatchee, WA 98801

### AGENDA

#### 5:15 p.m. Regular Meeting.

#### 1. Call to Order, Pledge of Allegiance, and Roll Call.

#### 2. Consent Items.

- Motion to approve agenda, vouchers, and minutes from previous meetings.

##### Vouchers:

Claim checks #186563 through #186637 in the amount of \$368,938.77 for June 28, 2018

Claim check #186638 in the amount of \$6,215.00 for June 28, 2018

Claim checks #186667 through #186675 in the amount of \$8,581.49 for June 29, 2018

Benefit/deduction checks in the amount of \$940,061.75 for June 29, 2018

Claim checks #186676 through #186747 in the amount of \$675,046.01 for July 3, 2018

Payroll distribution in the amount of \$496,087.45 for July 5, 2018

Payroll distribution in the amount of \$3,903.64 for July 5, 2018

Payroll distribution in the amount of \$637.63 for July 6, 2018

- Motion to cancel the Thursday, July 26, 2018, City Council meeting.

#### 3. Citizen Requests/Comments.

The "Citizen Comments" period is to provide the opportunity for members of the public to address the Council on items either not on the agenda or not listed as a public hearing. The Mayor will ask if there are any citizens wishing to address the Council. When recognized, please step up to the microphone, give your name and mailing address, and state the matter of your interest. If your interest is an agenda item, the Mayor may suggest that your comments wait until that time. Citizen comments will be limited to three minutes.

#### 4. Presentations.

- National Night Out Proclamation

## 5. Public Hearing Items.

- A. Proposed Voting Districts  
Presented by City Attorney Steve Smith
  
- B. CDBG 2013-2017 Consolidated Plan Update and 2018 CDBG Annual Action Plan  
Presented by Housing & Community Planner Brooklyn Holton  
*Resolution No. 2018-28, amending the City of Wenatchee 2013-2017 Housing and Community Development Consolidated Plan.*

## 6. Action Items.

- C. Improvement Agreement for Pine Shadow  
Presented by City Engineer Gary Owen  
*Motion for City Council to approve and authorize the Mayor's signature on the Improvement Agreement for Pine Shadow.*
  
- D. Signing of the Final Plat for Pine Shadow  
Presented by Planning Manager Stephen Neuenschwander, Associate Planner Kirsten Larsen, City Engineer Gary Owen, and Development Review Engineer Donald Nelson  
*Motion for City Council to authorize the Mayor to sign the final mylar for Pine Shadow P-17-03.*
  
- E. 2017-2019 Homeless Grant Funding Changes  
Presented by Community Development Director Glen DeVries  
*Motion for City Council to accept the recommendations and authorize the Mayor to:*
  - 1. *Enter into a subgrant agreement with Catholic Charities Housing Services for a four-year term totaling \$724,000 for the construction of a low-income housing/permanent supporting housing facility.*
  - 2. *Enter into an amended CHG agreement with the Washington State Department of Commerce and amended subgrant agreements as outlined.*
  
- F. Hale Park Phase Two Project Funding Agreement with the State of Washington  
Presented by Parks, Recreation & Cultural Services Director David Erickson  
*Motion for City Council to approve the Project Funding Agreement with the State of Washington for the Hale Park Phase Two Project and authorize the Mayor to sign the agreement.*

G. Budget Amendment  
Presented by Finance Director Brad Posenjak

*Ordinance No. 2018-20, amending the 2018 Budget as adopted by Ordinance No. 2017-27, revoking, recalling or decreasing all or a portion of total appropriations provided for, entering findings that this Ordinance is in the best interests of the City and requiring that this Ordinance be approved by a majority plus one of the entire Council.*

H. Comprehensive Water Systems Plan Update  
Presented by Public Works Director Rob Jammerman

*Motion for City Council to authorize the Mayor to execute Supplement #1 with RH2 Engineering, Inc. for design services for the Comprehensive Water Systems Plan Update (Project No. 1701) providing additional design.*

I. Purchase and Sale Agreement – Mission/Kittitas Parking Lot  
Presented by Economic Development Director Steve King

*Motion for City Council to authorize the Mayor to sign a second amendment to the real estate purchase and sale agreement with Weidner Apartment Homes for the Mission and Kittitas parking lot extending the due diligence period an additional 90 days.*

**7. Reports.**

- a. Mayor's Report
- b. Reports/New Business of Council Committees

**8. Announcements.**

**9. Adjournment.**



**DRAFT**

## WENATCHEE CITY COUNCIL MEETING

**Thursday, June 28, 2018**

Wenatchee City Hall  
129 South Chelan  
Wenatchee, WA 98801

### MINUTES

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**In attendance:**

**Mayor Frank Kuntz**  
**Councilmember Keith Huffaker**  
**Councilmember Mark Kulaas**  
**Councilmember Linda Herald**  
**Councilmember Mike Poirier**

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**Staff in attendance:**

City Attorney Steve Smith  
Public Information Officer Annagrisel Alvarez  
City Clerk Tammy Stanger  
IS Support Jessi Saucedo  
Parks, Recreation & Cultural Services Director David Erickson  
Engineering Services Manager Jacob Huylar  
Housing & Community Planner Brooklyn Holton  
Community Development Director Glen DeVries  
Economic Development Director Brad Posenjak  
Finance Director Brad Posenjak

#### **5:15 p.m. Regular Meeting.**

##### **1. Call to Order, Pledge of Allegiance, and Roll Call.**

Mayor Frank J. Kuntz called the meeting to order at 5:15 PM. Councilmember Mike Poirier led the Pledge of Allegiance. Councilmembers Jim Bailey, Ruth Esparza and Lyle Markhart were absent as they were attending the Association of Washington Cities' annual conference in Yakima, Washington.

##### **2. Consent Items.**

- Motion to approve agenda, vouchers, and minutes from previous meetings.

*Motion by Councilmember Keith Huffaker to approve the agenda, vouchers, and minutes from previous meetings, with an amendment to the agenda to remove Item F. Councilmember Mark Kulaas seconded the motion. Motion carried (4-0).*

### 3. Citizen Requests/Comments.

Bryan Campbell, 1837 Jefferson Street, Wenatchee, read his letter into the record with his concerns with districting.

Tanner Dotzauer, 1218 Castlerock Avenue, Wenatchee, read his letter into the record concerning drones. The Mayor asked the City Attorney to research regulations and include Mr. Dotzauer in his report back to the City Council.

### 4. Presentations.

- Parks & Recreation Month Proclamation read by Councilmember Keith Huffaker. The Mayor presented the Proclamation to Arts, Recreation & Parks Board Chair Sara Urdahl and Vice Chair Dan Langager. Sara invited everyone to enjoy the many parks, recreation and cultural experiences in Wenatchee.

### 5. Action Items.

#### A. Wenatchee Arts, Recreation and Parks Commission Reappointment

Parks, Recreation & Cultural Services Director David Erickson presented the staff report.

Motion by Councilmember Mark Kulaas to approve Resolution No. 2018-19, appointing a member to the Wenatchee Arts, Recreation & Parks Commission (Sophia Dillon). Councilmember Linda Herald seconded the motion. Motion carried (4-0).

#### B. Kiwanis Methow Park Grant Amendment #2

Parks, Recreation & Cultural Services Director David Erickson presented the staff report.

Motion by Councilmember Linda Herald for City Council to authorize the Mayor to sign Grant Amendment #2 with the State of Washington for the Kiwanis Methow Park Project. Councilmember Mike Poirier seconded the motion. Motion carried (4-0).

#### C. Consent to Terminate Permits – 9<sup>th</sup> Street Parking Area

Parks, Recreation & Cultural Services Director David Erickson presented the staff report.

Motion by Councilmember Mike Poirier for City Council to authorize the Mayor to sign the Consent to Terminate Permits between the City of Wenatchee and Public Utility District No. 1 of Chelan County, and the City of Wenatchee and the Wenatchee Row &

Paddle Club for the 9<sup>th</sup> Street parking area. Councilmember Keith Huffaker seconded the motion. Motion carried (4-0).

D. SR 285 Pedestrian Crossing Improvements - Project 1601

Engineering Services Manager Jacob Huylar presented the staff report. Council asked questions and commented.

Motion by Councilmember Keith Huffaker for City Council to reject all bids for the SR285 project and authorize the Public Works Director to call for rebid in the same manner as the original call. Councilmember Linda Herald seconded the motion. Motion carried (4-0).

E. Middle School Crossing Improvements - Project 1715

Engineering Services Manager Jacob Huylar presented the staff report. Council asked questions and commented.

Motion by Councilmember Mike Poirier for City Council to approve the project budget and award the construction contract for the Middle School Crossing Improvements project to the lowest responsible bidder with the recommendation of Public Works staff, and authorize the Mayor to sign the construction contract documents. Councilmember Linda Herald seconded the motion. Motion carried (4-0).

[Item F was removed from the agenda.]

~~F. AARP Community Challenge Grant 2018~~

~~Presented by Housing & Community Planner Brooklyn Holton~~

~~Motion for City Council to approve the Mayor's signature on documents accepting the 2018 AARP Community Challenge Grant award.~~

**6. Public Hearing Items.**

G. Chelan Douglas Land Trust Annexation

Housing & Community Planner Brooklyn Holton presented the staff report.

The Mayor asked for public comment. There was none.

Motion by Councilmember Mark Kulaas to approve Ordinance No. 2018-18, providing for the annexation of an unincorporated area located directly west of Phase VIII and IX of the Broadview neighborhood at the end of Maiden Lane also known as the Chelan Douglas Land Trust (CDLT) Annexation, subject to the provisions of Ordinance No.

2007-34 and all subsequent amendments thereto. Councilmember Keith Huffaker seconded the motion. Motion carried (4-0).

## 7. Reports.

### a. Mayor's Report

The Mayor reported that the sewer bond proceeds have arrived and work has begun on the project. He asked City Attorney Steve Smith to speak to the public hearing process for districting. Attorney Steve Smith briefly explained the public notice requirements, and the public hearing process.

### b. Reports/New Business of Council Committees

Councilmember Linda Herald reported that she attended the homeless steering committee meeting on Monday and provided an update on the funding provided. She is pleased with the process.

Councilmember Keith Huffaker reminded everyone to stay away from bats and not handle bats. It was reported that three bats recently tested positive for rabies in Chelan County. Report bats to the Humane Society.

Councilmember Mark Kulaas spoke about the Pybus events center and how nicely it has come along.

## 8. Announcements. None.

## 9. Adjournment. With no further business the meeting adjourned at 5:54 p.m.

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Frank J. Kuntz, Mayor

Attest:

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Tammy L. Stanger, City Clerk



**NOTICE OF CANCELANATION OF THE REGULARLY SCHEDULED  
CITY COUNCIL MEETING FOR THURSDAY, JULY 26, 2018**

NOTICE IS HEREBY GIVEN that the Wenatchee City Council has canceled the regularly scheduled City Council meeting of Thursday, July 26, 2018. The next regularly scheduled meeting is set for Thursday, August 9, 2018.

DATED at Wenatchee, Washington this 9<sup>th</sup> day of July, 2018.

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Tammy L. Stanger, CMC  
City Clerk  
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# Staff Report

**TO:** Mayor Kuntz and City Council

**FROM:** Steve D. Smith, City Attorney 

**DATE:** July 9, 2018

**RE:** Voting Districts  
Proposed Ordinance Nos. 2018-17 and 2018-19

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The City of Wenatchee elects each of its seven council positions by a city-wide vote. The City's voting population is approximately 25-30% Latino. In the last 13 years only three Latinos have run for a City Council position. Two were defeated in the general election. One successfully made it through two general elections, the first time unopposed, the second time opposed by another Latino candidate.

The Federal Voting Rights Act of 1965 (FVRA) prohibits voting practices or procedures that discriminate on the basis of race, color, or membership in a language minority group.

In 2014, the City of Yakima lost a well-publicized case when a federal judge struck down Yakima's at-large voting system upon ruling that it violated the FVRA. Yakima had a significant Latino population, but had never elected a Latino to city council despite a few attempts. Yakima was ordered to pay the petitioner's attorney's fees of \$1,521,911 and costs of \$320,461. Yakima also reportedly incurred attorney's fees and costs of approximately \$1,000,000 to defend the case.

Recognizing the diversity of its population, the requirements of the FVRA, and desiring to be proactive on the issue, on July 9, 2015, the Wenatchee City Council approved Resolution 2015-36 appointing an ad hoc advisory committee to study and make recommendations to the City Council related to the electoral process for City Council members. Section I of the resolution read:

That an ad hoc advisory committee shall be established for the purposes of examining the electoral process for City Council members to determine whether changes would be beneficial for a fair and equal electoral process. Specifically, the committee shall examine whether creating a districting system would be beneficial and, if so, the number of districts that would be fair and equal, and recommended boundaries of any proposed districts consistent with state and federal law. The committee shall develop a

recommendation and report back to the City Council within twelve (12) months of the date of this Resolution.

The advisory committee worked diligently to gather information, reached out to the public for input and ultimately issued its report on June 27, 2016. The committee noted in its report that it considered three options, to wit: Continuing the status quo of at-large voting for the seven council positions, creating seven districts, and creating a hybrid system of five districts and two at-large positions. The committee unanimously recommended that the City discontinue its current system of seven at-large positions in electing its city council. The committee recommended going to a district system, but was divided on what district system to implement. An eight member majority recommended that the City go to a seven district voting system. A three member minority recommended a five district and two at-large voting system.

At the time the committee made its recommendation, the City was prevented from implementing a full district voting system because state law allowed a change to voting districts for the primary election, but then the candidates emerging from the primary had to run city-wide in the general election. Being aware that the City was working toward a large annexation of territory, and that the state legislature was working on a change to the law, the City Council postponed a final decision on the issue. The Washington Voting Rights Act of 2018 (“the Act”) was approved in March 2018, effective June 7, 2018. The Act found that electoral systems that deny race, color, or language minority groups an equal opportunity to elect candidates of their choice are inconsistent with the right to free and equal elections as provided by Article I, Section 19, and Article VI, Section 1 of the Washington State Constitution, as well as protections found in the 14<sup>th</sup> and 15<sup>th</sup> Amendments to the United States Constitution. The Act authorized political subdivisions, including cities, to change its electoral system, including, but not limited to, implementing a district-based election system, to remedy a potential violation of the Act.

If the City implements a district-based election system, the plan must be consistent with the following criteria:

- (a) Each district shall be reasonably equal in population as possible to each and every other such district comprising the political subdivision;
- (b) Each district shall be reasonably compact;
- (c) Each district shall consist of geographically contiguous area;
- (d) To the extent feasible, the district boundaries shall coincide with existing recognized natural boundaries and shall, to the extent possible, preserve existing communities of related and mutual interest; and
- (e) District boundaries may not be drawn or maintained in a manner that creates or perpetuates the delusion of the votes of the members of a protected class or classes.

Once a district system is implemented, some ongoing maintenance is required. A city must review its system and prepare a plan for re-aligning its districts within eight months of receiving federal decennial census data.

The Act also provided for citizen initiated changes to the electoral processes. A city voter who intends to challenge a voting system shall first notify the city. The city must promptly make the notice public. No notice may be submitted to the city pursuant to the Act prior to July 19, 2018.

The standard for determining whether a city is in violation of the Act is as follows:

1. A political subdivision is in violation of the Act when it is shown that:
  - (a) Elections in the political subdivision exhibit polarized voting. "Polarized voting" means voting in which there is a difference, as defined in case law regarding enforcement of the Federal Voting Rights Act, 52 USC 10301 et. seq., in the choice of candidates or other electoral choices that are preferred by voters in a protected class, and in the choice of candidates and electoral choices that are preferred by voters and the rest of the electorate.
  - (b) Members of a protected class or classes do not have an equal opportunity to elect candidates of their choice as a result of the delusion or abridgement of the rights of members of that protected class or classes.
2. The fact that members of a protected class are not geographically compact or concentrated to constitute a majority in a proposed or existing district-based election district shall not preclude a finding of a violation under this Act, but may be a factor in determining a remedy. The equal opportunity to elect shall be assessed pragmatically, based on local election conditions, and may include crossover districts.
3. In determining whether there is polarized voting under the Act, the Court shall analyze elections of the governing body of the political subdivision, ballot measure elections, elections in which at least one candidate is a member of a protected class, and other electoral choices that affect the rights and privileges of members of a protected class. Elections conducted prior to the filing of an action pursuant to this Act are more probative to establish the existence of racially polarized voting than elections conducted after the filing of an action.
4. The election of candidates who are members of a protected class and who were elected prior to the filing of an action pursuant to this Act,

shall not preclude a finding of polarized voting that results in an unequal opportunity for a protected class to elect candidates of their choice.

5. Proof of intent on the part of the voters or elected officials to discriminate against a protected class is not required for a cause of action to be sustained.
6. Other facts such as the history of discrimination, the use of electoral devices or other voting practices or procedures that may enhance the diluted effects of at-large elections, denial of access to those processes determining which groups of candidates will receive financial or other support in a given election, the extent to which members of a protected class bear the effects of past discrimination in areas such as education, employment, and health, which hinder their ability to participate effectively in the political process, and the use of overt or subtle racial appeals in political campaigns are probative, but not necessary factors, to establish a violation of the Act.

If a notice is filed, the Act requires that the City work in good faith with the person providing the notice to implement a remedy that provides the protected class or classes identified in the notice an equal opportunity to elect candidates of their choice. Such work in good faith to implement a remedy may include, but is not limited to consideration of:

- (a) Relevant electoral data;
- (b) Relevant demographic data, including the most recent census data available; and
- (c) Any other information that would be relevant to implementing a remedy.

If a remedy is adopted by a city, the city must seek a court order acknowledging that the city's remedy complies with the Act and was prompted by a plausible violation. The person who submitted the notice may support or oppose such an order. A city is required to provide all political, census, and demographic data and any analysis of that data used to develop the remedy in its filings seeking the court order and with any documents made public. **All facts and reasonable inferences shall be viewed in the light most favorable to those opposing the city's proposed remedy at this stage. There shall be a rebuttable presumption that the court will decline to approve the city's proposed remedy at this stage.** (Emphasis added.) If the court concludes that the city's remedy complies with the Act, an action under the Act may not be brought against that city for four years by any party so long as the city does not enact a change to or deviation from the remedy during this four year period that would otherwise give rise to an action under the Act. In agreeing to the person's proposed remedy, the City may do so by stipulation, which shall become a public document.

Any voter who resides in the city may file an action under the Act if, 180 days after a city receives notice of a challenge to its electoral system, the city has not obtained a court order stating that it has adopted a remedy in compliance with the Act. (However, if notice is received after July 1, 2021, then the city shall have 90 days to obtain a court order before an action may be filed.) If a city has received two or more notices containing materially different proposed remedies, the city shall work in good faith with the persons to implement a remedy that provides the protected class or classes identified in the notices an equal opportunity to elect candidates of their choice. If the city adopts one of the remedies offered, or a different remedy that takes multiple notices into account, the city shall seek a court order acknowledging that the city's remedy is reasonably necessary to avoid a violation of the Act. The persons who submitted the notice may support or oppose such an order, and may obtain public records to do so. The city must provide all political, census, and demographic data and any analysis of that data used to develop the remedy in its filing seeking a court order and with any documents made public. **All facts and reasonable inferences shall be viewed in the light most favorable to those opposing the city's proposed remedy at this stage. There shall be a rebuttable presumption that the court will decline to approve the city's proposed remedy at this stage.** (Emphasis added.)

If the court concludes that the city's remedy complies with the Act, an action under the Act may not be brought against the city for four years by any party so long as the city does not enact a change to or deviation from the remedy during this four year period that would otherwise give rise to an action under this Act.

### LEGAL ACTION UNDER THE ACT

The Act also allows for court action against the city. After exhaustion of the time period provided for notice under this Act, either 180 days or 90 days as noted above, any voter who resides in a city where a violation of the Act is alleged, may file an action in the superior court of the county in which the city is located.

The court may order appropriate remedies including, but not limited to, the imposition of a district-based election system. The court may order the affected jurisdiction to draw or redraw district boundaries or appoint an individual or panel to draw or redraw district lines. The proposed districts must be approved by the court prior to their implementation.

Within 30 days of the conclusion of any action filed under the Act, the city must publish on the city's website, the outcome and summary of the action, as well as the legal costs incurred by the city. If the city does not have its own website, then it may publish on the county website.

In any action to enforce this Chapter, the court **may allow** (emphasis added) the prevailing plaintiff or plaintiffs, other than the state or political subdivision thereof, reasonable attorney's fees, all non-attorney fee costs as defined by RCW 4.84.010, and all reasonable expert witness fees. No fees or costs may be awarded if no action is filed. Prevailing defendants may recover an award of fees or costs pursuant to RCW 4.84.185 (actions determined to be frivolous and advanced without reasonable cause).

## EFFECT OF WARDS ON SITTING COUNCILMEMBERS

Pursuant to RCW 35A.12.180, no change in the boundaries of wards (districts) shall affect the term of any councilmember, and councilmembers shall serve out their terms in the districts of their residences at the time of their elections; provided, that if this results in one district being represented by more councilmembers than the number to which it is entitled, those having the shortest unexpired terms shall be assigned by the council to districts where there is a vacancy, and the councilmembers so assigned shall be deemed to be residents of the districts to which they are assigned for purposes of those positions being vacant.

To assist the voting rights committee in its work in evaluating the City's electoral process, the city hired expert Bill Cooper. Mr. Cooper was the expert for the prevailing party in the City of Yakima litigation. Mr. Cooper assisted in the analysis of determining the potential for polarized voting and providing assistance in developing districts which would meet criteria of the Act including districts that are reasonably equal in population as possible to each and every other district comprising the city, forming districts that would be reasonably compact, forming districts that would consist of geographically contiguous area, to the extent feasible forming district boundaries which coincide with existing recognized natural boundaries and, to the extent possible, preserve existing communities of related and mutual interest, and minimize the dilution of votes of the members of a protected class or classes. Mr. Cooper was requested to provide districts that would support a seven district system, and that would support a five district plus two at-large position system. The end result of his work is reflected in the attachments to proposed Ordinance Nos. 2018-17 (seven district system) and 2018-19 (five district plus two at-large system) describing the districts.

Proposed Ordinance Nos. 2018-17 and 2018-19 are proposed as alternatives to each other. They represent the culmination of a significant amount of work by the voting rights committee, the public, City staff, and Mr. Cooper. The method of describing the districts has been vetted by the Chelan County Auditor's Office to ensure they could accurately draw the district boundaries and they indicated they could do it from the information referenced in the Ordinance. Before adopting either of these Ordinances, the City must hold one public hearing at least one week before adoption. The public hearing on this matter is scheduled for July 12, 2018, at the regularly scheduled City Council meeting. Final action is scheduled for the City Council's regular council meeting of August 9, 2018.

## **ORDINANCE NO. 2018-17**

**AN ORDINANCE**, of the City of Wenatchee, Washington, adding Chapter 1.15 Voting Districts to the Wenatchee City Code establishing voting districts for the positions of City Council members.

**WHEREAS**, the federal Voting Rights Act of 1965 prohibits voting practices or procedures that discriminate on the basis of race, color, or membership in a language minority group; and

**WHEREAS**, the State of Washington's Voting Rights Act of 2018 found that electoral systems that deny race, color or language minority groups an equal opportunity to elect candidates of their choice are inconsistent with the right to free and equal elections as provided in Article VI, Section 1, of the Washington State Constitution as well as the fourteenth and fifteenth amendments to the United States Constitution; and

**WHEREAS**, the City of Wenatchee is authorized to change its electoral system including, but not limited to, implementing a district-based election system, per RCW 35A.12.180 and 29A.76 RCW; and

**WHEREAS**, on July 9, 2015, the Wenatchee City Council passed Resolution No. 2015-36 appointing an ad hoc advisory committee to study and make recommendations to the City Council related to the electoral process for City Council members; and

**WHEREAS**, the City's ad hoc committee issued its report on June 27, 2016, in which the committee unanimously recommended the City discontinue its system of seven

at-large positions, but with a majority recommendation that the City implement a seven district system and a minority recommendation that the City implement a five district with two at-large positions system in electing its city council; and

**WHEREAS**, the City hired consultant Bill Cooper, a recognized expert on the forensic analysis of population data, to examine the City's population and to develop proposed districts that would meet the criteria of RCW 29A.76.010 and RCW 35A.12.180; and

**WHEREAS**, the City Council held a duly advertised public hearing on the proposed districting plan in accordance with RCW 29A.76.010 (5); and

**WHEREAS**, the City Council finds that it would be in the best interest of the public to adopt a voting district system.

**NOW, THEREFORE**, the City Council of the City of Wenatchee do ordain as follows:

## **SECTION I**

That the following chapter shall be and hereby is adopted and added to the Wenatchee City Code (WCC):

### **Chapter 1.15 VOTING DISTRICTS**

#### **1.15.010 Number of Districts.**

The City is divided into seven voting districts. Each district shall be as nearly equal in population as possible, compact as possible, consist of geographically contiguous area, be configured as to not favor or disfavor any racial group or political party, and, to the extent feasible, coincide with the recognized natural boundaries so as to preserve existing neighborhoods of related and mutual interest.



- 1.15.020 District One.
- Voting district one shall be comprised of the area within the census blocks for District 1 described on Exhibit “A” and which conform with the GIS shape files, generally depicted on Exhibit “B” attached hereto.
- 1.15.030 District Two.
- Voting district two shall be comprised of the area within the census blocks for District 2 described on Exhibit “A” and which conform with the GIS shape files, generally depicted on Exhibit “B” attached hereto.
- 1.15.040 District Three.
- Voting district three shall be comprised of the area within the census blocks for District 3 described on Exhibit “A” and which conform with the GIS shape files, generally depicted on Exhibit “B” attached hereto.
- 1.15.050 District Four.
- Voting district four shall be comprised of the area within the census blocks for District 4 described on Exhibit “A” and which conform with the GIS shape files, generally depicted on Exhibit “B” attached hereto.
- 1.15.060 District Five.
- Voting district five shall be comprised of the area within the census blocks for District 5 described on Exhibit “A” and which conform with the GIS shape files, generally depicted on Exhibit “B” attached hereto.
- 1.15.070 District Six.
- Voting district six shall be comprised of the area within the census blocks for District 6 described on Exhibit “A” and which conform with the GIS shape files, generally depicted on Exhibit “B” attached hereto.
- 1.15.080 District Seven.
- Voting district seven shall be comprised of the area within the census blocks for District 7 described on Exhibit “A” and which

conform with the GIS shape files, generally depicted on Exhibit “B” attached hereto.

1.15.090 Election of Council Members.

The qualified electors of each voting district, and they only, shall nominate from among their number of candidates for the office of council member of such voting district to be voted for at the next general election. Such candidates shall be nominated in the same manner as other candidates at the primary election held on the date specified in RCW 29A.04.311. The two candidates having the highest vote totals for each council position shall be certified as having been nominated and shall run for that position in the general election. District council members shall be elected by all of the qualified electors of their district and the candidate receiving the highest number of votes for the office of council member for the position for which he or she is a candidate shall be declared duly elected.

1.15.100 Council Members – Residential Requirement.

Council members elected from districts shall be residents of the districts from which they are elected in conformance with RCW 29A.24.075(3). If at any time during their term a Council member shall no longer maintain their residence, as defined by RCW 29A.04.151, within the district from which they were elected, then the office shall be considered vacant; provided, that no change in the boundaries of a district shall affect the term of any Council member and the Council member shall serve out his or her term in the district of their residence at the time of their election.

1.15.110 Re-establishment of District Boundaries.

In addition to decennial census adjustments required by RCW 29A.76.010, the Council shall re-establish district boundaries whenever the population in any district exceeds by ten percent or more the population in any other district; provided, that no change in the boundaries of any district shall be made within 90 days next before the date of a general municipal election, nor within 12 months after the districts were last established.

1.15.120 Annexation.

When additional territory is added to the City through annexation, it may, by act of the City Council, be annexed to contiguous districts

of the City without affecting the right to re-district the City at the expiration of 12 months after the last prior establishment of districts.

1.15.130 Recall Petitions.

Any registered voter of the district shall be eligible to sign a petition for the recall of a Council member for that district in conformance with RCW 29A.56.180.

1.15.140 Filling Vacancies.

If a vacancy in a council position occurs or if a council position is not filled by the election process, the remaining members of the City Council shall appoint a person to fill such office as provided in RCW 35A.12.050. Persons appointed to fill a district position shall be a qualified elector of that district.

## SECTION II

If any section, subsection, sentence, clause or phrase of this Ordinance is declared or judged by a court of competent jurisdiction to be invalid or unconstitutional, such adjudication shall in no manner affect the remaining portions of this Ordinance which shall be in full force and effect as if said section, subsection, sentence, clause or phrase so declared or adjudged invalid or unconstitutional were not originally a part hereof.

## SECTION III

This ordinance shall take effect thirty (30) days from and after approval and publication as provided by law.

**PASSED BY THE CITY COUNCIL OF THE CITY OF WENATCHEE** this \_\_\_\_ day of \_\_\_\_\_, 2018.

CITY OF WENATCHEE, a municipal corporation

By \_\_\_\_\_  
FRANK KUNTZ, Mayor

ATTEST:

By \_\_\_\_\_  
TAMMY L. STANGER, City Clerk

APPROVED:

By \_\_\_\_\_  
STEVE D. SMITH, City Attorney

Plan: report\_7\_districts\_4\_21\_plan  
Plan Type:  
Administrator:  
User:

## Plan Components Report (short format)

Friday, July 6, 2018

4:28 PM

### District 1

#### *CHELAN County*

VTD: 53400

Blocks (961000): 1020 1021 1022 1028 1030 1031 1032 1033 1034 1035 1036 1037

Blocks (961000): 1038 1039 1040 1041 1043 2000 2001 2002 2006 2007 2008 2009

Blocks (961100): 2000 2001 3001 3002 3005 5000 5001 5002 5003 5004 5005 5006

Blocks (961100): 5007 5008 5009 5010 5011 5012 5013 5014 5015 5016 5017 5018

Blocks (961100): 5019 5020 5021 5022 5023 5024 5025 5026 5027 5028 5029 5030

Blocks (961100): 5031 5032 5033 5034

VTD: 53460

Blocks (961000): 1016 1017 1018 1019 1023 1024 1025 1026 1027 2003 2004 2005

VTD: 53560

Blocks (961100): 3004 3007 3009 3010 3011 3012 3013 3014 3015

### District 2

#### *CHELAN County*

VTD: 53156

Blocks (961100): 4012 4021

VTD: 53400

Blocks (961100): 2002 2003 2004 2005 2006 2007 2008 2009 2010 2011 2012 2013

Blocks (961100): 2014 2015 2016 2017 2018 2019

VTD: 53450

Blocks (961100): 1000 1001 1002 1003 1014 1015 1016 1017 4000 4001 4002 4003

Blocks (961100): 4004 4005 4006 4007 4008 4009 4010 4011 4013 4014 4015 4034

Blocks (961100): 4035 4036

VTD: 53460

Blocks (961000): 3003 3004 3005 3006 3007 3008 3009 3010 3011 3012

Blocks (961100): 6000 6001 6003 6004

VTD: 53560

Blocks (961100): 3039 3041 3058 4023 4024 4025 4026 4027 4028 4029 4030

Blocks (961200): 1254 1255 1256

### District 3

#### *CHELAN County*

VTD: 53

Blocks (960802): 1001 1004 1008

VTD: 53460

Plan: report\_5\_districts\_4\_21\_plan

Administrator:

Type:

User:

### District 3 (continued)

#### *CHELAN County (continued)*

Blocks (961000): 1002 1005 1006 1007 1008 1009 1010 1011 1012 1013 1014 1015

Blocks (961000): 1042 3000 3001 3002

VTD: 53480

VTD: 53510

Blocks (960802): 1007 1009 1011 1012 1013 1014 1034 1035 1036 1037 2001 2002

Blocks (960802): 2003 2004 2005 2006 2007 2008 2009 2010

Blocks (961000): 1001 1003 1004 6000 6001 6002 6020 6021 7000 7001 7002 7003

Blocks (961000): 7011 7012 7013 7014 7015 7016

### District 4

#### *CHELAN County*

VTD: 53155

Blocks (960700): 2054

VTD: 53500

Blocks (960700): 1070 1072 1073 1074 1089 1090 1091 1092 1093 2001 2002 2003

Blocks (960700): 2004 2005 2006 2007 2009 2010 2011 2012 2013 2014 2015 2016

Blocks (960700): 2017 2018 2019 2020 2046 2047 2048 2049 2050 2051 2052 2053

Blocks (960700): 2055 2056 2057 2064 2065

Blocks (960802): 3008

VTD: 53510

Blocks (960802): 1002 1003 1005 1010 1015 1016 3007 3009 3010 3011 3012 3025

Blocks (960802): 3046 3047 5000 5001 5002 5003 5004

VTD: 53520

Blocks (960802): 3026 3052

VTD: 53530

VTD: 53540

Blocks (960802): 4000 4001 4002 4003 4004 4005 4006 4007 4008 4009 4010 4011

Blocks (960802): 4012 4013 4014 4015 4016 4017 4018 4019 4020 4029

### District 5

#### *CHELAN County*

VTD: 53149

Blocks (961302): 4014

VTD: 53158

Blocks (960802): 3036

VTD: 53420

Blocks (961301): 1005 1006 1007 1008 1009

VTD: 53430

Blocks (961302): 5017

VTD: 53440

Blocks (961301): 1001 1002 1003 1004

Blocks (961302): 4022 4023 4024 4025 4032 4037 4038 4039 4040 4050

Plan: report\_5\_districts\_4\_21\_plan

Administrator:

Type:

User:

**District 5 (continued)**

***CHELAN County (continued)***

VTD: 53520

Blocks (960801): 1019 1020 1025 1026 1027 1028 1029 1030 1031 1032 1039 1071

Blocks (960801): 1072 1073 1074 1081 1083 1084 1085

Blocks (960802): 3005 3013 3014 3015 3016 3017 3018 3019 3020 3021 3022 3023

Blocks (960802): 3024 3032 3033 3038 3039

VTD: 53580

VTD: 53590

**District 6**

***CHELAN County***

VTD: 53430

Blocks (961302): 3019 3020 3027 5009 5010 5012 5013 5014 5015 5016 6000 6001

Blocks (961302): 6002 6003 6004 6005 6006 6007 6008 6010 6011 6012 6013 6014

Blocks (961302): 6015 6016 6017 6018

VTD: 53440

Blocks (961302): 6009

VTD: 53470

Blocks (961000): 5002 5003 5004 5005 5006 5007 5010

Blocks (961302): 3012 3013 3014 3015 3016 3017 3018 3021 3022 3023 3024 3025

Blocks (961302): 3026

VTD: 53490

VTD: 53510

Blocks (960802): 5005 5006 5007 5008 5009 5010 5011

VTD: 53540

Blocks (960802): 4021 4022 4023 4024 4025 4026 4027 4028

**District 7**

***CHELAN County***

VTD: 53149

Blocks (961301): 1011

VTD: 53156

Blocks (961301): 1022

VTD: 53410

VTD: 53420

Blocks (961301): 1000

Blocks (961302): 1002 1003 1004 1005 1006 1007 1008 1009 1020 1021 1023

VTD: 53440

Blocks (961302): 2000 2001 2002 2003 2004 2005 2006 2007 2008 2009 2010 2011

Blocks (961302): 2012 2013 2014 2015 2016 2017

VTD: 53450

Blocks (961100): 1004 1005 1006 1007 1008 1009 1010 1011 1012 1013 1018 1019

Blocks (961100): 1020 1021 4016 4017 4018 4019 4020

VTD: 53460

Plan: report\_5\_districts\_4\_21\_plan

Administrator:

Type:

User:

**District 7 (continued)**

*CHELAN County (continued)*

Blocks (961100): 6002

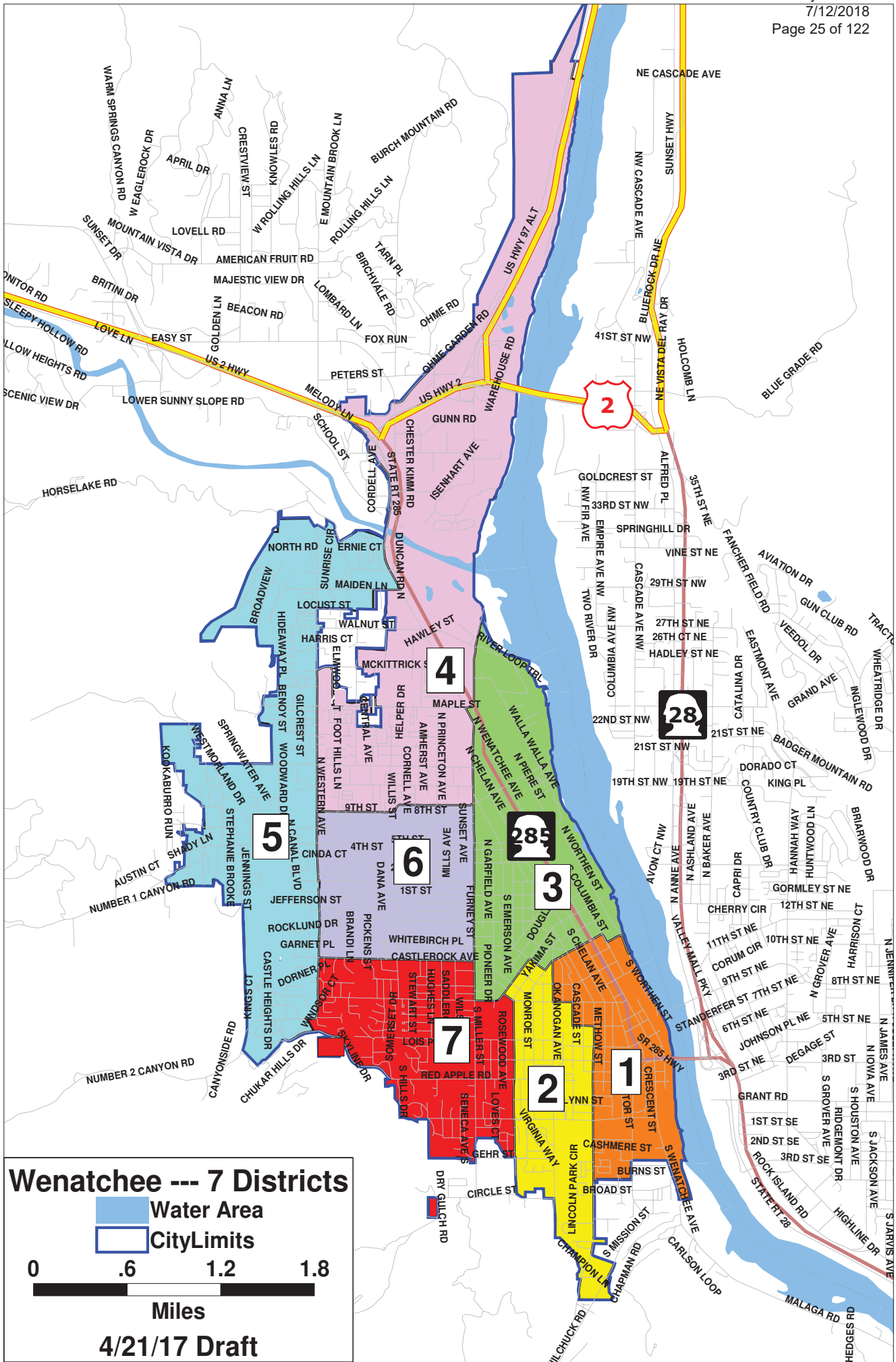
VTD: 53470

Blocks (961000): 5011 5012 5018 5019 5020 5021

Blocks (961302): 1000 1001 1014 1015

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## **ORDINANCE NO. 2018-19**

**AN ORDINANCE**, of the City of Wenatchee, Washington, adding Chapter 1.15 Voting Districts to the Wenatchee City Code establishing voting districts for the positions of City Council members.

**WHEREAS**, the federal Voting Rights Act of 1965 prohibits voting practices or procedures that discriminate on the basis of race, color, or membership in a language minority group; and

**WHEREAS**, the State of Washington's Voting Rights Act of 2018 found that electoral systems that deny race, color or language minority groups an equal opportunity to elect candidates of their choice are inconsistent with the right to free and equal elections as provided in Article VI, Section 1, of the Washington State Constitution as well as the fourteenth and fifteenth amendments to the United States Constitution; and

**WHEREAS**, the City of Wenatchee is authorized to change its electoral system including, but not limited to, implementing a district-based election system, per RCW 35A.12.180 and 29A.76 RCW; and

**WHEREAS**, on July 9, 2015, the Wenatchee City Council passed Resolution No. 2015-36 appointing an ad hoc advisory committee to study and make recommendations to the City Council related to the electoral process for City Council members; and

**WHEREAS**, the City's ad hoc committee issued its report on June 27, 2016, in which the committee unanimously recommended the City discontinue its system of seven

at-large positions, but with a majority recommendation that the City implement a seven district system and a minority recommendation that the City implement a five district with two at-large positions system in electing its city council; and

**WHEREAS**, the City hired consultant Bill Cooper, a recognized expert on the forensic analysis of population data, to examine the City's population and to develop proposed districts that would meet the criteria of RCW 29A.76.010 and RCW 35A.12.180; and

**WHEREAS**, the City Council held a duly advertised public hearing on the proposed districting plan in accordance with RCW 29A.76.010 (5); and

**WHEREAS**, the City Council finds that it would be in the best interest of the public to adopt a voting district system.

**NOW, THEREFORE**, the City Council of the City of Wenatchee do ordain as follows:

## **SECTION I**

That the following chapter shall be and hereby is adopted and added to the Wenatchee City Code (WCC):

### **Chapter 1.15 VOTING DISTRICTS**

#### **1.15.010 Number of Districts.**

The City is divided into five voting districts. Each district shall be as nearly equal in population as possible, compact as possible, consist of geographically contiguous area, be configured as to not favor or disfavor any racial group or political party, and, to the extent feasible, coincide with the recognized natural boundaries so as to preserve existing neighborhoods of related and mutual interest.

1.15.020 District One.

Voting district one shall be comprised of the area within the census blocks for District 1 described on Exhibit “A” and which conform with the GIS shape files, generally depicted on Exhibit “B” attached hereto.

1.15.030 District Two.

Voting district two shall be comprised of the area within the census blocks for District 2 described on Exhibit “A” and which conform with the GIS shape files, generally depicted on Exhibit “B” attached hereto.

1.15.040 District Three.

Voting district three shall be comprised of the area within the census blocks for District 3 described on Exhibit “A” and which conform with the GIS shape files, generally depicted on Exhibit “B” attached hereto.

1.15.050 District Four.

Voting district four shall be comprised of the area within the census blocks for District 4 described on Exhibit “A” and which conform with the GIS shape files, generally depicted on Exhibit “B” attached hereto.

1.15.060 District Five.

Voting district five shall be comprised of the area within the census blocks for District 5 described on Exhibit “A” and which conform with the GIS shape files, generally depicted on Exhibit “B” attached hereto.

1.15.070 Election of Council Members.

The qualified electors of each voting district, and they only, shall nominate from among their number of candidates for the office of council member of such voting district to be voted for at the next general election. Such candidates shall be nominated in the same manner as other candidates at the primary election held on the date specified in RCW 29A.04.311. In addition, two council members, designated councilmembers-at-large, shall be nominated from among all districts within the City. Each district council position shall be numbered one through five corresponding to its district

number with the at-large council member positions being designated as position six and seven. The two candidates having the highest vote totals for each council position shall be certified as having been nominated and shall run for that position in the general election. District council members shall be elected by all of the qualified electors of their district and the council members-at-large shall be elected by all of the qualified electors of the City and the candidate receiving the highest number of votes for the office of council member for the position for which he or she is a candidate shall be declared duly elected.

1.15.100 Council Members – Residential Requirement.

Council members elected from districts shall be residents of the districts from which they are elected in conformance with RCW 29A.24.075(3). Council members elected at-large shall be residents of the City in conformance with RCW 29A.24.075 (3). If at any time during their term a Council member shall no longer maintain their residence, as defined by RCW 29A.04.151, within the district from which they were elected, or within the City if at-large, then the office shall be considered vacant; provided, that no change in the boundaries of a district shall affect the term of any Council member and the Council member shall serve out his or her term in the district of their residence at the time of their election.

1.15.110 Re-establishment of District Boundaries.

In addition to decennial census adjustments required by RCW 29A.76.010, the Council shall re-establish district boundaries whenever the population in any district exceeds by ten percent or more the population in any other district; provided, that no change in the boundaries of any district shall be made within 90 days next before the date of a general municipal election, nor within 12 months after the districts were last established.

1.15.120 Annexation.

When additional territory is added to the City through annexation, it may, by act of the City Council, be annexed to contiguous districts of the City without affecting the right to re-district the City at the expiration of 12 months after the last prior establishment of districts.

1.15.130 Recall Petitions.

Any registered voter of the district shall be eligible to sign a petition for the recall of a Council member for that district in conformance with RCW 29A.56.180.

1.15.140 Filling Vacancies.

If a vacancy in a council position occurs or if a council position is not filled by the election process, the remaining members of the City Council shall appoint a person to fill such office as provided in RCW 35A.12.050. Persons appointed to fill a district position shall be a qualified elector of that district.

**SECTION II**

If any section, subsection, sentence, clause or phrase of this Ordinance is declared or judged by a court of competent jurisdiction to be invalid or unconstitutional, such adjudication shall in no manner affect the remaining portions of this Ordinance which shall be in full force and effect as if said section, subsection, sentence, clause or phrase so declared or adjudged invalid or unconstitutional were not originally a part hereof.

**SECTION III**

This ordinance shall take effect thirty (30) days from and after approval and publication as provided by law.

**PASSED BY THE CITY COUNCIL OF THE CITY OF WENATCHEE** this \_\_\_\_ day of \_\_\_\_\_, 2018.

CITY OF WENATCHEE, a municipal corporation

By \_\_\_\_\_  
FRANK KUNTZ, Mayor

ATTEST:

By \_\_\_\_\_  
TAMMY L. STANGER, City Clerk

APPROVED:

By \_\_\_\_\_  
STEVE D. SMITH, City Attorney

Plan: report\_5\_districts\_4\_20\_plan  
Plan Type:  
Administrator:  
User:

## Plan Components Report (short format)

Friday, July 6, 2018

4:23 PM

### District 1

#### *CHELAN County*

VTD: 53156

Blocks (961200): 1252

VTD: 53400

Blocks (961000): 1020 1021 1022 1028 1030 1031 1032 1033 1034 1035 1036 1037

Blocks (961000): 1038 1039 1040 1041 1043 2000 2001 2002 2006 2007 2008 2009

Blocks (961100): 2000 2001 2003 2004 2005 2006 2007 2008 2009 2010 2011 2012

Blocks (961100): 2013 2014 2015 2016 2017 2018 2019 3001 3002 3005 5000 5001

Blocks (961100): 5002 5003 5004 5005 5006 5007 5008 5009 5010 5011 5012 5013

Blocks (961100): 5014 5015 5016 5017 5018 5019 5020 5021 5022 5023 5024 5025

Blocks (961100): 5026 5027 5028 5029 5030 5031 5032 5033 5034

VTD: 53460

Blocks (961000): 1011 1012 1013 1014 1015 1016 1017 1018 1019 1023 1024 1025

Blocks (961000): 1026 1027 1042 2003 2004 2005

VTD: 53560

Blocks (961100): 3004 3007 3009 3010 3011 3012 3013 3014 3015 3039 3041 3058

Blocks (961100): 4024 4025 4026 4027 4028 4029 4030

Blocks (961200): 1254 1255 1256

### District 2

#### *CHELAN County*

VTD: 53149

Blocks (961301): 1011

VTD: 53156

Blocks (961100): 4021

Blocks (961301): 1022

VTD: 53400

Blocks (961100): 2002

VTD: 53410

VTD: 53420

Blocks (961301): 1000

Blocks (961302): 1002 1003 1004 1005 1006 1007 1008 1009 1020 1021 1023

VTD: 53450

VTD: 53460

Blocks (961000): 3003 3004 3005 3006 3007 3008 3009 3010 3011 3012



Plan: report\_5\_districts\_4\_20\_plan

Administrator:

Type:

User:

**District 2 (continued)**

*CHELAN County (continued)*

Blocks (961100): 6000 6001 6002 6003 6004  
VTD: 53470  
Blocks (961302): 1000 1001 1014 1015  
VTD: 53560  
Blocks (961100): 4023

**District 3**

*CHELAN County*

VTD: 53158  
Blocks (960802): 3036  
VTD: 53420  
Blocks (961301): 1005 1006 1007 1008 1009  
VTD: 53440  
Blocks (961301): 1001 1002 1003 1004  
Blocks (961302): 4022 4023 4024 4025 4032 4037 4038 4039 4040 4050  
VTD: 53510  
Blocks (960802): 3007  
VTD: 53520  
Blocks (960801): 1019 1020 1025 1026 1027 1028 1029 1030 1031 1032 1039 1071  
Blocks (960801): 1072 1073 1074 1081 1083 1084 1085  
Blocks (960802): 3005 3013 3014 3015 3016 3017 3018 3019 3020 3021 3022 3023  
Blocks (960802): 3024 3032 3033 3038 3039 3052  
VTD: 53530  
Blocks (960802): 1022 1023 1024 1025 1026 1027 1028 1029 1030 3043 3048 3049  
Blocks (960802): 3050 3051  
VTD: 53540  
Blocks (960802): 4000 4001 4002 4003 4004 4005 4006 4007 4008 4009 4010 4011  
Blocks (960802): 4012 4013 4014 4015 4016 4017 4018 4019 4020 4029  
VTD: 53580  
VTD: 53590

**District 4**

*CHELAN County*

VTD: 53  
Blocks (960802): 1001 1004 1008  
VTD: 53154  
Blocks (960700): 1075  
VTD: 53155  
Blocks (960700): 2054  
VTD: 53460  
Blocks (961000): 1002 1005 1006 1007 1008 1009 1010 3000 3001 3002  
VTD: 53480  
VTD: 53500

Plan: report\_5\_districts\_4\_20\_plan

Administrator:

Type:

User:

**District 4 (continued)**

*CHELAN County (continued)*

Blocks (960700): 1070 1072 1073 1074 1089 1090 1091 1092 1093 2001 2002 2003

Blocks (960700): 2004 2005 2006 2007 2009 2010 2011 2012 2013 2014 2015 2016

Blocks (960700): 2017 2018 2019 2020 2047 2048 2049 2050 2051 2052 2053 2055

Blocks (960700): 2056 2057 2064

VTD: 53510

Blocks (960802): 1002 1003 1005 1007 1009 1010 1011 1012 1013 1014 1015 1016

Blocks (960802): 1034 1035 1036 1037 2001 2002 2003 2004 2005 2006 2007 2008

Blocks (960802): 2009 2010 3009 3010 3011 3012 3025 3046 3047

Blocks (961000): 1001 1003 1004 6000 6001 6002 6020 6021 7000 7001 7002 7003

Blocks (961000): 7011 7012 7013 7014 7015 7016

VTD: 53520

Blocks (960802): 3026

VTD: 53530

Blocks (960802): 1017 1018 1019 1020 1031 1032 1033 3029 3030 3042 3044 3045

Blocks (960802): 3053

**District 5**

*CHELAN County*

VTD: 53430

VTD: 53440

Blocks (961302): 2000 2001 2002 2003 2004 2005 2006 2007 2008 2009 2010 2011

Blocks (961302): 2012 2013 2014 2015 2016 2017 6009

VTD: 53470

Blocks (961000): 5002 5003 5004 5005 5006 5007 5010 5011 5012 5018 5019 5020

Blocks (961000): 5021

Blocks (961302): 3012 3013 3014 3015 3016 3017 3018 3021 3022 3023 3024 3025

Blocks (961302): 3026

VTD: 53490

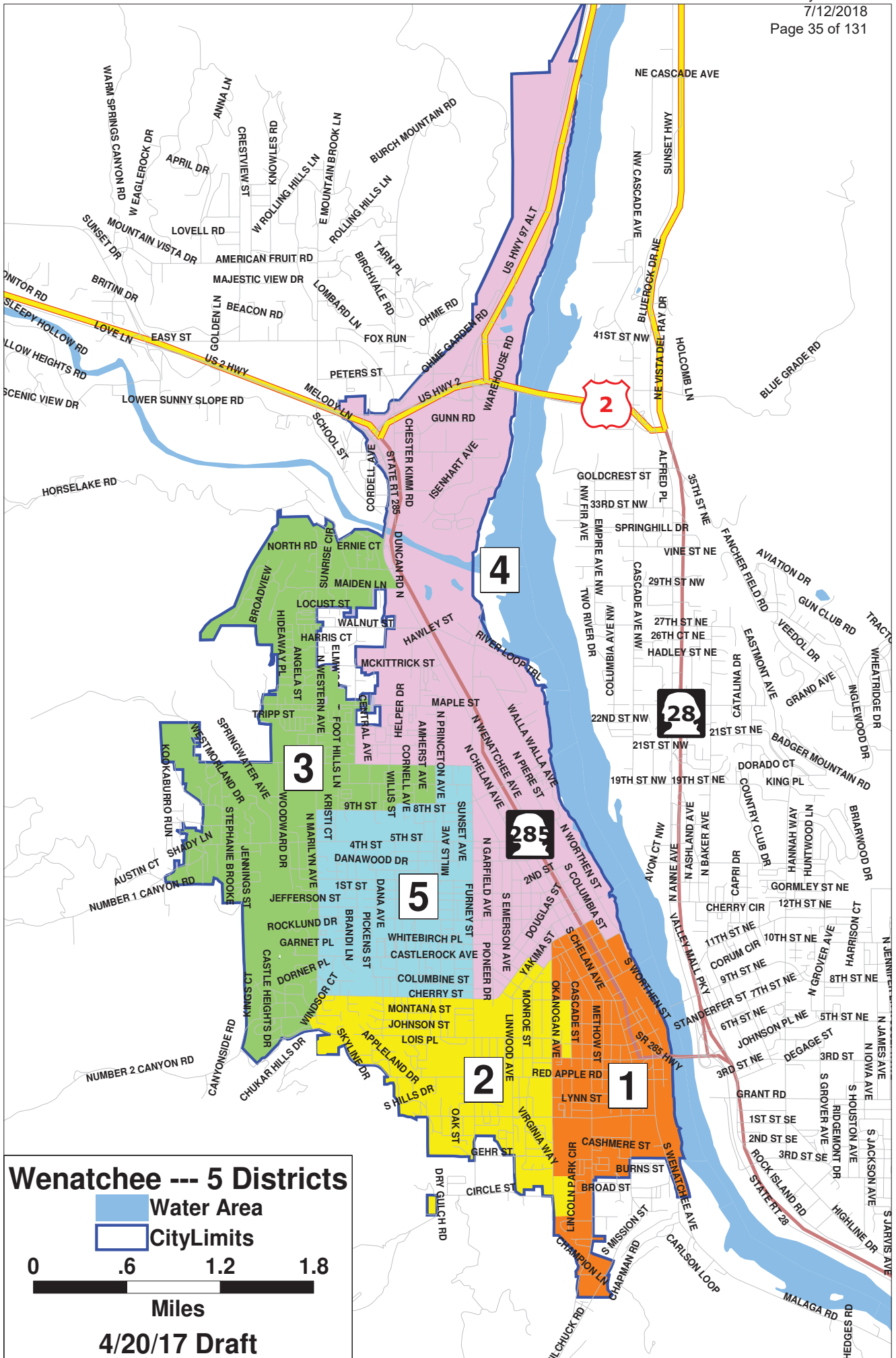
VTD: 53510

Blocks (960802): 5000 5001 5002 5003 5004 5005 5006 5007 5008 5009 5010 5011

VTD: 53540

Blocks (960802): 4021 4022 4023 4024 4025 4026 4027 4028

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**Agenda Item B: Public Hearing Re: CDBG 2013-2017 Consolidated Plan Update and 2018 CDBG Annual Action Plan**

Agenda Item B is included as a separate agenda packet: AGENDA PACKET PART 2

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**COUNCIL AGENDA REPORT  
PUBLIC WORKS DEPARTMENT**

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**TO:** Frank Kuntz, Mayor  
City Council

**FROM:** Gary P. Owen, City Engineer  
Donald M. Nelson, Development Review Engineer

**SUBJECT:** Improvement Agreement for Pine Shadow Subdivision P-17-03, Action Item

**DATE:** July 9, 2018

**MEETING DATE:** July 12, 2018

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**I. OVERVIEW**

The Major Subdivision, Pine Shadow was provided preliminary approval on April 3, 2018 by the Hearing Examiner consistent with RCW 58.17.110. The required improvements identified in this agreement are based upon Wenatchee City Code Chapter 11.24 and the Conditions of Approval from the Hearing Examiner. In this case, the applicant proposes to Plat the Land in advance of providing any required improvements at all. The applicant has bonded for all of the required improvements in the amount of \$ 1,697,000.00 US Dollars being 150% of its approved bids as approved by the City Engineer for the work. This agreement states that the City shall have the right to inspection of completed improvements prior to the release of the bond. The agreement also includes a provision that upon completion of the required improvements 20 percent of the performance bond remain in place for one year to cover the cost of failure of any of the required improvements that may occur.

The following action is a required action for the City Council to authorize the Mayor to sign the final mylar for Pine Shadow Subdivision P-17-03.

**II. ACTION REQUESTED**

*Staff recommends the City Council authorize the Mayor to sign the improvement agreement for Pine Shadow Subdivision P-17-03.*

**III. FISCAL IMPACT Submitted to the Finance Committee Yes No**

N/A

**IV. PROPOSED PROJECT SCHEDULE**

Required improvements identified in the Agreement are to be done by June 30, 2023.

**V. REFERENCE(S)**

Improvement Agreement of Pine Shadow Subdivision P-17-03

**VI. ADMINISTRATIVE ROUTING**

Tammy Stanger, City Clerk  
Brad Posenjak, Finance Director

Return Address:

Public Works  
Public Services Center  
1350 McKittrick Street, Suite A  
Wenatchee, Washington 98801

**Improvement Agreement  
of  
Pine Shadow Subdivision P-17-03**

**Grantor(s):** Pine Shadow Land Company, LLC, a Washington limited Liability company

**Grantee(s):** City of Wenatchee, a Washington municipal corporation

**Legal Description (Abbreviated):** Parcel A of BLA 2018-08 WE in Section 5, Township 22 North, Range 20 East of the Willamette Meridian, Chelan County, WA.;  
Additional legal on page 2

**Assessor's Tax Parcel ID#:** 222005120200; 222005780283; part of 222005780285

This Improvement Agreement (“Agreement”) is made and entered into this date by and between the City of Wenatchee, a Washington municipal corporation, organized and existing under the laws of the State of Washington (“City”) and Pine Shadow Land Company, LLC, (“Pine Shadow Land Company”), an entity that is developing property to be known as Pine Shadow Subdivision P-17-03.

**RECITALS**

A. Pursuant to Chapter 11.24.200 Wenatchee City Code (“WCC”), the City has the authority to enter into improvement agreements to facilitate and promote the construction of all required improvements within a subdivision.

B. Pine Shadow Land Company desires to develop and plat a residential subdivision (the "Project"). The legal description of the Project, as well as other property contained in the plat for Project to be further divided, is as follows:

Description PARCEL A Reference: AFN 2274189 and 2397080

Lots 1 and 2, Chelan County Short Plat Number 2003-061, Chelan County, Washington, according to the plat thereof recorded in Book SP-19 of Short Plats, page 45,

TOGETHER WITH A tract of land deeded as Parcel B in that deed recorded under Auditor File No. 2274189 re-described herein for clarification:

THAT PORTION of the Northeast quarter of the Northwest quarter and the Northwest quarter of the Northeast quarter of Section 5, Township 22 North, Range 20 East of the Willamette Meridian, Chelan County, Washington lying Westerly of the High Line Canal right-of-way and Easterly of Lots 1 and 2 of said Chelan County Short Plat Number 2003-061 and North and East of the following described line: COMMENCING at the North quarter corner for Section 5, a 2 inch pipe with tack in monument case, from which a 5/8 inch pin in monument case at Springwater and Woodward Streets bears South 89°27'37" East 1134.80 feet; thence South 02°52'04" West 768.32 feet to the Southeast corner of said Lot 1, a gin spike in sandstone slab, and the TRUE POINT OF BEGINNING of this described line; thence South 02°51'17" West 217.75 to a 5/8" rebar at the Northwest corner of Lot 17, Plat of Birch Meadows recorded in Volume 21, page 62; thence along North line thereof, North 87°49'24" East 279.61 to a 5/8" rebar at the Northeast corner of said lot; thence North 87°42'38" East 385.45 feet along the North line of Birch Meadows Short Plat No. 1 as recorded in Book SP-10, page 99, records of said county, to the Northeast corner of Lot 10 of said short plat at the right-of-way for the High Line Canal and the end of this described line,

EXCEPTING the right-of-way for Springwater Avenue,

AND EXCEPTING therefrom:

THAT PORTION of the Northeast quarter of the Northwest quarter and the Northwest quarter of the Northeast quarter of Section 5, Township 22 North, Range 20 East of the Willamette Meridian, Chelan County, Washington described as follows:

COMMENCING at the North quarter corner for Section 5, a 2 inch pipe with tack in monument case, from which a 5/8 inch pin in monument case at Springwater and Woodward Streets bears South 89°27'37" East 1134.80 feet; thence South 02°50'04" West 39.94 feet to a 5/8 inch rebar; thence North 89°24'11" West 200.26 feet; thence South 25°17'56" East 148.68 feet to the TRUE POINT OF BEGINNING of this described parcel; thence South 89°33'28" East 135.00 feet; thence North 75°03'15" East 32.71 feet to a curve left, the center of which bears North 75°03'15" East 325.00 feet; thence Southeasterly along said curve, an arc length of 25.02 feet, through a central angle of 04°24'42"; thence South 75°03'15" West 42.25 feet; thence South 03°59'38" West 229.03 feet; thence North 89°21'24" West 109.84 feet; thence North 03°51'33" West 155.14 feet; thence North 01°45'50" East 99.91 feet to the POINT OF BEGINNING.

AKA: Parcel A of BLA2018-008WE

C. For purposes of this Agreement, the defined term "Project" means only that portion of the above-described real property that is contained within the residential subdivision and shown on the Plat named Pine Shadow Subdivision P-17-03. Said Plat filed at Chelan County Auditor's file number \_\_\_\_\_.

D. Pine Shadow Land Company is bound and vested by the Findings of Fact, Conclusions of Law and Conditions of Approval in the matter of P-17-03 Pine Shadow Major Subdivision before the City of Wenatchee Land Use Hearing Examiner on March 29, 2018 as issued by the Hearing Examiner on April 3, 2018. In this Conditions of Approvals document, item #20 references that the subject site and final plat shall conform to the conditions of approval as found in the City of Wenatchee Development Review Engineer's Report dated March 20, 2018 and described in Section 3 of the Agreement as Required Improvements. These documents are incorporated herein by this reference.

E. Pine Shadow Land Company has proposed that the City allow certain required improvements to be bonded pursuant to WCC 11.16.240(5), WCC 11.24.210, WCC 11.24.220 and WCC 11.24.230 consistent with the provisions of this Agreement.

F. Based upon the proposal of Pine Shadow Land Company set forth herein, the City agrees to accept a performance bond in lieu of completed improvements in consideration of providing final plat approval.

#### AGREEMENT

NOW, THEREFORE, Pine Shadow Land Company and the City hereby covenant and agree to the following in behalf of themselves, their successors and assigns:

1. Application: Pine Shadow Land Company has submitted an application for the approval of the Pine Shadow Major Subdivision, P-17-03.

2. Project Information:

Owner: Pine Shadow Land Company, LLC  
Address: PO Box 119, Wenatchee, WA 98807-0119

Contractor Name: Selland Construction, Inc.  
License Number: SELLAC\*372NO  
Address: 1285 S. Wenatchee Avenue, Wenatchee, WA 98801



3. Required Improvements: Pine Shadow Land Company hereby agrees to make all improvements to public property, to construct improvements for dedication to the public, and/or make improvements to private property set forth in the Conditions of Approval, all of which shall be completed at the sole cost and expense of Pine Shadow Land Company.

4. Damages to Public Property: Pine Shadow Land Company agrees to immediately and completely repair any and all damages to public property caused by Pine Shadow Land Company, its agents and independent contractors in connection with the required work and pay for all repairs at Pine Shadow Land Company's sole cost and expense.

5. Registered Contractor Required: Any and all work related to public improvements and repairs to public property shall be by a licensed contractor registered under Washington law.

6. Estimated Costs: Any and all costs of improvements as described in Required Improvements above have been provided by Pine Shadow Land Company and are estimates only. This Agreement does not constitute a guarantee or any other representation by the City as to the cost of required improvements. Pine Shadow Land Company hereby accepts the risk that the cost of required improvements may exceed the described cost estimates.

7. Bonding (Financial Assurance of Performance): Pine Shadow Land Company shall provide a Surety Performance Bond as security for the full and timely performance of all of the Pine Shadow Land Company's obligations for the Required Improvements in the amount of One Million Six Hundred Ninety Seven Thousand and No One Hundredths (\$1,697,000.00) U.S. Dollars as approved by the City Engineer pursuant to WCC 11.24.210. The Surety shall be licensed to conduct business in Washington State. The Surety Performance Bond shall be issued by a Surety acceptable to and in a form acceptable to the City Attorney and, as applicable, the City Engineer and the Subdivision Administrator of the City of Wenatchee. At the completion of the Required Improvements the Surety Performance Bond shall remain in place until Pine Shadow Land Company provides a maintenance bond in an amount equal to 20% of the performance bond

amount as approved by the City Engineer to cover the cost of failure of any of the Required Improvements occurring within one year following completion. Forfeiture and release of the surety shall be governed by WCC 11.24.220 and WCC 11.24.230.

8. Warranty (Guarantee of Materials and Workmanship): All of the Required Improvements and work performed by Pine Shadow Land Company and all necessary repairs to public property shall be in conformance with this Agreement, the development plans approved by the City Engineer and the standards of the City code. Pine Shadow Land Company does hereby warrant any and all design and construction of Required Improvements and all necessary repairs to public property to be free from defects in design, workmanship and materials. The warranty against any and all defects in workmanship and materials shall be limited to defects arising within twelve (12) months after final acceptance of the work by the City. Pine Shadow Land Company shall repair or replace substandard or failed work, whether due to materials or workmanship, discovered during the guarantee period in a timely manner of 30 days or less.

9. Inspection by City: The City shall have the right to inspect all Required Improvements done by Pine Shadow Land Company. Pine Shadow Land Company shall be responsible for certifying that all materials and construction meet the intent of the design prior to release of the Surety Performance Bond. Release of the Surety Performance Bond is contingent on final inspection and approval by City of the Required Improvements.

10. Timeline: All Required Improvements shall be satisfactorily completed by **July 30, 2023**. If the Required Improvements are not satisfactorily completed by that date, Pine Shadow Land Company shall be in breach of this Agreement for its failure to complete all Required Improvements in accordance with this Agreement and forfeiture of the Surety Performance Bond shall begin according to WCC 11.24.220.

11. Occupancy of Land within Subdivision Restricted: Lots may be sold within the subdivision prior to completion of the Requirement Improvements; provided, however, that no residential

occupancy shall occur until the following Required Improvements are satisfactorily completed concurrent with development:

- a. The sidewalk adjacent to any lot within the Project for which a building permit has been issued has been completed; and
- b. The required landscaping between such sidewalk and the street curb has been completed; and
- c. The utilities serving the lot have been undergrounded and are functionally concurrent with development; and
- d. Access to a public street with curbing shall be completed and open to Public use as allowed by the City Engineer along Spring Mountain Drive to Springwater Avenue and if Spring Mountain Drive's dead-end is not completed, then a fire apparatus turnaround shall be required to be completed and approved by the City Engineer and City Fire Official for road lengths longer than 150 feet from Springwater Avenue.

12. Termination: This Agreement shall terminate at the conclusion of the warranty (guarantee) period provided for in Section 8 hereof.

13. Binding Effect: This Improvement Agreement shall be a covenant running with the land and shall inure to and be binding upon the heirs, successors and assigns of the parties hereto.

14. Modification: This Agreement may not be amended, supplemented, or otherwise modified unless expressly set forth in a written Agreement signed by the parties.

15. Venue: The venue for any disputes to this Agreement shall be in Chelan County, Washington.

Pine Shadow Land Company, LLC.  
A Washington limited liability company

By: \_\_\_\_\_  
Craig Homchick, Manager

Date: \_\_\_\_\_



CITY OF WENATCHEE  
A Washington Municipal Corporation

Recommending approval

By: \_\_\_\_\_ Date: \_\_\_\_\_  
Gary Owen, City Engineer

Recommending approval

By: \_\_\_\_\_ Date: \_\_\_\_\_  
Stephen Neuenschwander, Subdivision Administrator

Approved

By: \_\_\_\_\_ Date: \_\_\_\_\_  
Frank Kuntz, Mayor

STATE OF WASHINGTON )  
 ) ss.  
COUNTY OF \_\_\_\_\_ )

I certify that I know or have satisfactory evidence that Frank Kuntz is the person who appeared before me and said person acknowledged that he signed this instrument, as the Mayor of the City of Wenatchee to be the free and voluntary act of such party of the users and purposes mentioned in the instrument.

Dated this \_\_\_\_ day of \_\_\_\_\_, 2018

\_\_\_\_\_  
SIGNATURE

\_\_\_\_\_  
TYPED/PRINTED NAME

NOTARY PUBLIC  
In and for the State of Washington  
My appointment expires \_\_\_\_\_

STATE OF WASHINGTON )  
 ) ss.  
COUNTY OF \_\_\_\_\_ )

I certify that I know or have satisfactory evidence that Gary P. Owen is the person who appeared before me and said person acknowledged that he signed this instrument, as the City Engineer of the City of Wenatchee to be the free and voluntary act of such party of the users and purposes mentioned in the instrument.

Dated this \_\_\_\_ day of \_\_\_\_\_, 2018

\_\_\_\_\_  
SIGNATURE

\_\_\_\_\_  
TYPED/PRINTED NAME

NOTARY PUBLIC

In and for the State of Washington

My appointment expires \_\_\_\_\_

STATE OF WASHINGTON )  
 ) ss.  
COUNTY OF \_\_\_\_\_ )

I certify that I know or have satisfactory evidence that Stephen Neuenschwander is the person who appeared before me and said person acknowledged that he signed this instrument, as the Subdivision Administrator of the City of Wenatchee to be the free and voluntary act of such party of the users and purposes mentioned in the instrument.

Dated this \_\_\_\_ day of \_\_\_\_\_, 2018

\_\_\_\_\_  
SIGNATURE

\_\_\_\_\_  
TYPED/PRINTED NAME

NOTARY PUBLIC

In and for the State of Washington

My appointment expires \_\_\_\_\_



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**COUNCIL AGENDA REPORT  
COMMUNITY DEVELOPMENT DEPARTMENT**

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As required by state law and applicable sections of the Wenatchee City Code, the City Council provides final approval confirming that the Subdivision Administrator and the City Engineer have verified that all of the conditions of approval have been met.

The Subdivision Administrator and City Engineer have determined that:

1. All requirements of the state law and the Wenatchee City Code have been met.
2. All conditions imposed by the preliminary plat have been met.
3. The development agreement satisfies these requirements.
4. The public use and interest are served by the approval of this subdivision; and
5. Adequate provisions have been made for the necessary infrastructure and improvements.

The City Council action is the final step in the review and approval process for a final plat. This action is a closed record action as a public hearing and preliminary approval has already occurred through the City of Wenatchee Hearing Examiner's proceedings.

**II. ACTION REQUESTED**

*Staff recommends the City Council authorize the Mayor to sign the final mylar for Pine Shadows P-17-03.*

**III. FISCAL IMPACT**

N/A

**IV. REFERENCE(S)**

1. Mylar Scan

**V. ADMINISTRATIVE ROUTING**

Tammy Stanger, City Clerk



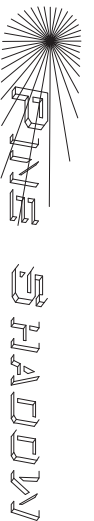
DESCRIPTION

TAX PARCEL No. 222005 120 200 & 222005 780 283

LOTS 1 AND 2 CHELAN COUNTY SHORT PLAT NUMBER 2003-061, CHELAN COUNTY, WASHINGTON, ... TOGETHER WITH A TRACT OF LAND DEEDED AS PARCEL B IN THAT DEED RECORDED UNDER A/DI/O/P ...

GENERAL NOTES AND PROVISIONS

- 1) NEW LINES PER BOUNDARY LINE ADJUSTMENT CONCURRENT WITH PLAT RECORDING. AFN
2) ACCESS EASEMENT PER AFN 2420200 VACATED AND RELOCATED PER ITEM 12 AND THE SIGNING OF THE ...



PART OF GOVERNMENT LOTS 2 & 3 SECTION 5 T22N R20E W.M. CHELAN COUNTY, WASHINGTON CITY OF WENATCHEE

DEDICATION

KNOW ALL MEN BY THESE PRESENTS: THAT THE UNDERSIGNED, GRIG HONCHICK, MEMBER OF PINE SHADOW LAND ...

ACKNOWLEDGMENT

I CERTIFY THAT I KNOW OR HAVE SATISFACTORY EVIDENCE THAT I AM THE MEMBER OF PINE SHADOW LAND COMPANY, LLC, WASHINGTON ...

ACKNOWLEDGMENT

STATE OF WASHINGTON } SS. COUNTY OF CHELAN } SS. THIS IS TO CERTIFY THAT ON THIS ... DAY OF ... 20 ...

SURVEYOR'S CERTIFICATE

I, SCOTT W. VOLLRATH, REGISTERED AS A LAND SURVEYOR BY THE STATE OF WASHINGTON, CERTIFY THAT THIS PLAT IS BASED UPON AN ACTUAL SURVEY OF THE LAND ...



EXAMINED & APPROVED

CITY OF WENATCHEE CITY OF WENATCHEE ENGINEER DATE CITY OF WENATCHEE MAYOR DATE CITY OF WENATCHEE SUBDIVISION ADMINISTRATOR DATE

TREASURER CERTIFICATE

I HEREBY CERTIFY THAT ALL TAXES AND ASSESSMENTS WHICH HAVE BEEN LEVIED AND BECAME CHARGEABLE AGAINST SAID PROPERTY FOR 20... AND PRECEDING YEARS HAVE BEEN DULY PAID, SATISFIED AND DISCHARGED ...

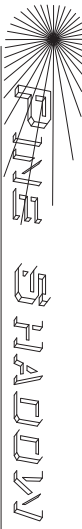
AUDITOR'S CERTIFICATE

AUDITOR'S FILE No. ... FEE ... FILED FOR RECORD THIS ... DAY OF ... OF PLATS, ... AT PAGES ... RECORDS OF CHELAN COUNTY, WASHINGTON. CHELAN COUNTY AUDITOR



DATE: 6/26/18 SHEETS: 1 OF 2 FILE: 16010JMS JOB NO.: 16010

PO BOX 123, LEAVENWORTH, WA, 98826 (509) 548-5290



**PART OF GOVERNMENT LOTS 2 & 3**  
**SECTION 5 T22N R20E W.M.**  
**CITY OF WENATCHEE**

SHORT PLAT NO. 3534

**CURVE TABLE**

CHORD BEARING	CHORD DISTANCE	ARC LENGTH	AREA
C1	94.44	50.00	6.50
C2	110.49	60.00	9.00
C3	126.54	70.00	11.50
C4	142.59	80.00	14.00
C5	158.64	90.00	16.50
C6	174.69	100.00	19.00
C7	190.74	110.00	21.50
C8	206.79	120.00	24.00
C9	222.84	130.00	26.50
C10	238.89	140.00	29.00
C11	254.94	150.00	31.50
C12	270.99	160.00	34.00
C13	287.04	170.00	36.50
C14	303.09	180.00	39.00
C15	319.14	190.00	41.50
C16	335.19	200.00	44.00
C17	351.24	210.00	46.50
C18	367.29	220.00	49.00
C19	383.34	230.00	51.50
C20	399.39	240.00	54.00
C21	415.44	250.00	56.50
C22	431.49	260.00	59.00

**LINE TABLE**

LINE BEARING	DISTANCE
L1	S 96°18'22" W 77.00
L2	N 63°23'25" E 21.00
L3	S 53°24'05" W 71.00
L4	S 02°24'00" W 14.60
L5	S 02°24'00" W 14.60
L6	S 60°51'59" E 25.00
L7	S 46°19'27" E 10.00
L8	N 02°24'05" W 71.00
L9	N 02°24'05" W 71.00
L10	N 02°24'05" W 71.00
L11	N 56°06'57" E 23.97
L12	N 89°56'15" W 72.90
L13	S 02°24'00" W 14.60
L14	S 02°24'00" W 14.60
L15	S 02°24'00" W 14.60
L16	N 53°23'25" E 21.00
L17	N 53°23'25" E 21.00

**6/26/18** SHEETS: **2 OF 2** FILE: 16010.DWG JOB NO: **16010** AFN \_\_\_\_\_

**LANDLINE SURVEYORS**

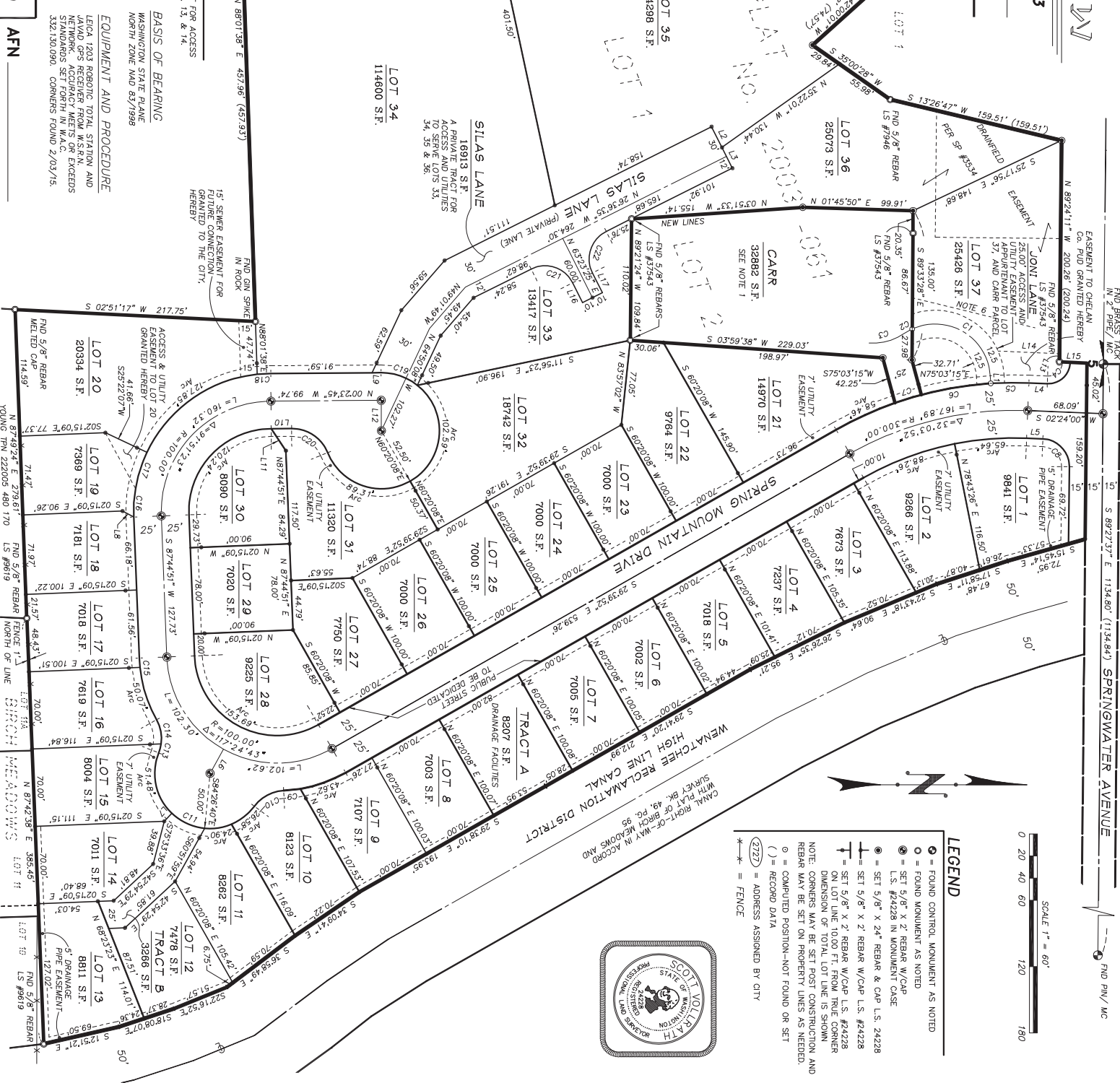
PO BOX 123, LEAVENWORTH, WA, 98926  
(509) 548-5290

**TRACT 'A'**  
A NON-BUILDABLE TRACT FOR STORM DRAINAGE FACILITIES AND UTILITIES.

**TRACT 'B'**  
A NON-BUILDABLE PRIVATE TRACT FOR ACCESS AND UTILITIES, TO SERVE LOTS 12, 13 & 14.

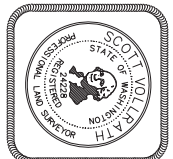
**BASIS OF BEARING**  
WASHINGTON STATE PLANE NORTH ZONE NAD 83/7998

**EQUIPMENT AND PROCEDURE**  
LEICA 1203 ROBOTIC TOTAL STATION AND JAVAD GPS RECEIVER FROM W.S.R.N. NETWORK. ACCURACY MEETS OR EXCEEDS STANDARDS SET FORTH IN W.A.C. 35A.150.090. CORNERS FOUND 2/03/15.



**LEGEND**

- = FOUND CONTROL MONUMENT AS NOTED
- = FOUND MONUMENT AS NOTED
- = SET 5/8" X 2" REBAR W/CAP
- = SET 5/8" X 24" REBAR & CAP L.S. 24228
- = SET 5/8" X 2" REBAR W/CAP L.S. 24228
- = SET 5/8" X 2" REBAR W/CAP L.S. #24228 ON LOT LINE 10.00 FT. FROM TRUE CORNER
- = DIMENSION OF TOTAL LOT LINE IS SHOWN
- = CORNERS MAY BE SET POST CONSTRUCTION AND REBAR MAY BE SET ON PROPERTY LINES AS NEEDED.
- = COMPUTED POSITION - NOT FOUND OR SET
- ( ) = RECORD DATA
- = ADDRESS ASSIGNED BY CITY
- = FENCE



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**COUNCIL AGENDA REPORT  
COMMUNITY DEVELOPMENT DEPARTMENT**

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**TO:** Frank Kuntz, Mayor  
City Council

**FROM:** Glen Devries, Community Development Director

**SUBJECT:** 2017-2019 Homeless Grant Funding Changes

**DATE:** July 9, 2018

**MEETING DATE:** July 12, 2018

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**I. OVERVIEW**

**Item 1: Catholic Charities Housing Services Funding Award**

Currently, the City of Wenatchee is authorized by two separate interlocal agreements to serve as the lead entity on behalf of Chelan county, Douglas county, and the City of East Wenatchee for the administration of the following funds:

- Chelan-Douglas County Homeless Fund (document recording fee funds)
- Chelan County Affordable Housing for All Fund (document recording fee funds)
- Consolidated Homeless/Housing & Essential Needs Grant (issued from the Washington State Department of Commerce).

Per the original funding legislation, counties in Washington State are designated as the formal recipients of the funding and have the authority to determine how to best manage it. Therefore, counties can opt to administer the funding themselves, subcontract with a Commerce-approved non-profit agency, or designate a local lead entity to manage the funds through an interlocal agreement.

Chelan and Douglas counties opted to establish the City of Wenatchee as the lead entity for the funding through the establishment of two interlocal agreements. The agreements state that the City of Wenatchee will administer and manage 100% of the funds listed above under the guidance of the Chelan-Douglas Homeless Steering Committee. The Steering Committee serves as the oversight body for the funding and is responsible for setting funding priorities and making funding distribution decisions. The Committee has representatives from each county commission as well as the City of East Wenatchee.

With the recent passage of House Bill 1570, the Chelan-Douglas County Homeless Fund will receive additional funding in the future. The Washington State Housing Alliance is currently estimating that the additional funding generated from House Bill 1570 will result in approximately \$195,200/year in additional funding for Chelan county and \$46,931/year for Douglas county for a combined total of \$242,131 year.

On May 24<sup>th</sup>, the City was notified by the Chelan County Board of Commissioners office that they intended to allocate their portion of the additional funding generated by House Bill 1570 to Catholic Charities Housing Services for the construction of a 67-unit low-income housing facility which would include 33 units designated for permanent supportive housing for homeless

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**COUNCIL AGENDA REPORT  
COMMUNITY DEVELOPMENT DEPARTMENT**

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households (please see attached letter). At the June 7<sup>th</sup> Homeless Steering Committee meeting, Chelan County Commissioner Kevin Overbay notified the Committee of the county's decision and requested Homeless Steering Committee approval for the grant award to Catholic Charities with the stipulation that the allocation would not be subject to any additional administration cost reimbursement by the City. The Committee unanimously approved the funding allocation recommendation of \$181,000 per year for a four year term (\$724,000 total).

**Recommendation:** Staff recommends the City Council authorize the Mayor to enter into a sub grant agreement with Catholic Charities Housing Services for a four-year term totaling \$724,000 for the construction of a low-income housing/permanent supportive housing facility.

**Item 2: Consolidated Homeless Grant (CHG) Funding Increase**

Effective July 1<sup>st</sup>, the Consolidated Homeless Grant (CHG) contract will be increased by \$88,703. The Homeless Steering Committee is recommending allocating the additional funding by amending existing subgrants/programs as follows:

- Community Action Council Prevention Program: \$26,934 rental assistance
- Upper Valley MEND Prevention Program: \$5,000
- Community Action Council Coordinated Entry: \$12,500
- SAGE Coordinated Entry: \$2,000
- Chelan Regional Justice Center transitional housing program: \$10,000
- Pilot hotel/motel voucher program under Community Action Council's Rapid Rehousing grant: \$18,964
- City of Wenatchee Administration: \$13,305

**Recommendation:** Staff recommends the City Council authorize the Mayor to enter into an amended CHG agreement with the Washington State Commerce Department and amended sub grant agreement as outlined above.

**II. ACTION REQUESTED**

City staff requests the City Council accept the recommendations outlined above and authorize the Mayor to:

1. Enter into a sub grant agreement with Catholic Charities Housing Services for a four-year term totaling \$724,000 for the construction of a low-income housing/permanent supportive housing facility.
2. Enter into an amended CHG agreement with the Washington State Commerce Department and amended subgrant agreements as outlined above.

**III. FISCAL IMPACT Submitted to the Finance Committee Yes No - X**

As part of the CHG funding increase, the City will receive an additional \$13,305 in administrative funding. There are no other impacts to the City budget.

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**COUNCIL AGENDA REPORT  
COMMUNITY DEVELOPMENT DEPARTMENT**

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**IV. REFERENCES**

None

**V. ADMINISTRATIVE ROUTING**

Tammy Stanger, City Clerk  
Allison Williams, Executive Services Director  
Brad Posenjak, Finance Director



BOARD OF COMMISSIONERS  
**CHELAN COUNTY**

STATE OF WASHINGTON  
COUNTY ADMINISTRATION BUILDING  
400 DOUGLAS STREET, SUITE #201  
WENATCHEE, WA 98801  
PHONE (509) 667-6215 FAX (509) 667-6599

**CATHY MULHALL**  
County Administrator  
cathy.mulhall@co.chelan.wa.us

**JACINDA RUBLAITUS**  
Clerk of the Board  
jacinda.rublaitus@co.chelan.wa.us

May 29, 2018

Mr. Bryan Ketcham, Director  
Catholic Charities Housing Services – Diocese of Yakima  
5301 Tieton Drive, Suite G  
Yakima, WA 98908

RE: Wenatchee Supportive Housing Community

Dear Mr. Ketcham:

The Chelan County Board of Commissioners have reached a decision to allocate the new homeless housing dollars we will be collecting through (HB 1570) to the Wenatchee Supportive Housing Community project. We are pleased to support Catholic Charities Housing Services – Diocese of Yakima (CCHS) development proposal to provide 67 units of critically needed affordable housing in Wenatchee with 50% of the units set-aside for individuals and families with children who are experiencing homelessness.

The project meets two priorities of the Ten Year Plan to End Homelessness in Chelan and Douglas Counties. Specifically:

1. Priority III: Increasing the development of and access to affordable rental housing; and
2. Priority IV: Addressing homelessness and the risk of homelessness for children and youth.

As a result, Chelan County commits to providing approximately \$724,000 in total capital with installments of approximately \$181,000 per annum over the next 4 years. We look forward to the successful completion of this project and the impact it will have to meet the goals of the Ten Year Plan to End Homelessness in Chelan and Douglas Counties.

Sincerely,

Chelan County Board of Commissioners

  
Keith W. Goehner, Chairman

  
Kevin Overbay, Commissioner

  
Doug England, Commissioner

Cc: Lisa Vatske, Division Director  
Multifamily Housing and Community Facilities  
Washington State Housing Finance Commission



# MEMO

Parks, Recreation and Cultural Services Department

To: Mayor Kuntz and City Council  
From: Dave Erickson, Parks, Recreation and Cultural Services Director  
Re: Project Funding Agreement with the State of Washington  
Date: June 27, 2018

***ACTION REQUESTED:***

**Move approval of the project funding agreement with the State of Washington for the Hale Park Phase Two Project and authorize the Mayor to sign the agreement.**

***BACKGROUND:***

The Hale family approached the City in early 2013 about donating five parcels of land totaling 4.97 acres for a future City Park. A review of the 2012-2018 PROS Plan and the parcels determined that accepting the properties was consistent with the goals and objectives contained in the plan. Also early in 2013, staff prepared a waiver of retroactivity request to the Washington State Recreation Conservation Office (RCO) and National Parks Service in the event the donation of the property was accepted by the City. This waiver allowed for the reimbursement of certain acquisition related expenses and the use of the value of the property for grant match if a future successful grant application was made to either agency. The waiver of retroactivity was approved by the State on March 29, 2013.

Following the completion of appraisals and environmental and cultural reviews, the City Council approved Resolution 2013-23 on April 25, 2013 which accepted the donation of the property for the park. For the remainder of 2013 a park design process which included community workshops and meetings, and surveys was conducted to develop a conceptual plan for the park area. The concept plan was then used to prepare a funding strategy for the park.



In December 2013 staff prepared a Utilities and Transportation Commission (UTC) Grade Protection Grant application for the first of a three phase project to fence the western border of the park.

On March 13, 2014 the City Council authorized the submittal of a grant application to the state Recreation Conservation Office for the acquisition/development project. Over the next six months during the grant application process as the project and budget was refined, the scope of the project was also narrowed. The major project elements included: Property acquisition, project engineering, off leash recreation area, fencing, water system, signs and landscaping.

In May 2014 staff prepared a Utilities and Transportation Commission Grade Protection Grant application for the second phase of a project to fence the western border of the park. In June, the City received notification that the phase one fence project grant was successful.

On July, 10, 2014 the City Council approved resolution 2014-39, which accepted the UTC grant for the first phase of the fence project. The fence installation was completed by the end of November.

In January 2015, the City received notification that the phase two fence project grant was successful. On February 12, 2015 City Council approved resolution 2015-20 which accepted the grant. In May 2015 a third grant UTC application was prepared and submitted for consideration.

On July 1, 2015 staff received notification from the state that the 2014 RCO WWRP grant application was successful and would be fully funded with a total grant award of \$523,000.

On August 27, 2015 the City received notification that the third UTC grant was successful for the final phase of the fence project. On September 10, 2015 the City Council approved resolution 2015-48 which accepted the grant. The fence construction was completed by the end of 2015.

On October 22, 2015 the City Council approved Resolution 2015-59 authorizing the Mayor to sign the RCO WWRP grant agreement with the State and the construction of phase one of the project began. From October through December 2015 a request for proposals (RFP) solicitation was prepared to obtain proposals for project final engineering, and construction bidding and management. From this process, Pacific Engineering was selected to complete the project and a consultant agreement was approved by City Council on February 25, 2016. Final details and engineering were completed over the next 10 months.

On March 24, 2016 City Council approved resolution 2016-19 which authorized staff to pursue a \$414,500 grant in the Land and Water Conservation Fund program for phase two construction. On April 14, 2016 City Council also approved Resolution 2016-20 which authorized staff to complete a \$500,000 WWRP grant application. For the next six months staff completed the rigorous grant application processes.

At the end of 2016, the State released the ranked list of grant projects. Out of 22 applications statewide in the Land and Water Conservation Fund Program, the Hale Park Phase Two Park Project ranked sixth in the State. In the Washington Wildlife and Recreation Program, the project ranked seventh in the state out of 77 projects.

On January 16, 2017 the phase one construction project was advertised. Bids were received and reviewed by Pacific Engineering and staff. Following this review, Selland Construction was selected and awarded the construction contract by the City Council on February 9, 2017. Construction commenced in April 2017 and was physically completed on October 20, 2017. Primary construction elements included: Parking, lighting, grass picnic area, dog off leash recreation area, landscaping, storm water treatment, fences, utilities, signs and section of a walkway.



Because of the favorable bids received for phase one, in May 2017 a grant amendment was prepared and submitted to the State. The amendment request incorporated parking into phase one and eliminated it from phase two. The request was approved. The off leash area was officially opened on August 15, 2017.

Throughout the fall of 2017, additional required federal grant forms for phase two were prepared and submitted to the State.



On December 7, 2017 City Council approved acceptance of the phase one construction project.

In January 2018, the City received notification that both the WWRP and LWCF grants from 2016 were successful for the phase two construction project. The phase two project includes the addition of a picnic shelter, restrooms, skate park, play area, walkways, engineering, landscaping and security cameras. The grant portion of the project is \$914,500 with project match coming from City staff time and use of the sewer fund for the restroom portion of the project.



On June 27, 2018 the City received the grant agreement for both the LWCF and WWRP grants. The agreement is a standard RCO contract which has been reviewed by the City Attorney and Finance Committee and is attached to the agenda bill.

If the grant is accepted, the final engineering would commence later this fall with construction to occur by the end of 2020.

Staff recommends acceptance of the grant.



## Funding Board Project Agreement

Project Sponsor: City of Wenatchee

Project Number: 16-1584D

Project Title: Hale Park Phase Two Development

Approval Date: 6/14/2018

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### A. PARTIES OF THE AGREEMENT

This Funding Board Project Agreement (Agreement) is entered into between the State of Washington by and through the Recreation and Conservation Funding Board (RCFB or funding board) and the Recreation and Conservation Office (RCO), P.O. Box 40917, Olympia, Washington 98504-0917 and City of Wenatchee (Sponsor, and primary Sponsor), PO Box 519, Wenatchee, WA 98807-0519, and shall be binding on the agents and all persons acting by or through the parties. The Sponsor's Data Universal Numbering System (DUNS) Number is 075746545.

All Sponsors are equally and independently subject to all the conditions of this Agreement except those conditions that expressly apply only to the primary Sponsor.

Per the Applicant Resolution/Authorizations submitted by all sponsors (and on file with the RCO), the identified Authorized Representative(s)/Agent(s) have full authority to legally bind the Sponsor(s) regarding all matters related to the project, including but not limited to, full authority to: (1) sign an application to the funding board for grant assistance, (2) enter into this project agreement on behalf of the Sponsor(s) (including indemnification and waiver of sovereign immunity as provided therein), (3) enter any amendments thereto on behalf of the Sponsors, and (4) make any decisions and submissions required with respect to the project. Agreements and amendments must be signed by the Authorized Representative of all sponsors.

If a Sponsor wishes to change its Authorized Representative/Agent as identified on the original signed Applicant Resolution/Authorization, the Sponsor has the obligation to provide to RCO in writing a new Applicant Resolution/Authorization signed by its governing body. Unless a new Applicant Resolution/Authorization has been provided, RCO will be entitled to rely upon the fact that the current Authorized Representative/Agent has the authority to bind the Sponsor to the Agreement (including any amendments thereto) and decisions related to implementation of the Agreement.

For the purposes of this Agreement, as well as for grant management purposes with RCO, only the primary Sponsor may act as a fiscal agent to obtain reimbursements (see Section 11. PROJECT REIMBURSEMENTS).

### B. PURPOSE OF AGREEMENT

This Agreement sets out the terms and conditions by which a grant is made from the General Fund - Federal and Outdoor Recreation Account of the State of Washington. The grant is administered by the Recreation and Conservation Office (RCO) to the Sponsor for the project named above per the director's authority granted in RCW 79A.25.020.

### C. DESCRIPTION OF PROJECT

The City of Wenatchee will use this grant to complete the second and final phase of development of the nearly 5-acre Hale Park. The City will construct a picnic shelter, restrooms, a loop trail, a children's playground, and a skate park. The city will also install landscaping, site furnishings and security cameras. The primary recreation opportunity provided by this project will be active recreation.

### D. PERIOD OF PERFORMANCE

The period of performance begins on June 13, 2018 (project start date) and ends on December 1, 2020 (project end date). No allowable cost incurred before or after this period is eligible for reimbursement unless specifically provided for by written amendment or addendum to this Agreement or specifically provided for by WAC Titles 286, 420; or RCFB and/or SRFB policies published in RCO manuals as of the effective date of this agreement.

The Sponsor must request extensions of the period of performance at least 60 days before the project end date.

The Sponsor has obligations beyond this period of performance as described in Section F: Long-Term Obligations.

### E. STANDARD TERMS AND CONDITIONS INCORPORATED

The Standard Terms and Conditions of the Project Agreement are hereby incorporated by reference as part of this Agreement.

### F. LONG-TERM OBLIGATIONS

For this development, renovation and restoration project, the sponsor's on-going obligations shall be in perpetuity and shall survive the completion/termination of this Project Agreement unless otherwise identified in the Agreement or as approved by the funding board. It is the intent of the funding board's conversion policy (see Section 25: Long-Term Obligations Of The Project Sponsors) that all lands acquired and/or facilities and areas developed, renovated, or restored with funding assistance remain in the public domain in perpetuity.

**G. PROJECT FUNDING**

The total grant award provided by the funding board for this project shall not exceed \$914,500.00. The funding board shall not pay any amount beyond that approved for grant funding of the project and within the funding board's percentage as identified below. The Sponsor shall be responsible for all total project costs that exceed this amount. The minimum matching share provided by the Sponsor shall be as indicated below:

	Percentage	Dollar Amount	Source of Funding
<b>RCFB - Land and Water Conservation</b>	37.11%	\$414,500.00	Federal
<b>RCFB - WWRP - Local Parks</b>	44.76%	\$500,000.00	State
<b>Project Sponsor</b>	18.13%	\$202,500.00	
<b>Total Project Cost</b>	100.00%	\$1,117,000.00	

**H. FEDERAL FUND INFORMATION**

If federal funding information is included in this section, this project is funded by, matched by, and/or funded in part by the following federal award, or subaward:

Federal Agency: US Dept of Interior  
 Catalog of Federal Domestic Assistance Number and Name: 15.916 - Land & Water Conservation  
 Federal Award Identification Number: P17AP00309  
 Federal Fiscal Year: 2017  
 Federal Award Date: 06/13/2018  
 Total Federal Award: \$414,500  
 Federal Award Project Description: 53-00724 Hale Park

Sponsor's Indirect Cost Rate: 0.00% of all costs for this agreement

This funding is not research and development (R&D).

If the Sponsor's total federal expenditures are \$750,000 or more during the Sponsor's fiscal-year, the Sponsor is required to have a federal single audit conducted for that year in compliance with 2 C.F.R. Part 200, Sub Part F Audit Requirements, Section 500 (2013). The Sponsor must provide a copy of the final audit report to RCO within nine months of the end of the Sponsor's fiscal year, unless a longer period is agreed to in advance by the federal agency identified in this section.

RCO may suspend all reimbursements if the Sponsor fails to timely provide a single federal audit; further the RCO reserves the right to suspend any and all RCO Agreement(s) with the Sponsor if such noncompliance is not promptly cured.

**I. RIGHTS AND OBLIGATIONS INTERPRETED IN LIGHT OF RELATED DOCUMENTS**

All rights and obligations of the parties under this Agreement are further specified in and shall be interpreted in light of the Sponsor's application and the project summary and eligible scope activities under which the Agreement has been approved as well as documents produced in the course of administering the Agreement, including the eligible scope activities, the milestones report, progress reports, and the final report. Provided, to the extent that information contained in such documents is irreconcilably in conflict with this Agreement, it shall not be used to vary the terms of the Agreement, unless those terms are shown to be subject to an unintended error or omission. This "Agreement" as used here and elsewhere in this document, unless otherwise specifically stated, has the meaning set forth in the definitions of the Standard Terms and Conditions.

**J. AMENDMENTS TO AGREEMENT**

Except as provided herein, no amendment (including without limitation, deletions) of any of the terms or conditions of this Agreement will be effective unless provided in writing signed by all parties. Extensions of the period of performance and minor scope adjustments consented to in writing (including email) by the Sponsor need only be signed by RCO's director or designee, unless otherwise provided for in another agreement a Sponsor has with the RCO. This exception does not apply to a federal government Sponsor or a Sponsor that requests and enters into a formal amendment for extensions or minor scope adjustments.

It is the responsibility of a Sponsor to ensure that any person who signs an amendment on its behalf is duly authorized to do so, and such signature shall be binding on the Sponsor if the representative/agent signing has been authorized to do so by Applicant Resolution/Authorization provided to the RCO and such Applicant Resolution/Authorization has not been withdrawn by the governing body in a subsequent resolution.

Any amendment to this Agreement, unless otherwise expressly stated, shall be deemed to include all current federal, state, and local government laws and rules, and funding board policies applicable and active and published in RCO manuals or on the RCO Website in effect as of the effective date of the amendment, without limitation to the subject matter of the amendment. Provided, any update in law, rule, policy or a manual that is incorporated as a result of an amendment shall apply only prospectively and shall not require that an act previously done in compliance with existing requirements be redone.

**K. COMPLIANCE WITH APPLICABLE STATUTES, RULES, AND RCFB-SRFB POLICIES**

This agreement is governed by, and the Sponsor shall comply with, all applicable state and federal laws and regulations, including any applicable 43 C.F.R. Part 12, 2 C.F.R. Part 1402, RCW 79A.15, WAC 286 and RCW 79A.25, WAC 286 and RCFB and/or SRFB policies published in RCO manuals or on the RCO Website as exist on the effective date of this Agreement and any amendments to this Agreement. Provided, any update in law, rule, policy or a manual that is incorporated as a result of an amendment shall apply only prospectively and shall not require that an act previously done in compliance with existing requirements be redone.

**L. SPECIAL CONDITIONS**

**Special Condition #1: Cultural Resources-Monitoring Required**

Funding for this project is partially derived through the National Park Service's Land and Water Conservation fund; therefore it is subject to review under Section 106 of the National Historic Preservation Act. The lead agency has completed the initial consultation for this project and monitoring ground disturbance related to playground installation is required. The Sponsor must submit to RCO the final monitoring report. Please insure that your project milestones provide ample time for the Agencies to coordinate review with the consulting parties. Construction started without a Notice to Proceed will be considered a breach of contract. In the event that archaeological or historic materials are discovered while conducting ground disturbing activities, work in the immediate vicinity must stop and the Sponsor must ensure compliance with the provisions found in Section 8 of this agreement.

**M. AGREEMENT CONTACTS**

The parties will provide all written communications and notices under this Agreement to the mail address or the email address listed below if not both:

**Project Contact**

Name: Dave Erickson  
Title: Parks and Recreation Director  
Address: PO Box 519  
Wenatchee, WA 98807  
Email: DErickson@wenatcheewa.gov

**RCO - RCFB**

Ben Donatelle  
Natural Resources Building  
PO Box 40917  
Olympia, Washington 98504-0917  
Ben.Donatelle@rco.wa.gov

These addresses and contacts shall be effective until receipt by one party from the other of a written notice of any change. Decisions relating to the Agreement must be made by the Authorized Representative/Agent, who may or may not be the Project Contact for purposes of notices and communications.

**N. ENTIRE AGREEMENT**

This Agreement, with all amendments and attachments, constitutes the entire Agreement of the parties. No other understandings, oral or otherwise, regarding this Agreement shall exist or bind any of the parties.

**O. EFFECTIVE DATE**

This Agreement, for project 16-1584D, shall be subject to the written approval of the RCO's authorized representative and shall not be effective and binding until the date signed by both the Sponsor and the RCO, whichever is later (effective date). Reimbursements for eligible and allowable costs incurred within the period of performance identified in Section D: PERIOD OF PERFORMANCE are allowed only when this Agreement is fully executed and an original is received by RCO.

The Sponsor has read, fully understands, and agrees to be bound by all terms and conditions as set forth in this Agreement and the STANDARD TERMS AND CONDITIONS OF THE PROJECT AGREEMENT. The signators listed below represent and warrant their authority to bind the parties to this Agreement.

**City of Wenatchee**

By: \_\_\_\_\_ Date: \_\_\_\_\_  
Name: (printed) \_\_\_\_\_  
Title: \_\_\_\_\_

**State of Washington, Recreation Conservation Office  
On behalf of the Recreation and Conservation Funding Board (RCFB or funding board)**

By: \_\_\_\_\_ Date: \_\_\_\_\_  
Kaleen Cottingham  
Director  
Recreation and Conservation Office

Pre-approved as to form:  
By: Brian Toller Date: October 6, 2017  
Assistant Attorney General

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## Standard Terms and Conditions of the Project Agreement

Project Sponsor: City of Wenatchee  
Project Title: Hale Park Phase Two Development

Project Number: 16-1584D  
Approval Date: 6/14/2018

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### SECTION 1. CITATIONS, HEADINGS AND DEFINITIONS

- A. Any citations referencing specific documents refer to the current version on the effective date of this Agreement or the effective date of any amendment thereto.
- B. Headings used in this Agreement are for reference purposes only and shall not be considered a substantive part of this Agreement.
- C. Definitions. As used throughout this Agreement, the following terms shall have the meaning set forth below:

**acquisition project** – A project that purchases or receives a donation of fee or less than fee interests in real property. These interests include, but are not limited to, conservation easements, access/trail easements, covenants, water rights, leases, and mineral rights.

**Agreement or project agreement** – The document entitled "Funding Board Project Agreement" accepted by all parties to the present transaction, including without limitation these Standard Terms and Conditions of the Project Agreement, all attachments, addendums, and amendments, and any intergovernmental agreements or other documents that are incorporated into the Funding Board Project Agreement subject to any limitations on their effect.

**applicant** – Any party that meets the qualifying standards, including deadlines, for submission of an application soliciting a grant of funds from the funding board.

**application** – The documents and other materials that an applicant submits to the RCO to support the applicant's request for grant funds; this includes materials required for the "Application" in the RCO's automated project information system, and other documents as noted on the application checklist including but not limited to legal opinions, maps, plans, evaluation presentations and scripts.

**Authorized Representative/Agent** – A Sponsor's agent (employee, political appointee, elected person, etc.) authorized to be the signatory of this Agreement and any amendments requiring a Sponsor signature. This person has the signature authority to bind the Sponsor to this Agreement, grant, and project.

**Boating Infrastructure Grant (BIG)** – A program administered through the United States Fish and Wildlife Service.

**C.F.R.** – Code of Federal Regulations

**contractor** – An entity that receives a contract from a Sponsor related to performance of work or another obligation under this Agreement.

**conversion** – A conversion occurs 1) when facilities acquired, developed, renovated or restored within the project area are changed to a use other than that for which funds were approved, without obtaining prior written formal RCO or board approval, 2) when property interests are conveyed to a third party not otherwise eligible to receive grants in the program from which funding was approved without obtaining prior written formal RCO or board approval, or 3) when obligations to operate and maintain the funded property are not complied with after reasonable opportunity to cure.



**development project** – A project that results in the construction of, or work resulting in, new elements, including but not limited to structures, facilities, and/or materials to enhance outdoor recreation resources.

**director** – The chief executive officer of the Recreation and Conservation Office or that person's designee.

**education project** – A project that provides information, education, and outreach programs for the benefit of outdoor recreationists.

**education and enforcement project** – A project that provides information, education, and outreach programs; encourages responsible recreational behavior, and may provide law enforcement for the benefit of outdoor recreationists.

**effective date** – The date when the signatures of all parties to this agreement are present in the agreement.

**enhancement project** – 1) A project that brings a site back to its historic function as part of a natural ecosystem or that improves the ecological functionality of a site, or 2) a project that (i) supports hatchery reform to improve hatchery effectiveness to minimize impacts to wild fish populations, (ii) ensures compatibility between hatchery production and salmon recovery programs, or (iii) supports sustainable fisheries (WAC 420.04.010).

**equipment** – Tangible personal property (including information technology systems) having a useful service life of more than one year and a per-unit acquisition cost which equals or exceeds the lesser of the capitalization level established by the Sponsor or \$5,000 (2 C.F.R. § 200.33 (2013)).

**funding board or board** – The board that authorized the funds in this Agreement, either the Recreation and Conservation Funding Board (RCFB) created under RCW 79A.25.110, or the Salmon Recovery Funding Board (SRFB) created under RCW 77.85.110.

**grant program** – The source of the grant funds received. May be an account in the state treasury, or a grant category within a larger grant program, or a federal source.

**indirect cost** – Costs incurred for a common or joint purpose benefitting more than one cost objective, and not readily assignable to the cost objectives specifically benefitted, without effort disproportionate to the results achieved (2 C.F.R. § 200.56 (2013)).

**long-term compliance period** – The period of time after the project end date or end of the period of performance (depending on the project types and grant program). During this period, the Sponsor has continuing obligations under the Agreement. This period may have a nonspecific end date (in perpetuity) or an expressly specified number of years.

**long-term obligations** – Sponsor's obligations after the project end date, as specified in the Agreement and applicable regulations and policies.

**landowner agreement** – An agreement that is required between a Sponsor and landowner for projects located on land not owned, or otherwise controlled, by the Sponsor.

**maintenance** – A project that maintains existing areas and facilities through repairs and upkeep for the benefit of outdoor recreation or salmon recovery.

**maintenance and operation** – A project that maintains and operates existing areas and facilities through repairs, upkeep, and routine services for the benefit of outdoor recreationists.

**match or matching share** – The portion of the total project cost provided by the Sponsor.

**milestone** – An important event with a defined date to track an activity related to implementation of a funded project and monitor significant stages of project accomplishment.

**monitoring project** – Means a project that tracks the effectiveness of salmon recovery restoration actions, or provides data on salmon populations or their habitat conditions.

**monitoring and research project** – Means a project that tracks the effectiveness of salmon recovery restoration actions, or provides data on salmon populations or their habitat conditions.

**Office** – Means the Recreation and Conservation Office or RCO.

**notice of grant** – As required by RCO or another authority, a document that has been legally recorded in the county or counties where the project property is located that describes the grant funded project located on the property, the funding sources, and agencies responsible for awarding the grant.

**pass-through entity** – A non-Federal entity that provides a subaward to a subrecipient to carry out part of a Federal program (2 C. F. R. § 200.74 (2013)). If this Agreement is a federal subaward, RCO is the pass-through entity.

**period of performance** – The period beginning on the project start date and ending on the project end date.

**planning (RCFB projects only)** – A project that results in one or more of the following: a study, a plan, construction plans and specifications, and permits to increase the availability of outdoor recreational resources.

**planning (SRFB projects only)** – A project that results in a study, assessment, project design, or inventory.

**pre-agreement cost** – A project cost incurred before the period of performance.

**primary Sponsor** – The Sponsor who is not a secondary Sponsor and who is specifically identified in the Agreement as the entity to which RCO grants funds to and authorizes and requires to administer the grant. This administration includes but is not limited to acting as the fiscal agent for the grant (e.g. requesting and accepting reimbursements, submitting reports). Primary Sponsor includes its officers, employees, agents and successors.

**project** – An undertaking that is, or may be, funded in whole or in part with funds administered by RCO on behalf of the funding board.

**project area, RCFB** – A geographic area that delineates a grant assisted site which is subject to project agreement requirements (WAC 286.04.010).

**project area, SRFB** – The area consistent with the geographic limits of the scope of work of the project and subject to project agreement requirements. For restoration projects, the project area must include the physical limits of the project's final site plans or final design plans. For acquisition projects, the project area must include the area described by the legal description of the properties acquired for or committed to the project (WAC 420.04.010).

**project cost** – The total allowable costs incurred under this Agreement and all required match share and voluntary committed matching share, including third-party contributions (2 C.F.R. § 200.83 (2013)).

**project end date** – The specific date identified in the Agreement on which the period of performance ends, as may be changed by amendment. This date is not the end date for any long-term obligations.

**project start date** – The specific date identified in the Agreement on which the period of performance starts.

**research project** – Means a project that studies salmon and the effectiveness of recovery restoration efforts on the population or habitat condition.

**RCO** – Recreation and Conservation Office – The state office that provides administrative support to the Recreation and Conservation Funding Board and Salmon Recovery Funding Board. RCO includes the director and staff, created by RCW 79A.25.110 and 79A.25.150 and charged with administering this Agreement by RCW 77.85.110 and 79A.25.240.

**reimbursement** – RCO's payment of funds from eligible and allowable costs that have already been paid by the Sponsor per the terms of the Agreement.

**renovation project** – A project intended to improve an existing site or structure in order to increase its useful service life beyond current expectations or functions. This does not include maintenance activities to maintain the facility for its originally expected useful service life.

**restoration project** – A project that brings a site back to its historic function as part of a natural ecosystem or improving the ecological functionality of a site.

**restoration and enhancement project** – A project that brings a site back to its historic function as part of a natural ecosystem or that improves the ecological functionality of a site or a larger ecosystem which improvement may include benefiting fish stocks.

**RCFB** – Recreation and Conservation Funding Board

**RCW** – Revised Code of Washington

**Recreational Trails Program (RTP)** – A Federal Highways Administration grant program.

**secondary Sponsor** – One of two or more Sponsors who is not a primary Sponsor. Only the primary Sponsor may be the fiscal agent for the project.

**Sponsor** – A Sponsor is an organization that is listed in and has signed this Agreement.

**Sponsor Authorized Representative/Agent** – A Sponsor's agent (employee, political appointee, elected person, etc.) authorized to be the signatory of this Agreement and any amendments requiring a Sponsor signature. This person has the signature authority to bind the Sponsor to this Agreement, grant, and project.

**SRFB** – Salmon Recovery Funding Board

**subaward** – Funds allocated to the RCO from another organization, for which RCO makes available to or assigns to another organization via this Agreement. Also, a subaward may be an award provided by a pass-through entity to a subrecipient for the subrecipient to carry out part of any award received by the pass-through entity. It does not include payments to a contractor or payments to an individual that is a beneficiary of a federal or other program. A subaward may be provided through any form of legal agreement, including an agreement that the pass-through entity considers a contract. Also see 2 C.F.R. § 200.92 (2013). For federal subawards, a subaward is for the purpose of carrying out a portion of a Federal award and creates a federal assistance relationship with the subrecipient (2 C.F.R. § 200.330 (2013)). If this Agreement is a federal subaward, the subaward amount is the grant program amount in Section G: Project Funding.

**subrecipient** – Subrecipient means an entity that receives a subaward. For non-federal entities receiving federal funds, a subrecipient is an entity that receives a subaward from a pass-through entity to carry out part of a federal program; but does not include an individual that is a beneficiary of such program. A subrecipient may also be a recipient of other federal awards directly from a federal awarding agency (2 C.F.R. § 200.93 (2013)). If this Agreement is a federal subaward, the Sponsor is the subrecipient.

**useful service life** – Period during which an asset or property is expected to be useable for the purpose it was acquired, developed, renovated, and/or restored per this Agreement.

**WAC** – Washington Administrative Code.

## **SECTION 2. PERFORMANCE BY THE SPONSOR**

The Sponsor shall undertake the project as described in this Agreement, and in accordance with the Sponsor's proposed goals and objectives described in the application or documents submitted with the application, all as finally approved by the funding board. All submitted documents are incorporated by this reference as if fully set forth herein.

Timely completion of the project and submission of required documents, including progress and final reports, is important. Failure to meet critical milestones or complete the project, as set out in this Agreement, is a material breach of the Agreement.

## **SECTION 3. ASSIGNMENT**

Neither this Agreement, nor any claim arising under this Agreement, shall be transferred or assigned by the Sponsor without prior written consent of the RCO.

## **SECTION 4. RESPONSIBILITY FOR PROJECT**

While the funding board undertakes to assist the Sponsor with the project by providing a grant pursuant to this Agreement, the project itself remains the sole responsibility of the Sponsor. The funding board undertakes no responsibilities to the Sponsor, or to any third party, other than as is expressly set out in this Agreement. The responsibility for the implementation of the project is solely that of the Sponsor, as is the responsibility for any claim or suit of any nature by any third party related in any way to the project. When a project is Sponsored by more than one entity, any and all Sponsors are equally responsible for the project and all post-completion stewardship responsibilities and long-term obligations unless otherwise stated in this Agreement.

The RCO has no responsibility for reviewing, approving, overseeing or supervising design or construction of the project and leaves such review, approval, oversight and supervision exclusively to the Sponsor and others with expertise or authority. In this respect, the RCO will act only to confirm at a general, lay, and nontechnical level, solely for the purpose of compliance and payment and not for safety or suitability, that the project has apparently been completed as per the Agreement.

## **SECTION 5. INDEMNIFICATION**

The Sponsor shall defend, indemnify, and hold the State and its officers and employees harmless from all claims, demands, or suits at law or equity arising in whole or in part from the actual or alleged acts, errors, omissions or negligence in connection with this Agreement (including without limitation all work or activities thereunder), or the breach of any obligation under this Agreement by the Sponsor or the Sponsor's agents, employees, contractors, subcontractors, or vendors, of any tier, or any other persons for whom the Sponsor may be legally liable.

Provided that nothing herein shall require a Sponsor to defend or indemnify the State against and hold harmless the State from claims, demands or suits based solely upon the negligence of the State, its employees and/or agents for whom the State is vicariously liable.

Provided further that if the claims or suits are caused by or result from the concurrent negligence of (a) the Sponsor or the Sponsor's agents, employees, contractors, subcontractors or vendors, of any tier, or any other persons for whom the Sponsor is legally liable, and (b) the State its employees and agents for whom it is vicariously liable, the indemnity obligation shall be valid and enforceable only to the extent of the Sponsor's negligence or the negligence of the Sponsor's agents, employees, contractors, subcontractors or vendors, of any tier, or any other persons for whom the Sponsor may be legally liable.

This provision shall be included in any agreement between Sponsor and any contractors, subcontractor and vendor, of any tier.

The Sponsor shall also defend, indemnify, and hold the State and its officers and employees harmless from all claims, demands, or suits at law or equity arising in whole or in part from the alleged patent or copyright infringement or other allegedly improper appropriation or use of trade secrets, patents, proprietary information, know-how, copyright rights or inventions by the Sponsor or the Sponsor's agents, employees, contractors, subcontractors or vendors, of any tier, or any other persons for whom the Sponsor may be legally liable, in performance of the work under this Agreement or arising out of any use in connection with the Agreement of methods, processes, designs, information or other items furnished or communicated to the State, its agents, officers and employees pursuant to the Agreement. Provided, this indemnity shall not apply to any alleged patent or copyright infringement or other allegedly improper appropriation or use of trade secrets, patents, proprietary information, know-how, copyright rights or inventions resulting from the State's, its agents', officers' and employees' failure to comply with specific written instructions regarding use provided to the State, its agents, officers and employees by the Sponsor, its agents, employees, contractors, subcontractors or vendors, of any tier, or any other persons for whom the Sponsor may be legally liable.

As part of its obligations provided above, the Sponsor specifically assumes potential liability for actions brought by the Sponsor's own employees or its agents against the State and, solely for the purpose of this indemnification and defense, the Sponsor specifically waives any immunity under the state industrial insurance law, RCW Title 51.

The funding board and RCO are included within the term State, as are all other agencies, departments, boards, councils, committees, divisions, bureaus, offices, societies, or other entities of state government.

#### **SECTION 6. INDEPENDENT CAPACITY OF THE SPONSOR**

The Sponsor and its employees or agents performing under this Agreement are not officers, employees or agents of the funding board or RCO. The Sponsor will not hold itself out as nor claim to be an officer, employee or agent of RCO, a funding board or of the state of Washington, nor will the Sponsor make any claim of right, privilege or benefit which would accrue to an employee under RCW 41.06 or Section 30B.

The Sponsor is responsible for withholding and/or paying employment taxes, insurance, or deductions of any kind required by federal, state, and/or local laws.

#### **SECTION 7. CONFLICT OF INTEREST**

Notwithstanding any determination by the Executive Ethics Board or other tribunal, RCO may, in its sole discretion, by written notice to the Sponsor terminate this Agreement if it is found after due notice and examination by RCO that there is a violation of the Ethics in Public Service Act, RCW 42.52; or any similar statute involving the Sponsor in the procurement of, or performance under, this Agreement.

In the event this Agreement is terminated as provided herein, RCO shall be entitled to pursue the same remedies against the Sponsor as it could pursue in the event of a breach of the Agreement by the Sponsor. The rights and remedies of RCO provided for in this clause shall not be exclusive and are in addition to any other rights and remedies provided by law or this Agreement.

#### **SECTION 8. COMPLIANCE WITH APPLICABLE LAW**

In implementing the Agreement, the Sponsor shall comply with all applicable federal, state, and local laws (including without limitation all applicable ordinances, codes, rules, and regulations). Such compliance includes, without any limitation as to other applicable laws, the following laws:

- A. Nondiscrimination Laws.** The Sponsor shall comply with all applicable federal, state, and local nondiscrimination laws and/or policies, including but not limited to: the Americans with Disabilities Act; Civil Rights Act; and the Age Discrimination Act. In the event of the Sponsor's noncompliance or refusal to comply with any nondiscrimination law or policy, the Agreement may be rescinded, cancelled, or terminated in whole or in part, and the Sponsor may be declared ineligible for further grant awards from the funding board. The Sponsor is responsible for any and all costs or liability arising from the Sponsor's failure to so comply with applicable law.
- B. Secular Use of Funds.** No funds awarded under this grant may be used to pay for any religious activities, worship, or instruction, or for lands and facilities for religious activities, worship, or instruction. Religious activities, worship, or instruction may be a minor use of the grant supported recreation and conservation land or facility.
- C. Wages and Job Safety.** The Sponsor agrees to comply with all applicable laws, regulations, and policies of the United States and the State of Washington or other jurisdiction which affect wages and job safety. The Sponsor agrees when state prevailing wage laws (RCW 39.12) are applicable, to comply with such laws, to pay the prevailing rate of wage to all workers, laborers, or mechanics employed in the performance of any part of this contract, and to file a statement of intent to pay prevailing wage with the Washington State Department of Labor and Industries as required by RCW 39.12.040. The Sponsor also agrees to comply with the provisions of the rules and regulations of the Washington State Department of Labor and Industries.

- 1. Exception, Service Organizations of Trail and Environmental Projects (RCW 79A.35.130).** If allowed by state and federal law and rules, participants in conservation corps programs offered by a nonprofit organization affiliated with a national service organization established under the authority of the national and community service trust act of 1993, P.L. 103-82, are exempt from provisions related to rates of compensation while performing environmental and trail maintenance work provided: (1) The nonprofit organization must be registered as a nonprofit corporation pursuant to RCW 24.03; (2) The nonprofit organization's management and administrative headquarters must be located in Washington; (3) Participants in the program must spend at least fifteen percent of their time in the program on education and training activities; and (4) Participants in the program must receive a stipend or living allowance as authorized by federal or state law. Participants are exempt from provisions related to rates of compensation only for environmental and trail maintenance work conducted pursuant to the conservation corps program.

- D. Archaeological and Cultural Resources.** RCO facilitates the review of applicable projects for potential impacts to archaeological sites and state cultural resources. The Sponsor must assist RCO in compliance with Governor's Executive Order 05-05 or the National Historic Preservation Act before and after initiating ground-disturbing activity or construction, repair, installation, rehabilitation, renovation, or maintenance work on lands, natural resources, or structures. The funding board requires documented compliance with Executive Order 05-05 or Section 106 of the National Historic Preservation Act, whichever is applicable to the project. If a federal agency declines to consult, the Sponsor shall comply with the requirements of Executive Order 05-05. In the event that archaeological or historic materials are discovered during project activities, work in the location of discovery and immediate vicinity must stop instantly, the area must be secured, and notification must be provided to the following: concerned Tribes' cultural staff and cultural committees, RCO, and the State Department of Archaeology and Historic Preservation. If human remains are discovered during project activity, work in the location of discovery and immediate vicinity must stop instantly, the area must be secured, and notification provided to the concerned Tribe's cultural staff and cultural committee, RCO, State Department of Archaeology, the coroner and local law enforcement in the most expeditious manner possible according to RCW 68.50.

- E. **Restrictions on Grant Use.** No part of any funds provided under this grant shall be used, other than for normal and recognized executive-legislative relationships, for publicity or propaganda purposes, or for the preparation, distribution, or use of any kit, pamphlet, booklet, publication, radio, television, or video presentation designed to support or defeat legislation pending before the U.S. Congress or any state legislature.

No part of any funds provided under this grant shall be used to pay the salary or expenses of any Sponsor, or agent acting for such Sponsor, related to any activity designed to influence legislation or appropriations pending before the U.S. Congress or any state legislature.

- F. **Debarment and Certification.** By signing the Agreement with RCO, the Sponsor certifies that neither it nor its principals nor any other lower tier participant are presently debarred, suspended, proposed for debarment, declared ineligible or voluntarily excluded from participation in this transaction by Washington State Labor and Industries. Further, the Sponsor agrees not to enter into any arrangements or contracts related to this Agreement with any party that is on Washington State Department of Labor and Industries' "Debarred Contractor List."

## SECTION 9. RECORDS

- A. **Digital Records.** If requested by RCO, the Sponsor must provide a digital file(s) of the project property and funded project site in a format specified by the RCO.
- B. **Maintenance.** The Sponsor shall maintain books, records, documents, data and other evidence relating to this Agreement and performance of the services described herein, including but not limited to accounting procedures and practices which sufficiently and properly reflect all direct and indirect costs of any nature expended in the performance of this Agreement. Sponsor shall retain such records for a period of six years from the date RCO deems the project complete, as defined in Section 11: PROJECT REIMBURSEMENTS. If any litigation, claim or audit is started before the expiration of the six (6) year period, the records shall be retained until all litigation, claims, or audit findings involving the records have been resolved.
- C. **Access to Records and Data.** At no additional cost, the records relating to the Agreement, including materials generated under the Agreement, shall be subject at all reasonable times to inspection, review or audit by RCO, personnel duly authorized by RCO, the Office of the State Auditor, and federal and state officials so authorized by law, regulation or agreement. This includes access to all information that supports the costs submitted for payment under the grant and all findings, conclusions, and recommendations of the Sponsor's reports, including computer models and methodology for those models.
- D. **Public Records.** Sponsor acknowledges that the funding board is subject to RCW 42.56 and that this Agreement and any records Sponsor submits or has submitted to the State shall be a public record as defined in RCW 42.56. RCO administers public records requests per WAC 286-06 and 420-04. Additionally, in compliance with RCW 77.85.130(8), Sponsor agrees to disclose any information in regards to expenditure of any funding received from the SRFB. By submitting any record to the State, Sponsor understands that the State may be requested to disclose or copy that record under the state public records law, currently codified at RCW 42.56. The Sponsor warrants that it possesses such legal rights as are necessary to permit the State to disclose and copy such document to respond to a request under state public records laws. The Sponsor hereby agrees to release the State from any claims arising out of allowing such review or copying pursuant to a public records act request, and to indemnify against any claims arising from allowing such review or copying and pay the reasonable cost of state's defense of such claims.

## SECTION 10. PROJECT FUNDING

- A. **Authority.** This Agreement is funded through a grant award from the recreation and conservation funding board per WAC 286 and/or the salmon recovery funding board per WAC 420. The director of RCO enters into this Agreement per delegated authority in RCW 79A.25.020 and 77.85.120.
- B. **Additional Amounts.** The funding board shall not be obligated to pay any amount beyond the dollar amount as identified in this Agreement, unless an additional amount has been approved in advance by the funding board or director and incorporated by written amendment into this Agreement.
- C. **Before the Agreement.** No expenditure made, or obligation incurred, by the Sponsor before the project start date shall be eligible for grant funds, in whole or in part, unless specifically provided for by funding board policy, such as a waiver of retroactivity or program specific eligible pre-Agreement costs. For reimbursements of such costs, this Agreement must be fully executed and an original received by RCO. The dollar amounts identified in this Agreement may be reduced as necessary to exclude any such expenditure from reimbursement.
- D. **Requirements for Federal Subawards.** Pre-Agreement costs before the federal award date in Section H: FEDERAL FUND INFORMATION are ineligible unless approved by the federal award agency (2 C.F.R § 200.458 (2013)).
- E. **After the Period of Performance.** No expenditure made, or obligation incurred, following the period of performance shall be eligible, in whole or in part, for grant funds hereunder. In addition to any remedy the funding board may have under this Agreement, the grant amounts identified in this Agreement shall be reduced to exclude any such expenditure from participation.

#### SECTION 11. PROJECT REIMBURSEMENTS

- A. **Reimbursement Basis.** This Agreement is administered on a reimbursement basis per WAC 286-13 and/or 420-12. Only the primary Sponsor may request reimbursement for eligible and allowable costs incurred during the period of performance. The primary Sponsor may only request reimbursement after (1) this Agreement has been fully executed and (2) the Sponsor has remitted payment to its vendors. RCO will authorize disbursement of project funds only on a reimbursable basis at the percentage as defined in Section G: PROJECT FUNDING. Reimbursement shall not be approved for any expenditure not incurred by the Sponsor or for a donation used as part of its matching share. RCO does not reimburse for donations. All reimbursement requests must include proper documentation of expenditures as required by RCO.
- B. **Reimbursement Request Frequency.** The primary Sponsor is required to submit a reimbursement request to RCO, at a minimum for each project at least once a year for reimbursable activities occurring between July 1 and June 30 or as identified in the milestones. Sponsors must refer to the most recently published/adopted RCO policies and procedures regarding reimbursement requirements.
- C. **Compliance and Payment.** The obligation of RCO to pay any amount(s) under this Agreement is expressly conditioned on strict compliance with the terms of this Agreement and other agreements between RCO and the Sponsor.
- D. **Retainage Held Until Project Complete.** RCO reserves the right to withhold disbursement of the total amount of the grant to the Sponsor until the project has been completed. A project is considered "complete" when:
  - 1. All approved or required activities outlined in the Agreement are done;
  - 2. On-site signs are in place (if applicable);
  - 3. A final project report is submitted to and accepted by RCO;
  - 4. Any other required documents and media are complete and submitted to RCO;



5. A final reimbursement request is submitted to RCO;
6. The completed project has been accepted by RCO;
7. Final amendments have been processed;
8. Fiscal transactions are complete, and
9. RCO has accepted a final boundary map, if requested by RCO, for which the Agreement terms will apply in the future.
10. Notice of Grant (if applicable) filed with the county lands records office and a stamped copy received by RCO

**E. Requirements for Federal Subawards: Match.** The Sponsor's matching share must comply with 2 C.F.R. § 200.306 (2013). Any shared costs or matching funds and all contributions, including cash and third party in-kind contributions, can be accepted as part of the Sponsor's matching share when such contributions meet all of the following criteria:

1. Are verifiable from the non-Federal entity's (Sponsor's) records;
2. Are not included as contributions for any other Federal award;
3. Are necessary and reasonable for accomplishment of project or program objectives;
4. Are allowable under 2 C.F.R. Part 200, Subpart E—Cost Principles (2013);
5. Are not paid by the Federal Government under another Federal award, except where the Federal statute authorizing a program specifically provides that Federal funds made available for such program can be applied to matching or cost sharing requirements of other Federal programs;
6. Are provided for in the approved budget when required by the Federal awarding agency identified in Section H: FEDERAL FUND INFORMATION of this Agreement; and
7. Conform to other provisions of 2 C.F.R. Part 200, Subpart D—Post Federal Award Requirements (2013), as applicable.

**F. Requirements for Federal Subawards: Close out.** Per 2 C.F.R § 200.343 (2013), the non-Federal entity (Sponsor) must:

1. Submit, no later than 90 calendar days after the end date of the period of performance, all financial, performance, and other reports as required by the terms and conditions of the Federal award. The Federal awarding agency or pass-through entity (RCO) may approve extensions when requested by the Sponsor.
2. Liquidate all obligations incurred under the Federal award not later than 90 calendar days after the end date of the period of performance as specified in the terms and conditions of the Federal award.
3. Refund any balances of unobligated cash that the Federal awarding agency or pass-through entity (RCO) paid in advance or paid and that are not authorized to be retained by the non-Federal entity (Sponsor) for use in other projects. See OMB Circular A-129 and see 2 C.F.R § 200.345 Collection of amounts due (2013), for requirements regarding unreturned amounts that become delinquent debts.

4. Account for any real and personal property acquired with Federal funds or received from the Federal Government in accordance with 2 C.F.R §§ 200.310 Insurance coverage through 200.316 Property rust relationship and 200.329 Reporting on real property (2013).

## **SECTION 12. ADVANCE PAYMENTS**

Advance payments of or in anticipation of goods or services are not allowed unless approved by the RCO director and are consistent with legal requirements and Manual 8: Reimbursements. See WAC 420-12.

## **SECTION 13. RECOVERY OF PAYMENTS**

- A. **Recovery for Noncompliance.** In the event that the Sponsor fails to expend funds under this Agreement in accordance with state and federal laws, and/or the provisions of the Agreement, or meet its percentage of the project total, RCO reserves the right to recover grant award funds in the amount equivalent to the extent of noncompliance in addition to any other remedies available at law or in equity.
- B. **Overpayment Payments.** The Sponsor shall reimburse RCO for any overpayment or erroneous payments made under the Agreement. Repayment by the Sponsor of such funds under this recovery provision shall occur within 30 days of demand by RCO. Interest shall accrue at the rate of twelve percent (12%) per annum from the time that payment becomes due and owing.
- C. **Requirements for Federal Subawards.** RCO, acting as a pass-through entity, may impose any of the remedies as authorized in 2 C.F.R §§ 200.207 Specific conditions and/or 200.338 Remedies for noncompliance (2013).

## **SECTION 14. COVENANT AGAINST CONTINGENT FEES**

The Sponsor warrants that no person or selling agent has been employed or retained to solicit or secure this Agreement on an agreement or understanding for a commission, percentage, brokerage or contingent fee, excepting bona fide employees or bona fide established agents maintained by the Sponsor for the purpose of securing business. RCO shall have the right, in the event of breach of this clause by the Sponsor, to terminate this Agreement without liability or, in its discretion, to deduct from the Agreement grant amount or consideration or recover by other means the full amount of such commission, percentage, brokerage or contingent fee.

## **SECTION 15. INCOME (AND FEES) AND USE OF INCOME**

RCFB Projects. See WAC 286-13-110 for additional requirements for projects funded from the RCFB.

### **A. Income.**

1. **Farm and Forest Account (Farmland and Forestland Preservation Grants).** Excepted from this section is income generated and fees paid on/for properties which received funds from the Farm and Forest Account (RCW 79A.15.130).
2. **Firearms and Archery Range Recreation Projects.** Excepted from this section are safety classes (firearm and/or hunter) for which a facility/range fee must not be charged (RCW 79A.25.210).
3. **Compatible source.** The source of any income generated in a funded project or project area must be compatible with the funding source and the Agreement and any policies adopted by the RCFB or SRFB.

- B. Use of Income.** Subject to any limitations contained in applicable state or federal law and applicable rules and policies, income or fees generated at a project work site (including entrance, utility corridor permit, cattle grazing, timber harvesting, farming, etc.) during or after the reimbursement period cited in the Agreement, must be used to offset:
1. The Sponsor's matching resources;
  2. The project's total cost;
  3. The expense of operation, maintenance, stewardship, monitoring, and/or repair of the facility or program assisted by the funding board grant;
  4. The expense of operation, maintenance, stewardship, monitoring, and/or repair of other similar units in the Sponsor's system;
  5. Capital expenses for similar acquisition and/or development and renovation; and/or
  6. Other purposes explicitly approved by RCO
- C. Fees.** User and/or other fees may be charged in connection with land acquired or facilities developed, maintained, renovated, or restored with funding board grants if the fees are consistent with the:
1. Grant program laws, rules, policies, and funding board policies;
  2. Value of any service(s) furnished;
  3. Value of any opportunities furnished; and
  4. Prevailing range of public fees in the state for the activity involved.
- D. Requirements for Federal Subawards.** Sponsors must also comply with 2 C.F.R. § 200.307 Program income (2013).

## **SECTION 16. PROCUREMENT REQUIREMENTS**

- A. Procurement Requirements.** If the Sponsor has, or is required to have, a procurement process that follows applicable state and/or federal law or procurement rules and principles, it must be followed, documented, and retained. If no such process exists the Sponsor must follow these minimum procedures:
1. Publish a notice to the public requesting bids/proposals for the project;
  2. Specify in the notice the date for submittal of bids/proposals;
  3. Specify in the notice the general procedure and criteria for selection; and
  4. Sponsor must contract or hire from within its bid pool. If bids are unacceptable the process needs to be repeated until a suitable bid is selected.
  5. Comply with the same legal standards regarding unlawful discrimination based upon race, gender, ethnicity, sex, or sex-orientation that are applicable to state agencies in selecting a bidder or proposer.

Alternatively, Sponsor may choose a bid from a bidding cooperative if authorized to do so.

This procedure creates no rights for the benefit of third parties, including any proposers, and may not be enforced or subject to review of any kind or manner by any entity other than the RCO. Sponsors may be required to certify to the RCO that they have followed any applicable state and/or federal procedures or the above minimum procedure where state or federal procedures do not apply.

**B. Requirements for Federal Subawards.**

1. For all Federal subawards except RTP projects, non-Federal entities (Sponsors) must follow 2 C.F.R §§ 200.318 General procurement standards through 200.326 Contract Provisions (2013).
2. For RTP subawards, Sponsors follow such policies and procedures allowed by the State when procuring property and services under a Federal award (2 C.F.R § 1201.317 (2013)). State procurement policies are in subsection A of this section.

**SECTION 17. TREATMENT OF EQUIPMENT AND ASSETS**

Equipment shall be used and managed only for the purpose of this Agreement, unless otherwise provided herein or in published funding board policies, or approved by RCO in writing.

- A. Discontinued Use.** Equipment obtained under this Agreement shall remain in the possession of the Sponsor for the duration of the project, or RULES of applicable grant assisted program. When the Sponsor discontinues use of the equipment for the purpose for which it was funded, RCO may require the Sponsor to deliver the equipment to RCO, or to dispose of the equipment according to RCO published policies.
- B. Loss or Damage.** The Sponsor shall be responsible for any loss or damage to equipment.
- C. Requirements for Federal Subawards.** Except in the RTP, procedures for managing equipment (including replacement equipment), whether acquired in whole or in part under a Federal award or match for the award, until disposition takes place will, at a minimum, meet the following requirements (2 C.F.R § 200.313 (2013)):
1. Property records must be maintained that include a description of the property, a serial number or other identification number, the source of funding for the property (including the Federal Award Identification Number), who holds title, the acquisition date, and cost of the property, percentage of Federal participation in the project costs for the Federal award under which the property was acquired, the location, use and condition of the property, and any ultimate disposition data including the date of disposal and sale price of the property.
  2. A physical inventory of the property must be taken and the results reconciled with the property records at least once every two years.
  3. A control system must be developed to ensure adequate safeguards to prevent loss, damage, or theft of the property. Any loss, damage, or theft must be investigated.
  4. Adequate maintenance procedures must be developed to keep the property in good condition.
  5. If the non-Federal entity is authorized or required to sell the property, proper sales procedures must be established to ensure the highest possible return.
- D. Requirements for RTP Subawards.**
1. The subrecipient (Sponsor) shall follow such policies and procedures prescribed by and allowed by the State, as well as federal law and federal rules issued by the Federal Highways Administration and 2 CFR 200.

2. Sponsor may be required to pay prevailing wage rates as required by the Davis Bacon Act as amended.

#### **SECTION 18. RIGHT OF INSPECTION**

The Sponsor shall provide right of access to the project to RCO, or any of its officers, or to any other authorized agent or official of the state of Washington or the federal government, at all reasonable times, in order to monitor and evaluate performance, long-term obligations, compliance, and/or quality assurance under this Agreement.

If a landowner agreement or other form of control and tenure as described in Section 23.C: Control and Tenure has been executed, it will further stipulate and define the funding board and RCO's right to inspect and access lands acquired or developed with funding board assistance.

#### **SECTION 19. STEWARDSHIP AND MONITORING**

Sponsor agrees to perform monitoring and stewardship functions as stated in funding board policy, this Agreement, or as otherwise directed by RCO consistent with existing policies. Sponsor further agrees to utilize, where applicable and financially feasible, any monitoring protocols recommended by the funding board.

#### **SECTION 20. PREFERENCES FOR RESIDENTS**

Sponsors shall not express a preference for users of grant assisted projects on the basis of residence (including preferential reservation, membership, and/or permit systems) except that reasonable differences in admission and other fees may be maintained on the basis of residence. Fees for nonresidents must not exceed twice the fee imposed on residents. Where there is no fee for residents but a fee is charged to nonresidents, the nonresident fee shall not exceed the amount that would be imposed on residents at comparable state or local public facilities.

#### **SECTION 21. ACKNOWLEDGMENT AND SIGNS**

- A. Publications.** The Sponsor shall include language which acknowledges the funding contribution of the applicable grant program to this project in any release or other publication developed or modified for, or referring to, the project during the project period and in the future.
- B. Signs.**
  1. During the period of performance through the period of long-term obligation, the Sponsor shall post openly visible signs or other appropriate media at entrances and other locations on the project area that acknowledge the applicable grant program's funding contribution, unless exempted in funding board policy or waived by the director; and
  2. During the period of long-term obligation, the Sponsor shall post openly visible signs or other appropriate media at entrances and other locations to notify the public of the availability of the site for reasonable public access.
- C. Ceremonies.** The Sponsor shall notify RCO no later than two weeks before a dedication ceremony for this project. The Sponsor shall verbally acknowledge the applicable grant program's funding contribution at all dedication ceremonies.
- D. Federally Funded Projects.** When issuing statements, press releases, requests for proposals, bid solicitations, and other documents describing a project funded in whole or in part with federal money provided for in this grant, Sponsors shall clearly state:
  1. The fund source;
  2. The percentage of the total costs of the project that is financed with federal money;

3. The dollar amount of federal funds for the project; and
4. The percentage and dollar amount of the total costs of the project that is financed by nongovernmental sources.

## **SECTION 22. PROVISIONS FOR BOATING PROJECT GRANTS**

If requested by RCO, or required per state or federal law or rule with respect to any project or project element that supports recreational boating, Sponsor shall manage the project or project element per federal rules to include 2 C.F.R. Part 200, and place a United States Coast Guard (or other federal agency) logo and funding program information at the project site.

## **SECTION 23. PROVISIONS APPLYING TO DEVELOPMENT, MAINTENANCE, RENOVATION, AND RESTORATION PROJECTS**

The following provisions shall be in force only if the project described in this Agreement is for construction of land or facilities in a development, maintenance, renovation or restoration project:

- A. Operations and Maintenance.** Properties, structures, and facilities developed, maintained, or operated with the assistance of money granted by the board and within the project area shall be built, operated, and maintained according to applicable regulations, laws, building codes, and health and public safety standards to assure a reasonably safe condition and to prevent premature deterioration (WAC 286.13.130). It is the Sponsor's sole responsibility to ensure the same are operated and maintained in a safe and operable condition. The RCO does not conduct safety inspections or employ or train staff for that purpose.
- B. Document Review and Approval.** Prior to commencing construction or finalizing the design, the Sponsor agrees to submit one copy of all construction and restoration plans and specifications to RCO for review solely for compliance with the scope of work to be identified in the Agreement. RCO does not review for, and disclaims any responsibility to review for safety, suitability, engineering, compliance with code, or any matters other than the scope so identified. Although RCO staff may provide tentative guidance to a Sponsor on matters related to site accessibility by persons with a disability, it is the Sponsor's responsibility to confirm that all legal requirements for accessibility are met even if the RCO guidance would not meet such requirements.
  1. Change orders that impact the amount of funding or changes to the scope of the project as described to and approved by the funding board or RCO must receive prior written approval of the board or RCO.
- C. Control and Tenure.** The Sponsor must provide documentation that shows appropriate tenure (such as landowner agreement, long-term lease, easement, or fee simple ownership) for the land proposed for construction. The documentation must meet current RCO requirements identified in the appropriate grant program policy manual as of the effective date of this Agreement and determines the long-term compliance period unless otherwise approved by the board.
- D. Nondiscrimination.** Except where a nondiscrimination clause required by a federal funding agency is used, the Sponsor shall insert the following nondiscrimination clause in each contract for construction of this project:

"During the performance of this contract, the contractor agrees to comply with all federal and state nondiscrimination laws, regulations and policies."

- E. Use of Best Management Practices.** Sponsors are encouraged to use best management practices including those developed as part of the Washington State Aquatic Habitat Guidelines (AHG) Program. AHG documents include "Integrated Streambank Protection Guidelines", 2002; "Land Use Planning for Salmon, Steelhead and Trout: A land use planner's guide to salmonid habitat protection and recovery", 2009; "Protecting Nearshore Habitat and Functions in Puget Sound", 2010; "Stream Habitat Restoration Guidelines", 2012; "Water Crossing Design Guidelines", 2013; and "Marine Shoreline Design Guidelines", 2014. These documents, along with new and updated guidance documents, and other information are available on the AHG Web site. Sponsors are also encouraged to use best management practices developed by the Washington Invasive Species Council (WISC) described in "Reducing Accidental Introductions of Invasive Species" which is available on the WISC Web site.

## **SECTION 24. PROVISIONS APPLYING TO ACQUISITION PROJECTS**

The following provisions shall be in force only if the project described in this Agreement is an acquisition project (including projects with any acquisition component):

- A. Evidence of Land Value.** Before disbursement of funds by RCO as provided under this Agreement, the Sponsor agrees to supply documentation acceptable to RCO that the cost of the property rights acquired has been established according to funding board policy.
- B. Evidence of Title.** The Sponsor agrees to provide documentation that shows the type of ownership interest for the property that has been acquired. This shall be done before any payment of financial assistance.
- C. Legal Description of Real Property Rights Acquired.** The legal description of the real property rights purchased with funding assistance provided through this Agreement (and protected by a recorded conveyance of rights to the State of Washington) shall be delivered to RCO before final payment.
- D. Conveyance of Rights to the State of Washington.** When real property rights (both fee simple and lesser interests) are acquired, the Sponsor agrees to execute an appropriate document conveying certain rights and responsibilities to RCO, on behalf of the State of Washington. These documents include a Deed of Right, Assignment of Rights, Easements and/or Leases as described below. The Sponsor agrees to use document language provided by RCO, to record the executed document in the County where the real property lies, and to provide a copy of the recorded document to RCO. The document required will vary depending on the funding board project type, the real property rights being acquired and whether or not those rights are being acquired in perpetuity.
- 1. Deed of Right.** The Deed of Right conveys to the people of the state of Washington the right to preserve, protect, access, and/or use the property for public purposes consistent with the funding source and project agreement. See WAC 286 or 420. Sponsors shall use this document when acquiring real property rights that include the underlying land. This document may also be applicable for those easements where the Sponsor has acquired a perpetual easement for public purposes.
  - 2. Assignment of Rights.** The Assignment of Rights document transfers certain rights to RCO and the state such as public access, access for compliance, and enforcement. Sponsors shall use this document when an easement or lease is being acquired under this Agreement. The Assignment of Rights requires the signature of the underlying landowner and must be incorporated by reference in the easement document.
  - 3. Easements and Leases.** The Sponsor may incorporate required language from the Deed of Right or Assignment of Rights directly into the easement or lease document, thereby eliminating the requirement for a separate document. Language will depend on the situation; Sponsor must obtain RCO approval on the draft language prior to executing the easement or lease.

**E. Real Property Acquisition and Relocation Assistance.**

1. **Federal Acquisition Policies.** When federal funds are part of this Agreement, the Sponsor agrees to comply with the terms and conditions of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, 84 Stat. 1894 (1970)--Public Law 91-646, as amended, and applicable regulations and procedures of the federal agency implementing that Act.
2. **State Acquisition Policies.** When state funds are part of this Agreement, the Sponsor agrees to comply with the terms and conditions of the Uniform Relocation Assistance and Real Property Acquisition Policy of the State of Washington, Chapter 8.26 RCW, and Chapter 468-100 WAC.
3. **Housing and Relocation.** In the event that housing and relocation costs, as required by federal law set out in subsection (1) above and/or state law set out in subsection (2) above, are involved in the execution of this project, the Sponsor agrees to provide any housing and relocation assistance required.

**F. Buildings and Structures.** In general, grant funds are to be used for outdoor recreation, conservation, or salmon recovery. Sponsors agree to remove or demolish ineligible structures. Sponsor must consult with RCO regarding treatment of such structures and compliance with Section 8.D Archeological and Cultural Resources.

**G. Hazardous Substances.**

1. **Certification.** The Sponsor shall inspect, investigate, and conduct an environmental audit of the proposed acquisition site for the presence of hazardous substances, as defined in RCW 70.105D.020(13), and certify:
  - a. No hazardous substances were found on the site, or
  - b. Any hazardous substances found have been treated and/or disposed of in compliance with applicable state and federal laws, and the site deemed "clean."
2. **Responsibility.** Nothing in this provision alters the Sponsor's duties and liabilities regarding hazardous substances as set forth in RCW 70.105D.
3. **Hold Harmless.** The Sponsor will defend, protect and hold harmless the State and any and all of its employees and/or agents, from and against any and all liability, cost (including but not limited to all costs of defense and attorneys' fees) and any and all loss of any nature from any and all claims or suits resulting from the presence of, or the release or threatened release of, hazardous substances on the property the Sponsor is acquiring, except to the extent, if any, that the State, its officers and agents caused or contributed to the release. The funding board and RCO are included within the term State, as are all other agencies, departments, boards, councils, committees, divisions, bureaus, offices, societies, or other entities of state government.

**H. Requirements for Federal Subawards.** The non-federal entity (Sponsor) must submit reports at least annually on the status of real property in which the federal government retains an interest, unless the federal interest in the real property extends 15 years or longer. In those instances where the federal interest attached is for a period of 15 years or more, the federal awarding agency or the pass-through entity (RCO), at its option, may require the Sponsor to report at various multi-year frequencies (e.g., every two years or every three years, not to exceed a five-year reporting period; or a federal awarding agency or RCO may require annual reporting for the first three years of a federal award and thereafter require reporting every five years) (2 C.F.R § 200.329 (2013)).

**SECTION 25. LONG-TERM OBLIGATIONS OF THE PROJECTS AND SPONSORS**



- A. **Long-Term Obligations of RCFB Projects.** Sponsor shall comply with WAC 286-13-160, 170, and 180.
- B. **Long-Term Obligations of SRFB Projects.** Sponsor shall comply with WAC 420.
- C. **Perpetuity.** For acquisition, development, and restoration projects, or a combination thereof, unless otherwise allowed by policy, program rules, or this Agreement, or approved in writing by RCO or the funding board, RCO requires that the project area continue to function as intended after the period of performance in perpetuity.
- D. **Conversion.** The Sponsor shall not at any time convert any real property (including any interest therein) or facility acquired, developed, renovated, and/or restored pursuant to this Agreement, unless provided for in applicable statutes, rules, and policies. Conversion includes, but is not limited to, putting such property to uses other than those purposes for which funds were approved or transferring such property to another entity without prior approval via a written amendment to the Agreement. Also see WAC Title 286 or 420 and applicable policies. All real property or facilities acquired, developed, renovated, and/or restored with funding assistance shall remain in the same ownership and in public use/access status in perpetuity unless otherwise expressly provided in the Agreement or applicable policy or unless a transfer or change in use is approved by the funding board through an amendment. Failure to comply with these obligations is a conversion. Further, if the project is subject to operation and or maintenance obligations, the failure to comply with such obligations, without cure after a reasonable period as determined by the RCO, is a conversion. Determination of whether a conversion has occurred shall be based upon this Agreement, applicable law and RCFB/SRFB policies.

For acquisition projects that are expressly term limited in the Agreement, such as one involving a lease or a term-limited restoration, renovation or development project or easement, the restriction on conversion shall apply only for the length of the term, unless otherwise provided in this Agreement, by funding board policy, other RCO approved written documents, or required by applicable state or federal law.

When a conversion has been determined to have occurred, the Sponsor is required to remedy the conversion per established funding board policies, and the board or RCO may pursue such remedies as are allowed by law and board policies, and/or this Agreement.

## **SECTION 26. CONSTRUCTION, OPERATION, USE AND MAINTENANCE OF ASSISTED PROJECTS**

The following provisions shall be in force only if the project described in this Agreement is an acquisition, development, maintenance, renovation, or restoration project:

- A. **Property and facility operation and maintenance.** Sponsor must ensure that properties or facilities assisted with funding board funds, including undeveloped sites, are built, operated, used, and maintained:
  - 1. According to applicable federal, state, and local laws and regulations, including public health standards and building codes;
  - 2. In a reasonably safe condition for the project's intended use;
  - 3. Throughout its estimated useful service life so as to prevent undue deterioration;
  - 4. In compliance with all federal and state nondiscrimination laws, regulations and policies.
- B. **Open to the public.** Unless otherwise specifically provided for in the Agreement of funding board policies, and in compliance with applicable statutes, rules, and funding board policies, facilities must be open and accessible to the general public, and must:

1. Be constructed, maintained, and operated to meet or exceed the minimum requirements of the most current guidelines or rules, local or state codes, Uniform Federal Accessibility Standards, guidelines, or rules, including but not limited to: the International Building Code, the Americans with Disabilities Act, and the Architectural Barriers Act, as amended and updated.
2. Appear attractive and inviting to the public except for brief installation, construction, or maintenance periods.
3. Be available for appropriate use by the general public at reasonable hours and times of the year, according to the type of area or facility, unless otherwise stated in RCO manuals, by a decision of the board, or by RCO in writing. Sponsor shall notify the public of the availability for use by posting and updating that information on its website and by maintaining at entrances and/or other locations openly visible signs with such information.

#### **SECTION 27. RECORDED NOTICE OF GRANT**

At the request of RCO, Sponsor shall record a notice of grant on the property and shall submit to the RCO a recorded and registry stamped copy of such notice. The purpose of the notice of grant is to ensure that the present and future use of the facility is and shall remain subject to the terms and conditions described in this Agreement. The notice of grant shall be in a format specified by RCO.

#### **SECTION 28. PROVISIONS RELATED TO CORPORATE (INCLUDING NONPROFIT) SPONSORS**

A corporate Sponsor, including any nonprofit Sponsor, shall:

- A. Maintain corporate status with the state, including registering with the Washington Secretary of State's office, throughout the Sponsor's obligation to the project as identified in the Agreement.
- B. Notify RCO before corporate dissolution at any time during the period of performance or long-term obligations. Within 30 days of dissolution the Sponsor shall name a qualified successor that will agree in writing to assume any on-going project responsibilities, and transfer all property and assets to the successor. A qualified successor is any party eligible to apply for funds in the subject grant program and capable of complying with the terms and conditions of this Agreement. RCO will process an amendment transferring the Sponsor's obligation to the qualified successor if requirements are met.
- C. Maintain sites or facilities open to the public and may not limit access to members.

#### **SECTION 29. PROVISIONS FOR FEDERAL SUBAWARDS ONLY**

The following provisions shall be in force only if the project described in this Agreement is funded with a federal subaward as identified in Section H: FEDERAL FUND Information:

- A. **Sub-Recipient** (Sponsor) must comply with the cost principles of 2 C.F.R. Part 200 Subpart E (2013). Unless otherwise indicated, the cost principles apply to the use of funds provided under this Agreement to include match and any in-kind matching donations. The applicability of the cost principles depends on the type of organization incurring the costs.
- B. **Binding Official**. Per 2 CFR 200.415, Sponsor certifies through its actions or those of authorized staff, at the time of a request for reimbursement, the following: "To the best of my knowledge and belief that the report is true, complete, and accurate, and the expenditures, disbursements and cash receipts are for the purposes and objectives set forth in the terms and conditions of the Federal award. I am aware that any false, fictitious, or fraudulent information, or the omission of any material fact, may subject me to criminal, civil or administrative penalties for fraud, false statements, false claims or otherwise. (U.S. Code Title 18, Section 1001 and Title 31, Sections 3729-3730 and 3801-3812)."

**C. Equal Employment Opportunity.** Except as otherwise provided under 41 C.F.R. Part 60, all contracts that meet the definition of "federally assisted construction contract" in 41 C.F.R. § 60-1.3 must include the equal opportunity clause provided under 41 C.F.R. § 60- 1.4(b), in accordance with Executive Order 11246, Equal Employment Opportunity (30 Fed. Reg. 12319, 12935, 3 C.F.R. Part, 1964-1965 Comp., p. 339), as amended by Executive Order 11375, Amending Executive Order 11246 Relating to Equal Employment Opportunity, and implementing regulations at 41 C.F.R. Part 60 (Office of Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor). See 2 C.F.R. Part 200, Appendix II, paragraph C.

1. **Federally Assisted Construction Contract.** The regulation at 41 C.F.R. § 60-1.3 defines a "federally assisted construction contract" as any agreement or modification thereof between any applicant and a person for construction work which is paid for in whole or in part with funds obtained from the Government or borrowed on the credit of the Government pursuant to any Federal program involving a grant, contract, loan, insurance, or guarantee, or undertaken pursuant to any Federal program involving such grant, contract, loan, insurance, or guarantee, or any application or modification thereof approved by the Government for a grant, contract, loan, insurance, or guarantee under which the applicant itself participates in the construction work.
2. **Construction Work.** The regulation at 41 C.F.R. § 60-1.3 defines "construction work" as the construction, rehabilitation, alteration, conversion, extension, demolition or repair of buildings, highways, or other changes or improvements to real property, including facilities providing utility services. The term also includes the supervision, inspection, and other onsite functions incidental to the actual construction.

**D. Davis-Bacon Act, as amended (40 U.S.C. 3141-3148).** When required by federal program legislation, all prime construction contracts in excess of \$2,000 awarded by non-federal entities (Sponsors) must include a provision for compliance with the Davis-Bacon Act (40 U.S.C. 3141-3148) as supplemented by Department of Labor regulations (29 C.F.R. § 5, "Labor Standards Provisions Applicable to Contracts Covering Federally Financed and Assisted Construction").

In accordance with the statute, contractors must be required to pay wages to laborers and mechanics at a rate not less than the prevailing wages specified in a wage determination made by the Secretary of Labor. In addition, contractors must be required to pay wages not less than once a week. The non-federal entity (Sponsor) must place a copy of the current prevailing wage determination issued by the Department of Labor in each solicitation. The decision to award a contract or subcontract must be conditioned upon the acceptance of the wage determination. The non-Federal entity (Sponsor) must report all suspected or reported violations to the federal awarding agency identified in Section H: Federal Fund Information.

The contracts must also include a provision for compliance with the Copeland "Anti-Kickback" Act (40 U. S. C. 3145), as supplemented by Department of Labor regulations (29 C.F.R Part 3, "Contractors and Subcontractors on Public Building or Public Work Financed in Whole or in Part by Loans or Grants from the United States"). The Act provides that each contractor or subrecipient (Sponsor) must be prohibited from inducing, by any means, any person employed in the construction, completion, or repair of public work, to give up any part of the compensation to which he or she is otherwise entitled. The non-Federal entity (Sponsor) must report all suspected or reported violations to the Federal awarding agency identified in Section H: Federal Fund Information.

- E. Contract Work Hours and Safety Standards Act (40 U.S.C. 3701-3708).** Where applicable, all contracts awarded by the non-federal entity (Sponsor) in excess of \$100,000 that involve the employment of mechanics or laborers must include a provision for compliance with 40 U.S.C. 3702 and 3704, as supplemented by Department of Labor regulations (29 C.F.R. Part 5). Under 40 U.S.C. 3702 of the Act, each contractor must be required to compute the wages of every mechanic and laborer on the basis of a standard work week of 40 hours. Work in excess of the standard work week is permissible provided that the worker is compensated at a rate of not less than one and a half times the basic rate of pay for all hours worked in excess of 40 hours in the work week.

The requirements of 40 U.S.C. 3704 are applicable to construction work and provide that no laborer or mechanic must be required to work in surroundings or under working conditions which are unsanitary, hazardous or dangerous. These requirements do not apply to the purchases of supplies or materials or articles ordinarily available on the open market, or contracts for transportation or transmission of intelligence.

- F. Rights to Inventions Made Under a Contract or Agreement.** If the Federal award meets the definition of "funding agreement" under 37 C.F.R § 401.2(a) and the recipient or subrecipient (Sponsor) wishes to enter into a contract with a small business firm or nonprofit organization regarding the substitution of parties, assignment or performance of experimental, developmental, or research work under that "funding agreement," the recipient or subrecipient (Sponsor) must comply with the requirements of 37 C.F.R Part 401, "Rights to Inventions Made by Nonprofit Organizations and Small Business Firms Under Government Grants, Contracts and Cooperative Agreements," and any implementing regulations issued by the awarding agency.
- G. Clean Air Act (42 U.S.C. 7401-7671q.) and the Federal Water Pollution Control Act (33 U.S.C. 1251-1387), as Amended.** Contracts and subgrants of amounts in excess of \$150,000 must contain a provision that requires the non-Federal award to agree to comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act (42 U.S.C. 7401-7671q) and the Federal Water Pollution Control Act as amended (33 U.S.C. 1251-1387). Violations must be reported to the Federal awarding agency identified in Section H: Federal Fund Information and the Regional Office of the Environmental Protection Agency (EPA).
- H. Byrd Anti-Lobbying Amendment (31 U.S.C. 1352).** By signing this Agreement, the Sponsor certifies (per the certification requirements of 31 U.S.C.) that none of the funds that the Sponsor has (directly or indirectly) received or will receive for this project from the United States or any agency thereof, have been used or shall be used to engage in the lobbying of the Federal Government or in litigation against the United States. Such lobbying includes any influence or attempt to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this project. Contractors that apply or bid for an award exceeding \$100,000 must file the required certification. 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, officer or employee of Congress, or an employee of a member of Congress in connection with obtaining any federal contract, grant or any other award covered by 31 U.S.C. 1352. Each tier must also disclose any lobbying with non-federal funds that takes place in connection with obtaining any federal award. Such disclosures are forwarded from tier to tier up to the non-federal award.

- I. **Procurement of Recovered Materials.** A non-federal entity (Sponsor) that is a state agency or agency of a political subdivision of a state and its contractors must comply with section 6002 of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act. The requirements of Section 6002 include procuring only items designated in guidelines of the Environmental Protection Agency (EPA) at 40 C.F.R part 247 that contain the highest percentage of recovered materials practicable, consistent with maintaining a satisfactory level of competition, where the purchase price of the item exceeds \$10,000 or the value of the quantity acquired during the preceding fiscal year exceeded \$10,000; procuring solid waste management services in a manner that maximizes energy and resource recovery; and establishing an affirmative procurement program for procurement of recovered materials identified in the EPA guidelines.
- J. **Required Insurance.** The non-federal entity (Sponsor) must, at a minimum, provide the equivalent insurance coverage for real property and equipment acquired or improved with federal funds as provided to property owned by the non-federal entity. Federally-owned property need not be insured unless required by the terms and conditions of the Federal award (2 C.F.R § 200.310 (2013)).
- K. **Debarment and Suspension (Executive Orders 12549 and 12689).** The Sponsor must not award a contract to parties listed on the government-wide exclusions in the System for Award Management (SAM), in accordance with the Office of Management and Budget (OMB) guidelines at 2 C.F.R § 180 that implement Executive Orders 12549 (3 C.F.R part 1986 Comp., p. 189) and 12689 (3 C.F.R part 1989 Comp., p. 235), "Debarment and Suspension." SAM Exclusions contains the names of parties debarred, suspended, or otherwise excluded by agencies, as well as parties declared ineligible under statutory or regulatory authority other than Executive Order 12549.
- L. **Conflict of Interest.** Sponsor agrees to abide by the conflict of interest policy and requirements of the federal funding agency established pursuant to 2 C.F.R 200.

### SECTION 30. PROVISIONS FOR BOATING INFRASTRUCTURE GRANTS

- A. **Use of Sport Fish Restoration Logo.** Per 50 CFR 86 Sec 75 and 76, the user of the logo must indemnify and defend the United States and hold it harmless from any claims, suits, losses, and damages from; any allegedly unauthorized use of any patent, process, idea, method, or device by the user in connection with its use of the logo, or any other alleged action of the user; and any claims, suits, losses, and damages arising from alleged defects in the articles or services associated with the logo. No one may use any part of the logo in any other manner unless the United States Fish and Wildlife Service's Assistant Director for Wildlife and Sport Fish Restoration or Regional Director approves in writing.

### SECTION 31. PROVISIONS FOR FIREARMS AND ARCHERY RANGE RECREATION PROJECTS ONLY

The following provisions shall be in force only if the project described in this Agreement is funded from the Firearms and Archery Range Recreation Account.

- A. **Liability Insurance.** The Sponsor of a firearms or archery range recreation project shall procure an endorsement, or other addition, to liability insurance it carries, or shall procure a new policy of liability insurance, in a total coverage amount the Sponsor deems adequate to ensure it will have resources to pay successful claims of people who may be killed or injured, or suffer damage to property, while present at the range facility to which this grant is related, or by reason of being in the vicinity of that facility; provided that the coverage shall be at least one million dollars (\$1,000,000) for the death of, or injury to, each person.
- B. **Insurance Endorsement.** The liability insurance policy, including any endorsement or addition, shall name Washington State, the funding board, and RCO as additional insured and shall be in a form approved by the funding board or director.

- C. Length of Insurance.** The policy, endorsement or other addition, or a similar liability insurance policy meeting the requirements of this section, shall be kept in force throughout the Sponsor's obligation to the project as identified in this Agreement in Section F. LONG-TERM OBLIGATIONS.
- D. Notice of Cancellation.** The policy, as modified by any endorsement or other addition, shall provide that the issuing company shall give written notice to RCO not less than thirty (30) calendar days in advance of any cancellation of the policy by the insurer, and within ten (10) calendar days following any termination of the policy by the Sponsor.
- E. Government Agencies.** The requirement of Subsection A through D above shall not apply if the Sponsor is a federal, state, or municipal government which has established a program of self-insurance or a policy of self-insurance with respect to claims arising from its facilities or activities generally, including such facilities as firearms or archery ranges, when the applicant declares and describes that program or policy as a part of its application to the funding board.
- F. Sole Duty of the Sponsor.** By this requirement, the funding board and RCO does not assume any duty to any individual person with respect to death, injury, or damage to property which that person may suffer while present at, or in the vicinity of, the facility to which this grant relates. Any such person, or any other person making claims based on such death, injury, or damage, must look to the Sponsor, or others, for any and all remedies that may be available by law.

#### **SECTION 32. PROVISIONS FOR LAND AND WATER CONSERVATION FUND PROJECTS ONLY**

If the project has been approved by the National Park Service, US Department of the Interior, for funding assistance from the federal Land and Water Conservation Fund (LWCF), the "LWCF Grant Agreement General Provisions" are made part of this Agreement and incorporated herein. The Sponsor shall abide by these LWCF General Provisions, in addition to this Agreement, as they now exist or are hereafter amended. Further, the Sponsor agrees to provide RCO with reports or documents needed to meet the requirements of the LWCF General Provisions.

#### **SECTION 33. PROVISIONS FOR FARM AND FOREST ACCOUNT PROJECTS (FARMLAND AND FORESTLAND PRESERVATION PROJECTS ONLY)**

The following sections will not apply to Farmland and Forestland Preservation Projects if covered separately in a recorded RCO approved Agricultural Conservation Easement, or Forest Conservation Easement (or other method):

- A. Section 15 - Income and Income Use;
- B. Section 19 - Stewardship and Monitoring;
- C. Section 21 - Acknowledgement and Signs;
- D. Section 24 -- Provisions Applying To Acquisition Projects, Sub-sections D, F, and G;
- E. Section 25C -Perpetuity; and
- F. Section 26 -- Construction, Operation, Use and Maintenance of Assisted Projects.

#### **SECTION 34. PROVISIONS FOR SALMON RECOVERY FUNDING BOARD PROJECTS ONLY**

For habitat restoration projects funded in part or whole with federal funds administered by the SRFB the Sponsor shall not commence with clearing of riparian trees or in-water work unless either the Sponsor has complied with 50 C.F.R. § 223.203 (b)(8) (2000), limit 8 or until an Endangered Species Act consultation is finalized in writing by the National Oceanic and Atmospheric Administration. Violation of this requirement may be grounds for terminating this Agreement. This section shall not be the basis for any enforcement responsibility by RCO.

## SECTION 35. PROVISIONS FOR PUGET SOUND ACQUISITION AND RESTORATION PROJECTS ONLY

The following provisions shall be in force only if the project described in this Agreement is funded in part or wholly from the Puget Sound Acquisition and Restoration program.

The Sponsor agrees to the following terms and conditions:

- A. Cost Principles/Indirect Costs For State Agencies.** GRANT RECIPIENT agrees to comply with the cost principles of 2 CFR 200 Subpart E as appropriate to the award. In addition to the US Environmental Protection Agency's General Terms and Conditions "Indirect Cost Rate Agreements," if the recipient does not have a previously established indirect cost rate, it agrees to prepare and submit its indirect cost rate proposal in accordance with 2 CFR 200 Appendix VII.
- B. Credit and Acknowledgement.** In addition to Section 21: Acknowledgement and Signs, materials produced must display both the Environmental Protection Agency (EPA) and Puget Sound Partnership (PSP) logos and the following credit line: "This project has been funded wholly or in part by the United States Environmental Protection Agency. The contents of this document do not necessarily reflect the views and policies of the Environmental Protection Agency, nor does mention of trade names or commercial products constitute endorsement or recommendation for use." This requirement is for the life of the product, whether during or after the Agreement period of performance.
- C. Hotel Motel Fire Safety Act.** Sponsor agrees to ensure that all conference, meeting, convention, or training space funded in whole or part with federal funds, complies with the federal Hotel and Motel Fire Safety Act (PL 101-391, as amended). Sponsors may search the Hotel-Motel National Master List @ <http://www.usfa.dhs.gov/applications/hotel> to see if a property is in compliance or to find other information about the Act.
- D. Drug Free Workplace Certification.** Sub-recipient (Sponsor) shall make an ongoing, good faith effort to maintain a drug-free workplace pursuant to the specific requirements set forth in 2 C.F.R. Part 1536 Subpart B. Additionally, in accordance with these regulations, the recipient organization shall identify all known workplaces under its federal awards, and keep this information on file during the performance of the award. Sponsors who are individuals must comply with the drug-free provisions set forth in 2 C.F.R. Part 1536 Subpart C. The consequences for violating this condition are detailed under 2 C.F.R. Part 1536 Subpart E.
- E. Management Fees.** Management fees or similar charges in excess of the direct costs and approved indirect rates are not allowable. The term "management fees or similar charges" refers to the expenses added to direct costs in order to accumulate and reserve funds for ongoing business expenses, unforeseen liabilities or for other similar costs that are not allowable. Management fees or similar charges may not be used to improve or expand the project funded under this Agreement, except for the extent authorized as a direct cost of carrying out the scope of work.
- F. Trafficking in Persons and Trafficking Victim Protection Act of 2000 (TVPA).** This provision applies only to a sub-recipient (Sponsor), and all sub-awardees of sub-recipient (Sponsor), if any. Sub-recipient (Sponsor) shall include the following statement in all sub-awards made to any private entity under this Agreement.

"You as the sub-recipient, your employees, sub-awardees under this award, and sub-awardees' employees may not engage in severe forms of trafficking in persons during the period of time that the award is in effect; procure a commercial sex act during the period of time that the award is in effect; or use forced labor in the performance of the award or sub-awards under this Award."

The sub-recipient (Sponsor), and all sub-awardees of sub-recipient (Sponsor) must inform RCO immediately of any information you receive from any source alleging a violation of this prohibition during the award term.

The federal agency funding this Agreement may unilaterally terminate, without penalty, the funding award if this prohibition is violated, Section 106 of the Trafficking Victims Protection Act of 2000, as amended.

- G. Lobbying.** The chief executive officer of this recipient agency (Sponsor) shall ensure that no grant funds awarded under this Agreement are used to engage in lobbying of the Federal Government or in litigation against the United States, unless authorized under existing law. The recipient (Sponsor) shall abide by its respective Cost Principles (OMB Circulars A-21, A-87, and A-122), which generally prohibits the use of federal grant funds for litigation against the United States, or for lobbying or other political activities.

The Sponsor agrees to comply with 40 C.F.R. Part 34, New Restrictions on Lobbying. Sponsor shall include the language of this provision in award documents for all sub-awards exceeding \$100,000, and require that sub-awardees submit certification and disclosure forms accordingly.

In accordance with the Byrd Anti-Lobbying Amendment, any Sponsor who makes a prohibited expenditure under 40 C.F.R. Part 34 or fails to file the required certification or lobbying forms shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each expenditure.

All contracts awarded by Sponsor shall contain, when applicable, the anti-lobbying provisions as stipulated in the Appendix at 40 C.F.R. Part 30.

Pursuant to Section 18 of the Lobbying Disclosure Act, Sponsor affirms that it is not a non-profit organization described in Section 501(c)(4) of the Internal Revenue Code of 1986; or that it is a non-profit organization described in Section 501(c)(4) of the code but does not and will not engage in lobbying activities as defined in Section 3 of the Lobbying Disclosure Act.

- H. Reimbursement Limitation.** If the Sponsor expends more than the amount of RCO funding in this Agreement in anticipation of receiving additional funds from the RCO, it does so at its own risk. RCO is not legally obligated to reimburse the Sponsor for costs incurred in excess of the RCO approved budget.
- I. Disadvantaged Business Enterprise Requirements.** The Sponsor agrees to comply with the requirements of EPA's Utilization of Small, Minority and Women's Business Enterprises in procurements made under this award.
- J. Minority and Women's Business Participation.** Sponsor agrees to solicit and recruit, to the maximum extent possible, certified minority owned (MBE) and women owned (WBE) businesses in purchases and contracts initiated after the effective date of this Agreement.

These goals are expressed as a percentage of the total dollars available for purchase or agreement and are as follows:

Purchased Goods 8% MBE 4% WBE

Purchased Services 10% MBE 4% WBE

Professional Services 10% MBE 4% WBE

Meeting these goals is voluntary and no agreement award or rejection shall be made based on achievement or non-achievement of the goals. Achievement of the goals is encouraged, however, and Sponsor and ALL prospective bidders or people submitting qualifications shall take the following affirmative steps in any procurement initiated after the effective date of this Agreement:

1. Include qualified minority and women's businesses on solicitation lists.
2. Assure that qualified minority and women's business are solicited whenever they are potential sources of services or supplies.



3. Divide the total requirements, when economically feasible, into smaller tasks or quantities, to permit maximum participation by qualified minority and women's businesses.
4. Establish delivery schedules, where work requirements permit, which will encourage participation of qualified minority and women's businesses.
5. Use the services and assistance of the State Office of Minority and Women's Business Enterprises (OMWBE) and the Office of Minority Business Enterprises of the U.S. Department of Commerce, as appropriate.

**K. MBE/WBE Reporting.** In accordance with the deviation from 40 C.F.R. §33.502, signed November 8, 2013, DBE reporting is limited to annual reports and only required for assistance agreements where one or more the following conditions are met:

1. There are any funds budgeted in the contractual/services, equipment or construction lines of the award;
2. \$3,000 or more is included for supplies; or
3. There are funds budgeted for subawards or loans in which the expected budget(s) meet the conditions as
4. Described in items (a) and (b).

When completing the form, recipients (Sponsors) should disregard the quarterly and semi-annual boxes in the reporting period Section 1B of the form. For annual submissions, the reports are due by October 30th of each year or 90 days after the end of the project period, whichever comes first.

The reporting requirement is based on planned procurements. Recipients (Sponsors) with funds budgeted for non-supply procurement and/or \$3,000 or more in supplies are required to report annually whether the planned procurements take place during the reporting period or not. If no procurements take place during the reporting period, the recipient should check the box in Section 5B when completing the form.

MBE/WBE reports should be sent to the DBE Coordinator in the Sponsor's region. Contact information can be found at <http://www.epa.gov/osbp/contactpage.htm>. The coordinators also can answer any questions.

Final MBE/WBE reports must be submitted within 90 days after the project period of the grant ends. To be in compliance with regulations, the Sponsor must submit a final MBE/WBE report. Non-compliance may impact future competitive grant proposals. The current EPA Form 5700-52A can be found at the EPA Office of Small Business Program's Home Page at [http://www.epa.gov/osbp/dbe\\_reporting.htm](http://www.epa.gov/osbp/dbe_reporting.htm).

**L. Procurement involving an EPA Financial Assistance Agreement.** Pursuant to 40 C.F.R. § 33.301, the Sponsor agrees to make the following six good faith efforts whenever procuring construction, equipment, services and supplies under an EPA financial assistance agreement, and to require that sub-recipients (Sponsors), and prime contractors also comply. Records documenting compliance with the six good faith efforts shall be retained:

1. Ensure Disadvantaged Business Enterprise (DBEs) are made aware of contracting opportunities to the fullest extent practicable through outreach and recruitment activities. For Indian Tribal, State and Local and Government Sponsors, this will include placing DBEs on solicitation lists and soliciting them whenever they are potential sources.

2. Make information on forthcoming opportunities available to DBEs and arrange time frames for contracts and establish delivery schedules, where the requirements permit, in a way that encourages and facilitates participation by DBEs in the competitive process. This includes, whenever possible, posting solicitations for bids or proposals for a minimum of 30 calendar days before the bid or proposal closing date.
3. Consider in the contracting process whether firms competing for large contracts could subcontract with DBEs. For Indian Tribal, State and local Government Sponsors, this will include dividing total requirements when economically feasible into smaller tasks or quantities to permit maximum participation by DBEs in the competitive process.
4. Encourage contracting with a consortium of DBEs when an agreement is too large for one of these firms to handle individually.
5. Use the services and assistance of the Small Business Administration (SBA) and the Minority Business Development of the Department of Commerce.
6. If the Sponsor awards subcontracts, require the Sponsor to take the steps in paragraphs (a) through (e) of this section.

**M. Lobbying & Litigation.** By signing this Agreement, the Sponsor certifies that none of the funds received from this Agreement shall be used to engage in the lobbying of the Federal Government or in litigation against the United States unless authorized under existing law.

The chief executive officer of this Sponsor agency shall ensure that no grant funds awarded under this Agreement are used to engage in lobbying of the Federal Government or in litigation against the United States unless authorized under existing law. The Sponsor shall abide by its respective Attachment in 2 C.F.R. Part 200, which prohibits the use of federal grant funds for litigation against the United States or for lobbying or other political activities.

For subawards exceeding \$100,000, EPA requires the following certification and disclosure forms:

1. Certification Regarding Lobbying, EPA Form 6600-06:  
[http://www.epa.gov/ogd/AppKit/form/Lobbying\\_sec.pdf](http://www.epa.gov/ogd/AppKit/form/Lobbying_sec.pdf)
2. Disclosure of Lobbying Activities, SF LLL: [http://www.epa.gov/ogd/AppKit/form/sfllin\\_sec.pdf](http://www.epa.gov/ogd/AppKit/form/sfllin_sec.pdf)
3. Legal expenses required in the administration of Federal programs are allowable. Legal expenses for prosecution of claims against the Federal Government are unallowable.

**N. Payment to Consultants.** EPA participation in the salary rate (excluding overhead) paid to individual consultants retained by recipients (Sponsors) or by a recipients' (Sponsor's) contractors or subcontractors shall be limited to the maximum daily rate for Level IV of the Executive Schedule (formerly GS-18), to be adjusted annually. This limit applies to consultation services of designated individuals with specialized skills who are paid at a daily or hourly rate. This rate does not include transportation and subsistence costs for travel performed (the recipient will pay these in accordance with his/her normal travel reimbursement practices).

Subagreements with firms for services that are awarded using the procurement requirements in 40 C.F.R. Parts 30 or 31, are not affected by this limitation unless the terms of the contract provide the recipient (Sponsor) with responsibility for the selection, direction and control of the individual who will be providing services under the contract at an hourly or daily rate of compensation. See 40 C.F.R. § 30.27(b) or 40 C.F.R. § 31.369(j), as applicable, for additional information.

As of January 1, 2014, the limit is \$602.24 per day \$75.28 per hour.

- O. **Peer Review.** Where appropriate, prior to finalizing any significant technical products the Principal Investigator (PI) of this project must solicit advice, review, and feedback from a technical review or advisory group consisting of relevant subject matter specialists. A record of comments and a brief description of how respective comments are addressed by the PI will be provided to the Project Monitor prior to releasing any final reports or products resulting from the funded study.
- P. **International Travel (Including Canada).** All International Travel must be approved by the US Environmental Protection Agency's Office of International and Tribal Affairs (OITA) BEFORE travel occurs. Even a brief trip to a foreign country, for example to attend a conference, requires OITA approval. Please contact your Partnership Project manager as soon as possible if travel is planned out of the country, including Canada and/or Mexico, so that they can submit a request to the EPA Project Officer if they approve of such travel.
- Q. **Unliquidated Obligations (ULO).** Sub-recipients, and all sub-awardees of Sub-Recipients, if any, should manage their agreement and subaward funding in ways that reduce the length of time that federal funds obligated and committed to subaward projects are unspent (not yet drawn down through disbursements to sub-recipients and sub-awardees).

### **SECTION 36. ORDER OF PRECEDENCE**

This Agreement is entered into, pursuant to, and under the authority granted by applicable federal and state laws. The provisions of the Agreement shall be construed to conform to those laws. In the event of a direct and irreconcilable conflict between the terms of this Agreement and any applicable statute, rule, or policy or procedure, the conflict shall be resolved by giving precedence in the following order:

1. Federal law and binding executive orders;
2. Code of federal regulations;
3. Terms and conditions of a grant award to the state from the federal government;
4. Federal grant program policies and procedures adopted by a federal agency that are required to be applied by federal law;
5. State law (constitution, statute);
6. Washington Administrative Code;
7. Funding board or RCO policies.

### **SECTION 37. LIMITATION OF AUTHORITY**

Only RCO's Director or RCO's delegate by writing (delegation to be made prior to action) shall have the authority to alter, amend, modify, or waive any clause or condition of this Agreement; provided that any such alteration, amendment, modification, or waiver of any clause or condition of this Agreement is not effective or binding unless made as a written amendment to this Agreement and signed by the RCO Director or delegate.

### **SECTION 38. WAIVER OF DEFAULT**

Waiver of any default shall not be deemed to be a waiver of any subsequent default. Waiver or breach of any provision of the Agreement shall not be deemed to be a waiver of any other or subsequent breach and shall not be construed to be a modification of the terms of the Agreement unless stated to be such in writing, signed by the director, or the director's designee, and attached as an amendment to the original Agreement.

### **SECTION 39. APPLICATION REPRESENTATIONS – MISREPRESENTATIONS OR INACCURACY OR BREACH**

The funding board and RCO rely on the Sponsor's application in making its determinations as to eligibility for, selection for, and scope of, funding grants. Any misrepresentation, error or inaccuracy in any part of the application may be deemed a breach of this Agreement.

#### **SECTION 40. SPECIFIC PERFORMANCE**

The funding board and RCO may enforce this Agreement by the remedy of specific performance, which usually will mean completion of the project as described in this Agreement and/or enforcement of long-term obligations. However, the remedy of specific performance shall not be the sole or exclusive remedy available to RCO. No remedy available to the funding board or RCO shall be deemed exclusive. The funding board or RCO may elect to exercise any, a combination of, or all of the remedies available to it under this Agreement, or under any provision of law, common law, or equity, including but not limited to seeking full or partial repayment of the grant amount paid and damages.

#### **SECTION 41. TERMINATION AND SUSPENSION**

The funding board and RCO will require strict compliance by the Sponsor with all the terms of this Agreement including, but not limited to, the requirements of the applicable statutes, rules and all funding board and RCO policies, and with the representations of the Sponsor in its application for a grant as finally approved by the funding board. For federal awards, notification of termination will comply with 2 C.F.R. § 200.340.

##### **A. For Cause.**

1. The funding board or the director may suspend or terminate the obligation to provide funding to the Sponsor under this Agreement:
  - a. If the Sponsor breaches any of the Sponsor's obligations under this Agreement;
  - b. If the Sponsor fails to make progress satisfactory to the funding board or director toward completion of the project by the completion date set out in this Agreement. Included in progress is adherence to milestones and other defined deadlines; or
  - c. If the primary and secondary Sponsor(s) cannot mutually agree on the process and actions needed to implement the project;
2. Prior to termination, the RCO or the funding board shall notify the Sponsor in writing of the opportunity to cure. If corrective action is not taken within 30 days or such other time period that the director or board approves in writing, the Agreement may be terminated. In the event of termination, the Sponsor shall be liable for damages or other relief as authorized by law and/or this Agreement.
3. RCO reserves the right to suspend all or part of the Agreement, withhold further payments, or prohibit the Sponsor from incurring additional obligations of funds during the investigation of any alleged breach and pending corrective action by the Sponsor, or a decision by the RCO to terminate the Contract.

**B. For Convenience.** Except as otherwise provided in this Agreement, RCO may, by ten (10) days written notice, beginning on the second day after the mailing, terminate this Agreement, in whole or in part when it is in the best interest of the state. If this Agreement is so terminated, RCO shall be liable only for payment required under the terms of this Agreement prior to the effective date of termination. A claimed termination for cause shall be deemed to be a "Termination for Convenience" if it is determined that:

1. The Sponsor was not in default; or
2. Failure to perform was outside Sponsor's control, fault or negligence.

**C. Rights of Remedies of the RCO.**

1. The rights and remedies of RCO provided in this Agreement are not exclusive and are in addition to any other rights and remedies provided by law.
2. In the event this Agreement is terminated by the funding board or director, after any portion of the grant amount has been paid to the Sponsor under this Agreement, the funding board or director may require that any amount paid be repaid to RCO for redeposit into the account from which the funds were derived. However, any repayment shall be limited to the extent it would be inequitable and represent a manifest injustice in circumstances where the project will fulfill its fundamental purpose for substantially the entire period of performance and of long-term obligation.

**D. Non Availability of Funds.** The obligation of the RCO to make payments is contingent on the availability of state and federal funds through legislative appropriation and state allotment. If amounts sufficient to fund the grant made under this Agreement are not appropriated to RCO for expenditure for this Agreement in any biennial fiscal period, RCO shall not be obligated to pay any remaining unpaid portion of this grant unless and until the necessary action by the Legislature or the Office of Financial Management occurs. If RCO participation is suspended under this section for a continuous period of one year, RCO's obligation to provide any future funding under this Agreement shall terminate. Termination of the Agreement under this section is not subject to appeal by the Sponsor .

1. **Suspension:** The obligation of the RCO to manage contract terms and make payments is contingent upon the state appropriating state and federal funding each biennium. In the event the state is unable to appropriate such funds by the first day of each new biennium RCO reserves the right to suspend the Agreement, with ten (10) days written notice, until such time funds are appropriated. Suspension will mean all work related to the contract must cease until such time funds are obligated to RCO and the RCO provides notice to continue work.

**SECTION 42. DISPUTE HEARING**

Except as may otherwise be provided in this Agreement, when a dispute arises between the Sponsor and the funding board, which cannot be resolved, either party may request a dispute hearing according to the process set out in this section. Either party's request for a dispute hearing must be in writing and clearly state:

- A. The disputed issues;
- B. The relative positions of the parties;
- C. The Sponsor's name, address, project title, and the assigned project number.

In order for this section to apply to the resolution of any specific dispute or disputes, the other party must agree in writing that the procedure under this section shall be used to resolve those specific issues. The dispute shall be heard by a panel of three persons consisting of one person chosen by the Sponsor, one person chosen by the director, and a third person chosen by the two persons initially appointed. If a third person cannot be agreed on, the third person shall be chosen by the funding board's chair.

Any hearing under this section shall be informal, with the specific processes to be determined by the disputes panel according to the nature and complexity of the issues involved. The process may be solely based on written material if the parties so agree. The disputes panel shall be governed by the provisions of this Agreement in deciding the disputes.

The parties shall be bound by the decision of the disputes panel, unless the remedy directed by that panel shall be without the authority of either or both parties to perform, as necessary, or is otherwise unlawful.

Request for a disputes hearing under this section by either party shall be delivered or mailed to the other party. The request shall be delivered or mailed within thirty (30) days of the date the requesting party has received notice of the action or position of the other party which it wishes to dispute. The written agreement to use the process under this section for resolution of those issues shall be delivered or mailed by the receiving party to the requesting party within thirty (30) days of receipt by the receiving party of the request.

All costs associated with the implementation of this process shall be shared equally by the parties.

#### **SECTION 43. ATTORNEYS' FEES**

In the event of litigation or other action brought to enforce contract terms, each party agrees to bear its own attorney fees and costs.

#### **SECTION 44. GOVERNING LAW/VENUE**

This Agreement shall be construed and interpreted in accordance with the laws of the State of Washington . In the event of a lawsuit involving this Agreement, venue shall be in Thurston County Superior Court if legally proper; otherwise venue shall be in a county where the project is situated, if venue there is legally proper, and if not, in a county where venue is legally proper. The Sponsor, by execution of this Agreement acknowledges the jurisdiction of the courts of the State of Washington.

#### **SECTION 45. PROVISIONS APPLICABLE ONLY IF FEDERALLY RECOGNIZED INDIAN TRIBE IS THE SPONSOR**

In the cases where this Agreement is between the funding board (which includes the State of Washington for purposes of this Agreement) and a federally recognized Indian Tribe, the following terms and conditions apply, but only between those parties:

- A. Notwithstanding the above venue provision, if the State of Washington intends to initiate legal action against a federally recognized Indian tribe relating to the performance, breach, or enforcement of this Agreement, it shall so notify the Tribe. If the Tribe believes that a good faith basis exists for subject matter jurisdiction of such an action in federal court, the Tribe shall so notify the State within five days of receipt of such notice and state the basis for such jurisdiction. If the Tribe so notifies the State, the State shall bring such action in federal court, otherwise the State may sue the Tribe in the Thurston County Superior Court, or such other superior court where venue is proper, if not proper in Thurston County. Interpretation of the Agreement shall be according to applicable State law, except to the extent preempted by federal law. In the event suit is brought in federal court and the federal court determines that it lacks subject matter jurisdiction to resolve the dispute between the State and Tribal Party, then the State may bring suit in Thurston County Superior Court or such other superior court where venue is proper, if not proper in Thurston County.
- B. Any judicial award, determination, order, decree or other relief, whether in law or equity or otherwise, resulting from such actions under subsection A above, shall be binding and enforceable on the parties. Any money judgment or award against a Tribe, tribal officers, or employees, or the State of Washington, its agencies, or its officers and employees may exceed the amount of funding awarded under this Agreement.
- C. As requested by RCO, the Tribe shall provide to RCO its governing requirements and procedures for entering into Agreement with RCO and waiving its sovereign immunity. In addition, the tribe shall provide to RCO all authorizations the Tribe requires to authorize the person(s) signing the Agreement on the Tribe's behalf to bind the Tribe and waive the Tribe's sovereign immunity as provided herein.

- D. The Tribe hereby waives its sovereign immunity for suit in federal and state court for the limited purposes of allowing the State to bring and prosecute to completion such actions relating to the performance, breach, or enforcement of this Agreement as provided in subsection A above, and to bring actions to enforce any judgment arising from such actions. This waiver is not for the benefit of any third party and shall not be enforceable by any third party or by any assignee of the parties. In any enforcement action, the parties shall bear their own enforcement costs, including attorneys' fees.

For purposes of this provision, the State includes the funding board, the RCO, and any other state agencies as the term "agency" is broadly understood to include, but not be limited to, departments, commissions, boards, divisions, bureaus, committees, offices, councils, societies, etc.

**SECTION 46. SEVERABILITY**

The provisions of this Agreement are intended to be severable. If any term or provision is illegal or invalid for any reason whatsoever, such illegality or invalidity shall not affect the validity of the remainder of the Agreement.

## LAND AND WATER CONSERVATION FUND (LWCF) GRANT AGREEMENT GENERAL PROVISIONS

### ARTICLE XI – PRIOR APPROVAL

The Recipient shall obtain prior approval for budget and program revisions in accordance with 2 CFR 200.308.

### ARTICLE XIV – MODIFICATION, REMEDIES FOR NONCOMPLIANCE, TERMINATION

- A. This Agreement may be modified only by a written instrument executed by the parties. Modifications will be requested in writing and approved by the NPS AO and the authorized representative of Recipient.
- B. Additional conditions may be imposed by NPS if it is determined that the Recipient is non-compliant to the terms and conditions of this agreement. Remedies for Noncompliance can be found in 2 CFR 200.338 and the LWCF Assistance Manual ([https://www.nps.gov/subjects/lwcf/upload/lwcf\\_manual.pdf](https://www.nps.gov/subjects/lwcf/upload/lwcf_manual.pdf)).
- C. This Agreement may be terminated consistent with applicable termination provisions for Agreements found in 2 CFR 200.339 through 200.342 and the LWCF Assistance Manual.

### ARTICLE XV – GENERAL AND SPECIAL PROVISIONS

#### A. General Provisions

1. **OMB Circulars and Other Regulations.** The following Federal regulations are incorporated by reference into this Agreement (full text can be found at <http://www.ecfr.gov>):
  - a) **Administrative Requirements:**  
*2 CFR Part 200 – Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards, in its entirety;*
  - b) **Determination of Allowable Costs:**  
*2 CFR Part 200 – Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards, Subpart E; and*
  - c) **Audit Requirements:**  
*2 CFR Part 200 – Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards, Subpart F.*
  - d) **Code of Federal Regulations/Regulatory Requirements:**  
*2 CFR Part 182 & 1401, "Government-wide Requirements for a Drug-Free Workplace";*  
*2 CFR 180 & 1400, "Non-Procurement Debarment and Suspension", previously located at 43 CFR Part 42, "Governmentwide Debarment and Suspension (NonProcurement)";*  
*43 CFR 18, "New Restrictions on Lobbying";*  
*2 CFR Part 175, "Trafficking Victims Protection Act of 2000";*  
*FAR Clause 52.203-12, Paragraphs (a) and (b), Limitation on Payments to Influence Certain Federal Transactions;*  
*2 CFR Part 25, System for Award Management (www.SAM.gov) and Data Universal Numbering System (DUNS); and*  
*2 CFR Part 170, "Reporting Subawards and Executive Compensation".*
2. **Non-Discrimination.** All activities pursuant to this Agreement shall be in compliance with the requirements of Executive Order 11246, as amended; Title VI of the Civil Rights Act of 1964, as



amended, (78 Stat. 252; 42 U.S.C. §§2000d et seq.); Title V, Section 504 of the Rehabilitation Act of 1973, as amended, (87 Stat. 394; 29 U.S.C. §794); the Age Discrimination Act of 1975 (89 Stat. 728; 42 U.S.C. §§6101 et seq.); and with all other federal laws and regulations prohibiting discrimination on grounds of race, color, sexual orientation, national origin, disabilities, religion, age, or sex.

3. **Lobbying Prohibition.** 18 U.S.C. §1913, Lobbying with Appropriated Moneys, as amended by Public Law 107-273, Nov. 2, 2002 – No part of the money appropriated by any enactment of Congress shall, in the absence of express authorization by Congress, be used directly or indirectly to pay for any personal service, advertisement, telegram, telephone, letter, printed or written matter, or other device, intended or designed to influence in any manner a Member of Congress, a jurisdiction, or an official of any government, to favor, adopt, or oppose, by vote or otherwise, any legislation, law, ratification, policy, or appropriation, whether before or after the introduction of any bill, measure, or resolution proposing such legislation, law, ratification, policy, or appropriation; but this shall not prevent officers or employees of the United States or of its departments or agencies from communicating to any such Members or official, at his request, or to Congress or such official, through the proper official channels, requests for legislation, law, ratification, policy, or appropriations which they deem necessary for the efficient conduct of the public business, or from making any communication whose prohibition by this section might, in the opinion of the Attorney General, violate the Constitution or interfere with the conduct of foreign policy, counter-intelligence, intelligence, or national security activities. Violations of this section shall constitute violations of section 1352(a) of title 31. In addition to the above, the related restrictions on the use of appropriated funds found in Div. F, § 402 of the Omnibus Appropriations Act of 2008 (P.L. 110-161) also apply.
4. **Anti-Deficiency Act.** Pursuant to 31 U.S.C. §1341 nothing contained in this Agreement shall be construed as binding the NPS to expend in any one fiscal year any sum in excess of appropriations made by Congress, for the purposes of this Agreement for that fiscal year, or other obligation for the further expenditure of money in excess of such appropriations.
5. **Business Enterprise Development.** Pursuant to Executive Order 12432 it is national policy to award a fair share of contracts to small and minority firms. NPS is strongly committed to the objectives of this policy and encourages all recipients of its Cooperative Agreements to take affirmative steps to ensure such fairness by ensuring procurement procedures are carried out in accordance with the Executive Order.
6. **Assignment.** No part of this Agreement shall be assigned to any other party without prior written approval of the NPS and the Assignee.
7. **Member of Congress.** Pursuant to 41 U.S.C. § 22, no Member of Congress shall be admitted to any share or part of any contract or agreement made, entered into, or adopted by or on behalf of the United States, or to any benefit to arise thereupon.
8. **Agency.** The Recipient is not an agent or representative of the United States, the Department of the Interior, NPS, or the Park, nor will the Recipient represent its self as such to third parties. NPS employees are not agents of the Recipient and will not act on behalf of the Recipient.
9. **Non-Exclusive Agreement.** This Agreement in no way restricts the Recipient or NPS from entering into similar agreements, or participating in similar activities or arrangements, with other public or private agencies, organizations, or individuals.
10. **Survival.** Any and all provisions which, by themselves or their nature, are reasonably expected to be performed after the expiration or termination of this Agreement shall survive and be enforceable after the expiration or termination of this Agreement. Any and all liabilities, actual or contingent, which have arisen during the term of and in connection with this Agreement shall survive expiration or termination of this Agreement.
11. **Partial Invalidity.** If any provision of this Agreement or the application thereof to any party or circumstance shall, to any extent, be held invalid or unenforceable, the remainder of this Agreement or the application of such provision to the parties or circumstances other than those to which it is held invalid or unenforceable, shall not be affected thereby and each provision of this Agreement shall be valid and be enforced to the fullest extent permitted by law.

12. **Captions and Headings.** The captions, headings, article numbers and paragraph numbers appearing in this Agreement are inserted only as a matter of convenience and in no way shall be construed as defining or limiting the scope or intent of the provision of this Agreement nor in any way affecting this Agreement.
13. **No Employment Relationship.** This Agreement is not intended to and shall not be construed to create an employment relationship between NPS and Recipient or its representatives. No representative of Recipient shall perform any function or make any decision properly reserved by law or policy to the Federal government.
14. **No Third-Party Rights.** This Agreement creates enforceable obligations between only NPS and Recipient. Except as expressly provided herein, it is not intended nor shall it be construed to create any right of enforcement by or any duties or obligation in favor of persons or entities not a party to this Agreement.
15. **Foreign Travel.** The Recipient shall comply with the provisions of the Fly America Act (49 U.S.C. 40118). The implementing regulations of the Fly America Act are found at 41 CFR 301-10.131 through 301-10.143.

**B) Special Provisions**

**1) Public Information and Endorsements**

- a) Recipient shall not publicize or otherwise circulate promotional material (such as advertisements, sales brochures, press releases, speeches, still and motion pictures, articles, manuscripts or other publications) which states or implies governmental, Departmental, bureau, or government employee endorsement of a business, product, service, or position which the Recipient represents. No release of information relating to this award may state or imply that the Government approves of the Recipient's work products, or considers the Recipient's work product to be superior to other products or services.
  - b) All information submitted for publication or other public releases of information regarding this project shall carry the following disclaimer.
  - c) The views and conclusions contained in this document are those of the authors and should not be interpreted as representing the opinions or policies of the U.S. Government. Mention of trade names or commercial products does not constitute their endorsement by the U.S. Government.
  - d) Recipient must obtain prior Government approval for any public information releases concerning this award which refer to the Department of the Interior or any bureau or employee (by name or title). The specific text, layout photographs, etc. of the proposed release must be submitted with the request for approval.
  - e) Recipient further agrees to include this provision in a subaward to a subrecipient, except for a subaward to a State government, a local government, or to a federally recognized Indian tribal government.
- 2) Publications of Results of Studies.** No party will unilaterally publish a joint publication without consulting the other party. This restriction does not apply to popular publications of previously published technical matter. Publications pursuant to this Agreement may be produced independently or in collaboration with others; however, in all cases proper credit will be given to the efforts of those parties contribution to the publication. In the event no agreement is reached concerning the manner of publication or interpretation of results, either party may publish data after due notice and submission of the proposed manuscripts to the other. In such instances, the party publishing the data will give due credit to the cooperation but assume full responsibility for any statements on which there is a difference of opinion.
- 3) Rights in Data.** The Recipient must grant the United States of America a royalty-free, non-exclusive and irrevocable license to publish, reproduce and use, and dispose of in any manner and for any purpose without limitation, and to authorize or ratify publication, reproduction or use by others, of all copyrightable material first produced or composed under this Agreement by the Recipient, its employees or any individual or concern specifically employed or assigned to originate and prepare such material.

- 4) **Retention and Access Requirements for Records.** All Recipient financial and programmatic records, supporting documents, statistical records, and other grants-related records shall be maintained and available for access in accordance with 2 CFR Part 200.333–200.337. With respect to 2 CFR 200.333(c), “final disposition” as it relates to real property acquired or developed with LWCF funds is considered to mean once the property is approved for conversion (i.e., as long as there is an LWCF interest in a property the records for it must be maintained).
- 5) **Audit Requirements**
  - a) Non-Federal entities that expend \$750,000 or more during a year in Federal awards shall have a single or program-specific audit conducted for that year in accordance with the Single Audit Act Amendments of 1996 (31 U.S.C. 7501–7507) and 2 CFR Part 200, Subpart F, which is available at <http://www.ecfr.gov/cgi-bin/text-idx?SID=fd6463a517ceea3fa13e665e525051f4&node=sp2.1.200.f&rqn=div6>
  - b) Non-Federal entities that expend less than \$750,000 for a fiscal year in Federal awards are exempt from Federal audit requirements for that year, but records must be available for review or audit by appropriate officials of the Federal agency, pass-through entity, and General Accounting Office (GAO).
  - c) Audits shall be made by an independent auditor in accordance with generally accepted government auditing standards covering financial audits. Additional audit requirements applicable to this agreement are found at 2 CFR Part 200, Subpart F, as applicable. Additional information on single audits is available from the Federal Audit Clearinghouse at <http://harvester.census.gov/sac/>.
- 6) **Procurement Procedures.** It is a national policy to place a fair share of purchases with minority business firms. The Department of the Interior is strongly committed to the objectives of this policy and encourages all recipients of its grants and cooperative agreements to take affirmative steps to ensure such fairness. Positive efforts shall be made by recipients to utilize small businesses, minority-owned firms, and women's business enterprises, whenever possible. Recipients of Federal awards shall take all of the following steps to further this goal:
  - a) Ensure that small businesses, minority-owned firms, and women's business enterprises are used to the fullest extent practicable.
  - b) Make information on forthcoming opportunities available and arrange time frames for purchases and contracts to encourage and facilitate participation by small businesses, minority-owned firms, and women's business enterprises.
  - c) Consider in the contract process whether firms competing for larger contracts intend to subcontract with small businesses, minority-owned firms, and women's business enterprises.
  - d) Encourage contracting with consortiums of small businesses, minority-owned firms and women's business enterprises when a contract is too large for one of these firms to handle individually.
  - e) Use the services and assistance, as appropriate, of such organizations as the Small Business Development Agency in the solicitation and utilization of small business, minority-owned firms and women's business enterprises.
- 7) **Prohibition on Text Messaging and Using Electronic Equipment Supplied by the Government while Driving.** Executive Order 13513, Federal Leadership On Reducing Text Messaging While Driving, was signed by President Barack Obama on October 1, 2009. This Executive Order introduces a Federal Government-wide prohibition on the use of text messaging while driving on official business or while using Government-supplied equipment. Additional guidance enforcing the ban will be issued at a later date. In the meantime, please adopt and enforce policies that immediately ban text messaging while driving company-owned or -rented vehicles, government-owned or leased vehicles, or while driving privately owned vehicles when on official government business or when performing any work for or on behalf of the government.
- 8) **Seat Belt Provision.** The Recipient is encouraged to adopt and enforce on-the-job seat belt use policies and programs for their employees when operating company-owned, rented, or personally

owned vehicles. These measures include, but are not limited to, conducting education, awareness, and other appropriate programs for their employees about the importance of wearing seat belts and the consequences of not wearing them.

- 9) **Trafficking in Persons.** This term of award is pursuant to paragraph (g) of Section 106 of the Trafficking Victims Protections Act of 2000, as amended (2 CFR §175.15).
- a) Provisions applicable to a recipient that is a private entity.
1. You as the Recipient, your employees, subrecipients under this award, and subrecipients' employees may not–
    - i. Engage in severe forms of trafficking in persons during the period of time that the award is in effect;
    - ii. Procure a commercial sex act during the period of time that the award is in effect; or
    - iii. Use forced labor in the performance of the award or subawards under the award.
  2. We as the Federal awarding agency may unilaterally terminate this award, without penalty, if you or a subrecipient that is a private entity–
    - i. Is determined to have violated a prohibition in paragraph a.1 of this award term; or
    - ii. Has an employee who is determined by the agency official authorized to terminate the award to have violated a prohibition in paragraph a.1 of this award term through conduct that is either:
      - a. Associated with performance under this award: or
      - b. Imputed to you or the subrecipient using the standards and due process for imputing the conduct of an individual to an organization that are provided in 2 CFR part 180, "OMB Guidelines to Agencies on Governmentwide Debarment and Suspension (NonProcurement)," as implemented by our agency at 2 CFR part 1400.
- b) Provision applicable to a recipient other than a private entity. We as the Federal awarding agency may unilaterally terminate this award, without penalty, if a subrecipient that is a private entity–
1. Is determined to have violated an applicable prohibition in paragraph a.1 of this award term; or
  2. Has an employee who is determined by the agency official authorized to terminate the award to have violated an applicable prohibition in paragraph a.1 of this award term through conduct that is either:
    - i. Associated with performance under this award; or
    - ii. Imputed to the subrecipient using the standards and due process for imputing the conduct of an individual to an organization that are provided in 2 CFR part 180, "OMB Guidelines to Agencies on Governmentwide Debarment and Suspension (NonProcurement)," as implemented by our agency at 2 CFR part 1400.
- c) Provisions applicable to any recipient.
1. You must inform us immediately of any information you receive from any source alleging a violation of a prohibition in paragraph a.1 of this award term.
  2. Our right to terminate unilaterally that is described in paragraph a.2 or b of this section:
    - i. Implements section 106(g) of the Trafficking Victims Protection Act of 2000 (TVPA), as amended (22 U.S.C. 7104(g)), and

- ii. Is in addition to all other remedies for noncompliance that are available to us under this award.
    3. You must include the requirements of paragraph a.1 of this award term in any subaward you make to a private entity.
  - d) Definitions. For purposes of this award term:
    1. "Employee" means either:
      - i. An individual employed by you or a subrecipient who is engaged in the performance of the project or program under this awards; or
      - ii. Another person engaged in the performance of the project or program under this award and not compensated by you including, but not limited to, a volunteer or individual whose services are contributed by a third party as an in-kind contribution toward cost sharing or matching requirements.
    2. "Forced labor" means labor obtained by any of the following methods: The recruitment, harboring, transportation, provision, or obtaining of a person for labor or services, through the use of force, fraud, or coercion for the purpose of subjection to involuntary servitude, peonage, debt bondage, or slavery.
    3. "Private entity" means:
      - i. Any entity other than a State, local government, Indian tribe, or foreign public entity, as those terms are defined in 2 CFR 175.25; and
      - ii. Includes:
        - a. A nonprofit organization, including any nonprofit institution of higher education, hospital, or tribal organization other than one included in the definition of Indian tribe at 2 CFR 175.25(b).
        - b. A for-profit organization.
    4. "Severe forms of trafficking in persons," "commercial sex act," and "coercion" have the meanings given at section 103 of the TVPA, as amended (22 U.S.C. 7102).
- 10) Recipient Employee Whistleblower Rights and Requirement to Inform Employees of Whistleblower Rights**
- a. This award and employees working on this financial assistance agreement will be subject to the whistleblower rights and remedies in the pilot program on Award Recipient employee whistleblower protections established at 41 U.S.C. 4712 by section 828 of the National Defense Authorization Act for Fiscal Year 2013 (Pub. L. 112-239).
  - b. The Award Recipient shall inform its employees in writing, in the predominant language of the workforce, of employee whistleblower rights and protections under 41 U.S.C. 4712.
  - c. The Award Recipient shall insert the substance of this clause, including this paragraph (c), in all subawards or subcontracts over the simplified acquisition threshold, 42 CFR § 52.203-17 (as referenced in 42 CFR § 3.908-9).
- 11) Reporting Subawards And Executive Compensation**
- a) Reporting of first-tier subawards.
    1. Applicability. Unless you are exempt as provided in paragraph D. of this award term, you must report each action that obligates \$25,000 or more in Federal funds that does not include Recovery Act funds (as defined in section 1512(a)(2) of the American Recovery and

Reinvestment Act of 2009, Pub. L. 111-5) for a subaward to an entity (see definitions in paragraph E. of this award term).

2. Where and when to report.
    - i. You must report each obligating action described in paragraph A.1. of this award term to <http://www.fsrs.gov>.
    - ii. For subaward information, report no later than the end of the month following the month in which the obligation was made. (For example, if the obligation was made on November 7, 2010, the obligation must be reported by no later than December 31, 2010.)
  3. What to report. You must report the information about each obligating action that the submission instructions posted at <http://www.fsrs.gov> specify.
- b) Reporting Total Compensation of Recipient Executives.
1. Applicability and what to report. You must report total compensation for each of your five most highly compensated executives for the preceding completed fiscal year, if—
    - i. The total Federal funding authorized to date under this award is \$25,000 or more;
    - ii. In the preceding fiscal year, you received—
      - a. 80 percent or more of your annual gross revenues from Federal procurement contracts (and subcontracts) and Federal financial assistance subject to the Transparency Act, as defined at 2 CFR 170.320 (and subawards); and
      - b. \$25,000,000 or more in annual gross revenues from Federal procurement contracts (and subcontracts) and Federal financial assistance subject to the Transparency Act, as defined at 2 CFR 170.320 (and subawards); and
    - iii. The public does not have access to information about the compensation of the executives through periodic reports filed under section 13(a) or 15(d) of the Securities Exchange Act of 1934 (15 U.S.C. 78m(a), 78o(d)) or section 6104 of the Internal Revenue Code of 1986. (To determine if the public has access to the compensation information, see the U.S. Security and Exchange Commission total compensation filings at <http://www.sec.gov/answers/excomp.htm>.)
  2. Where and when to report. You must report executive total compensation described in paragraph A.1. of this award term:
    - i. As part of your registration profile at <https://www.sam.gov>.
    - ii. By the end of the month following the month in which this award is made, and annually thereafter.
- c) Reporting of Total Compensation of Subrecipient Executives.
1. Applicability and what to report. Unless you are exempt as provided in paragraph D. of this award term, for each first-tier subrecipient under this award, you shall report the names and total compensation of each of the subrecipient's five most highly compensated executives for the subrecipient's preceding completed fiscal year, if—
    - i. In the subrecipient's preceding fiscal year, the subrecipient received—
      - a. 80 percent or more of its annual gross revenues from Federal procurement contracts (and subcontracts) and Federal financial assistance subject to the Transparency Act, as defined at 2 CFR 170.320 (and subawards); and

- b. \$25,000,000 or more in annual gross revenues from Federal procurement contracts (and subcontracts), and Federal financial assistance subject to the Transparency Act (and subawards); and
  - ii. The public does not have access to information about the compensation of the executives through periodic reports filed under section 13(a) or 15(d) of the Securities Exchange Act of 1934 (15 U.S.C. 78m(a), 78o(d)) or section 6104 of the Internal Revenue Code of 1986. (To determine if the public has access to the compensation information, see the U.S. Security and Exchange Commission total compensation filings at <http://www.sec.gov/answers/execomp.htm>.)
2. Where and when to report. You must report subrecipient executive total compensation described in paragraph c.1. of this award term:
- i. To the recipient.
  - ii. By the end of the month following the month during which you make the subaward. For example, if a subaward is obligated on any date during the month of October of a given year (i.e., between October 1 and 31), you must report any required compensation information of the subrecipient by November 30 of that year.
- d) Exemptions.
1. If, in the previous tax year, you had gross income, from all sources, under \$300,000, you are exempt from the requirements to report:
    - i. Subawards, and
    - ii. The total compensation of the five most highly compensated executives of any subrecipient.
- e) Definitions. For purposes of this award term:
1. Entity means all of the following, as defined in 2 CFR part 25:
    - i. A Governmental organization, which is a State, local government, or Indian tribe;
    - ii. A foreign public entity;
    - iii. A domestic or foreign nonprofit organization;
    - iv. A domestic or foreign for-profit organization;
    - v. A Federal agency, but only as a subrecipient under an award or subaward to a non-Federal entity.
  2. Executive means officers, managing partners, or any other employees in management positions.
  3. Subaward:
    - i. This term means a legal instrument to provide support for the performance of any portion of the substantive project or program for which you received this award and that you as the recipient award to an eligible subrecipient.
    - ii. The term includes your procurement of property and services needed to carry out the project or program. The term does not include procurement of incidental property and services needed to carry out the award project or program.
    - iii. A subaward may be provided through any legal agreement, including an agreement that you or a subrecipient considers a contract.

4. Subrecipient means an entity that:
  - i. Receives a subaward from you (the recipient) under this award; and
  - ii. Is accountable to you for the use of the Federal funds provided by the subaward.
5. Total compensation means the cash and noncash dollar value earned by the executive during the recipient's or subrecipient's preceding fiscal year and includes the following (for more information see 17 CFR 229.402(c)(2)):
  - i. Salary and bonus.
  - ii. Awards of stock, stock options, and stock appreciation rights. Use the dollar amount recognized for financial statement reporting purposes with respect to the fiscal year in accordance with the Statement of Financial Accounting Standards No. 123 (Revised 2004) (FAS 123R), Shared Based Payments.
  - iii. Earnings for services under non-equity incentive plans. This does not include group life, health, hospitalization or medical reimbursement plans that do not discriminate in favor of executives, and are available generally to all salaried employees.
  - iv. Change in pension value. This is the change in present value of defined benefit and actuarial pension plans.
  - v. Above-market earnings on deferred compensation which is not tax-qualified.
  - vi. Other compensation, if the aggregate value of all such other compensation (e.g. severance, termination payments, value of life insurance paid on behalf of the employee, perquisites or property) for the executive exceeds \$10,000.

12) **Conflict of Interest**

- a) The Recipient must establish safeguards to prohibit its employees and Sub-recipients from using their positions for purposes that constitute or present the appearance of a personal or organizational conflict of interest. The Recipient is responsible for notifying the Awarding Officer in writing of any actual or potential conflicts of interest that may arise during the life of this award. Conflicts of interest include any relationship or matter which might place the Recipient or its employees in a position of conflict, real or apparent, between their responsibilities under the agreement and any other outside interests. Conflicts of interest may also include, but are not limited to, direct or indirect financial interests, close personal relationships, positions of trust in outside organizations, consideration of future employment arrangements with a different organization, or decision-making affecting the award that would cause a reasonable person with knowledge of the relevant facts to question the impartiality of the Recipient and/or Recipient's employees and Sub-recipients in the matter.
- b) The Awarding Officer and the servicing Ethics Counselor will determine if a conflict of interest exists. If a conflict of interest exists, the Awarding Officer will determine whether a mitigation plan is feasible. Mitigation plans must be approved by the Awarding Officer in writing.
- c) Failure to resolve conflicts of interest in a manner that satisfies the government may be cause for termination of the award. Failure to make required disclosures may result in any of the remedies described in 2 CFR § 200.338, Remedies/or Noncompliance, including suspension or debarment (see also 2 CFR Part 180).

**ARTICLE XVI – LWCF PROVISIONS**

**Part I – Definitions**

- A. The term "NPS" or "Service" as used herein means the National Park Service, United States Department of the Interior.



- B. The term "Director" as used herein means the Director of the National Park Service, or any representative lawfully delegated the authority to act for such Director.
- C. The term "Manual" as used herein means the Land and Water Conservation Fund State Assistance Program Manual.
- D. The term "project" as used herein means a Land and Water Conservation Fund grant, which is subject to the project agreement and/or its subsequent amendments.
- E. The term "State" as used herein means the State or Territory that is a party to the project agreement, and, where applicable, the political subdivision or public agency to which funds are to be transferred pursuant to this agreement. Wherever a term, condition, obligation, or requirement refers to the State, such term, condition, obligation, or requirement shall also apply to the recipient political subdivision or public agency, except where it is clear from the nature of the term, condition, obligation, or requirement that it is to apply solely to the State. For purposes of these provisions, the terms "State," "grantee," and "recipient" are deemed synonymous.
- F. The term "Secretary" as used herein means the Secretary of the Interior, or any representative lawfully delegated the authority to act for such Secretary.

## Part II - Continuing Assurances

The parties to the project agreement specifically recognize that the Land and Water Conservation Fund project creates an obligation to maintain the property described in the project agreement and supporting application documentation consistent with the Land and Water Conservation Fund Act and the following requirements.

Further, it is the acknowledged intent of the parties hereto that recipients of assistance will use monies granted hereunder for the purposes of this program, and that assistance granted from the Fund will result in a net increase, commensurate at least with the Federal cost-share, in a participant's outdoor recreation.

It is intended by both parties hereto that assistance from the Fund will be added to, rather than replace or be substituted for, State and local outdoor recreation funds.

- A. The State agrees, as recipient of this assistance, that it will meet the general, special, and LWCF provisions outlined in this award agreement and that it will further impose these provisions, and the terms of the project agreement, upon any political subdivision or public agency to which funds are transferred pursuant to the project agreement. The State also agrees that it shall be responsible for compliance with the terms of the project agreement by such a political subdivision or public agency and that failure by such political subdivision or public agency to so comply shall be deemed a failure by the State to comply with the terms of this agreement.
- B. The State agrees that the property described in the project agreement and the signed and dated project boundary map made part of that agreement is being acquired or developed with Land and Water Conservation Fund assistance, or is integral to such acquisition or development, and that, without the approval of the Secretary, it shall not be converted to other than public outdoor recreation use but shall be maintained in public outdoor recreation in perpetuity or for the term of the lease in the case of leased property. The Secretary shall approve such conversion only if it is found to be in accord with the then existing comprehensive statewide outdoor recreation plan and only upon such conditions deemed necessary to assure the substitution of other recreation properties of at least equal fair market value and of reasonably equivalent usefulness and location pursuant to Title 36 Part 59.3 of the *Code of Federal Regulations*. This replacement land then becomes subject to LWCF protection. The approval of a conversion shall be at the sole discretion of the Secretary, or his/her designee.

Prior to the completion of this project, the State and the Director may mutually alter the area described and shown in the project agreement and the signed and dated project boundary map to provide the most satisfactory public outdoor recreation unit, except that acquired parcels are afforded LWCF protection as Fund reimbursement is provided.

In the event the NPS provides Land and Water Conservation Fund assistance for the acquisition and/or development of property with full knowledge that the project is subject to reversionary rights and outstanding interests, conversion of said property to other than public outdoor recreation uses as a result of such right or interest being exercised will occur. In receipt of this approval, the State agrees to notify the Service of the potential conversion as soon as possible and to seek approval of replacement property in accord with the

conditions set forth in these provisions and program regulations. The provisions of this paragraph are also applicable to: leased properties acquired and/or developed with Fund assistance where such lease is terminated prior to its full term due to the existence of provisions in such lease known and agreed to by the Service; and properties subject to other outstanding rights and interests that may result in a conversion when known and agreed to by the Service.

- C. The State agrees that the benefit to be derived by the United States from the full compliance by the State with the terms of this agreement is the preservation, protection, and the net increase in the quality of public outdoor recreation facilities and resources which are available to the people of the State and of the United States, and such benefit exceeds to an immeasurable and unascertainable extent the amount of money furnished by the United States by way of assistance under the terms of this agreement. The State agrees that payment by the State to the United States of an amount equal to the amount of assistance extended under this agreement by the United States would be inadequate compensation to the United States for any breach by the State of this agreement.

The State further agrees, therefore, that the appropriate remedy in the event of a breach by the State of this agreement shall be the specific performance of this agreement or the submission and approval of a conversion-of-use request as described in Part II.B above.

- D. The State agrees to comply with the policies and procedures set forth in the Manual. Provisions of said Manual are incorporated into and made a part of the project agreement.
- E. The State agrees that the property and facilities described in the project agreement shall be operated and maintained as prescribed by Manual requirements and published post-completion compliance regulations (Title 36 Part 59 of the *Code of Federal Regulations*).
- F. The State agrees that a notice of the grant agreement shall be recorded in the public property records (e.g., registry of deeds or similar) of the jurisdiction in which the property is located, to the effect that the property described and shown in the scope of the project agreement and the signed and dated project boundary map made part of that agreement, has been acquired or developed with Land and Water Conservation Fund assistance and that it cannot be converted to other than public outdoor recreation use without the written approval of the Secretary of the Interior.
- G. Nondiscrimination
1. By signing the LWCF agreement, the State certifies that it will comply with all Federal laws relating to nondiscrimination as outlined in the Civil Rights Assurance appearing at Article XV.A.2.
  2. The State shall not discriminate against any person on the basis of residence, except to the extent that reasonable differences in admission or other fees may be maintained on the basis of residence as set forth in the Manual.

### Part III - Project Assurances

#### A. Project Application

1. The Application for Federal Assistance bearing the same project number as the agreement and associated documents is by this reference made a part of the agreement.
2. The State possesses legal authority to apply for the grant, and to finance and construct the proposed facilities. A resolution, motion, or similar action has been duly adopted or passed authorizing the filing of the application, including all understandings and assurances contained herein, and directing and authorizing the person identified as the official representative of the State to act in connection with the application and to provide such additional information as may be required.
3. The State has the capability to finance the non-Federal share of the costs for the project. Sufficient funds will be available to assure effective operation and maintenance of the facilities acquired or developed by the project.

#### B. Project Execution

1. The State shall transfer to the project sponsor identified in the Application for Federal Assistance or the

Description and Notification Form all funds granted hereunder except those reimbursed to the State to cover eligible expenses derived from a current approved negotiated indirect cost rate agreement.

2. The State will cause work on the project to start within a reasonable time after receipt of notification that funds have been approved and assure that the project will be implemented to completion with reasonable diligence.
3. The State will require the facility to be designed to comply with the Architectural Barriers Act of 1968 (Public Law 90-480) and DOI Section 504 Regulations (43 CFR Part 17). The State will be responsible for conducting inspections to insure compliance with these specifications by the contractor.
4. The State shall secure completion of the work in accordance with approved construction plans and specifications, and shall secure compliance with all applicable Federal, State, and local laws and regulations.
5. In the event the project covered by the project agreement, cannot be completed in accordance with the plans and specifications for the project; the State shall bring the project to a point of recreational usefulness agreed upon by the State and the Director or his designee.
6. The State will provide for and maintain competent and adequate architectural/engineering supervision and inspection at the construction site to insure that the completed work conforms with the approved plans and specifications; that it will furnish progress reports and such other information as the NPS may require.
7. The State will comply with the terms of Title II and Title III, the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (P.L. 91-646), 94 Stat. 1894 (1970), and the applicable regulations and procedures implementing such Act for all real property acquisitions and where applicable shall assure that the Act has been complied with for property to be developed with assistance under the project agreement.
8. The State will comply with the provisions of: Executive Order 11988, relating to evaluation of flood hazards; Executive Order 11288, relating to the prevention, control, and abatement or water pollution, and Executive Order 11990 relating to the protection of wetlands.
9. The State will comply with the flood insurance purchase requirements of Section 102(a) of the Flood Disaster Protection Act of 1973, Public Law 93-234, 87 Stat. 975, approved December 31, 1976. Section 102(a) requires the purchase of flood insurance in communities where such insurance is available, as a condition for the receipt of any Federal financial assistance for construction or acquisition purposes, for use in any area that has been identified as an area having special flood hazards by the Flood Insurance Administration of the Federal Emergency Management Agency. The phrase "Federal financial assistance" includes any form of loan, grant, guaranty, insurance payment, rebate, subsidy, disaster assistance loan or grant, or any other form of direct or indirect Federal assistance.
10. The State will assist the NPS in its compliance with Section 106 of the National Historic Preservation Act of 1966, as amended (16 U.S.C. 470), Executive Order 11593, and the Archaeological and Historic Preservation Act of 1966 (16 U.S.C. 469a-1 et seq.) by (a) consulting with the State Historic Preservation Officer on the conduct of investigations, as necessary, to identify properties listed in or eligible for inclusion in the National Register of Historic Places that are subject to effects (see CFR Part 800.8) by the activity, and notifying the Federal grantor agency of the existence of any such properties, and by (b) complying with all requirements established by the Federal grantor agency to avoid or mitigate adverse effects upon such properties.

#### C. Project Termination

1. The Director may temporarily suspend Federal assistance under the project pending corrective action by the State or pending a decision to terminate the grant by the Service.
2. The State may unilaterally terminate the project at any time prior to the first payment on the project. After the initial payment, the project may be terminated, modified, or amended by the State only by mutual agreement.
3. The Director may terminate the project in whole, or in part, at any time before the date of completion, whenever it is determined that the grantee has failed to comply with the conditions of the grant. The Director

will promptly notify the State in writing of the determination and the reasons for the termination, together with the effective date. Payments made to States or recoveries by the Service under projects terminated for cause shall be in accord with the legal rights and liabilities of the parties.

4. The Director or State may terminate grants in whole, or in part at any time before the date of completion, when both parties agree that the continuation of the project would not produce beneficial results commensurate with the further expenditure of funds. The two parties shall agree upon the termination conditions, including the effective date and, in the case of partial termination, the portion to be terminated. The grantee shall not incur new obligations for the terminated portion after the effective date, and shall cancel as many outstanding obligations as possible. The NPS may allow full credit to the State for the Federal share of the non-cancelable obligations, properly incurred by the grantee prior to termination.
5. Termination either for cause or for convenience requires that the project in question be brought to a state of recreational usefulness agreed upon by the State and the Director or that all funds provided by the National Park Service be returned.

#### D. Project Closeout

1. The State will determine that all applicable administrative actions, including financial, and all required work as described in the project agreement has been completed by the end of the project's period of performance.
2. Within 90 calendar days after completing the project or after the end of the period of performance, whichever comes first, the State will submit all required documentation as outlined in the Manual and the Federal Financial Report (SF-425) as outlined in Article XII of this Agreement for approval by the Service prior to requesting final reimbursement.
3. After review, including any adjustments, and approval from the NPS, the State will request through ASAP the final allowable reimbursable costs. Upon completion of an electronic payment, the State will submit a completed "LWCF Record of Electronic Payment" form to the NPS.
4. The NPS retains the right to disallow costs and recover funds on the basis of later audit or other review within the record retention period.

#### ARTICLE XVII – ATTACHMENTS INCORPORATED BY REFERENCE

The following completed documents are made a part of this Agreement:

- |               |   |
|---------------|---|
| Attachment A. | LWCF Federal Financial Assistance Manual, Volume 69 |
| Attachment B. | Project Application and Attachments                 |

## Eligible Scope Activities

<b>Project Sponsor:</b> City of Wenatchee	<b>Project Number:</b> 16-1584
<b>Project Title:</b> Hale Park Phase Two Development	<b>Project Type:</b> Development
<b>Program:</b> Land and Water Conservation	<b>Approval:</b> 6/14/2018

### Project Metrics

#### Sites Improved

Project acres developed:	2.52
Project acres renovated:	0.00

### Development Metrics

## Worksite #1, Hale Park

#### Buildings and Structures

##### Construct / install restroom

Number of restrooms:	1 new, 0 renovated
Select the restroom type :	Restroom

#### General Site Improvements

##### Construct picnic shelter

Number of group picnic shelters:	1 new, 0 renovated
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##### Develop circulation paths or access routes

Enter length of circulation paths and routes by surface type:	
Asphalt	1052
Lighting provided (yes/no):	No

##### Landscaping improvements

Acres of landscaped area :	2.52
Select the landscape features:	Groundcover, Irrigation, Planters, Trees/shrubs

#### Play Areas

##### Playground development

Number of play areas:	1 new, 0 renovated
Number of climbing walls/rocks:	1 new, 0 renovated
	<i>Climbing net structure</i>
Select the play area surface material type:	Rubber matting/tiles

#### Site Preparation

##### General site preparation

#### Skating Facilities

##### Skatepark development

Number of skate parks:	1 new, 0 renovated
Lighting provided for evening use (yes/no):	No
Select the skate park type:	Combination flat track w/bowls

#### Utilities

##### Install power utilities

Select the power utilities:	General service connection
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##### Install sewage system

Number of dump stations:	0 new, 0 renovated
Select the sewer utilities:	Sewer connection, Sewer line

##### Install water system

Select the water utilities:	Water line
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#### Permits

##### Obtain permits

## Eligible Scope Activities

Architectural & Engineering  
Architectural & Engineering (A&E)

### Milestone Report By Project

**Project Number:** 16-1584 D  
**Project Name:** Hale Park Phase Two Development  
**Sponsor:** Wenatchee City of  
**Project Manager:** Ben Donatelle

X	!	Milestone	Target Date	Comments/Description
X	!	Cultural Resources Complete	08/01/2017	Completed for Phase 1
X		Project Start	06/13/2018	
		Design Initiated	10/30/2018	
	!	Progress Report Due	03/30/2019	
		60% Plans to RCO	05/30/2019	
	!	Annual Project Billing Due	07/30/2019	
		All Bid Docs/Plans to RCO	09/30/2019	
	!	Progress Report Due	09/30/2019	
		Applied for Permits	03/01/2020	
		Bid Awarded/Contractor Hired	03/28/2020	
	!	Progress Report Due	03/31/2020	
	!	Construction Started	04/01/2020	
		50% Construction Complete	05/31/2020	
		RCO Interim Inspection	06/01/2020	
		90% Construction Complete	07/30/2020	
	!	Annual Project Billing Due	07/30/2020	
		RCO Final Inspection	10/01/2020	
	!	Special Conditions Met	10/31/2020	Monitoring required, see special condition #1
		Funding Acknowl Sign Posted	10/31/2020	
		Construction Complete	10/31/2020	
		Final Billing Due	11/16/2020	
		Final Report Due	11/30/2020	
	!	Agreement End Date	12/01/2020	

X = Milestone Complete

! = Critical Milestone

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**COUNCIL AGENDA REPORT  
FINANCE DEPARTMENT**

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**TO:** Frank Kuntz, Mayor  
City Council Members

**FROM:** Brad Posenjak, Finance Director

**SUBJECT:** Ordinance 2018-20, amending the 2018 budget Ordinance 2017-27

**DATE:** July 3, 2018

**MEETING DATE:** July 12, 2018

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**I. OVERVIEW**

When the 2018 budget was adopted in 2017, many projects and budget needs were not anticipated. Ordinance 2018-20 amends the 2018 budget to provide the necessary legal authority to complete projects, provide resources, and fund positions already approved by the finance committee.

In recent years, the City Council has adopted a single budget ordinance at the end of the year. Reviewing best practices, we are recommending that the Council adopt budget amendments throughout the year as need arise.

Exhibit A of Ordinance 2018-20 summarizes 33 budget amendments requests that have been reviewed and approved by the Finance Committee.

**II. ACTION REQUESTED**

Staff requests the City Council approve Ordinance 2018-20 amending the 2018 budget as adopted by Ordinance #2017-27, revoking, recalling or decreasing all or a portion of total appropriations provided for, entering findings that this ordinance is in the best interest of the City and requiring that this Ordinance be approved by a majority plus one of the entire Council.

**III. FISCAL IMPACT**

This ordinance ensures several funds of the City do not exceed original budget appropriations, as required by law. This has been reviewed by Finance Committee.

**IV. ATTACHMENTS**

Ordinance 2018-20  
Ordinance 2018-20, Exhibit "A"

**V. ADMINISTRATIVE ROUTING**

Tammy Stanger, City Clerk



## **ORDINANCE NO. 2018-20**

**AN ORDINANCE**, amending the 2018 Budget as adopted by Ordinance No. 2017-27, revoking, recalling or decreasing all or a portion of total appropriations provided for, entering findings that this Ordinance is in the best interest of the City and requiring that this Ordinance be approved by a majority plus one of the entire Council.

**THE CITY COUNCIL OF THE CITY OF WENATCHEE DO ORDAIN** as follows:

### **SECTION I**

Ordinance No. 2017-27 adopting the 2018 Budget, be and the same is hereby amended by decreasing, revoking or recalling all or a portion of total appropriations and re-appropriating for another purpose or purposes, without limitation to department, division or fund, the use of such monies as is set forth on Exhibit "A" attached hereto and incorporated herein by reference.

### **SECTION II**

This Ordinance is adopted pursuant to the authority of RCW 35A.33.120.

### **SECTION III**

The facts and findings for this Ordinance are that the budget, as originally adopted for the year 2018, needs to be amended so as to balance the budget and to appropriate funds to maintain the public peace, safety and welfare.

### **SECTION IV**

This Ordinance is adopted by at least a majority plus one vote of the City Council as required by the authority set forth in Section II hereof.

**PASSED BY THE CITY COUNCIL OF THE CITY OF WENATCHEE** at a  
regular meeting thereof this 12th day of July 2018.

CITY OF WENATCHEE, a Municipal  
Corporation

By: \_\_\_\_\_  
FRANK KUNTZ, Mayor

ATTEST:

By: \_\_\_\_\_  
TAMMY STANGER, City Clerk

APPROVED:

By: \_\_\_\_\_  
STEVE D. SMITH, City Attorney

**CITY OF WENATCHEE, WA**  
**2018 Budget Amendment**  
**Ordinance # 2018-20, Exhibit A**

Fund Title	Fund No.	Beginning Fund Balance	Revenue			Appropriations			Ending Fund Balance
			Initial Budget	Ordinance 2018-20	Total Revenue	Initial Budget	Ordinance 2018-20	Total Approp.	
General	001	5,500,000	24,635,250	17,700	24,652,950	25,434,510	829,000	26,263,510	3,889,440
Rainy Day	005	1,510,000	10,000	-	10,000	-	-	-	1,520,000
Public Arts	101	70,000	15,000	-	15,000	6,500	-	6,500	78,500
PFD .2% Sales Tax	102	-	2,500,000	-	2,500,000	2,500,000	-	2,500,000	-
Paths and Trails	103	11,000	2,800	-	2,800	-	-	-	13,800
Tourism Promotion Area	104	200,000	236,780	-	236,780	300,000	23,250	323,250	113,530
Hotel/Motel Tax - Capital Outlay	105	-	344,250	-	344,250	344,250	-	344,250	-
Convention Center	106	400,000	1,618,990	-	1,618,990	1,461,430	-	1,461,430	557,560
Hotel/Motel - Tourism	107	300,000	688,900	-	688,900	966,820	-	966,820	22,080
Street Maintenance	108	1,300,000	3,958,050	-	3,958,050	2,897,440	-	2,897,440	2,360,610
Arterial Streets	109	1,800,000	6,485,080	-	6,485,080	7,792,720	40,000	7,832,720	452,360
LEOFF 1 Long-Term Care	110	580,000	54,000	-	54,000	55,000	-	55,000	579,000
Street Overlay	111	1,600,000	2,602,000	-	2,602,000	2,157,660	-	2,157,660	2,044,340
Low Income Housing	113	60,000	36,250	-	36,250	43,500	-	43,500	52,750
Community Center	114	105,000	30,500	-	30,500	36,120	-	36,120	99,380
CDBG Entitlement	115	-	250,000	-	250,000	211,190	-	211,190	38,810
LEOFF 1 Retiree Health Insurance	116	685,000	256,600	-	256,600	307,100	-	307,100	634,500
Homeless Housing	117	300,000	1,089,670	-	1,089,670	1,299,540	-	1,299,540	90,130
Abatement	118	65,000	11,100	-	11,100	25,000	25,000	50,000	26,100
Transportation Benefit District	119	1,500,000	502,000	-	502,000	2,000,000	-	2,000,000	2,000
Police Station UTGO Bonds	201	(1,730)	327,830	-	327,830	326,100	-	326,100	-
Councilmanic LTGO Bonds	205	5,000	1,525,180	-	1,525,180	1,525,300	-	1,525,300	4,880
REET Capital Projects	301	400,000	600,000	-	600,000	223,050	-	223,050	776,950
Parks & Rec. Capital Projects	302	600,000	18,460,000	(18,460,000)	-	8,613,400	(8,360,000)	253,400	346,600
Econ. Development Capital Proj.	304	-	-	18,460,000	18,460,000	-	13,460,000	13,460,000	5,000,000
Local Revitalization Financing	307	4,000,000	540,000	-	540,000	3,999,950	-	3,999,950	540,050
Water and Sewer Utility	401	10,000,000	22,543,220	-	22,543,220	22,151,720	-	22,151,720	10,391,500
Storm Drain Utility	410	2,500,000	2,127,600	-	2,127,600	2,733,260	410,780	3,144,040	1,483,560
Regional Water	415	1,800,000	1,446,300	-	1,446,300	855,810	-	855,810	2,390,490
Solid Waste Utility	420	320,000	-	-	-	11,500	6,000	17,500	302,500
Regional Decant Facility	425	130,000	450,000	-	450,000	455,790	-	455,790	124,210
Cemetery	430	100,000	394,900	49,300	444,200	455,990	49,300	505,290	38,910
Equipment Rental O&M	501	370,000	909,600	-	909,600	1,064,790	-	1,064,790	214,810
Self Insurance	502	1,315,000	1,150,000	-	1,150,000	1,065,000	-	1,065,000	1,400,000
Equipment Rental Replacement	503	2,500,000	999,100	-	999,100	657,690	-	657,690	2,841,410
Facilities Maintenance	504	100,000	510,700	2,051,000	2,561,700	501,010	1,167,000	1,668,010	993,690
Information Systems	505	380,000	1,197,310	-	1,197,310	1,213,170	-	1,213,170	364,140
Cemetery Endowment	610	1,100,000	28,300	-	28,300	-	-	-	1,128,300
Firemen's Pension	611	1,700,000	44,000	-	44,000	165,500	-	165,500	1,578,500
		43,304,270	98,581,260	2,118,000	100,699,260	93,857,810	7,650,330	101,508,140	42,495,390

**COUNCIL AGENDA REPORT  
 PUBLIC WORKS DEPARTMENT**

**TO:** Frank Kuntz, Mayor  
 City Council

**FROM:** Rob Jammerman, Public Works Director

**SUBJECT:** Comprehensive Water Systems Plan Update - Project No. 1701

**DATE:** July 3, 2018

**MEETING DATE:** July 12, 2018

**I. OVERVIEW**

The project consists of two volumes of work: City Service Area and Regional Facilities. The long term Capital Improvements Plan (CIP) is currently being updated to reflect existing system deficiencies and provide the basis for ongoing operations and system improvements for the next ten years. The utility rate structures are being analyzed to provide recommendations for revisions to account for the costs associated with implementation of CIP projects while allowing for ongoing system maintenance and emergency repairs. The updated plan will provide a discussion of the financial viability of the water utility and summarize past revenues and expenditures. In addition to the updated plan, an updated hydraulic water model will be provided.

**II. ACTION REQUESTED**

Staff recommends the City Council authorize the Mayor to execute supplement #1 with RH2 Engineering, Inc. for design services for the Comprehensive Water Systems Plan Update (Project No. 1701) providing additional design.

**III. FISCAL IMPACT Submitted to the Finance Committee  Yes  No**

This project is identified in the current CIP budget and will be funded by Funds 401 - Water/Sewer and 415 - Regional Water.

**Project Budget Amendment**

Task	Budget	Supplement	Total
City Water	\$100,000.00	\$17,556	\$117,556
Regional Water	\$75,000.00	(\$4,392)	\$70,608
<b>Totals</b>	<b>\$175,000.00</b>	<b>\$13,164</b>	<b>\$188,164</b>

**IV. PROPOSED PROJECT SCHEDULE**

Design duration is anticipated to be executed by December 2018.

**VI. ADMINISTRATIVE ROUTING**

Tammy Stanger, City Clerk  
 Rob Jammerman, Public Works Director  
 Gary Owen, City Engineer  
 Brad Posenjak, Finance Director

**Contract Amendment No. 1**  
**City of Wenatchee Contract 1701**  
**2018 Comprehensive Water System Plan, Volume 1 – City System**

*RH2 Project No. WEN 217.020*

In accordance with our Professional Services Agreement for the 2018 Comprehensive Water System Plan, Volume 1 – City System, dated February 7, 2017, this is an authorization to revise the project Scope of Work as described below. The work will be performed and invoiced using the terms and conditions listed in the original agreement, plus previous amendments and/or agreements.

**Add the following items to the Scope of Work:**

Reference attached **Exhibit A**.

The engineering fee authorization will increase by \$12,656 for a total authorization amount of **\$117,556**.

Please sign this authorization in the space provided below and mail or fax to RH2 Engineering, Inc., 300 Simon Street SE, Suite 5, East Wenatchee, WA 98802. FAX (509) 886-2313.

RH2 Engineering, Inc.

City of Wenatchee



\_\_\_\_\_  
Signature

\_\_\_\_\_  
Signature

Paul R. Cross – Executive Vice President

\_\_\_\_\_  
Print Name/Title

\_\_\_\_\_  
Print Name/Title

May 16, 2018

\_\_\_\_\_  
Date

\_\_\_\_\_  
Date

# **EXHIBIT A – Amendment No. 1**

## **City of Wenatchee Contract 1701**

### **2018 Comprehensive Water System Plan Update Volume 1 – City System**

**May 2018**

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RH2 Engineering, Inc., (RH2) has been retained by the City of Wenatchee (City) to update the Comprehensive Water System Plan (WSP) for the City’s domestic water system. RH2 relies on the accuracy of data provided to efficiently perform the work per the contract. During preparation of the plan, data errors and past incorrect practices were identified that need to be resolved. These items are listed below with their associated contract task item.

#### **Task 3 – Land Use and Population**

Population estimates and projections are required to characterize current customer water use and to forecast future water use. During preparation of the WSP update, it was discovered that the prior WSP used assumptions for number of persons per household that were not accurate. Additional time was spent to develop new population values and review values with City Engineering and Planning Departments.

- Six (6) hours of additional effort. Requested supplement of \$1,211.

#### **Task 4 – Water Demands**

Historical water supply and consumption (meter) records are used to determine customer water use patterns, size future infrastructure, set utility rates, and estimate system leakage. During preparation of the WSP update, significant errors were found in the historical data. Additional time was required to locate the errors, determine the cause, and develop methods to correct the problems.

- Twenty-five and three quarters (25.75) hours of effort. Requested supplement of \$4,804.

#### **Task 5 – Water System Analysis**

Analyzing the performance of the water system requires accurate mapping. The City has four (4) separate mapping systems (AutoCAD, GIS, “water cards,” and RH2 maintained hydraulic model). While updating the hydraulic model with recent water system improvement projects, many discrepancies between the various mapping systems were noted. Time was spent to determine the discrepancies, meet with the City to review, and update the hydraulic model accordingly.

- Thirty (30) hours of effort. Requested supplement of \$5,405.

#### **Task 12 – Water Use Efficiency Program**

During development of this WSP update, it was discovered that between 2005 and 2010, City customer water consumption dropped by 30-percent. This reduction in use was not discussed in the 2012 WSP. Such a large reduction in consumption must be addressed and included in the discussion and planning for the Water Use Efficiency (WUE) program. Time was spent to determine the accuracy of the information, develop rationale for the reduction, and incorporate updates into the City’s WUE program.

- Six (6) hours of effort. Requested supplement of \$1,236.

**Total Supplement Request of \$12,656.**

# Labor Detail

Tuesday, May 1, 2018  
3:06:32 PM

RH2 Engineering, Inc.

Job-to-Date through 4/30/2018

Show Unposted		Date	Regular Hours	Overtime Hours	Total Hours
<b>Project Manager Name: Peterson, Ryan</b>					
<b>Project Number: 0217020.01 2018 CWSP Update, Volume 1 - City System</b>					
<b>Phase Number: 0001 Water System Plan</b>					
<b>Task Number: 0103 Land Use and Population</b>					
53	Peterson, Ryan	8/7/2017	2.00		2.00
	Write/edit chapter.				
53	Peterson, Ryan	8/8/2017	1.00		1.00
	Work on chapter text.				
53	Peterson, Ryan	8/24/2017	.50		.50
	Write chapter text.				
53	Peterson, Ryan	8/30/2017	4.00		4.00
	Work on population estimates and projections.				
53	Peterson, Ryan	8/31/2017	4.00		4.00
	Population forecasts.				
53	Peterson, Ryan	9/5/2017	.75		.75
	Land use and population summaries.				
53	Peterson, Ryan	9/6/2017	1.25		1.25
	Land use and population summaries.				
53	Peterson, Ryan	9/7/2017		1.50	1.50
	Review land use GIS provided by City. Create breakdown and tabulations.				
53	Peterson, Ryan	9/8/2017	1.75		1.75
	Service area population estimates. Write chapter.				
53	Peterson, Ryan	10/4/2017	1.50		1.50
	Work on population data.				
53	Peterson, Ryan	10/10/2017		2.00	2.00
	Write land use and population chapter.				
53	Peterson, Ryan	10/25/2017	1.25		1.25
	Submit population methodology to City for review.				
53	Peterson, Ryan	12/20/2017	.50		.50
	Update chapter text for growth estimates.				
53	Peterson, Ryan	12/28/2017	1.00		1.00
	Prepare land use figure.				
53	Peterson, Ryan	1/4/2018	2.00		2.00
	Revise chapter based on City review meeting.				
53	Peterson, Ryan	1/18/2018	1.50		1.50
	Revision to chapter per revised population estimates.				
<b>Total for 0103</b>			<b>23.00</b>	<b>3.50</b>	<b>26.50</b>
<b>Total for 0001</b>			<b>23.00</b>	<b>3.50</b>	<b>26.50</b>
<b>Total for 0217020.01</b>			<b>23.00</b>	<b>3.50</b>	<b>26.50</b>
<b>Total for Peterson, Ryan</b>			<b>23.00</b>	<b>3.50</b>	<b>26.50</b>

**3.5 hrs x \$206 = \$721**

# Labor Detail

Tuesday, May 1, 2018  
2:30:20 PM

RH2 Engineering, Inc.

Job-to-Date through 4/30/2018

Show Unposted		Date	Regular Hours	Overtime Hours	Total Hours
<b>Project Manager Name: Peterson, Ryan</b>					
<b>Project Number: 0217020.01 2018 CWSP Update, Volume 1 - City System</b>					
<b>Phase Number: 0001 Water System Plan</b>					
<b>Task Number: 0104 Water Demands</b>					
291	Anderson, Clayton	7/3/2017	.25		.25
	Data Collection				
291	Anderson, Clayton	10/26/2017		.75	.75
	Data Collection				
291	Anderson, Clayton	11/2/2017	.50		.50
	Data Collection from SCADA				
53	Peterson, Ryan	6/28/2017	1.00		1.00
	Review customer water use data provided by City.				
53	Peterson, Ryan	7/12/2017	.25		.25
	Review customer water use records.				
53	Peterson, Ryan	8/30/2017	.50		.50
	Customer service data analysis.				
53	Peterson, Ryan	8/31/2017	2.00		2.00
	Future customer connection projections.				
53	Peterson, Ryan	9/6/2017	.25		.25
	Write chapter text.				
53	Peterson, Ryan	10/4/2017	1.75		1.75
	Work on water use data.				
53	Peterson, Ryan	10/5/2017	2.00		2.00
	Water use history.				
53	Peterson, Ryan	10/10/2017		.50	.50
	Historical water use calcs.				
53	Peterson, Ryan	10/11/2017		5.00	5.00
	Work on historical 5th St meter inaccuracy data.				
53	Peterson, Ryan	10/12/2017	3.50		3.50
	Work on historical 5th St meter inaccuracy data.				
53	Peterson, Ryan	10/17/2017	2.00		2.00
	Historical water use data and chapter.				
53	Peterson, Ryan	10/18/2017	1.50		1.50
	Historical water use data and chapter.				
53	Peterson, Ryan	10/19/2017	3.25		3.25
	Historical water use data and chapter.				
53	Peterson, Ryan	10/23/2017	2.00		2.00
	City water use analysis.				
53	Peterson, Ryan	10/24/2017	3.75		3.75
	PS1 and PS2 flow record analysis, poor data available.				
53	Peterson, Ryan	10/25/2017	.50		.50
	Booster station pump flows data analysis.				
53	Peterson, Ryan	10/26/2017	2.00		2.00
	PS1 and PS2 flow record analysis, poor data available. Extract data from old SCADA histories.				
53	Peterson, Ryan	11/1/2017	1.00		1.00
	Write chapter text.				



Show Unposted		Date	Regular Hours	Overtime Hours	Total Hours
53	Peterson, Ryan	11/1/2017		1.00	1.00
	Write chapter text.				
53	Peterson, Ryan	11/21/2017	1.25		1.25
	Write chapter text.				
53	Peterson, Ryan	11/27/2017	1.00		1.00
	Write chapter text.				
53	Peterson, Ryan	11/28/2017	3.75		3.75
	Write chapter text.				
53	Peterson, Ryan	11/29/2017	2.25		2.25
	Write chapter text.				
53	Peterson, Ryan	12/1/2017	1.50		1.50
	Write chapter text. Future water use forecasts.				
53	Peterson, Ryan	1/15/2018		1.25	1.25
	Update chapter text.				
53	Peterson, Ryan	1/18/2018	1.50		1.50
	Revision to chapter per revised population estimates.				
53	Peterson, Ryan	1/19/2018	3.00		3.00
	Prepare future water sales projections for rate analysis.				
342	Young, Paul	7/12/2017	1.25		1.25
	Water use data analysis				
342	Young, Paul	7/13/2017	8.25		8.25
	Water use data analysis				
342	Young, Paul	7/14/2017	3.50		3.50
	Water use data analysis				
342	Young, Paul	8/1/2017	.50		.50
	Analyzing the water use data				
342	Young, Paul	8/2/2017	6.00		6.00
	Analyzing the water use data				
342	Young, Paul	8/4/2017	2.75		2.75
	Analyzing the water use data				
342	Young, Paul	8/11/2017	2.75		2.75
	Water usage data analysis				
342	Young, Paul	8/14/2017	6.75		6.75
	Filtering water usage data for duplicate customers				
342	Young, Paul	8/16/2017	3.25		3.25
	Filtering water use data for duplicate customers				
342	Young, Paul	8/21/2017	3.75		3.75
	Checking the WaterCAD model data against the GIS data				
<b>Total for 0104</b>			<b>81.00</b>	<b>8.50</b>	<b>89.50</b>
<b>Total for 0001</b>			<b>81.00</b>	<b>8.50</b>	<b>89.50</b>
<b>Total for 0217020.01</b>			<b>81.00</b>	<b>8.50</b>	<b>89.50</b>
<b>Total for Peterson, Ryan</b>			<b>81.00</b>	<b>8.50</b>	<b>89.50</b>

Task 104  
15.75 hrs x \$206 = \$3,244.50  
10 hrs x \$156 = \$1,560  
Total \$4,804.50

# Labor Detail

Tuesday, May 1, 2018  
1:45:28 PM

RH2 Engineering, Inc.

Job-to-Date through 4/30/2018

Show Unposted		Date	Regular Hours	Overtime Hours	Total Hours
<b>Project Manager Name: Peterson, Ryan</b>					
<b>Project Number: 0217020.01 2018 CWSP Update, Volume 1 - City System</b>					
<b>Phase Number: 0001 Water System Plan</b>					
<b>Task Number: 0105 Water System Analyses</b>					
53	Peterson, Ryan	6/27/2017	.50		.50
	Review fire system rating from WSRB.				
53	Peterson, Ryan	7/12/2017	1.75		1.75
	Format GIS data for use. Update hydraulic model.				
53	Peterson, Ryan	8/22/2017	.50		.50
	Compare City mapping with hydraulic model for discrepancies.				
53	Peterson, Ryan	8/23/2017	.50		.50
	Water system model updates.				
53	Peterson, Ryan	8/24/2017	.50		.50
	Write chapter text.				
53	Peterson, Ryan	9/13/2017	3.25		3.25
	Meet with City to review discrepancies in water system maps.				
53	Peterson, Ryan	9/14/2017	.50		.50
	Tabulate water system mapping discrepancies.				
53	Peterson, Ryan	10/26/2017	2.50		2.50
	Write chapter text.				
53	Peterson, Ryan	11/20/2017	1.75		1.75
	Load hydraulic model with current customer demands. Run and troubleshoot model.				
53	Peterson, Ryan	11/21/2017	1.00		1.00
	Hydraulic modeling.				
53	Peterson, Ryan	11/27/2017	2.50		2.50
	Hydraulic modeling.				
53	Peterson, Ryan	12/1/2017	.25		.25
	Review tank operational issues.				
53	Peterson, Ryan	12/6/2017	1.75		1.75
	Run computer hydraulic analyses.				
53	Peterson, Ryan	12/11/2017	1.50		1.50
	Hydraulic modeling. Storage analysis.				
53	Peterson, Ryan	12/13/2017	4.50		4.50
	Supply and storage analysis.				
53	Peterson, Ryan	12/14/2017	5.00		5.00
	Supply and storage analyses.				
53	Peterson, Ryan	12/15/2017	6.75		6.75
	Supply, storage and physical capacity analyses. Fire flow analyses. Write chapter text.				
53	Peterson, Ryan	12/18/2017	.50		.50
	Write chapter text. System capacity analysis. Update hydraulic model with new PRV data.				
53	Peterson, Ryan	12/18/2017		2.00	2.00
	Write chapter text. System capacity analysis. Update hydraulic model with new PRV data.				
53	Peterson, Ryan	12/20/2017	1.50		1.50
	Prepare analysis figures.				
53	Peterson, Ryan	12/21/2017	2.00		2.00
	Capacity analysis.				

Labor Detail		Job-to-Date through 4/30/2018		Tuesday, May 1, 2018 1:45:28 PM	
Show Unposted		Date	Regular Hours	Overtime Hours	Total Hours
53	Peterson, Ryan	12/26/2017	2.00		2.00
	Pipe age mapping, and supply analysis.				
53	Peterson, Ryan	12/28/2017	3.00		3.00
	Update storage analysis based on model results. Prepare transmission analysis.				
53	Peterson, Ryan	1/3/2018	1.00		1.00
	Update analysis figures and data.				
53	Peterson, Ryan	1/11/2018		1.00	1.00
	Add pump condition section to Chapter.				
53	Peterson, Ryan	1/15/2018	.50		.50
	Update system mapping and figures.				
53	Peterson, Ryan	1/22/2018	.50		.50
	Update chapter text. Update model and fire flow analyses.				
53	Peterson, Ryan	1/22/2018		2.50	2.50
	Update chapter text. Update model and fire flow analyses.				
53	Peterson, Ryan	1/25/2018	.50		.50
	Update analysis results figures.				
53	Peterson, Ryan	4/17/2018	2.00		2.00
	Fire flow analyses.				
342	Young, Paul	9/13/2017	5.25		5.25
	Meeting at the City to go over water system discrepancies between the different maps and models. Cataloguing all the discrepancies that were discussed during the meeting and those that were not.				
342	Young, Paul	9/14/2017	2.50		2.50
	Cataloguing the discrepancies in the water system maps that were not discussed during the meeting				
342	Young, Paul	9/26/2017	7.25		7.25
	Updating the water model with pipe data from the City				
342	Young, Paul	9/28/2017	.50		.50
	Updating the water model with data from the City				
342	Young, Paul	10/9/2017	.50		.50
	Updating the water model with asbuilt information from previous watermain projects				
342	Young, Paul	11/16/2017	1.00		1.00
	Data analysis in the water model				
342	Young, Paul	11/16/2017		.25	.25
	Data analysis in the water model				
<b>Total for 0105</b>			<b>65.50</b>	<b>5.75</b>	<b>71.25</b>
<b>Total for 0001</b>			<b>65.50</b>	<b>5.75</b>	<b>71.25</b>
<b>Total for 0217020.01</b>			<b>65.50</b>	<b>5.75</b>	<b>71.25</b>
<b>Total for Peterson, Ryan</b>			<b>65.50</b>	<b>5.75</b>	<b>71.25</b>

Task 105  
 4.5 hrs x \$206 = \$927  
 15.5 hrs x \$156 = \$2,418  
 \$927 + \$2,418 = \$3,345

# Labor Detail

Tuesday, May 1, 2018  
2:03:23 PM

RH2 Engineering, Inc.

Job-to-Date through 4/30/2018

Show Unposted		Date	Regular Hours	Overtime Hours	Total Hours	
<b>Project Manager Name: Peterson, Ryan</b>						
<b>Project Number: 0217020.01 2018 CWSP Update, Volume 1 - City System</b>						
<b>Phase Number: 0005 Out of Scope</b>						
<b>Task Number: 0501 Out of Scope - Water Use Data and Mappin</b>						
53	Peterson, Ryan	12/7/2017	1.00		1.00	
Update hydraulic model.						
53	Peterson, Ryan	12/8/2017	.50		.50	Note A
Update hydraulic model.						
53	Peterson, Ryan	12/19/2017	1.50		1.50	
Hydraulic model update. System mapping.						
53	Peterson, Ryan	12/20/2017	2.75		2.75	
Write chapter text. Efficiency performance evaluation.						
53	Peterson, Ryan	12/20/2017		3.25	3.25	Note B
Write chapter text. Efficiency performance evaluation.						
53	Peterson, Ryan	12/21/2017	2.00		2.00	Note C
Update population and service area data and text.						
53	Peterson, Ryan	12/21/2017	2.00		2.00	Note D
Update water use calculations due to conflicting data.						
53	Peterson, Ryan	12/26/2017	2.00		2.00	Note C
Calculation population from 2010 census blocks.						
53	Peterson, Ryan	12/27/2017	.50		.50	
Prepare water system figures. Spend time fixing conflicting system maps.						
53	Peterson, Ryan	12/27/2017		2.50	2.50	
Prepare water system figures. Spend time fixing conflicting system maps.						
53	Peterson, Ryan	1/2/2018	1.00		1.00	Note A
Fix model and mapping per recent City map fixes.						
53	Peterson, Ryan	1/2/2018		3.00	3.00	
Fix model and mapping per recent City map fixes.						
342	Young, Paul	12/21/2017	.50		.50	Note D
Customer demand analysis						
<b>Total for 0501</b>			<b>13.75</b>	<b>8.75</b>	<b>22.50</b>	
<b>Total for 0005</b>			<b>13.75</b>	<b>8.75</b>	<b>22.50</b>	
<b>Total for 0217020.01</b>			<b>13.75</b>	<b>8.75</b>	<b>22.50</b>	
<b>Total for Peterson, Ryan</b>			<b>13.75</b>	<b>8.75</b>	<b>22.50</b>	

Note A: Correcting water system mapping discrepancies.

Note B: Evaluate the 30% reduction in customer water use between 2005-2010.

Note C: Revise population projections after meeting with City to agree to methodology. Prior population calculations for service area used simplified methodology (e.g., assumed multi-family and single-family dwelling units contained the same number of people, and were the same as Chelan County as a whole.)

Note D: Corrections due to old SCADA system recording errors.

Note A (task 105): 10 hrs x \$206 = \$2,060

Note B (task 112): 6 hrs x \$206 = \$1,236

Note C (task 102): 4 hrs x \$206 = \$824

Note D (task 103): 2 hrs x \$206 + .5 hrs x \$156 = \$490

**Contract Amendment No. 2**  
**City of Wenatchee Contract 1701**  
**2018 Comprehensive Water System Plan, Volume 2 – Regional System**

*RH2 Project No. WEN 217.021*

In accordance with our Professional Services Agreement for the 2018 Comprehensive Water System Plan, Volume 2 – Regional System, dated February 7, 2017, this is an authorization to revise the project Scope of Work as described below. The work will be performed and invoiced using the terms and conditions listed in the original agreement, plus previous amendments and/or agreements.

**Add the following items to the Scope of Work:**

Reference attached **Exhibit A**.

The engineering fee authorization will increase by \$5,854 for a total authorization amount of **\$70,608**.

Please sign this authorization in the space provided below and mail or fax to RH2 Engineering, Inc., 300 Simon Street SE, Suite 5, East Wenatchee, WA 98802. FAX (509) 886-2313.

RH2 Engineering, Inc.

City of Wenatchee



\_\_\_\_\_  
Signature

\_\_\_\_\_  
Signature

Paul R. Cross – Executive Vice President

\_\_\_\_\_  
Print Name/Title

\_\_\_\_\_  
Print Name/Title

May 16, 2018

\_\_\_\_\_  
Date

\_\_\_\_\_  
Date

**EXHIBIT A – Amendment No. 2**  
**City of Wenatchee Contract 1701**  
**2018 Comprehensive Water System Plan Update Volume 2 – Regional System**  
**May 2018**

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RH2 Engineering, Inc., (RH2) has been retained by the City of Wenatchee (City) to update the Comprehensive Water System Plan (WSP) for the Regional water system (Regional). RH2 relies on the accuracy of data provided to efficiently perform the work per the contract. During preparation of the WSP update, issues were identified that needed to be resolved. These items are listed below with their associated contract task item.

**Task 4 – Water Demands**

Historical water supply and sales (meter) records are used to determine customer water use, size future infrastructure, evaluate water rights sufficiency, and set utility rates. During preparation of the WSP update, significant errors were found in the historical data. Additional time was required to locate the errors, determine the cause, and develop methods to correct for the problems.

- Fifteen and one quarter (15.25) hours of effort. Requested supplement of \$2,854.

**Task 6 – Water Source and Quality**

Since the prior WSP was completed, the Regional system has acquired additional water rights (the “Pioneer” right). RH2’s contract had included a small amount of time to add those rights to the water rights inventory list. After review of the existing water rights inventory, it was noticed that there were some outstanding disagreements between the Washington State Department of Ecology (Ecology) and Regional regarding the status of some of the water rights. The Pioneer right is also more complex than the other rights in that it includes both consumptive and non-consumptive quantities. RH2 met with the City and discussed including the Pioneer water right as discussed in the contract, or putting in additional effort to attempt to resolve the Ecology dispute, and quantify how the Pioneer consumptive and non-consumptive portions can be tabulated and tracked in the future. While this work could be done at a later time and incorporated into a future WSP update, it was decided the most efficient approach is to address this now. RH2 will prepare an updated water rights inventory with supporting text, and submit it to the City for review by their water rights attorney. *The attorney fees are not included in this amendment.*

- Requested supplement of \$3,000.

**Total Supplement Request of \$5,854.**

# Labor Detail

Tuesday, May 1, 2018  
 2:39:34 PM

RH2 Engineering, Inc.

Job-to-Date through 4/30/2018

Show Unposted		Date	Regular Hours	Overtime Hours	Total Hours
Project Manager Name: Peterson, Ryan					
Project Number: 0217021.01 2018 CWSP Update, Volume 2 - Regional					
Phase Number: 0001 Water System Plan					
Task Number: 0104 Water Demands					
291	Anderson, Clayton	7/3/2017	.50		.50
	Data Collection				
291	Anderson, Clayton	8/30/2017	.50		.50
	Data Collection				
53	Peterson, Ryan	7/3/2017	1.50		1.50
	Download and review Regional flow meter records.				
53	Peterson, Ryan	7/5/2017	1.50		1.50
	Obtain and review historical meter records.				
53	Peterson, Ryan	7/12/2017	.50		.50
	Review past meter records.				
53	Peterson, Ryan	8/28/2017	.75		.75
	Write chapter text.				
53	Peterson, Ryan	8/29/2017	2.00		2.00
	Work on water use calculations.				
53	Peterson, Ryan	8/31/2017	1.50		1.50
	Work on historical demands.				
53	Peterson, Ryan	9/12/2017	.25		.25
	Discuss meter record keeping with Tony S.				
53	Peterson, Ryan	9/20/2017	1.25		1.25
	Historical water use records.				
53	Peterson, Ryan	9/21/2017	2.50		2.50
	Historical water use records.				
53	Peterson, Ryan	9/25/2017	4.75		4.75
	Work on historical water use.				
53	Peterson, Ryan	9/26/2017	2.75		2.75
	Work on historical water use.				
53	Peterson, Ryan	9/26/2017		2.50	2.50
	Work on historical water use.				
53	Peterson, Ryan	9/27/2017	4.50		4.50
	Historical water use.				
53	Peterson, Ryan	10/4/2017	1.00		1.00
	Water use/climate data.				
53	Peterson, Ryan	10/4/2017		.50	.50
	Water use/climate data.				
53	Peterson, Ryan	10/5/2017	.50		.50
	Water use history.				
53	Peterson, Ryan	10/6/2017	1.50		1.50
	Historical water use calcs.				
53	Peterson, Ryan	10/9/2017	4.75		4.75
	Historical water use. (records are poor, need lots of work)				
53	Peterson, Ryan	10/17/2017	2.00		2.00
	Historical water use data and chapter.				

climate data used to help estimate demands due to inaccurate SCADA data.

Show Unposted		Date	Regular Hours	Overtime Hours	Total Hours
53	Peterson, Ryan	10/18/2017	1.50		1.50
Historical water use data and chapter.					
53	Peterson, Ryan	10/19/2017		3.25	3.25
Historical water use data and chapter. Correct meter data errors.					
53	Peterson, Ryan	10/23/2017		4.25	4.25
Work on PUD water use records. MDD analysis.					
53	Peterson, Ryan	10/25/2017	3.00		3.00
Write chapter text.					
53	Peterson, Ryan	2/6/2018	3.00		3.00
Update chapter. Demand forecasts.					
53	Peterson, Ryan	2/12/2018	2.50		2.50
Write chapter. Water use forecasts.					
53	Peterson, Ryan	4/2/2018	.25		.25
Update chapter text.					
342	Young, Paul	7/12/2017	.25		.25
Water use data manipulation					
342	Young, Paul	8/17/2017	4.25		4.25
Digitizing the water usage data					
342	Young, Paul	8/18/2017	1.50		1.50
Digitizing the water usage data					
342	Young, Paul	8/31/2017	1.75		1.75
Monthly and Annual water usage analysis					
342	Young, Paul	9/1/2017	2.75		2.75
Monthly and Annual water usage analysis					
342	Young, Paul	9/5/2017	2.75		2.75
Water usage data analysis					
<b>Total for 0104</b>			<b>58.00</b>	<b>10.50</b>	<b>68.50</b>
<b>Total for 0001</b>			<b>58.00</b>	<b>10.50</b>	<b>68.50</b>
<b>Total for 0217021.01</b>			<b>58.00</b>	<b>10.50</b>	<b>68.50</b>
<b>Total for Peterson, Ryan</b>			<b>58.00</b>	<b>10.50</b>	<b>68.50</b>

manual data entry of hand written reports required due to inaccurate electronic data.

9.5 hrs x \$206 = \$1,957  
 5.75 hrs x \$156 = \$897  
 Total = \$2,854



### 2018 Capital Improvement Project Budget

Date: July 12, 2018

Project Name: Water System Comprehensive Plan Update Project Category: Water/Regional

**Project Description:** The City's Comprehensive Water System Plan was last revised in 2012. The Department of Health requires that this planning document be updated every six years. This update will build on the previous publication and provide a guide for determining the most effective utilization of funding to best address system deficiencies and rehabilitation needs.

<b>Lead Engineer:</b>	<u>Jeremy Hoover, P.E.</u>	<b>Start Year:</b>	<u>2017</u>
<b>Assigned Department:</b>	<u>Engineering</u>	<b>End Year:</b>	<u>2018</u>
<b>Original Project Budget:</b>	<u>\$175,000</u>	<b>Project Number:</b>	<u>1701</u>
<b>Budget Amendment:</b>	<u>\$188,164</u>	<b>Total City Funding:</b>	<u>\$188,164</u>
		<b>Other Funding:</b>	<u>\$0</u>

Revenue Notes and/or Requests for Budget Changes:

Project Expenditures by Category	Budget	Amended Budget	Prior Years Spent	ESTIMATES			Project Total
				2017	2018	2019	
Consultant	175,000	188,164	159,987	86,772	101,392		188,164
Construction Contract					-		
Construction Engineering					-		
Miscellaneous							
Art Fund	-				-		
<b>Total Project Expenditures</b>	<b>175,000</b>	<b>188,164</b>	<b>159,987</b>	<b>86,772</b>	<b>101,392</b>		<b>188,164</b>

Project Revenues by Category		Budget	Amended Budget	Prior Years	ESTIMATES			Project Total
					2017	2018	2019	
Fund:	#401 - Water	100,000	117,556	106,279	47,000	70,556		117,556
Fund:	#415 - Regional Water	75,000	70,608	53,708	38,000	32,608		70,608
Fund:								
Fund:								
Fund:								
GRANTS:								
Federal								
TIB								
<b>Total Project Revenues</b>		<b>175,000</b>	<b>188,164</b>	<b>159,987</b>	<b>85,000</b>	<b>103,164</b>		<b>188,164</b>

Approved by: Brad Posenjak, Finance Director

Date: \_\_\_\_\_

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**COUNCIL AGENDA REPORT**  
**City of Wenatchee**

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**TO:** Frank Kuntz, Mayor  
City Council

**FROM:** Steve King, Economic Development Director

**SUBJECT:** Purchase and Sale Agreement – Mission/Kittitas Parking Lot

**DATE:** July 6, 2018                      **MEETING DATE:** July 13, 2018

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**I. OVERVIEW**

The City Council declared the Mission and Kittitas Parking lot surplus on by passing Resolution 2017-39 on August 10, 2017. A public hearing was held at that time as well. The City Council intends to surplus this parking lot for the purposes of developing housing in downtown. The lack of market rate housing is at a crisis level in the region and thus this is one way the city can help encourage housing. Creating housing opportunities in downtown has also been a goal of the city for a number of years as identified in the City’s Comprehensive Plan as well as the Downtown Subarea Plan.



Following surplus, the City Council authorized entering a purchase and sale agreement with Weidner Apartment Homes on October 26, 2017. Since entering into the purchase and sale agreement, Council approved amendment #1 to the agreement providing time and resources for Weidner Apartment Homes to perform environmental due diligence on the site and for a housing project. After performing a phase 1 environmental assessment, Weidner pursued a Phase 2 assessment. The city agreed to pay for 50% of the phase 2 assessment and found that no environmental challenges exist. In addition, Weidner requested an extension of 90 days.

The action before Council provides the authorization for the Mayor to sign amendment #2 providing another 90 day extension to allow the Mayor and city staff to negotiate a public private partnership for the project.

**II. ACTION REQUESTED**

*Staff recommends the City Council authorize the Mayor to sign a second amendment to the real estate purchase and sale agreement with Weidner Apartment Homes for the Mission and Kittitas parking lot extending the due diligence period an additional 90 days.*

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**COUNCIL AGENDA REPORT**  
**City of Wenatchee**

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**III. FISCAL IMPACT Submitted to the Finance Committee Yes No**

There is no fiscal impact associated with this extension.

**IV. PROPOSED PROJECT SCHEDULE**

Depending on the outcome of negotiations, this project would proceed within 36 months of closing.

**V. REFERENCE(S)**

1. First Amendment to the Real Estate Purchase and Sale Agreement
2. Signed Purchase and Sale Agreement

**VI. ADMINISTRATIVE ROUTING**

Tammy Stanger, City Clerk  
Allison Williams, Executive Services Director  
Brad Posenjak, Finance Director