



**WENATCHEE CITY COUNCIL**  
**Thursday, December 5, 2019**  
Wenatchee City Hall Council Chambers  
301 Yakima Street, 2<sup>nd</sup> Floor  
Wenatchee, WA 98801  
**AGENDA**

**5:15 p.m. Special 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 #192946 through #193005 in the amount of \$2,008,648.96 for November 14, 2019  
Payroll in the amount of \$356,225.00 for November 20, 2019  
Claim checks #193006 - #193121 in the amount of \$1,144,375.92 for November 21, 2019  
Wire #1480 and #1481 in the amount of \$52,669.79 for November 25, 2019  
Claim checks #193122 - #193132 in the amount of \$15,813.88 for November 27, 2019  
Claim checks #193133 - #193194 in the amount of \$268,068.94 for November 27, 2019  
Payroll distribution (retirees) in the amount of \$3,656.11 for November 29, 2019  
Payroll distribution in the amount of \$462,344.46 for December 5, 2019
- Motion for City Council to accept the work performed by the contractor, Road Products, Inc., on City Project No. SW18-11 – Iron Adjustments, and further authorize the Mayor to sign the Final Contract Voucher.
- Motion for City Council to accept the work performed by the contractor, Pipkin Construction, on City Project No. 1614 – Wenatchee Regional Vector Waste Facility, and further authorize the Mayor to sign the Final Contract Voucher.
- Motion for City Council to accept the work performed by the contractor, Pipkin Construction, on the Montana and Dakota Water Main Replacement Project, City Project No. 1702, and further authorize the Mayor to sign the Final Contract Voucher.
- Motion for City Council to accept the work performed by the contractor, Pipkin Construction, on City Project No. SW19-05 – WWTP Snowmelt & Old Clarifier Demolition Project, and further authorize the Mayor to sign the Final Contract Voucher.

**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. Action Items.

**A. Lease Amendment No. 3 (WRC – Parcel D)**

Presented by Executive Services Director Allison Williams

*Motion for City Council to authorize the Mayor's signature on Lease Amendment No. 3 between the City of Wenatchee and the Women's Resource Center of North Central Washington for Parkside Parcel D.*

**B. Tourism Promotion Area Annual Budget Approval**

Presented by Executive Services Director Allison Williams

*Motion for City Council to approve the 2020 Tourism Promotion Area budget.*

**C. Tourism Promotion Area Advisory Board**

Presented by Executive Services Director Allison Williams

*Motion for City Council to approve Resolution No. 2019-55, appointing a member to the Tourism Promotion Area Advisory Board for a three (3) year term (Tiffany Petty).*

**D. Acceptance of RCO Grants – Lincoln Park Project**

Presented by Parks, Recreation and Cultural Services Director David Erickson

*Motion for City Council to approve the Project Funding Agreement 18-18246D with the State of Washington for the Lincoln Park Project and authorize the Mayor to sign the agreement.*

*Motion for City Council to approve the Project Funding Agreement 18-1250D with the State of Washington for the Lincoln Park Project and authorize the Mayor to sign the agreement.*

**E. Chelan County Natural Hazard Mitigation Plan**

Presented by Utilities Manager John Ricardi

*Motion for City Council to approve Resolution No. 2019-52, authorizing the adoption of the Chelan County Hazard Mitigation Plan.*

**F. Historic Preservation Board Re-Appointments**

Presented by Community Development Director Glen DeVries and Planning Manager Stephen Neuenschwander

*Motion for City Council to approve Resolution No. 2019-53, reappointing two voting representatives to the Wenatchee Historic Preservation Board for three-year terms (Robert Culp and Jon Campbell).*

**G. Planning Commission Member Re-Appointments**

Presented by Community Development Director Glen DeVries and Planning Manager Stephen Neuenschwander

*Resolution No. 2019-54, reappointing three voting representatives to the Planning Commission (Ace Bollinger, Josh Jorgensen, and Rani Sampson).*

- H.** Interlocal Agreement for Housing of Inmates  
Presented by Finance Director Brad Posenjak  
*Motion for City Council to authorize the Mayor's signature on the Interlocal Agreement between Chelan County and the City of Wenatchee for the Housing of Inmates, after final contract language has been negotiated.*
- I.** Ecology Construction Grant – Walla Walla Street Stormwater Retrofit  
Presented by Utilities Manager John Ricardi and Environmental Manager Jessica Shaw  
*Motion for City Council to authorize the Mayor to sign the Water Quality Combined Financial Assistance Agreement between the State of Washington Department of Ecology and the City of Wenatchee for the Walla Walla Street Stormwater Retrofit project.*

## **5. Public Hearing Items.**

The Mayor will call the Public Hearing to order and state the ground rules, the purpose of the hearing, the action that the hearing body may take on the matter, will address the appearance of fairness doctrine, and will state the manner in which the hearing will proceed. Staff will first give a report, followed by testimony of experts and/or the applicant, followed then by public testimony. All speakers must speak into the microphone and clearly state their names and addresses. All comments should be addressed to the hearing body, should be relevant to the application, and should not be of a personal nature. Public testimony may be limited to three minutes, unless further time is granted by the Mayor. If there are a large number of speakers, a representative may be appointed to speak on behalf of the group.

- J.** Sign Code Update – Amendments to Chapter 10.50 Signs  
Presented by Community Development Staff  
*Motion for City Council to adopt Ordinance No. 2019-50, amending and restating Chapter 10.50 "Signs" of the Wenatchee City Code.*
- K.** 2020-2025 Capital Facilities Plan  
Presented by Community Development Staff  
*Motion for City Council to approve Resolution No. 2019-59, amending and restating the City of Wenatchee Capital Facilities Plan.*
- L.** Annual Amendments to the Wenatchee Urban Area Comprehensive Plan and the Official Zoning Map  
Presented by Community Development Staff  
*Motion for City Council to adopt the proposed amendments to the Wenatchee Urban Area Comprehensive Plan as presented in Resolution No. 2019-58, and the Official Zoning Map as presented in Ordinance No. 2019-49.*
- M.** Franchise Renewal with Spectrum Pacific West, LLC, locally known as Charter Communications  
Presented by Executive Services Director Allison Williams, IS Director Dale Cantrell, Public Works Director Rob Jammerman, and Finance Director Brad Posenjak  
*No action to be taken at this time. Public hearing held for community input. Final Franchise Agreement to be considered on December 12, 2019.*

**6. Reports.**

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

**7. Announcements.**

**8. Adjournment.**





**WENATCHEE CITY COUNCIL**  
**Thursday, November 14, 2019**  
Wenatchee City Hall Council Chambers  
301 Yakima Street, 2<sup>nd</sup> Floor  
Wenatchee, WA 98801  
**MINUTES**

**In attendance:**

Mayor Frank Kuntz  
Councilmember Jim Bailey  
Councilmember Ruth Esparza (via phone)  
Councilmember Lyle Markhart  
Councilmember Keith Huffaker  
Councilmember Mark Kulaas  
Councilmember Linda Herald  
Councilmember Mike Poirier

**Staff in attendance:**

Executive Services Director Allison Williams  
City Attorney Steve Smith  
City Clerk Tammy Stanger  
IS Support Tim McCord  
Public Works Director Rob Jammerman  
Economic Development Director Steve King  
Police Chief Steve Crown  
Parks, Recreation & Cultural Services Director David Erickson  
Finance Director Brad Posenjak

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**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 p.m. Councilmember Jim Bailey led the Pledge of Allegiance. All Councilmembers were present with Councilmember Ruth Esparza participating via phone.

**2. Consent Items:**

*Motion by Councilmember Keith Huffaker to approve agenda, vouchers, and minutes from previous meetings. Councilmember Jim Bailey seconded the motion. Motion carried (7-0).*

**3. Citizen Requests/Comments.**

Doreen Smith, 1121 Monroe Street, Wenatchee, WA 98801, spoke on the issue of homelessness and asked what the city is doing to help with the issue.

**4. Presentations.**

- City of Wenatchee Service Award Recognition – Human Resources Director acknowledged the following employees who reached milestones in their years of service to the City: Tammy Patterson - 35 years; Stacey Mead - 25 years; Gary Geiger - 20 years;

and Charlotte Mitchell – 5 years. Present to receive their awards were Gary Geiger and Charlotte Mitchell.

- Volunteer Appreciation Presentation – The Mayor presented Bridgett Barker with a certificate of appreciation for her service and assistance to Wenatchee Parks & Recreation.
- Small Business Saturday Proclamation read by Councilmember Jim Bailey.

## 5. Action Items.

### A. Emergency Exemptions for Housing for Indigent Persons

Community Development Director Glen DeVries presented the staff report.

*Motion by Councilmember Linda Herald for City Council to adopt Ordinance No. 2019-43, allowing emergency exemptions for housing for indigent persons; providing for severability; and fixing a time when the same shall become effective. Councilmember Lyle Markhart seconded the motion. Motion carried (7-0).*

### B. Code Enforcement Board Appointments

Community Development Director Glen DeVries presented the staff report.

*Motion by Councilmember Mark Kulaas for City Council to approve Resolution No. 2019-44, reappointing members to the Wenatchee Code Enforcement Board for two (2) year terms (Emilka Furmanczyk, Don Files, Adriana Farnsworth). Councilmember Lyle Markhart seconded the motion. Motion carried (7-0).*

### C. Strategic Communications Plan and Policy

Executive Services Director Allison Williams presented the staff report.

*Motion by Councilmember Linda Herald for City Council to approve Resolution No. 2019-48, adopting a City of Wenatchee Strategic Communications Plan and Policy. Councilmember Lyle Markhart seconded the motion. Motion carried (7-0).*

### D. Extension of Franchise with Cascade Natural Gas

Executive Services Director Allison Williams presented the staff report. Council asked questions.

*Motion by Councilmember Keith Huffaker for City Council to approve Resolution No. 2019-49, granting an extension of the term of the franchise agreement with Cascade Natural Gas to December 31, 2020. Councilmember Jim Bailey seconded the motion. Motion carried (7-0).*

### E. Legislative Agenda

Executive Services Director Allison Williams presented the staff report.

Motion by Councilmember Jim Bailey for City Council to approve Resolution No. 2019-51, endorsing the legislative priorities adopted by the Association of Washington Cities and identifying the City of Wenatchee legislative priorities. Councilmember Lyle Markhart seconded the motion. Motion carried (7-0).

F. 2019 Budget Amendment

Finance Director Brad Posenjak presented the staff report.

Motion by Councilmember Lyle Markhart for City Council to adopt Ordinance No. 2019-38, amending the 2019 Budget as adopted by Ordinance No. 2018-41, as amended by Ordinance No. 2019-27, 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 approved by a majority plus one of the entire City Council. Councilmember Linda Herald seconded the motion. Motion carried (7-0).

G. Temporary Lending of Cash

Finance Director Brad Posenjak presented the staff report.

Motion by Councilmember Keith Huffaker for City Council to approve Resolution No. 2019-46, approving the temporary lending of cash from the General Fund to other funds, including but not limited to, the CDBG Entitlement Fund and the Police Station GO Bond Fund, as needed, in 2020. Councilmember Mike Poirier seconded the motion. Motion carried (7-0).

**6. Public Hearing Items.**

The Mayor explained the public hearing process.

H. Development Agreement for Triad, Beaconsfield, and Clennon

Community Development Director Glen DeVries presented the staff report. Council asked questions.

Attorney Pete Fraley spoke on behalf of his clients and provided the context for why they are seeking the development agreement.

Council asked additional questions.

Motion by Councilmember Lyle Markhart for City Council to approve Resolution No. 2019-47, approving a Development Agreement between the City of Wenatchee, Triad Maple, LLC, Beaconsfield Associates, Beaconsfield Associates II, LLP, and Barton Clennon and

Sheila Clennon. Councilmember Mark Kulaas seconded the motion. Motion carried (5-2; Huffaker and Esparza nay).

I. Chelan-Douglas Homeless Housing Strategic Plan 2019-2024

Community Development Director Glen DeVries presented the staff report.

The Mayor asked for public comment. There was no one who wished to speak.

Motion by Councilmember Mike Poirier for City Council to approve Resolution No. 2019-50, adopting the Chelan-Douglas Homeless Housing Plan 2019-2024. Councilmember Linda Herald seconded the motion. Motion carried (7-0).

J. City of Wenatchee CDBG Consolidated Annual Performance and Evaluation Report (CAPER)

Housing & Community Planner Brooklyn Holton presented the staff report.

The Mayor asked for public comment. There was no one who wished to speak.

*Conduct a public hearing; no City Council action is requested.*

K. Assessment of Impact Fees

Consultant Kendra Breiland with Fehr & Peers provided a presentation to the Council, together with Public Works Director Rob Jammerman. The presentation provided an overview of the analysis done to determine a maximum defensible impact fee. Council asked questions.

The Mayor asked for public comment.

Hank Lewis, 711 Briarwood Drive, East Wenatchee, WA, spoke on behalf of Deanne Schnibbe and of concerns with how the document reads.

Bart Clennon, spoke in favor of what has been done, but said the fees could potentially take away the profit from a project.

With no further comment the Mayor turned the public hearing back to the City Council for action.

Motion by Councilmember Keith Huffaker for City Council to adopt Ordinance No. 2019-41, relating to Chapter 15.02 general provisions governing the assessment of impact fees of the Wenatchee City Code. Councilmember Jim Bailey seconded the motion. Motion carried (7-0).

L. 2020 Final Budget Hearing

Finance Director Brad Posenjak presented the staff report.  
The Mayor asked for public comment. There was no one who wished to speak.

*Motion by Councilmember Linda Herald for City Council to adopt Ordinance No. 2019-39, adopting the Final Budget for the City of Wenatchee, Washington, for the fiscal year ending December 31, 2020. Councilmember Lyle Markhart seconded the motion. Motion carried (7-0).*

## **7. Reports.**

- a. Mayor's Report. The Mayor reported on the following:
  1. He attended a meeting today with the legislators.
  2. He signed the Boundary Line Adjustment for the Anderson property next to Public Works, which was authorized in the purchase and sale agreement.
  3. He attended the Wenatchee Valley Transportation Council meeting this week.
  4. The employee breakfast was held on Wednesday.
  5. He attended a meeting with the Department of Ecology.
  6. There will be a work session meeting next week.
  7. There will be a meeting on December 12.
  
- b. Reports/New Business of Council Committees. None.

## **8. Announcements.** None.

## **9. Adjournment.** With no further business the meeting adjourned at 7:30 p.m.

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Frank J. Kuntz, Mayor

Attest:

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Tammy L. Stanger, City Clerk



## WENATCHEE CITY COUNCIL WORK SESSION

City Hall Council Chambers  
301 Yakima Street, 2<sup>nd</sup> Floor  
Wenatchee, WA 98801

### MINUTES

Thursday, November 21, 2019

5:15 p.m.

#### ***DISCUSSION ITEMS:***

A. Public Assembly Update

Community Development Director Glen DeVries presented a power point presentation on public assembly. There is an interim control ordinance in place and the timeline was to provide an update to Council in November. Council heard the schedule and concurred that an extension of the interim control should come back before City Council in January. With a lot of public in attendance, the Mayor asked if there was anyone who would like to address the Council.

Josh McPherson, Grace City Church, spoke about his concern with the interim ordinance and how it might inhibit activities they hold at the church, where they have activities that sometimes are outside. They requested the interim ordinance expire.

Kirk Hudson spoke and emphasized the piece about the sound of “community.”

Charles Steinberg, with NW Liberties Association, reminded the Council about free speech and the Religious Land Act of 2000. He believes the current noise ordinance should remain in place.

B. Museum Presentation / Confluence Magazine

Keni Sturgeon, Chris Rader and Steve King spoke to the Council about the cultural work being done highlighted the Confluence Magazine. Randy Lewis spoke about his work and of the desire for a Cultural Heritage Center on the Horan.

C. Our Valley Our Future Update

Stephen Maher provided an update on the work of Our Valley Our Future.

D. PUD Headquarters Repurposing

Dan Frazier provided an update to the Council of the PUD headquarters repurposing process and thanked the city for participating.

E. Sign Code Overview

Community Development Director Glen DeVries and Planning Manager Stephen Neuenschwander presented an overview of the process to develop the new sign code and presented an overview of the planning commission's work. The Mayor asked, given the community desire to improve the appearance of the community, if the code went far enough. Staff also provided a brief overview of billboards, which is a separate code section to be addressed.

Paul Schmidt asked about mobile signs. There currently is no code in place for mobile signs.

With no further business, the meeting adjourned at 7:13 p.m.

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Frank J. Kuntz, Mayor

Attest:

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Tammy L. Stanger, City Clerk

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**COUNCIL AGENDA REPORT  
PUBLIC WORKS DEPARTMENT**

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

**FROM:** Jacob Huylar, Engineering Services Manager

**SUBJECT:** Iron Adjustments, City Project No. SW18-11  
Final Acceptance

**DATE:** November 18, 2019

**MEETING DATE:** December 5, 2019

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**I. OVERVIEW**

Over five miles of city streets received a thin asphalt skin patch in 2018 primarily in preparation for future pavement management projects. During this work, numerous utility castings such as manholes, water valves, and monument cases were paved over. The city's maintenance crews did not have the capacity to undertake adjusting these utility castings, and therefore the decision was made to complete the work via a small works project.

The original concept and budget were presented to Council on January 10, 2019, and the project was awarded to Road Products, Inc. on March 28, 2019. The initial utility count that was included in the contract documents varied significantly from the number of utilities identified during construction, and therefore a budget amendment was approved by Council on June 13, 2019.

Punch list work was completed in October, and the project was deemed physically complete on October 30, 2019.

**II. ACTION REQUESTED**

*Staff recommends that the City Council accept the work performed by the contractor, Road Products Inc., on City Project No. SW18-11 – Iron Adjustments, and further authorize the Mayor to sign the Final Contract Voucher.*

**III. FISCAL IMPACT**

The table below shows the original and amended budget amounts, as well as the anticipated final expenditures.

<b>Iron Adjustments</b>	<b>Original Budget</b>	<b>Amended Budget</b>	<b>Final Amount</b>
City Funding	\$131,637	\$170,390	\$171,884
Chelan County PUD	\$9,613	\$14,160	\$17,821
<b>Total:</b>	<b>\$141,250</b>	<b>\$184,550</b>	<b>\$189,705</b>



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**COUNCIL AGENDA REPORT  
PUBLIC WORKS DEPARTMENT**

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**IV. REFERENCE(S)**

1. Final Contract Voucher

**V. ADMINISTRATIVE ROUTING**

Tammy Stanger, City Clerk  
Rob Jammerman, Public Works Director  
Gary Owen, City Engineer  
Natalie Thresher, Contracts Coordinator



**City of Wenatchee**  
**Department of Public Works**

**Final Contract**  
**Voucher Certificate**

<b>Contractor</b> Road Products, Inc.			
<b>Street Address</b> 9915 E Trent Ave			
<b>City</b> Spokane Valley	<b>State</b> WA	<b>Zip</b> 99206	<b>Date</b> November 13, 2019
<b>City Project Number</b> SW18-11	<b>Federal-Aid Project Number</b> N/A	<b>Highway Number</b> N/A	
<b>Job Title</b> Iron Adjustments			
<b>Date Work Physically Completed</b> October 30, 2019		<b>Final Amount</b> \$180,561.88	

**Contractor's Certification**

I, The undersigned, having first been duly sworn, certify that I am authorized to sign for the claimant; that in connection with the work performed and to the best of my knowledge no loan, gratuity or gift in any form whatsoever has been extended to any employee of the City of Wenatchee nor have I rented or purchased any equipment or materials from any employee of the City of Wenatchee; I further certify that the attached final estimate is a true and correct statement showing all the monies due me from the City of Wenatchee for work performed and materials furnished under this contract; that I have carefully examined said final estimate and understand the same and that I hereby release the City of Wenatchee from any and all claims of whatsoever nature which I may have, arising out of the performance of said contract, which are not set forth in said estimate.

Notary Public  
State of Washington  
Traci Lynn Gering  
Commission No 143757  
Commission Expires 08/01/2022

*Denise M Lawless*  
Contractor Authorized Signature Required  
Denise M. Lawless, President  
Type Signature Name

Subscribed and sworn to before me this 18th day of November 2019

X *Traci Lynn Gering*  
Washington, \_\_\_\_\_ Notary Public in and for the State of  
residing at Spokane, WA

**City of Wenatchee**

City of Wenatchee hereby accepts the completed contract pursuant to Section 1-05.12 of the contract provisions.

\_\_\_\_\_  
Mayor/or Designee

\_\_\_\_\_  
Date of Acceptance

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**COUNCIL AGENDA REPORT  
PUBLIC WORKS DEPARTMENT**

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

**FROM:** Jeremy Hoover, P.E., Senior Engineer - Utilities

**SUBJECT:** Wenatchee Regional Vector Waste Facility - Project No. 1614, Final Acceptance

**DATE:** November 22, 2019

**MEETING DATE:** December 5, 2019

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**I. OVERVIEW**

In June of 2015, the City completed construction of a regional decant facility at 1745 S. Wenatchee Ave. for temporary storage of street sweepings and educator truck waste as well as for snow removal purposes to benefit the City of Wenatchee, City of East Wenatchee, Chelan County, and Douglas County. After being put into operation, issues regarding its ability to properly dry out the required volume of solids became apparent. Subsequent enhancements to the settling process improved the overall functionality but did not achieve the level of service intended in the original design.



The improvements associated with this project included paving of the dry weather solids processing area, installation of a concrete barrier wall for solids handling, storage and processing, isolation berms at the tipping floor, safety gates, drainage and snowmelt catch basins, valving, and electrical improvements. City crews also performed some additional work consisting of the installation of a new water meter, electrical hot box enclosure, upsized water pipe and installation of ecology blocks for separation of processed solids.



The construction contract was awarded in June of 2019 to Pipkin Construction for \$351,152.53. A single change order, in the amount of \$6,742.62 was issued during the course of construction to provide for additional survey work necessary to address design deficiencies arising from incorrect site grades. Some cost savings was gained due to reduced fill quantities. Construction was physically complete in October of 2019.

**The final construction contract cost is \$356,421.19.** To date, total expenditures including system investment fees, staff utilization, time and materials, are \$418,750 and, including the contribution to the Art Fund, the project will be under budget upon final closeout.

**COUNCIL AGENDA REPORT  
PUBLIC WORKS DEPARTMENT**

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

This project was included in the 2019 Budget and is funded through Fund 410 – Storm Drain Utility and Fund 425 - Regional Decant Facility.

**Project Budget**

<b>Fund 410 – Storm Drain Utility</b>	<b>Amount</b>
Engineering & Project Management	6,600
Water System Improvements (City)	17,800
Site Improvements (City)	16,800
Construction Contract	351,200
Art Fund	3,800
<b>Fund 410 – Storm Drain Utility Total</b>	<b>396,200</b>

<b>Fund 425 – Regional Decant Facility</b>	<b>Amount</b>
Design Analysis & Engineering	22,000
Water System Meter Connection Fees	21,000
Construction Engineering	6,000
<b>Fund 425 – Regional Decant Facility Total</b>	<b>49,000</b>

<b>Total Project Budget</b>	<b>445,200</b>
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**II. ACTION REQUESTED**

Staff recommends the City Council accept the work performed by the contractor, Pipkin Construction on the Wenatchee Regional Vector Waste Facility, Project #1614, and further authorize the Mayor to sign the Final Contract Voucher Certification on behalf of the City of Wenatchee.

**III. REFERENCE(S)**

Agenda Report 2019-32, Bid Award / Budget Amendment  
Final Contract Voucher Certificate

**IV. ADMINISTRATIVE ROUTING**

Tammy Stanger, City Clerk  
Rob Jammerman, Public Works Director  
John Ricardi, Utilities Manager  
Gary Owen, City Engineer  
Natalie Thresher, Contracts Coordinator  
Brad Posenjak, Finance Director





**City of Wenatchee  
Department of Public Works**

**Final Contract  
Voucher Certificate**

Contractor Pipkin Inc., dba Pipkin Construction			
Street Address 4801 Contractors Drive			
City E. Wenatchee	State WA	Zip 98802	Date November 14, 2019
City Project Number <b>1614</b>	Federal-Aid Project Number N/A	Highway Number	
Job Description (Title) <b>Wenatchee Regional Vector Waste Facility</b>			
Date Work Physically Complete October 22, 2019		Final Amount \$356,421.19	

**Contractor's Certification**

I, The undersigned, having first been duly sworn, certify that I am authorized to sign for the claimant; that in connection with the work performed and to the best of my knowledge no loan, gratuity or gift in any form whatsoever has been extended to any employee of the City of Wenatchee nor have I rented or purchased any equipment or materials from any employee of the City of Wenatchee; I further certify that the attached final estimate is a true and correct statement showing all the monies due me from the City of Wenatchee for work performed and materials furnished under this contract; that I have carefully examined said final estimate and understand the same and that I hereby release the City of Wenatchee from any and all claims of whatsoever nature which I may have, arising out of the performance of said contract, which are not set forth in said estimate.



*[Handwritten Signature]*  
Contractor Authorized Signature Required

**Brian Parsons**

Type Signature Name

Subscribed and sworn to before me this 15 day of November 2019

X *[Handwritten Signature]* Notary Public in and for the State of Washington,  
residing at East Wenatchee, WA

**City of Wenatchee**

City of Wenatchee hereby accepts the completed contract pursuant to Section 1-05.12 of the contract provisions.

X \_\_\_\_\_  
Mayor/or Designee

\_\_\_\_\_  
Date of Acceptance

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**COUNCIL AGENDA REPORT  
PUBLIC WORKS DEPARTMENT**

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

**FROM:** Jake Lewing, Project Engineer

**SUBJECT:** Montana & Dakota Water Main Replacement Project #1702  
Final Acceptance

**DATE:** November 15, 2019

**MEETING DATE:** December 5, 2019

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**I. OVERVIEW**

The Montana & Dakota Water Main Replacement project replaced approximately 2,300 linear feet of existing steel water main pipe in Wilson, Montana, and Dakota Streets between Millerdale Ave and Miller Street. The existing 50-60 year old steel lines were prone to leakage and were identified for replacement in the City's Comprehensive Water Plan. The project replaced the steel main with a larger diameter ductile iron pipe, installed approximately 50 service lines and meters, installed a new pressure reducing valve station, and replaced 5 fire hydrants. Other improvements included the replacement of HMA pavement, curb and gutter, sidewalk, and driveways as needed due to the water utility work.

The City Council awarded the project to Pipkin Construction on June 13, 2019 for a contract total of \$683,429.48. The project was physically complete as of November 11, 2019, and the final amount paid to Pipkin Construction was \$717,696.35. The increase in contract cost is primarily due to additional curb and sidewalk replacement.

**II. ACTION REQUESTED**

*Staff recommends the City Council accept the work performed by the contractor, Pipkin Construction, on the Montana and Dakota Water Main Replacement Project, City Project No. 1702, and further authorize the Mayor to sign the Final Contract Voucher.*

**III. FISCAL IMPACT**

The total project budget was \$835,000.00 with \$770,000.00 allocated for construction. Construction is now complete. Including the 1% of construction cost dedicated to the Art Fund, the overall project cost to date is \$867,282.56. There will be additional staff time involved in project close-out.

**V. REFERENCE(S)**

1. Final Contract Voucher

**VI. ADMINISTRATIVE ROUTING**

Tammy Stanger, City Clerk  
Rob Jammerman, Public Works Director  
Gary Owen, City Engineer  
Jacob Huylar, Engineering Services Manager  
Natalie Thresher, Contracts Coordinator  
Ruta Jones, Administrative Assistant



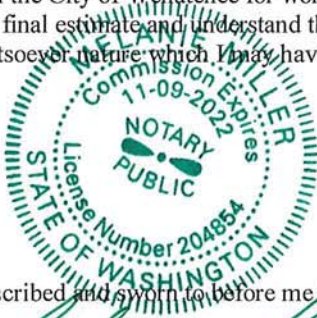
**City of Wenatchee  
Department of Public Works**

**Final Contract  
Voucher Certificate**

Contractor <b>Pipkin Construction</b>			
Street Address <b>P.O. Box 3181</b>			
City <b>Wenatchee</b>	State <b>WA</b>	Zip <b>98807</b>	Date <b>11/12/19</b>
City Project Number <b>#1702</b>	Federal-Aid Project Number <b>N/A</b>	Highway Number <b>N/A</b>	
Job Description (Title) <b>Montana &amp; Dakota Water Main Replacement</b>			
Date Work Physically Completed <b>11/11/2019</b>		Final Amount <b>\$717,696.35</b>	

**Contractor's Certification**

I, The undersigned, having first been duly sworn, certify that I am authorized to sign for the claimant; that in connection with the work performed and to the best of my knowledge no loan, gratuity or gift in any form whatsoever has been extended to any employee of the City of Wenatchee nor have I rented or purchased any equipment or materials from any employee of the City of Wenatchee; I further certify that the attached final estimate is a true and correct statement showing all the monies due me from the City of Wenatchee for work performed and materials furnished under this contract; that I have carefully examined said final estimate and understand the same and that I hereby release the City of Wenatchee from any and all claims of whatsoever nature which I may have, arising out of the performance of said contract, which are not set forth in said estimate.



*[Handwritten Signature]*  
Contractor Authorized Signature Required

Brian E. Parsons, Vice President  
Type Signature Name

Subscribed and sworn to before me this 13th day of November 2019

X *[Handwritten Signature]* Notary Public in and for the State of Washington,  
residing at 2948 N Baker Ave East Wenatchee, WA / Douglas County

**City of Wenatchee**

City of Wenatchee hereby accepts the completed contract pursuant to Section 1-05.12 of the contract provisions.

X \_\_\_\_\_  
Mayor/or Designee

\_\_\_\_\_  
Date of Acceptance

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**COUNCIL AGENDA REPORT  
PUBLIC WORKS DEPARTMENT**

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

**FROM:** John Ricardi, Utilities Manager

**SUBJECT:** WWTP Snowmelt & Old Clarifier Demolition Project – Project No. SW19-05  
Final Acceptance

**DATE:** November 25, 2019

**MEETING DATE:** December 5, 2019

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**I. OVERVIEW**

This project demolished an abandoned snowmelt facility and clarifier located along Worthen Street near the City’s existing Waste Water Treatment Facility.

The project site improvements include new chain-link fencing along the northern portion of the site to protect the EQ basin, site grading, and crushed rock finished surfacing.

The project was fully funded by the Sewer Utility Fund for a total project budget of \$249,000.

A request for bids was issued and advertised on August 4 and August 11, 2019. The Engineer’s estimated range of probable costs was \$160,000 to \$180,000. The project was awarded to Pipkin Construction on August 27<sup>th</sup>, 2019 for \$149,071.68.

Construction began on September 11, 2019 with the work being deemed physically complete on November 4<sup>th</sup>, 2019.

**II. ACTION REQUESTED**

*Staff recommends that the City Council accept the work performed by the contractor, Pipkin Construction, on City Project No. SW19-05 – WWTP Snowmelt & Old Clarifier Demolition Project, and further authorize the Mayor to sign the final Contract Voucher.*

**III. FISCAL IMPACT**

The project was identified in the current CIP budget and was funded by Fund 405 – Sewer.

The table below shows the project budget and anticipated final costs. The project came in under budget by approximately 11%.

**Project Budget**

Task	Project Budget	Final Amount
Design Engineering (Consultant)	\$ 33,500.00	\$ 33,500
Construction Contract (Award)	\$ 149,071.68	\$ 127,884.04
Construction Engineering (Option for Consultant Services)	\$ 15,500.00	\$ 15,500
<b>Totals</b>	<b>\$ 198,071.68</b>	<b>\$ 176,884.04</b>



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**COUNCIL AGENDA REPORT  
PUBLIC WORKS DEPARTMENT**

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**IV. REFERENCE(S)**

1. Final Contract Voucher.

**V. ADMINISTRATIVE ROUTING**

Tammy Stanger, City Clerk  
Rob Jammerman, Public Works Director  
Brad Posenjak, Finance Director  
Natalie Thresher, Contracts Coordinator



**City of Wenatchee  
Department of Public Works**

**Final Contract  
Voucher Certificate**

Contractor Pipkin Construction			
Street Address 4801 Contractors Drive			
City East Wenatchee	State WA	Zip 98802	Date November 19, 2019
City Project Number SW19-05	Federal-Aid Project Number N/A	Highway Number N/A	
Job Title WWTP Snow Melt & Old Clarifier Demo			
Date Work Physically Completed November 4, 2019		Final Amount \$127,884.04	

**Contractor's Certification**

I, The undersigned, having first been duly sworn, certify that I am authorized to sign for the claimant; that in connection with the work performed and to the best of my knowledge no loan, gratuity or gift in any form whatsoever has been extended to any employee of the City of Wenatchee nor have I rented or purchased any equipment or materials from any employee of the City of Wenatchee; I further certify that the attached final estimate is a true and correct statement showing all the monies due me from the City of Wenatchee for work performed and materials furnished under this contract; that I have carefully examined said final estimate and understand the same and that I hereby release the City of Wenatchee from any and all claims of whatsoever nature which I may have arising out of the performance of said contract, which are not set forth in said estimate.



*[Handwritten Signature]*  
Contractor Authorized Signature Required

Brian Parsons

Type Signature Name

Subscribed and sworn to before me this 20th day of November 2019

X *[Handwritten Signature]* Notary Public in and for the State of Washington,

residing at East Wenatchee, WA

**City of Wenatchee**

City of Wenatchee hereby accepts the completed contract pursuant to Section 1-05.12 of the contract provisions.

X \_\_\_\_\_  
Mayor/or Designee

\_\_\_\_\_  
Date of Acceptance

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## COUNCIL AGENDA REPORT

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

**FROM:** Allison Williams, Executive Services Director;

**SUBJECT:** Lease Amendment No. 3 (WRC – Parcel D)

**DATE:** November 27, 2019

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**Background:** In August of 2017, City Council authorized the lease of Parcel D of the Parkside property to the Women’s Resource Center (WRC) for the purposes of adding additional permanent supportive housing units. The subsequent lease amendments that have been executed have been at the request of the Women’s Resource Center and their funding agency.

Lease Amendment No. 3 is an additional request so the lease term would be consistent with the term of their financing. Additionally, they asked for the wording “whichever is earlier” to be removed to be assured WRC would have the lease through the term of the financing. It currently reads:

“Term. The Lease term shall be for a period of forty (40) years from the date of Tenant’s occupancy of the leased premises, or period ending December 31, 2060, whichever is earlier.”

The new language extends the lease term to April 1, 2061 and removes the requested language.

Their project budget is \$3.75 million and their construction bid is \$2.425 million. A ground breaking is being organized, most likely next Spring. The construction time period is 9 months to a year.

**Finance Committee Review:** There is no financial impact with this action.

**Action Requested:** City Council motion to authorize the Mayor’s signature on Lease Amendment No. 3 between the City of Wenatchee and the Women’s Resource Center of North Central Washington for Parkside Parcel D.

AFTER RECORDING, RETURN TO:  
Steve D. Smith  
Davis, Arneil Law Firm, LLP  
617 Washington Street  
Wenatchee, WA 98801

**LEASE AMENDMENT NO. 3**  
**(WRC – Parcel D)**

Reference numbers of related documents: 2462922; 2479284; 2502464
Grantors: 1. CITY OF WENATCHEE
Grantees: 1. WOMEN’S RESOURCE CENTER OF NORTH CENTRAL WASHINGTON
Legal Description: 1. Parcel D of BLA-2019-010 WE 2. Additional legal description is on page 2 of document
Assessor’s Property Tax Parcel Number(s): 22-20-15-700-125

**I. PARTIES**

- 1.1 Landlord. City of Wenatchee, a municipal corporation of the State of Washington.
- 1.2 Tenant. Women’s Resource Center of North Central Washington, a non-profit corporation of the State of Washington.

**II. PRIOR INSTRUMENTS**

- 2.1 Lease. That certain Lease signed by Landlord on August 11, 2017, and by Tenant on August 14, 2017, recorded at Auditor’s File No. 2462922, on August 14, 2017.
- 2.2 Lease Amendment No. 1. That certain Lease Amendment No. 1 signed by Landlord on June 6, 2018, and by Tenant on June 6, 2018, recorded at Auditor’s File No. 2479284, on June 11, 2018.

2.3 Lease Amendment No. 2. That certain Lease Amendment No. 2 signed by Landlord and Tenant on September 13, 2019, recorded at Auditor's File No. 2502464, on September 16, 2019.

### III. LEASED PREMISES

3.1 Description of Leased Premises. The leased premises are legally described as follows:

Parcel D of BLA-2019-010WE recorded September 16, 2019, under Auditor's File No. 2502463.

### IV. AMENDMENT TO LEASE

4.1 Amendment.

a. Section 2 "Term" shall be amended in its entirety to read as follows:

"Term. The Lease shall be for a term ending April 1, 2061."

### V. FULL FORCE AND EFFECT

All other terms and conditions, covenants, and amendments to the above-described Lease, unless specifically amended herein, shall remain unmodified and in full force and effect.

IN WITNESS WHEREOF, the parties hereto have executed this Lease Amendment No. 2 on the day and year noted below.

LANDLORD:  
CITY OF WENATCHEE:

By \_\_\_\_\_  
FRANK J. KUNTZ, Mayor

Dated: \_\_\_\_\_



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**CITY OF WENATCHEE**

**INTEROFFICE MEMORANDUM**

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

**FROM:** Allison Williams, Executive Services Director

**SUBJECT:** Tourism Promotion Area Annual Budget approval

**DATE:** **November 27, 2019**

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In 2010, City Council reauthorized the Tourism Promotion Area (TPA) for the City of Wenatchee. This City established TPA authorizes the Department of Revenue to collect \$1 per room night for participating hotels in the city over 40 rooms (RCW allows up to \$2 per room night). As a matter of procedure, each year the TPA brings forward their budget for the following year and the list of participating hotels. A copy of the budget that has been recommended by the TPA Board at their regular meeting on November 20th follows.

For 2019, the TPA is asking for the following budget to be approved, which fits within the \$275,000 expenditure approved by City Council in the 2020 budget, however, the TPA may return to ask for a budget amendment above the \$275,000 expenditure if there is a worthy new event to be considered. In addition, several contracts that were expected to be expended in 2019 requested to be carried over to 2020 and thus they expect the carry over starting point to be larger than anticipated.

Also of note for 2020 is the addition of the Hilton Garden Inn.

**Actions requested:** Council motion to approve the 2020 Tourism Promotion Area budget.

Wenatchee Hotels Participating TPA Members\*

2020

Best Western	77
Coast Hotel	147
Comfort Inn	81
Economy Inn	42
Holiday Express	90
Motel 6	58
La Quinta	65
Super 8	102
Red Lion Hotel	149
Travelodge	48
Springhill Suites	109
Hilton Garden Inn	176
<u>Comfort Suites</u>	<u>84</u>
	1228

\*Hotels 40+ rooms





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## COUNCIL AGENDA REPORT

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

**FROM:** Allison Williams, Executive Services Director

**SUBJECT:** Resolution 2019-55

**DATE:** November 27, 2019

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The City of Wenatchee's Tourism Promotion Area Board had one term expiring at the end of 2019. Tiffany Petty, who had filled a partial term, reapplied for a new three year term on the Board. Her application was considered at the regular joint meeting of the TPA on November 20 and she was recommended for appointment to a new three year terms.

**Action Requested:** City Council motion to approve Resolution 2019-55 appointing Tiffany Petty to a new three year term on the City's Tourism Promotion Area Board ending December 31, 2022.



**City of Wenatchee**  
Volunteer Commission and Board Application

**COMMISSION/BOARD INFORMATION**

Board (s) I would like to be considered for: (if more than one, please rank them in order of preference)

- |  |   |
|--|---|
| <input type="checkbox"/> Arts, Recreation & Parks Commission | <input type="checkbox"/> Greater Wenatchee Regional Events Center PFD Board |
| <input type="checkbox"/> Cemetery Advisory Board             | <input type="checkbox"/> Historic Preservation Board                        |
| <input type="checkbox"/> Civil Service Board                 | <input type="checkbox"/> Lodging Tax Advisory Committee                     |
| <input type="checkbox"/> Code Enforcement Board              | <input type="checkbox"/> Planning Commission                                |
| <input type="checkbox"/> Diversity Advisory Committee        | <input checked="" type="checkbox"/> Tourism Promotion Area Board            |

**APPLICANT INFORMATION**

City of Wenatchee Resident  Yes  No

*Residency Requirement: Applicants must reside within the City Limits of Wenatchee except the Arts Commission, Diversity Advisory Committee, Historic Preservation Board, and the Parks & Recreation Advisory Board*

Last Name: Petty First Name: Tiffany Initial: A

Physical Address: 2274 3rd St. SE City: East Wenatchee Zip: 98802

Mailing Address: \_\_\_\_\_ City: \_\_\_\_\_ Zip: \_\_\_\_\_

Day Phone: 541-900-0178 Evening Phone: Same

E-mail: tpetty@impressquest.com Years lived in Wenatchee Valley: 1 year 7 months

Occupation: General Manager/Hospitality Years of Experience: 9 years

Work Address: 1921 N Wenatchee Ave City: Wenatchee Zip: 98801

Education and Formal Training: Associates Degree Hospitality Management

Have you ever been convicted of a felony or released from prison?  Yes  No

(A conviction record will not necessarily bar you from serving. Factors such as the nature and gravity of the crime, the length of time that has passed since the conviction and/or completion of any sentence, and the nature of the position for which you have applied will be considered.)

**Volunteer/Community Experience:**

- Organization and Duties: Southern Idaho Tourism Committee <sup>Member</sup> Length of Service: 2 years
- Organization and Duties: Jr. Honker Football Board Member Length of Service: 2 years
- Organization and Duties: \_\_\_\_\_ Length of Service: \_\_\_\_\_
- Organization and Duties: \_\_\_\_\_ Length of Service: \_\_\_\_\_
- Organization and Duties: \_\_\_\_\_ Length of Service: \_\_\_\_\_
- Skills/Special Interests: \_\_\_\_\_

Experience related to the Commission/Board: I have over 9 years experience in Hospitality Management. I have been on the Southern Idaho Tourism Committee & loved coming up with activities for the local community.

Why are you seeking this appointment? I have a passion for hospitality and how it relates to tourism. Hospitality & Tourism go hand in hand. I understand the importance of promoting tourism & its impact on the community.

Would any conflict of interest be created as a result of your appointment?  Yes  No

If yes, please explain: \_\_\_\_\_

**REFERENCES**

Name: Kimberly Thomas  
Address: 1725 4th Street NE City: East Wenatchee Zip: 9880  
Phone: 509-670-8463 Email: K.Thomas@impressquest.com  
Occupation: Front Desk Lead Holiday Inn Express Years known: 1 year

Name: Shauna Waters  
Address: 1921 N. Wenatchee Ave City: Wenatchee Zip: 98801  
Phone: 509-663-6355 Email: swaters@impressquest.com  
Occupation: Sales Coordinator Years known: 7 Months

Name: Charlotte Mayo  
Address: 1730 N. Wenatchee Ave City: Wenatchee Zip: 98801  
Phone: 509-667-2775 Email: Char.mayo@Marriott.com  
Occupation: General Manager Springhill Suites Years known: 1 year

**AFFIDAVIT OF APPLICANT**

I, Tiffany Petty, do hereby certify that the information contained in the foregoing application is true and correct to the best of my knowledge and belief. I also understand that this completed application may be made available for public inspection.

T. Petty  
(Signature)  
Date: 11/8/19





**City of Wenatchee  
Volunteer Board, Commission and Committee Responsibilities**

**To be selected and serve as a City of Wenatchee volunteer Board, Commission or Committee Member is a high honor and provides an unusual opportunity for genuine public service. Although the specific duties of each of the City's Boards vary widely with the purpose for which they are formed, there are certain responsibilities that are common to all members. As a volunteer Board, Commission or Committee representative of the City of Wenatchee, I agree to:**

1. Understand my role and scope of responsibility. I will be informed of the individual group's scope of responsibility and operating procedures.
2. Represent the majority views of the group. Individual "opinions" to the public and press are discouraged, and, if given, must be identified as such.
3. Practice open and accountable government. I will be as open as possible about my decisions and actions, and also protect confidential information.
4. Represent the public interest and not special interest groups.
5. Not make decisions in order to gain financial or other benefits for myself, my family, or friends.
6. Serve as a liaison between the City and its citizens and can help reconcile contradictory viewpoints and to build a consensus around common goals and objectives. I will serve as a communication link between community, staff, and City, representing City programs and recommending and providing a channel for citizen expression.
7. Understand my role as a supportive relationship with the City Council and City staff and to follow the proper channel of communication through the designated staff person providing support for the group.
8. Do my homework and be thorough in recommendations. I will review agenda items under consideration prior to the meeting in order to be fully prepared to discuss, evaluate, and act on all matters scheduled for consideration. My conclusions will be based on careful preparation to strengthen the value of the group's recommendation.
9. Adhere to the highest standards of integrity and honesty in all endeavors and strive to safeguard the public trust. I shall announce any direct or remote conflict of interests prior to the discussion (RCW 42.36).
10. Understand that my authority is limited to decisions made by the group, and that in most cases, the decisions are advisory.
11. Understand that in my role I recommend policy while administrators and staff carry out approved policy.
12. Establish a good working relationship with fellow group members. I will respect individual viewpoints and allow other members time to present their views fully before making comments. I will be open and honest and welcome new members.
13. Not use or involve my membership in the conduct of political activities. However, I am not restricted from participating in political activities outside of my involvement in the group.

I hereby pledge to be positive in my role as a volunteer with the City and accept responsibility for my participation.

Signed:  Date: 11/8/19

## RESOLUTION NO. 2019-55

A **RESOLUTION**, appointing a member to the Tourism Promotion Area Advisory Board for a three (3) year term.

**WHEREAS**, Tiffany Petty has expressed an interest and is well qualified to serve as a member of the City of Wenatchee Tourism Promotion Area Advisory Board for a three year term.

**NOW, THEREFORE, BE IT RESOLVED THAT THE CITY COUNCIL OF THE CITY OF WENATCHEE** makes the following appointment to the Tourism Promotion Area Advisory Board for the term noted:

**NAME & ADDRESS**

**TERM EXPIRES**

Tiffany Petty  
Holiday Inn Express  
1921 N. Wenatchee Ave.  
Wenatchee, WA 98801

December 31, 2022

**PASSED BY THE CITY COUNCIL OF THE CITY OF WENATCHEE** at a regular meeting thereof this 5<sup>th</sup> day of December, 2019.

CITY OF WENATCHEE, a Municipal  
Corporation

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

ATTEST:

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

APPROVED:

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





# MEMO

Parks, Recreation and Cultural Services Department

To: Mayor Kuntz and City Council  
From: Dave Erickson, Parks, Recreation and Cultural Services Director  
Re: Acceptance of RCO grants  
Date: July 30, 2019

***ACTIONS REQUESTED:***

**Move approval of the project funding agreement 18-1246D with the State of Washington for the Lincoln Park Project and authorize the Mayor to sign the agreement.**

**Move approval of the project funding agreement 18-1250D with the State of Washington for the Lincoln Park Project and authorize the Mayor to sign the agreement.**

***PROJECT BACKGROUND:***

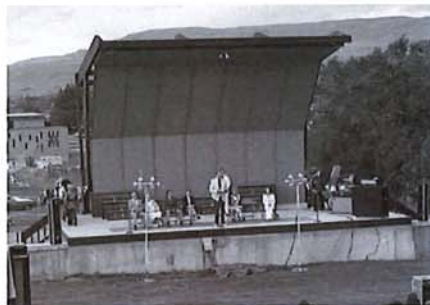
Lincoln Park is an 18½ acre community park located at 1410 South Mission in South Wenatchee. It was acquired in 1945 and developed into a park in the early 1970's with funding provided by the City and the State Interagency Committee for Outdoor Recreation (now Recreation and Conservation Office (RCO)).



Over the years, the park was upgraded to better serve the community. Restrooms were added in 1970, picnic shelter and play area in 1972 and stage in 1974. Baseball fields were improved thanks to additional IAC grants and in 1995 the Rotary Club renovated the playground. Along with regular uses such as



picnicking, baseball, softball and sledding, the park hosts a number of activities like free movies and concerts and the Fiestas Mexicanas festival.



Even with regular maintenance, time caught up to the original features of the park. Due to age, accessibility, safety and code related issues, the stage was removed in 2016, the picnic shelter in 2017 and the play area in 2019.



Creation of an updated master plan for the park came out of necessity due to the ageing infrastructure and also from several public planning processes that engaged the community to collect input on what people would like to have in the park. These included the South Wenatchee Sustainable Design Assessment Team Plan, South Wenatchee Sub Area Plan, Our Valley Our Future and 2012 and 2018 Parks, Recreation and Open Space comprehensive plans. The project was also discussed at Parks Commission, service club and City Council meetings off and on for several years. The results of these processes led to



the creation of a phased development plan that improves its safety, function and aesthetics and meet the needs of the community. The following is a summary of this phase of work:

The project will take an underutilized, highly visible portion of the park and create a dirt bmx pump track. It is doubtful that an asphalt pump track could be constructed at this time due to budget limitations.



To address community picnicking needs a 20 x 40 group shelter will be added on the west side of the park so it's convenient to parking and help bring new life to this area.

A new, themed play area will be constructed that is more visually open for safety and security and a spray park will be added to serve this area of the community. The play area will feature a variety of equipment for physical play to help combat the high obesity rates of children in the area. The spray park will create a new recreation opportunity that is within easy walking distance of this portion of town.



The remnants of the stage are planned to be replaced with a structure that is closer to the ground for improved accessibility and meet code. It is planned to be relocated and reoriented to create a park focal point, increase capacity of the viewing area and take better advantage of the slope.

The two main parking lots will be striped to gain efficiency and provide ADA accessible spaces. By doing this, we are estimating that capacity will be increased by 35% and provide parking for up to 110 vehicles.





The existing open field will be filled and graded to create a full size soccer/lacrosse field. Safety fences are planned be installed along Crawford Avenue. New restrooms would be constructed which meet current code and more centrally located. The mechanical room of the restroom would also serve the spray park.

The last main visible project element is the addition of 42 trees to increase shade, storm water absorption and canopy coverage and ensure the park remains forested into the future. The tree planting is included in the RCO grants, however staff has also applied for a Department of Natural Resources grant for this element of the project, which, if successful would help stretch the RCO grant funding and increase the City's match. We should know after the first of the year if this application was successful.



A final project element is the relocation of utilities throughout the various project elements. We are also working with a local disc golf club to install a disc golf course at the park. It would be part of this project, yet separate as it may begin prior to the main project getting underway and funded separately.

This project will satisfy ten goals contained in the afore mentioned plans including placing priority on revitalization and improvement of existing park areas and renovating Lincoln Park by developing a Splash Pad, bmx pump track, and picnic and play areas. It accomplishes the fifth ranked priority park project in the capital plan, fulfills strategies in the National Physical Activity Plan and strategies contained in other planning documents including Healthy Communities, Our Valley Our Future and others.

**Table 6.1.1: Parks, Recreation and Open Space Capital Investment Plan Summary**

Project Rank	Project Number	Project Name	Location	Total Cost
1	PK2006C3	Park Renovations	Pioneer Park	\$9,000,000
2	PK2013C6	Hale Park Development	Hale Park	\$1,117,000
3	PK2006T11	Pedestrian Bridge Extension	Hale Park	\$3,000,000
4	PK2006N2	Park Renovations	Kiwanis Methow Park	\$3,100,000
5	PK2006C1	Park Renovations	Lincoln Park	\$2,186,000
6	PK2006N1	Park Renovations	Chase Park	\$139,200
7	PK2006C6	New Community Park 1	Central Area	\$3,000,000
8	PK2006T3	New Trail Corridor A	To Be Determined	\$200,000

**GRANT FUNDING:**

Opportunities to obtain funding for parks and recreation projects are somewhat limited. One of the largest grant agencies with programs available for parks is the Washington State Recreation Conservation Funding Board (RCFB). Within the RCFB is the Recreation Conservation Office (RCO). They are the managing agency for the grant programs.

The rigorous, time consuming and highly competitive RCO grant application process begins in early February and continues throughout the year with technical presentations typically held in May and final project presentations held in Olympia in August. The ranked list of projects are available in September



and potentially funded list published at the end of October.

In February 2018 following presentations at the City Council Public Works Committee, City Council work session and Arts, Recreation and Parks Commission meetings, the City Council authorized pursuing several grants and competing in the application process for the project. For the next six months, the application process was completed.

Three grant applications were completed including a \$500,000 Washington Wildlife and Recreation Program Local Parks (WWRP) Development Grant, \$292,500 Youth Athletic Facilities Account (YAF) Grant and \$500,000 Federal Land and Water Conservation Fund Grant (LWCF).

The required grant match is estimated to be derived from the use of the sewer and art funds; city appropriations; matching the grants against one another; donations; and in-kind staff costs.

The grant results were as follows:

**Lincoln Park RCO Youth Athletic Facilities Grant Results**

The application ranked 5<sup>th</sup> out of 69 projects statewide and is fully funded.

**Lincoln Park Improvement RCO WWRP Local Parks Grant Results**

The project ranked 4<sup>th</sup> out of 93 projects statewide and is fully funded.

**Lincoln Park Improvement RCO Federal LWCF Grant Results**

The application ranked 9<sup>th</sup> out of the 18 applications and was designated to receive funding. Senator Cantwell’s office announced the funding award of \$520,600 on October 3, 2019.

If the grants are accepted by the City, we are anticipating that final engineering would occur in 2020 with bidding and construction in 2021. Standard state grant contracts are attached for City Council’s consideration.

***PRELIMINARY PROJECT BUDGET***

Final design and engineering will better estimate the budget for the project. A preliminary, planning level budget was prepared for the project. Revenues would match expenses. We are estimating that this will change through the design development process. The bulk of the expenses would occur during the construction phase in 2021.

<b>Revenue Sources</b>	<b>Amount</b>	<b>Notes</b>
RCO YAF Grant	\$500,000	Funded
RCO WWRP Grant	\$500,000	Funded
RCO LWCF Grant	\$263,192	Funded
DNR Grant	\$17,100	Pending
Donations – Rotary	\$50,000	Received
Donations – Fiestas	\$25,000	Pledged in 2018 but not yet received
Donations – Other	\$88,000	To be determined
Art Fund	\$300,000	Will need to borrow against future fund contributions
Sewer Fund	\$228,000	
General Fund	<u>\$107,900</u>	Anticipated that this will change once bids are received
<b>TOTAL</b>	<b>\$2,079,192</b>	

## LINCOLN PARK PROJECT PRELIMINARY PLANNING LEVEL BUDGET

ITEM	COST	DESCRIPTION/NOTES
<b>YAF Grant Project Elements</b>		
Architecture and Engineering	\$ 61,500	Includes staff time for administration and project management
Cultural Resources	\$ 7,500	
Fencing	\$ 22,900	Approximately 630 lf of 6' black chain link
Landscaping	\$ 6,100	Irrigation and trees
Permits	\$ 6,000	Most likely covered below
Restroom	\$ 200,000	New 1,120 square foot restroom, include mechanical room for spray park
Site Preparation	\$ 15,000	Restroom demolition and disposal
Soccer Field	\$ 196,000	Full size field, fill, hydroseed and irrigation
Utilities - Power	\$ 20,000	Relocating lines
Utilities - Sewer	\$ 28,000	Relocating lines
Utilities - Water	\$ 22,000	Relocating lines
<b>Subtotal</b>	<b>\$ 585,000</b>	
<b>WWRP/LWCF Grant Project Elements</b>		
Architecture and Engineering	\$ 172,000	Includes staff time for administration and project management
Cultural Resources	\$ 3,100	Most likely won't need according to RCO - covered under YAF
Disc Golf Course	\$ -	Disc golf club fundraising for baskets. Constructed separately during project.
Landscaping	\$ 20,400	Irrigation and trees
Parking	\$ 9,000	striping of two lots
Pathways	\$ 18,000	2,210 lf x 8' hma overlay
Permits	\$ 6,000	plumbing, building, electrical
Picnic Shelter	\$ 150,000	20' x 30'
Play Area	\$ 345,000	Approximately 14, 700 square feet
Pump Track	\$ 8,500	7,600 square foot track, supplement with volunteer labor
Signs	\$ 3,500	reservation kiosk, rules, parking
Site Furnishings	\$ 32,000	Benches, picnic tables, trash cans, bike racks. Benches possibly purchased by memorial sponsors
Site Preparation	\$ 35,000	Mobilization
Spray Park	\$ 350,000	2,000 square feet, direct discharge to sewer, no recirculation
Stage	\$ 275,000	30' x 40'
Utilities - Power	\$ 41,000	Relocating lines and possible service addition for vendors if budget allows
Utilities - Water	\$ 25,000	Relocating lines
<b>Subtotal</b>	<b>\$ 1,493,500</b>	
<b>DNR Grant Project Elements</b>		
Landscaping	\$ 11,400	If received, then this would redistribute a portion of landscaping above.
<b>Grand Total</b>	<b>\$ 2,078,500</b>	Including sale tax where applicable





**Project Sponsor:** City of Wenatchee  
**Project Title:** Lincoln Park Soccer-Lacrosse Field Construction

**Project Number:** 18-1246D  
**Approval Date:** 06/27/2019

## **PARTIES OF THE AGREEMENT**

This Recreation and Conservation Office 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.

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 a grant application for grant assistance, (2) enter into this project agreement on behalf of the Sponsor(s) (including indemnification and waiver of sovereign immunity, if applicable, 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/Agent(s) of all sponsors, unless otherwise allowed in Amendments and Agreement Section.

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 PROJECT REIMBURSEMENTS Section).

## **PURPOSE OF AGREEMENT**

This Agreement sets out the terms and conditions by which a grant is made from the State Building Construction Account of the State of Washington. The grant is administered by the Recreation and Conservation Office (RCO).

## **DESCRIPTION OF PROJECT**

The City of Wenatchee will use this grant to build a soccer-lacrosse field in the 18-acre Lincoln Park in south Wenatchee. The project will also include fencing and a restroom. The design, planning, and construction are being conducted as part of an overall Lincoln Park Revitalization project being undertaken by the City of Wenatchee. The primary recreational opportunity provided by this project is youth athletic field sports.

## **PERIOD OF PERFORMANCE**

The period of performance begins on October 1, 2019 (project start date) and ends on March 30, 2022 (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 applicable RCWs, WACs, and any applicable 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.

## **STANDARD TERMS AND CONDITIONS INCORPORATED**

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

## **LONG-TERM OBLIGATIONS**

For this development and renovation project, the sponsor's on-going obligations shall be for 20 years from the date of final reimbursement from RCO or the date RCO accepts the project as complete per the Project Agreement, whichever is later and shall survive the completion/termination of this Project Agreement unless otherwise identified in the Agreement or as approved by the funding board.

**PROJECT FUNDING**

The total grant award provided for this project shall not exceed \$263,192.00. The RCO shall not pay any amount beyond that approved for grant funding of the project and within the 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
RCFB - YAF - Large	44.99%	\$263,192.00	State
Project Sponsor	55.01%	\$321,808.00	
<b>Total Project Cost</b>	<b>100.00%</b>	<b>\$585,000.00</b>	

**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.

**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 policies applicable and active and published in the applicable 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.

**COMPLIANCE WITH APPLICABLE STATUTES, RULES, AND POLICIES**

This Agreement is governed by, and the sponsor shall comply with, all applicable state and federal laws and regulations, applicable RCO manuals as identified below, and any applicable federal program and accounting rules effective as of the date of this Agreement, and with respect to any amendments to this Agreement, as of the effective date of that 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.

For the purpose of this Agreement, WAC Title 286, RCFB policies, and shall apply as terms of this Agreement.

For the purpose of this Agreement, the following RCO manuals are deemed applicable and shall apply as terms of this Agreement:

- Development Projects - Manual 4
- Long Term Obligations - Manual 7
- Reimbursements - Manual 8
- Youth Athletic Facilities - Manual 17

**SPECIAL CONDITIONS**

1. Cultural Resources-Survey Required

This agreement requires compliance with Executive Order 05-05 and/or Section 106 of the National Historic Preservation Act. RCO has completed the initial consultation for this project and a cultural resources survey is required. The Sponsor must submit to RCO the survey and receive from RCO a notice of cultural resources completion before any ground disturbing



activities can begin. Ground disturbance started without approval 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 this agreement. All cultural resources work must meet reporting guidelines outlined by the Department of Archaeology and Historic Preservation.

**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:

**Sponsor Project Contact**  
Dave Erickson  
Parks and Recreation Director  
PO Box 519  
Wenatchee, WA 98807  
DErickson@wenatcheewa.gov

**RCO Contact**  
Brian Carpenter  
Natural Resources Building  
PO Box 40917  
Olympia, WA 98504-0917  
Brian.Carpenter@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.

**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.

**EFFECTIVE DATE**

This Agreement, for project 18-1246, 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 the PERIOD OF PERFORMANCE Section 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 RECREATION AND CONSERVATION OFFICE 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 and 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  
Assistant Attorney General

Date: 01/01/2019





**Project Sponsor:** City of Wenatchee  
**Project Title:** Lincoln Park Soccer-Lacrosse Field Construction

**Project Number:** 18-1246D  
**Approval Date:** 06/27/2019

## Eligible Scope Activities

### ELIGIBLE SCOPE ACTIVITIES

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#### Project Metrics

##### Sites Improved

Project acres renovated: 5.50

#### Development Metrics

##### Worksite #1, Lincoln Park

##### Athletic Fields

##### Soccer field development

Number of soccer fields: 1 new, 0 renovated  
 One full size field that will accommodate two youth fields.

Number of soccer fields with lighting: 0 new, 0 renovated  
 No lighting, per the neighborhood.

Number of soccer fields by surface type:

Natural	1
Synthetic	0

##### Buildings and Structures

##### Construct / install restroom

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

##### General Site Improvements

##### Install fencing/barriers

##### Landscaping improvements

Acres of landscaped area : 5.50  
 Select the landscape features: Irrigation, Trees/shrubs

##### Site Preparation

##### General site preparation

##### Utilities

##### Install power utilities

Select the power utilities: General service connection, Power line

##### Install sewage system

Select the sewer utilities: Sewer connection, Sewer line, Sewer relocation

##### Install water system

Select the water utilities: Water line, Water service connection, Water system relocation

##### Cultural Resources

##### Cultural resources

##### Permits

##### Obtain permits

**Architectural & Engineering**  
**Architectural & Engineering (A&E)**

**Project Sponsor:** City of Wenatchee  
**Project Title:** Lincoln Park Soccer-Lacrosse Field Construction

**Project Number:** 18-1246D  
**Approval Date:** 06/27/2019

## Project Milestones

### PROJECT MILESTONE REPORT

Complete	Milestone	Target Date	Comments/Description
X	Project Start	10/01/2019	
	Design Initiated	11/14/2019	
	Cultural Resources Complete	03/27/2020	Survey required, see special condition #1.
	60% Plans to RCO	05/21/2020	
	Progress Report Due	06/30/2020	
	SEPA/NEPA Completed	07/30/2020	
	Annual Project Billing Due	07/31/2020	
	All Bid Docs/Plans to RCO	10/30/2020	
	Progress Report Due	12/31/2020	
	Bid Awarded/Contractor Hired	02/11/2021	
	Applied for Permits	03/01/2021	
	Construction Started	03/01/2021	
	50% Construction Complete	06/01/2021	
	RCO Interim Inspection	06/01/2021	
	Progress Report Due	06/30/2021	
	Annual Project Billing Due	07/30/2021	
	90% Construction Complete	08/31/2021	
	Construction Complete	10/30/2021	
	Funding Acknowl Sign Posted	10/30/2021	
	RCO Final Inspection	11/15/2021	
	Final Billing Due	12/15/2021	
	Final Report Due	12/31/2021	
	Agreement End Date	03/30/2022	



**Project Sponsor:** City of Wenatchee  
**Project Title:** Lincoln Park Soccer-Lacrosse Field Construction

**Project Number:** 18-1246D  
**Approval Date:** 06/27/2019

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## Standard Terms and Conditions of the Recreation and Conservation Office

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## STANDARD TERMS AND CONDITIONS EFFECTIVE DATE

This agreement reflects Standard Terms and Conditions as of 09/16/2019.

## 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:

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

**applicable manual(s)** -- A manual designated in this Agreement to apply as terms of this Agreement, subject to substitution of the "RCO director" for instances where the term "board" occurs.

**applicable WAC(s)** -- Designated chapters or provisions of the Washington Administrative Code that are deemed under this Agreement to apply as terms of the Agreement, subject to substitution of the "RCO director" for instances where the term "board" occurs.

**applicant** – Any party that meets the qualifying standards, including deadlines, for submission of an application soliciting a grant of funds administered by RCO.

**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.

**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.

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

**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 Washington State Recreation and Conservation Funding Board, or the Washington State Salmon Recovery Funding Board. Or both as may apply.

**Funding Entity** – the entity that approves the project that is the subject to this Agreement.

**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.

**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.

**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.

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

**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.

**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.

**project area** - A geographic area that delineates a grant assisted site which is subject to project agreement requirements.

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

**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.

**RCO** – Recreation and Conservation Office – The state agency that administers the grant that is the subject of this Agreement. RCO includes the director and staff.

**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.

**RCFB** – Recreation and Conservation Funding Board

**RCW** – Revised Code of Washington

**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.

**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 the Project Funding Section.

**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.

### **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 RCO. 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.

### **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.

### **RESPONSIBILITY FOR PROJECT**

While RCO administers the grant that is the subject of this Agreement, the project itself remains the sole responsibility of the Sponsor. The RCO and Funding Entity (if different from the RCO) 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.

### **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.

#### **INDEPENDENT CAPACITY OF THE SPONSOR**

The Sponsor and its employees or agents performing under this Agreement are not officers, employees or agents of the RCO or Funding Entity. The Sponsor will not hold itself out as nor claim to be an officer, employee or agent of the RCO or the Funding Entity, 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.

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.

#### **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.

#### **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 RCO or Funding Entity. The Sponsor is responsible for any and all costs or liability arising from the Sponsor's failure to so comply with applicable law. 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."

- 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 39.12.40. 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."

## 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 the PROJECT REIMBURSEMENTS Section. 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 RCO 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 (which ever applies). Additionally, the Sponsor agrees to disclose any information in regards to the expenditure of that funding as if the project sponsor were subject to the requirements of chapter 42.56 RCW. 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.

#### PROJECT FUNDING

- A. **Authority.** This Agreement and funding is made available to Sponsor through the RCO.
- B. **Additional Amounts.** The RCO or Funding Entity 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 RCO 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 the RCO director, 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. **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 RCO or Funding Entity may have under this Agreement, the grant amounts identified in this Agreement shall be reduced to exclude any such expenditure from participation.

#### PROJECT REIMBURSEMENTS

- A. **Reimbursement Basis.** This Agreement is administered on a reimbursement basis per WAC 286-13 and/or 420-12, which ever has been designated to apply. 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 the PROJECT FUNDING Section. 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 recent applicable RCO manuals and this Agreement 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 of the project area for which the Agreement terms will apply in the future.

#### 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.

#### 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.

#### INCOME (AND FEES) AND USE OF INCOME

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

- A. **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 applicable manuals, RCWs, and WACs.
- 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 grant funding;
  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 and shall be consistent with the:
  1. Grant program laws, rules, and applicable manuals;
  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.

## 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.

## TREATMENT OF EQUIPMENT AND ASSETS

Equipment shall be used and managed only for the purpose of this Agreement, unless otherwise provided herein or in the applicable manuals, 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.

## 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 has been executed, it will further stipulate and define the RCO's right to inspect and access lands acquired or developed with this funding assistance.

## STEWARDSHIP AND MONITORING

Sponsor agrees to perform monitoring and stewardship functions as stated in the applicable WACs and manuals, this Agreement, or as otherwise directed by RCO consistent with the existing laws and applicable manuals. Sponsor further agrees to utilize, where applicable and financially feasible, any monitoring protocols recommended by the RCO; provided that RCO does not represent that any monitoring it may recommend will be adequate to reasonably assure project performance or safety. It is the sole responsibility of the Sponsor to perform such additional monitoring as may be adequate for such purposes.

## 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.

## 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 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.

**PROVISIONS APPLYING TO DEVELOPMENT, MAINTENANCE, RENOVATION, AND RESTORATION PROJECTS**

The following provisions shall be in force:

- A. Operations and Maintenance.** Properties, structures, and facilities developed, maintained, or operated with the assistance of money granted per this Agreement 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. 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 RCO must receive prior written approval of the 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 this Agreement and any applicable manual as of the effective date of this Agreement and determines the long-term compliance period unless otherwise provided in any applicable manual, RCW, WAC, or as approved by the RCO.
- D. 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.

**LONG-TERM OBLIGATIONS OF THE PROJECTS AND SPONSORS**

- A. Long-Term Obligations.** Sponsor shall comply with the terms of this Agreement.
- B. Perpetuity.** For acquisition, development, and restoration projects, or a combination thereof, unless otherwise allowed by applicable manual, policy, program rules, or this Agreement, or approved in writing by RCO. RCO requires that the project area continue to function as intended after the period of performance in perpetuity.
- C. 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. 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 RCO 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 the terms of this Agreement, including without limitation all WACs and manuals deemed applicable and all applicable laws.

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 by this Agreement, any applicable manual or WAC, or any applicable state or federal law.

When a conversion has been determined to have occurred, the Sponsor is required to remedy the conversion per this Agreement and the applicable manuals, WACs and laws, and the RCO may pursue such remedies as the above allows.

## CONSTRUCTION, OPERATION, USE, AND MAINTENANCE OF ASSISTED PROJECTS

The following provisions shall be in force for this agreement:

- A. **Property and facility operation and maintenance.** Sponsor must ensure that properties or facilities assisted with the grant 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, and in compliance with applicable statutes, rules, and applicable WACs and manuals, 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 RCO director 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.

## 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:

- A. Federal law and binding executive orders;
- B. Code of federal regulations;
- C. Terms and conditions of a grant award to the state from the federal government;
- D. Federal grant program policies and procedures adopted by a federal agency that are required to be applied by federal law;
- E. State law (constitution, statute);
- F. Washington Administrative Code;
- G. Applicable RCO manuals.



#### **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.

#### **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.

#### **APPLICATION REPRESENTATIONS – MISREPRESENTATIONS OR INACCURACY OR BREACH**

The Funding Entity (if different from RCO) and RCO relies 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.

#### **SPECIFIC PERFORMANCE**

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 RCO shall be deemed exclusive. The 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.

#### **TERMINATION AND SUSPENSION**

The 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 RCO policies, and with the representations of the Sponsor in its application for a grant as finally approved by RCO. For federal awards, notification of termination will comply with 2 C.F.R. § 200.340.

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

1. The RCO 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 RCO 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 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 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 director , after any portion of the grant amount has been paid to the Sponsor under this Agreement , the 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.

**DISPUTE HEARING**

Except as may otherwise be provided in this Agreement , when a dispute arises between the Sponsor and the RCO, 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 persons chosen by the Sponsor and director shall be dismissed and an alternate person chosen by the Sponsor, and one by the director shall be appointed and they shall agree on a third person. This process shall be repeated until a three person panel is established.

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.

**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.

**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.

**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.

**END OF AGREEMENT**

This is the end of the agreement.





**Project Sponsor:** City of Wenatchee  
**Project Title:** Lincoln Park Renovation

**Project Number:** 18-1250D  
**Approval Date:** 10/08/2019

## **PARTIES OF THE AGREEMENT**

This Recreation and Conservation Office 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 a grant application for grant assistance, (2) enter into this project agreement on behalf of the Sponsor(s) (including indemnification and waiver of sovereign immunity, if applicable, 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/Agent(s) of all sponsors, unless otherwise allowed in Amendments and Agreement Section.

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 PROJECT REIMBURSEMENTS Section).

## **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).

## **DESCRIPTION OF PROJECT**

The City of Wenatchee will use this grant to renovate Lincoln Park, an 18-acre community park located in Chelan County. Project work will include installation of a BMX pump track, a group picnic shelter, playground, splash pad, parking improvements, trees, restrooms, a new stage, and accessible connecting paths. The primary recreational opportunities provided by this grant are active and passive recreational uses.

## **PERIOD OF PERFORMANCE**

The period of performance begins on October 8, 2019 (project start date) and ends on June 30, 2021 (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 applicable RCWs, WACs, and any applicable 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.

## **STANDARD TERMS AND CONDITIONS INCORPORATED**

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

## **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 the Long-Term Obligations Of The Project Sponsors section) that all lands acquired and/or facilities and areas developed, renovated, or restored with funding assistance

remain in the public domain in perpetuity.

**PROJECT FUNDING**

The total grant award provided for this project shall not exceed \$1,000,000.00. The RCO shall not pay any amount beyond that approved for grant funding of the project and within the 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
RCFB - Land and Water Conservation	32.78%	\$500,000.00	Federal
RCFB - WWRP - Local Parks	32.78%	\$500,000.00	State
Project Sponsor	34.44%	\$525,400.00	
<b>Total Project Cost</b>	<b>100.00%</b>	<b>\$1,525,400.00</b>	

**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 Fund  
 Federal Award Identification Number: P19AP00201  
 Federal Fiscal Year: 2019  
 Federal Award Date: 09/26/2019  
 Total Federal Award: \$500,000  
 Federal Award Project Description: 53-00742 Lincoln Park Renovation

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.

**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.

**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 policies applicable and active and published in the applicable 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. ~~RCO will update in law, rule, policy or a manual incorporated into a result of an amendment shall apply~~



prospectively and shall not require that an act previously done in compliance with existing requirements be redone.

### **COMPLIANCE WITH APPLICABLE STATUTES, RULES, AND POLICIES**

This Agreement is governed by, and the sponsor shall comply with, all applicable state and federal laws and regulations, applicable RCO manuals as identified below, and any applicable federal program and accounting rules effective as of the date of this Agreement, and with respect to any amendments to this Agreement, as of the effective date of that 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.

For the purpose of this Agreement, WAC Title 286, RCFB policies, and shall apply as terms of this Agreement.

For the purpose of this Agreement, the following RCO manuals are deemed applicable and shall apply as terms of this Agreement:

- Development Projects - Manual 4
- Land and Water Conservation Fund - Manual 15
- Long Term Obligations - Manual 7
- Reimbursements - Manual 8
- WWRP - Recreation Programs - Manual 10a

### **SPECIAL CONDITIONS**

#### **1. Cultural Resources-Monitoring Required**

Funding for this project is projected to be 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 construction monitoring is required. Ground disturbance without a monitor present will be considered a breach of contract. Post construction, the Sponsor must submit to a monitoring report, meeting federal standards, before final payment will be made. 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 this agreement. All cultural resources work must meet reporting guidelines outlined by the Department of Archaeology and Historic Preservation and Section 106 of the National Historic Preservation Act.

### **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:

#### **Sponsor Project Contact**

Dave Erickson  
Parks and Recreation Director  
PO Box 519  
Wenatchee, WA 98807  
DERickson@wenatcheewa.gov

#### **RCO Contact**

Brian Carpenter  
Natural Resources Building  
PO Box 40917  
Olympia, WA 98504-0917  
Brian.Carpenter@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.

### **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.

### **EFFECTIVE DATE**

This Agreement, for project 18-1250, 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 the PERIOD OF PERFORMANCE Section 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 RECREATION AND CONSERVATION OFFICE 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 and 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  
Assistant Attorney General

Date: 01/01/2019



**Project Sponsor:** City of Wenatchee  
**Project Title:** Lincoln Park Renovation

**Project Number:** 18-1250D  
**Approval Date:** 10/08/2019

## Eligible Scope Activities

### ELIGIBLE SCOPE ACTIVITIES

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#### Project Metrics

##### Sites Improved

Project acres developed: 0.17  
 Project acres renovated: 3.83

#### Development Metrics

##### Worksite #1, Lincoln Park

##### Buildings and Structures

###### Construct amphitheater/stage

Number of amphitheaters: 1 new, 0 renovated  
 Number of amphitheater stages: 1 new, 0 renovated  
 Select the amphitheater seating type: Sloped lawn area

##### General Site Improvements

###### Construct picnic shelter

Number of group picnic shelters: 1 new, 0 renovated

###### Develop circulation paths or access routes

Enter length of circulation paths and routes by surface type:  
 Asphalt 2210  
 Lighting provided (yes/no): No  
 There is existing lighting on the walkways that would be upgraded if a separate grant is received.

###### Install signs/kiosk

Number of kiosks: 1 new, 0 renovated  
 Number of interpretive signs/displays: 0 new, 0 renovated  
 Number of permanent entrance signs: 0 new, 0 renovated  
 Number of electronic signs: 0 new, 0 renovated  
 Project involves installation of informational signs (yes/no): No

###### Install site furnishings

###### Landscaping improvements

Acres of landscaped area : 4.00  
 Select the landscape features: Irrigation, Trees/shrubs

##### Parking and Roads

###### Parking development

Number of vehicle parking stalls: 0 new, 110 renovated  
 Number of vehicle with trailer parking stalls: 0 new, 0 renovated  
 Number of accessible parking stalls:  
     Vehicle 5  
     Vehicle with trailers 0  
 Select the parking surfaces : Asphalt  
 The asphalt parking is existing. We would be striping the lots to gain efficiency.  
 Select the parking enhancements: Striping

#### Play Areas

**Playground development**

Number of play areas: 0 new, 1 renovated  
Number of climbing walls/rocks: 0 new, 0 renovated  
Select the play area surface material type: Rubber matting/tiles

**Site Preparation**

**General site preparation**

**Sports Facilities**

**BMX track/course development**

Number of BMX tracks: 1 new, 0 renovated  
Lighting provided for evening use (yes/no): No  
Number of miles of track: 0.25  
7,600 square foot pump track.

**Swimming Facilities**

**Spray park development**

Number of sprayparks/water play areas: 1 new, 0 renovated

**Utilities**

**Install power utilities**

Select the power utilities: Relocate/bury power utility, Transformers/panels  
This project relocates the power to the new amenities.

**Install water system**

Select the water utilities: Water line, Water system relocation

**Cultural Resources**

**Cultural resources**

**Permits**

**Obtain permits**

**Architectural & Engineering**

**Architectural & Engineering (A&E)**



**Project Sponsor:** City of Wenatchee  
**Project Title:** Lincoln Park Renovation

**Project Number:** 18-1250D  
**Approval Date:** 10/08/2019

## Project Milestones

### PROJECT MILESTONE REPORT

Complete	Milestone	Target Date	Comments/Description
X	Project Start	10/08/2019	
X	Design Initiated	11/04/2019	
	60% Plans to RCO	05/21/2020	
	SEPA/NEPA Completed	07/30/2020	
	All Bid Docs/Plans to RCO	08/30/2020	
	Bid Awarded/Contractor Hired	09/30/2020	
	Applied for Permits	10/15/2020	
	Construction Started	10/30/2020	Archaeological monitoring of construction required, see special condition #1.
	Progress Report Due	10/31/2020	For period ending September 30.
	Annual Project Billing Due	10/31/2020	For period ending September 30.
	50% Construction Complete	11/30/2020	
	RCO Interim Inspection	12/15/2020	
	90% Construction Complete	01/29/2021	
	Progress Report Due	01/29/2021	
	Funding Acknowl Sign Posted	03/30/2021	
	Cultural Resources Complete	03/31/2021	Submit results of archaeological monitoring of construction to RCO, see special condition #1.
	Construction Complete	03/31/2021	
	RCO Final Inspection	04/30/2021	
	Final Billing Due	05/15/2021	
	Final Report Due	05/31/2021	
	Agreement End Date	06/30/2021	





**Project Sponsor:** City of Wenatchee  
**Project Title:** Lincoln Park Renovation

**Project Number:** 18-1250D  
**Approval Date:** 10/08/2019

## Land and Water Conservation Fund General Provisions

### EFFECTIVE DATE

NPS Approved September 26, 2019

### ARTICLE XI – PRIOR APPROVAL

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

### ARTICLE XIII - INSURANCE AND LIABILITY

- A. Insurance. The Recipient is expected to have sufficient financial resources to cover claims brought by third parties for death, bodily injury, property damage, or other loss resulting from one or more identified activities carried out in connection with this financial assistance agreement.
- B. Indemnification. The Recipient hereby agrees to: Indemnify the Federal government, and the NPS, from any act or omission of the Recipient, its officers, employees, or (members, participants, agents, representatives, agents as appropriate), (1) against third party claims for damages arising from one or more identified activities carried out in connection with this financial assistance agreement and (2) for damage or loss to government property resulting from such an activity. This obligation shall survive the termination of this Agreement.  
  
Provide workers' compensation protection to its officers, employees, and representatives.  
  
Cooperate with the NPS in the investigation and defense of any claims that may be filed with the NPS arising out of the activities of the Recipient, its agents, and employees.
- C. Flow-down: For the purposes of this clause, "recipient" includes such sub-recipients, contractors, or subcontractors as, in the judgment of the recipient and subject to the Government's determination of sufficiency, have sufficient resources and/or maintain adequate and appropriate insurance to achieve the purposes of this clause.
- D. Identified activities: renovate existing public outdoor recreation facilities.

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

- A. This Agreement may be modified at any time, prior to the expiration date, only by a written instrument executed by both parties. Modifications will be in writing and approved by the AO and the authorized representative of the 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 in Attachment A and B.
- C. This Agreement may be terminated consistent with applicable termination provisions for Agreements found in 2 CFR 200.339 through 200.342 and in Attachment A and B.

### ARTICLE XVII – GENERAL AND SPECIAL PROVISIONS

Recipients must establish internal controls that include, at a minimum, procedures to identify, disclose, and mitigate or eliminate identified conflicts of interest. The recipient is responsible for notifying the Financial Assistance Officer in writing of any conflicts of interest that may arise during the life of the award, including those that have been reported by subrecipients. Restrictions on Lobbying. Non-Federal entities are strictly prohibited from using funds under this grant or cooperative agreement for lobbying activities and must provide the required certifications and disclosures pursuant to 43 CFR Part 18 and 31 USC 1352.

#### 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](http://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 Violations of this section shall constitute violations of section 1352(a) of title 31. In addition, 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. **Minority 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.
16. **Program Income.** If the Recipient earns program income, as defined in 2 CFR §200.80, during the period of performance of this agreement, to the extent available the Recipient must disburse funds available from program income, and interest earned on such funds, before requesting additional cash payments (2 CFR§200.305(5)). As allowed under 2 CFR §200.307 and the LWCF Manual, program income may be added to the Federal award by agreement of the NPS and the Recipient. The program income must be used for the purposes, and under the conditions of, the Federal award. Disposition of program income remaining after the end of the period of performance shall be negotiated as part of the agreement closeout process.

## 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.
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&rgn=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.** A full description of procurement standards can be found in 2 CFR §200.317-§200.326.
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).
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

Recipients must report all subaward and executive compensation data pursuant to the Federal Funding Accountability and Transparency Act (FFATA) of 2006 and associate amendments (P.L. 109-282, as amended by section 6202(a) of P.L. 110-252 (see 31 U.S.C. 6101 note)). Refer to <https://www.fdrs.gov/> for more information.

#### 12. Conflict of Interest

##### a. Applicability

This section intends to ensure that non-Federal entities and their employees take appropriate steps to avoid conflicts of interest in their responsibilities under or with respect to Federal financial assistance agreements.

In the procurement of supplies, equipment, construction, and services by recipients and by subrecipients, the conflict of interest provisions in 2 CFR 200.318 apply.

##### b. Requirements.

Non-Federal entities must avoid prohibited conflicts of interest, including any significant financial interests that could cause a reasonable person to question the recipient's ability to provide impartial, technically sound, and objective performance under or with respect to a Federal financial assistance agreement.

In addition to any other prohibitions that may apply with respect to conflicts of interest, no key official of an actual or proposed recipient or subrecipient, who is substantially involved in the proposal or project, may have been a former Federal employee who, within the last one (1) year, participated personally and substantially in the evaluation, award, or administration of an award with respect to that recipient or subrecipient or in development of the requirement leading to the funding announcement.

No actual or prospective recipient or subrecipient may solicit, obtain, or use non-public information regarding the evaluation, award, or administration of an award to that recipient or subrecipient or the development of a Federal financial assistance opportunity that may be of competitive interest to that recipient or subrecipient.

##### c. Notification.

Non-Federal entities, including applicants for financial assistance awards, must disclose in writing any conflict of interest to the DOI awarding agency or pass-through entity in accordance with 2 CFR 200.112, Conflicts of interest.

- d. Recipients must establish internal controls that include, at a minimum, procedures to identify, disclose, and mitigate or eliminate identified conflicts of interest. The recipient is responsible for notifying the Financial Assistance Officer in writing of any conflicts of interest that may arise during the life of the award, including those that have been reported by subrecipients. Restrictions on Lobbying. Non-Federal entities are strictly prohibited from using funds under this grant or cooperative agreement for lobbying activities and must provide the required certifications and disclosures pursuant to 43 CFR Part 18 and 31 USC 1352.

- e. Review Procedures. The Financial Assistance Officer will examine each conflict of interest disclosure on the basis of its particular facts and the nature of the proposed grant or cooperative agreement, and will determine whether a significant potential conflict exists and, if it does, develop an appropriate means for resolving it.

- f. Enforcement. 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 for Noncompliance, including suspension or debarment (see also 2 CFR Part 180).

13. **Minimum Wages Under Executive Order 13658 (January 2015)**

a. Definitions. As used in this clause—

“United States” means the 50 states and the District of Columbia.

“Worker”—

Means any person engaged in performing work on, or in connection with, an agreement covered by Executive Order 13658, and

Whose wages under such agreements are governed by the Fair Labor Standards Act (29 U.S.C. chapter 8), the Service Contract Labor Standards statute (41 U.S.C. chapter 67), or the Wage Rate Requirements (Construction) statute (40 U.S.C. chapter 31, subchapter IV),

Other than individuals employed in a bona fide executive, administrative, or professional capacity, as those terms are defined in 29 C.F.R. § 541,

Regardless of the contractual relationship alleged to exist between the individual and the employer.

Includes workers performing on, or in connection with, the agreement whose wages are calculated pursuant to special certificates issued under 29 U.S.C. § 214(c).

Also includes any person working on, or in connection with, the agreement and individually registered in a bona fide apprenticeship or training program registered with the Department of Labor's Employment and Training Administration, Office of Apprenticeship, or with a State Apprenticeship Agency recognized by the Office of Apprenticeship.

b. Executive Order Minimum Wage rate.

The non-Federal entity shall pay to workers, while performing in the United States, and performing on, or in connection with, this agreement, a minimum hourly wage rate determined by the Secretary of the Department of Labor on an annual basis (currently \$10.20 per hour as of January 1, 2017).

The non-Federal entity shall adjust the minimum wage paid, if necessary, annually thereafter, to meet the Secretary of Labor's annual E.O. minimum wage. The Administrator of the Department of Labor's Wage and Hour Division (the Administrator) will publish annual determinations in the Federal Register no later than 90 days before the effective date of the new E.O. minimum wage rate. The Administrator will also publish the applicable E.O. minimum wage on [www.wdol.gov](http://www.wdol.gov) (or any successor Web site) and on all wage determinations issued under the Service Contract Labor Standards statute or the Wage Rate Requirements (Construction) statute. The applicable published E.O. minimum wage is incorporated by reference into this agreement.

The non-Federal entity may request a price adjustment only after the effective date of the new annual E.O. minimum wage determination. Prices will be adjusted only if labor costs increase as a result of an increase in the annual E.O. minimum wage, and for associated labor costs and relevant subaward costs. Associated labor costs shall include increases or decreases that result from changes in social security and unemployment taxes and workers' compensation insurance, but will not otherwise include any amount for general and administrative costs, overhead, or profit.

Subrecipients may be entitled to adjustments due to the new minimum wage, pursuant to paragraph (b)(2). Non-Federal entities shall consider any Subrecipient requests for such price adjustment.

The Financial Assistance Awarding Officer will not adjust the agreement price under this clause for any costs other than those identified in paragraph (b)(3)(i) of this clause, and will not provide duplicate price adjustments with any price adjustment under clauses implementing the Service Contract Labor Standards statute or the Wage Rate Requirements (Construction) statute.

The non-Federal entity warrants that the prices in this agreement do not include allowance for any contingency to cover increased costs for which adjustment is provided under this clause.

The non-Federal entity shall pay, unconditionally to each worker, all wages due free and clear without subsequent rebate or kickback. The non-Federal entity may make deductions that reduce a worker's wages below the E.O. minimum wage rate only if done in accordance with 29 C.F.R. § 10.23, Deductions.

The non-Federal entity shall not discharge any part of its minimum wage obligation under this clause by furnishing fringe benefits or, with respect to workers whose wages are governed by the Service Contract Labor Standards statute, the cash equivalent thereof.

Nothing in this clause shall excuse the non-Federal entity from compliance with any applicable Federal or State prevailing wage law or any applicable law or municipal ordinance establishing a minimum wage higher than the E.O. minimum wage. However, wage increases under such other laws or municipal ordinances are not subject to price adjustment under this subpart.

The non-Federal entity shall pay the E.O. minimum wage rate whenever it is higher than any applicable collective bargaining agreement(s) wage rate.

The non-Federal entity shall follow the policies and procedures in 29 C.F.R. § 10.24(b) and 10.28 for treatment of workers engaged in an occupation in which they customarily and regularly receive more than \$30 a month in tips.

c.

This clause applies to workers as defined in paragraph (a). As provided in that definition—

Workers are covered regardless of the contractual relationship alleged to exist between the non-Federal entity or subrecipient and the worker;

Workers with disabilities whose wages are calculated pursuant to special certificates issued under 29 U.S.C. § 214(c) are covered; and

Workers who are registered in a bona fide apprenticeship program or training program registered with the Department of Labor's Employment and Training Administration, Office of Apprenticeship, or with a State Apprenticeship Agency recognized by the Office of Apprenticeship, are covered.

This clause does not apply to—

Fair Labor Standards Act (FLSA) – covered individuals performing in connection with contracts covered by the E.O., i.e. those individuals who perform duties necessary to the performance of the agreement, but who are not directly engaged in performing the specific work called for by the agreement, and who spend less than 20 percent of their hours worked in a particular workweek performing in connection with such agreements;

Individuals exempted from the minimum wage requirements of the FLSA under 29 U.S.C. § 213(a) and 214(a) and (b), unless otherwise covered by the Service Contract Labor Standards statute, or the Wage Rate Requirements (Construction) statute. These individuals include but are not limited to—

Learners, apprentices, or messengers whose wages are calculated pursuant to special certificates issued under 29 U.S.C. § 214(a).

Students whose wages are calculated pursuant to special certificates issued under 29 U.S.C. § 214(b).

Those employed in a bona fide executive, administrative, or professional capacity (29 U.S.C. § 213(a)(1) and 29 C.F.R. § part 541).

- d. *Notice.* The non-Federal entity shall notify all workers performing work on, or in connection with, this agreement of the applicable E.O. minimum wage rate under this clause. With respect to workers covered by the Service Contract Labor Standards statute or the Wage Rate Requirements (Construction) statute, the Contractor may meet this requirement by posting, in a prominent and accessible place at the worksite, the applicable wage determination under those statutes. With



respect to workers whose wages are governed by the FLSA, the non-Federal entity shall post notice, utilizing the poster provided by the Administrator, which can be obtained at [www.dol.gov/whd/govcontracts](http://www.dol.gov/whd/govcontracts), in a prominent and accessible place at the worksite. Non-Federal entities that customarily post notices to workers electronically may post the notice electronically provided the electronic posting is displayed prominently on any Web site that is maintained by the non-Federal entity, whether external or internal, and customarily used for notices to workers about terms and conditions of employment.

e. Payroll Records.

The non-Federal entity shall make and maintain records, for three years after completion of the work, containing the following information for each worker:

Name, address, and social security number;

The worker's occupation(s) or classification(s);

The rate or rates of wages paid;

The number of daily and weekly hours worked by each worker;

Any deductions made; and

Total wages paid.

The non-Federal entity shall make records pursuant to paragraph (e) (1) of this clause available for inspection and transcription by authorized representatives of the Administrator. The non-Federal entity shall also make such records available upon request of the Contracting Officer.

The non-Federal entity shall make a copy of the agreement available, as applicable, for inspection or transcription by authorized representatives of the Administrator.

Failure to comply with this paragraph (e) shall be a violation of 29 C.F.R. § 10.26 and this agreement. Upon direction of the Administrator or upon the Financial Assistance Awarding Officer's own action, payment shall be withheld until such time as the noncompliance is corrected.

Nothing in this clause limits or otherwise modifies the non-Federal entity's payroll and recordkeeping obligations, if any, under the Service Contract Labor Standards statute, the Wage Rate Requirements (Construction) statute, the Fair Labor Standards Act, or any other applicable law.

- f. *Access.* The non-Federal entity shall permit authorized representatives of the Administrator to conduct investigations, including interviewing workers at the worksite during normal working hours.
- g. *Withholding.* The Financial Assistance Awarding Officer, upon his or her own action or upon written request of the Administrator, will withhold funds or cause funds to be withheld, from the non-Federal entity under this or any other Federal agreement with the same non-Federal entity, sufficient to pay workers the full amount of wages required by this clause.
- h. *Disputes.* Department of Labor has set forth in 29 C.F.R. § 10.51, Disputes concerning non-Federal entity compliance, the procedures for resolving disputes concerning a non-Federal entity's compliance with Department of Labor regulations at 29 C.F.R. § 10. Such disputes shall be resolved in accordance with those. This includes disputes between the non-Federal entity (or any of its Subrecipients) and the contracting agency, the Department of Labor, or the workers or their representatives.
- i. *Antiretaliation.* The non-Federal entity shall not discharge or in any other manner discriminate against any worker because such worker has filed any complaint or instituted or caused to be instituted any proceeding under or related to compliance with the E.O. or this clause, or has testified or is about to testify in any such proceeding.
- j. *Subcontractor compliance.* The non-Federal entity is responsible for Subrecipient compliance with the requirements of this clause and may be held liable for unpaid wages due Subrecipient workers.
- k. *Subawards.* The non-Federal entity shall include the substance of this clause, including this paragraph (k) in all subawards, regardless of dollar value, that are subject to the Service Contract Labor Standards statute or the Wage Rate Requirements (Construction) statute, and are to be

performed in whole or in part in the United States.

14. **Prohibition on Issuing Financial Assistance Awards to Entities that Require Certain Internal Confidentiality Agreements:** Section 743 of Division E, Title VII of the Consolidated and Further Continuing Resolution Appropriations Act of 2015 (Pub. L. 113-235) prohibits the use of funds appropriated or otherwise made available under that or any other Act for grants or cooperative agreements to an entity that requires employees or contractors of such entity seeking to report fraud, waste, or abuse to sign internal confidentiality agreements or statements prohibiting or otherwise restricting such employees or contractors from lawfully reporting such waste, fraud, or abuse to a designated investigative or law enforcement representative of a Federal department or agency authorized to receive such information.

Recipients must not require their employees or contractors seeking to report fraud, waste, or abuse to sign internal confidentiality agreements or statements prohibiting or otherwise restricting such employees or contractors from lawfully reporting such waste, fraud, or abuse to a designated investigative or law enforcement representative of a Federal department or agency authorized to receive such information.

Recipients must notify their employees or contractors that existing internal confidentiality agreements covered by this condition are no longer in effect.

15. **Data Availability:**

- a. **Applicability.** The Department of the Interior is committed to basing its decisions on the best available science and providing the American people with enough information to thoughtfully and substantively evaluate the data, methodology, and analysis used by the Department to inform its decisions.
- b. **Use of Data.** The regulations at 2 CFR 200.315 apply to data produced under a Federal award, including the provision that the Federal Government has the right to obtain, reproduce, publish, or otherwise use the data produced under a Federal award as well as authorize others to receive, reproduce, publish, or otherwise use such data for Federal purposes.
- c. **Availability of Data.** The recipient shall make the data produced under this award and any subaward(s) available to the Government for public release, consistent with applicable law, to allow meaningful third party evaluation and reproduction of the following:

The scientific data relied upon;

The analysis relied upon; and

The methodology, including models, used to gather and analyze data

## ARTICLE XVIII – ATTACHMENTS

The following completed documents made a part of this Agreement:

- A. LWCF General Provisions
- B. LWCF Federal Financial Assistance Manual (v. 69, October 1, 2008)
- C. Project Application and Attachments

### ATTACHMENT A – LWCF GENERAL 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, Volume 69 (October 1, 2008).
- 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.

## **ATTACHMENT A – LWCF GENERAL PROVISIONS - 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 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 XVII.A.2 of the Grant Agreement to which these terms are attached.
  - 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.

#### **ATTACHMENT A – LWCF GENERAL PROVISIONS - PART III**

##### **Project Assurances**

###### **A. Project Application**

- 1. The Application for Federal Assistance bearing the same project number as the Grant 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 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 in accord with Section C below.
- 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 (EO) 11988, relating to evaluation of flood hazards; EO 11288, relating to the prevention, control, and abatement of water pollution, and EO 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 following the Expiration Date 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 XIV 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.





**Project Sponsor:** City of Wenatchee  
**Project Title:** Lincoln Park Renovation

**Project Number:** 18-1250D  
**Approval Date:** 10/08/2019

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## Standard Terms and Conditions of the Recreation and Conservation Office

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## STANDARD TERMS AND CONDITIONS EFFECTIVE DATE

This agreement reflects Standard Terms and Conditions as of 10/23/2019.

## 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:

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

**applicable manual(s)** -- A manual designated in this Agreement to apply as terms of this Agreement, subject to substitution of the "RCO director" for instances where the term "board" occurs.

**applicable WAC(s)** -- Designated chapters or provisions of the Washington Administrative Code that are deemed under this Agreement to apply as terms of the Agreement, subject to substitution of the "RCO director" for instances where the term "board" occurs.

**applicant** – Any party that meets the qualifying standards, including deadlines, for submission of an application soliciting a grant of funds administered by RCO.

**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.

**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.

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

**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 Washington State Recreation and Conservation Funding Board, or the Washington State Salmon Recovery Funding Board. Or both as may apply.

**Funding Entity** – the entity that approves the project that is the subject to this Agreement.

**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.

**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.

**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.

**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.

**project area** – A geographic area that delineates a grant assisted site which is subject to project agreement requirements.

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

**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.

**RCO** – Recreation and Conservation Office – The state agency that administers the grant that is the subject of this Agreement. RCO includes the director and staff.

**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.

**RCFB** – Recreation and Conservation Funding Board

**RCW** – Revised Code of Washington



**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.

**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 the Project Funding Section.

**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.

## **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 RCO. 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.

## **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.

## **RESPONSIBILITY FOR PROJECT**

While RCO administers the grant that is the subject of this Agreement, the project itself remains the sole responsibility of the Sponsor. The RCO and Funding Entity (if different from the RCO) 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.

## **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.

#### **INDEPENDENT CAPACITY OF THE SPONSOR**

The Sponsor and its employees or agents performing under this Agreement are not officers, employees or agents of the RCO or Funding Entity. The Sponsor will not hold itself out as nor claim to be an officer, employee or agent of the RCO or the Funding Entity, 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.

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.

#### **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.

#### **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 RCO or Funding Entity. The Sponsor is responsible for any and all costs or liability arising from the Sponsor's failure to so comply with applicable law. 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."

- 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 39.12.40. 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."

## 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 the PROJECT REIMBURSEMENTS Section. 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 RCO 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 (which ever applies). Additionally, the Sponsor agrees to disclose any information in regards to the expenditure of that funding as if the project sponsor were subject to the requirements of chapter 42.56 RCW. 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.

#### PROJECT FUNDING

- A. **Authority.** This Agreement and funding is made available to Sponsor through the RCO.
- B. **Additional Amounts.** The RCO or Funding Entity 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 RCO 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 the RCO director, 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 the FEDERAL FUND INFORMATION Section 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 RCO or Funding Entity may have under this Agreement, the grant amounts identified in this Agreement shall be reduced to exclude any such expenditure from participation.

#### PROJECT REIMBURSEMENTS

- A. **Reimbursement Basis.** This Agreement is administered on a reimbursement basis per WAC 286-13 and/or 420-12, which ever has been designated to apply. 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 the PROJECT FUNDING Section. 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 recent applicable RCO manuals and this Agreement 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 of the project area 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 the FEDERAL FUND INFORMATION Section 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).

#### 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).

#### 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.

#### INCOME (AND FEES) AND USE OF INCOME

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

- A. **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 applicable manuals, RCWs, and WACs.
- 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 grant funding;
  - 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 and shall be consistent with the:
  - 1. Grant program laws, rules, and applicable manuals;
  - 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).

#### 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, non-Federal entities (Sponsors) must follow 2 C.F.R §§ 200.318 General procurement standards through 200.326 Contract Provisions (2013).

#### **TREATMENT OF EQUIPMENT AND ASSETS**

Equipment shall be used and managed only for the purpose of this Agreement , unless otherwise provided herein or in the applicable manuals, 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.** 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.

#### **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 has been executed, it will further stipulate and define the RCO's right to inspect and access lands acquired or developed with this funding assistance.

#### **STEWARDSHIP AND MONITORING**

Sponsor agrees to perform monitoring and stewardship functions as stated in the applicable WACs and manuals, this Agreement, or as otherwise directed by RCO consistent with the existing laws and applicable manuals. Sponsor further agrees to utilize, where applicable and financially feasible, any monitoring protocols recommended by the RCO; provided that RCO does not represent that any monitoring it may recommend will be adequate to reasonably assure project performance or



safety. It is the sole responsibility of the Sponsor to perform such additional monitoring as may be adequate for such purposes.

#### 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.

#### 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 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.

#### PROVISIONS APPLYING TO DEVELOPMENT, MAINTENANCE, RENOVATION, AND RESTORATION PROJECTS

The following provisions shall be in force:

- A. **Operations and Maintenance.** Properties, structures, and facilities developed, maintained, or operated with the assistance of money granted per this Agreement 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. 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 RCO must receive prior written approval of the 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 this Agreement and any applicable manual as of

the effective date of this Agreement and determines the long-term compliance period unless otherwise provided in any applicable manual, RCW, WAC, or as approved by the RCO.

- D. **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.

#### LONG-TERM OBLIGATIONS OF THE PROJECTS AND SPONSORS

- A. **Long-Term Obligations.** Sponsor shall comply with the terms of this Agreement.
- B. **Perpetuity.** For acquisition, development, and restoration projects, or a combination thereof, unless otherwise allowed by applicable manual, policy, program rules, or this Agreement, or approved in writing by RCO. RCO requires that the project area continue to function as intended after the period of performance in perpetuity.
- C. **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. 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 RCO 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 the terms of this Agreement, including without limitation all WACs and manuals deemed applicable and all applicable laws.

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 by this Agreement, any applicable manual or WAC, or any applicable state or federal law.

When a conversion has been determined to have occurred, the Sponsor is required to remedy the conversion per this Agreement and the applicable manuals, WACs and laws, and the RCO may pursue such remedies as the above allows.

#### CONSTRUCTION, OPERATION, USE, AND MAINTENANCE OF ASSISTED PROJECTS

The following provisions shall be in force for this agreement:

- A. **Property and facility operation and maintenance.** Sponsor must ensure that properties or facilities assisted with the grant 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, and in compliance with applicable statutes, rules, and applicable WACs and manuals, 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 RCO director 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.

#### 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.

#### PROVISIONS FOR FEDERAL SUBAWARDS

The following provisions shall be in force for this agreement:

- 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 the Federal Fund Information Section.

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.

#### **PROVISIONS FOR LAND AND WATER CONSERVATION FUND PROJECTS**

This 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), therefore the "Land and Water Conservation Fund 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.

#### **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:

- A. Federal law and binding executive orders;
- B. Code of federal regulations;
- C. Terms and conditions of a grant award to the state from the federal government;
- D. Federal grant program policies and procedures adopted by a federal agency that are required to be applied by federal law;
- E. State law (constitution, statute);
- F. Washington Administrative Code;
- G. Applicable RCO manuals.

#### **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.

#### **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.

#### **APPLICATION REPRESENTATIONS – MISREPRESENTATIONS OR INACCURACY OR BREACH**

The Funding Entity (if different from RCO) and RCO relies 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.

#### **SPECIFIC PERFORMANCE**

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 RCO shall be deemed exclusive. The 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.

#### **TERMINATION AND SUSPENSION**

The 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 RCO policies, and with the representations of the Sponsor in its application



for a grant as finally approved by RCO. For federal awards, notification of termination will comply with 2 C.F.R. § 200.340.

**A. For Cause.**

1. The RCO 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 RCO 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 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 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 director, after any portion of the grant amount has been paid to the Sponsor under this Agreement, the 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.

**DISPUTE HEARING**

Except as may otherwise be provided in this Agreement, when a dispute arises between the Sponsor and the RCO, 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 persons chosen by the Sponsor and director shall be dismissed and an alternate person chosen by the Sponsor, and one by the director shall be appointed and they shall agree on a third person. This process shall be repeated until a three person panel is established.

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.

#### **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.

#### **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.

#### **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.

#### **END OF AGREEMENT**

This is the end of the agreement.

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**COUNCIL AGENDA REPORT  
PUBLIC WORKS DEPARTMENT**

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

**FROM:** John Ricardi, Utilities Manager

**SUBJECT:** Adopt Resolution 2019-52 accepting all of Volume 1 and the City of Wenatchee portion of Volume 2 within the Chelan County Multi-Jurisdictional Natural Hazard Mitigation Plan.

**DATE:** November 11, 2019

**MEETING DATE:** December 5, 2019

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**I. OVERVIEW**

**Hazard Mitigation Planning for the Chelan County Planning Area:**

In June of 2018, a coalition of Chelan County planning partners embarked on a planning process to prepare for and lessen the impacts of specified natural hazards. Responding to federal mandates in the Disaster Mitigation Act of 2000 (Public Law 106-390), the partnership was formed to pool resources and create a uniform hazard mitigation strategy that can be consistently applied to the defined planning area and used to ensure eligibility for specified grant funding sources.

The 15 member planning partnership involved in this program includes Chelan County, the Cities of Wenatchee, Chelan, Entiat, Cashmere, and Leavenworth, and nine special purpose districts. The planning area for the hazard mitigation plan encompasses all of Chelan County. The result of the organizational efforts has been to produce a Federal Emergency Management Agency (FEMA) and the Washington Emergency Management Division (EMD) approved multi-jurisdictional multi-hazard mitigation plan.

Mitigation is defined in this context as any sustained action taken to reduce or eliminate long-term risk to life and property from a hazard event. Mitigation planning is the systematic process of learning about the hazards that can affect the community, setting clear goals, identifying appropriate actions and following through with an effective mitigation strategy. Mitigation encourages long-term reduction of hazard vulnerability and can reduce the enormous cost of disasters to property owners and all levels of government. Mitigation can also protect critical community facilities, reduce exposure to liability, and minimize post-disaster community disruption.

The hazard identification and profiling in the hazard mitigation plan addresses the following hazards considered to be of paramount importance within the Chelan County planning area:

1. Avalanche
2. Dam or Levee Failure
3. Drought
4. Earthquake
5. Flood
6. Landslide
7. Severe Weather
8. Wildfire

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## **COUNCIL AGENDA REPORT PUBLIC WORKS DEPARTMENT**

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Chelan County Natural Resources Department secured funding to update the hazard mitigation plan and was the lead coordinating agency for this multi-jurisdictional effort. All participating local jurisdictions have been responsible for assisting in the development of the hazard and vulnerability assessments and the mitigation action strategies for their respective jurisdictions and organizations. The plan presents the accumulated information in a unified framework to ensure a comprehensive and coordinated plan covering all planning partners within the Chelan County Planning Area. Each jurisdiction has been responsible for the review and approval of their individual sections of the plan.

The plan was prepared in accordance with the Washington Emergency Management Division and FEMA preparation guidelines. Additionally, the plan has been aligned with the goals, objectives and priorities of the State's multi-hazard mitigation plan.

Plan development was guided by a Steering Committee composed of representative stakeholders from within the planning area. In addition, citizens were asked to contribute via a multi-media campaign that included public meetings, news releases, social media posts, website, and survey.

### **Why adopt this Plan?**

Once the hazard mitigation plan is adopted by all the jurisdictional partners and approved by FEMA, the partnership will collectively and individually become eligible to apply for and receive hazard mitigation project funding from both the Building Resilient Infrastructure and Communities (BRIC) Grant Program, which is superseding the current Pre-Disaster Mitigation Grant Program (PDM), and the Hazard Mitigation Grant Program (HMGP). Many of the participating jurisdictions currently have been awarded PDM and HMGP funding which is on hold pending the approval of this plan.

### **What is the Building Resilient Infrastructure and Communities competitive grant program?**

The Building Resilient Infrastructure and Communities (BRIC) grant program competitive grant program will supersede the existing Pre-disaster Mitigation (PDM) grant program in federal fiscal year 2020, authorized under the Disaster Recovery Reform Act of 2018. Guidance for this grant program has not yet been released. FEMA's vision for BRIC is to reduce costs and loss of life from natural disasters by building a national culture of preparedness through encouraging investments to protect our communities and infrastructure and strengthening national mitigation capabilities to foster resilience.

### **What is the Hazard Mitigation Grant Program?**

Authorized under Section 404 of the Stafford Act, the HMGP administered by FEMA provides grants to States and local governments to implement long-term hazard mitigation measures after a major disaster declaration. The purpose of the program is to reduce the loss of life and property due to natural disasters and to enable mitigation measures to be implemented during the immediate recovery from a disaster (For more details on this program see Reference 1).

### **Where do we go from here?**



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**COUNCIL AGENDA REPORT  
PUBLIC WORKS DEPARTMENT**

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Upon adoption of Volume I and our jurisdictional annex of Volume II of the Chelan County Multi-Jurisdictional Natural Hazard Mitigation Plan (CCHMP) and subsequent approval of said plan by FEMA, the City of Wenatchee will be eligible to apply for and receive specified grants. The grant funds are made available to states and local governments and can be used to implement the long-term hazard mitigation measures specified within the City of Wenatchee annex of the CCHMP before and after a major disaster declaration. The CCHMP is considered a living document such that, as awareness of additional hazards develops, and new strategies and projects are conceived to offset or prevent losses due to natural disasters, the CCHMP will be evaluated and revised on a continual 5-year time frame.

**II. ACTION REQUESTED**

Staff recommends the City Council authorize the Mayor to Adopt Resolution 2019-52 accepting all of Volume 1 and the City of Wenatchee portion of Volume 2 within the Chelan County Multi-Jurisdictional Natural Hazard Mitigation Plan.

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

The Hazard Mitigation Plan ensure eligibility for specified grant funding sources such as the Hazard Mitigation Grant Program (HMGP)

**IV. PROPOSED PROJECT SCHEDULE**

Effective upon adoption.

**V. REFERENCE(S)**

1. Hazard Mitigation Grant Program (HMGP) and Building Resilient Infrastructure and Communities (BRIC) Grant Program Fact Sheet
2. Draft Resolution 2019-52

**VI. ADMINISTRATIVE ROUTING**

Rob Jammerman, Public Works Director  
Tammy Stanger, City Clerk

## Reference 1

### Hazard Mitigation Grant Program (HMGP) Building Resilient Infrastructure and Communities Grant Program (BRIC)

#### FACT SHEET

#### I. **HAZARD MITIGATION GRANT PROGRAM (HMGP)**

##### **What is the Hazard Mitigation Grant Program?**

Authorized under Section 404 of the Stafford Act, the Hazard Mitigation Grant Program (HMGP) administered by the Federal Emergency Management Agency (FEMA) provides grants to States and local governments to implement long-term hazard mitigation measures after a major disaster declaration. The purpose of the program is to reduce the loss of life and property due to natural disasters and to enable mitigation measures to be implemented during the immediate recovery from a disaster.

##### **Who is eligible to apply?**

Hazard Mitigation Grant Program funding is only available to applicants that reside within a Presidentially declared disaster area. Eligible applicants are

- State and local governments
- Indian tribes or other tribal organizations
- Certain non-profit organizations

##### **What types of projects can be funded by the HMGP?**

HMGP funds may be used to fund projects that will reduce or eliminate the losses from future disasters. Projects must provide a long-term solution to a problem, for example, elevation of a home to reduce the risk of flood damages as opposed to buying sandbags and pumps to fight the flood. In addition, a project's potential savings must be more than the cost of implementing the project. Funds may be used to protect either public or private property or to purchase property that has been subjected to, or is in danger of, repetitive damage. Examples of projects include, but are not limited to:

- Acquisition of real property for willing sellers and demolition or relocation of buildings to convert the property to open space use
- Retrofitting structures and facilities to minimize damages from high winds, earthquake, flood, wildfire, or other natural hazards
- Elevation of flood prone structures
- Development and initial implementation of vegetative management programs
- Minor flood control projects that do not duplicate the flood prevention activities of other Federal agencies
- Localized flood control projects, such as certain ring levees and floodwall systems, that are designed specifically to protect critical facilities
- Post-disaster building code related activities that support building code officials during the reconstruction process

### **What are the minimum project criteria?**

There are five issues you must consider when determining the eligibility of a proposed project.

- Does your project conform to your State's Hazard Mitigation Plan?
- Does your project provide a beneficial impact on the disaster area i.e. the State?
- Does your application meet the environmental requirements?
- Does your project solve a problem independently?
- Is your project cost-effective?

## **II. BUILDING RESILIENT INFRASTRUCTURE AND COMMUNITIES GRANT PROGRAM (BRIC)**

### **What is the Building Resilient Infrastructure and Communities competitive grant program?**

The Building Resilient Infrastructure and Communities (BRIC) grant program competitive grant program will supersede the existing Pre-disaster Mitigation (PDM) grant program in federal fiscal year 2020, authorized under the Disaster Recovery Reform Act of 2018. Guidance for this grant program has not yet been released. FEMA's vision for BRIC is to reduce costs and loss of life from natural disasters by building a national culture of preparedness through encouraging investments to protect our communities and infrastructure and strengthening national mitigation capabilities to foster resilience. FEMA envisions that the BRIC program, once established, will focus on traditional mitigation projects and incentivize new, innovative large infrastructure projects that build resilient communities and reduces risks from all hazards.



## **RESOLUTION NO. 2019-52**

**A RESOLUTION** authorizing the adoption of the Chelan County Hazard Mitigation Plan.

**WHEREAS**, all of Chelan County has exposure to natural hazards that increase the risk to life, property, environment and the County's economy; and

**WHEREAS**; pro-active mitigation of known hazards before a disaster event can reduce or eliminate long-term risk to life and property; and

**WHEREAS**, The Disaster Mitigation Act of 2000 (Public Law 106-390) established new requirements for pre- and post-disaster hazard mitigation programs; and

**WHEREAS**; a coalition of Chelan County stakeholders with like planning objectives has been formed to pool resources and create consistent mitigation strategies to be implemented within each partner identified capabilities, within the Chelan County Planning Area; and

**WHEREAS**, the coalition has completed a planning process that engages the public, assesses the risk and vulnerability to the impacts of natural hazards, develops a mitigation strategy consistent with a set of uniform goals and objectives, and creates a plan for implementing, evaluating and revising this strategy.

**NOW, THEREFORE, BE IT RESOLVED** that the City Council:

- 1.) Adopts in its entirety, Volume I and the introduction, the City of Wenatchee jurisdictional annex, and the appendices of Volume II of the Chelan County Multi-Jurisdictional Natural Hazard Mitigation Plan (CCHMP).
- 2.) Will use the adopted and approved portions of the CCHMP to guide pre- and post-disaster mitigation of the hazards identified.
- 3.) Will coordinate the strategies identified in the CCHMP with other planning programs and mechanisms under its jurisdictional authority.
- 4.) Will continue its support of the Steering Committee and continue to participate in the Planning Partnership as described by the CCHMP.
- 5.) Will help to promote and support the mitigation successes of all CCHMP Planning Partners.

**PASSED BY THE CITY COUNCIL OF THE CITY OF WENATCHEE,**

at a regular hearing thereof this 5<sup>th</sup> day of December, 2019.

CITY OF WENATCHEE, a Municipal Corporation

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

ATTEST:

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

APPROVED:

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

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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  
Stephen Neuenschwander, Planning Manager

**SUBJECT:** Historic Preservation Board Member Re-appointment(s) – Bob Culp and Jon Campbell

**DATE:** December 2, 2019

**MEETING DATE:** December 5, 2019

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**I. OVERVIEW**

In accordance with the City of Wenatchee Historic Preservation Ordinance, the Historic Preservation Board consists of 7 members appointed by a majority of the Wenatchee City Council. Two of the current board members have terms that will expire December 31, 2019 – Bob Culp and Jon Campbell.

At the board's regular meeting on November 6, 2019, board members Culp and Campbell both expressed a desire to serve another three-year term. The remaining board members were in agreement to forward a recommendation to Council for the re-appointment of both.

**II. ACTION REQUESTED**

Staff and the Historic Preservation Board recommend that City Council pass Resolution No. 2019-53, designating the re-appointment of two voting representatives (Bob Culp and Jon Campbell) to the Historic Preservation Board each for a term ending December 31, 2022.

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

None, the Historic Preservation Board is made up of volunteer members.

**IV. REFERENCE(S)**

Resolution 2019-53  
Application – Bob Culp  
Application – Jon Campbell

**V. ADMINISTRATIVE ROUTING**

Tammy Stanger, City Clerk



November 7, 2019

City of Wenatchee  
P.O. Box 519  
Wenatchee, WA 98807-0519

Gentlemen:

This letter expresses my desire to serve a second term on the Historic Preservation Board. The board is a valuable asset for our community. I appreciate the ability to serve on it. Enclosed is my Volunteer Commission and Board Application.

My family's roots in this community date back to the 1890s. They were involved in the initial formation of Chelan County, and the earliest newspaper, hotel, medical and orchard professions. These connections, as well as my professional experience, have enabled me to passionately value historic preservation.

Thank you for considering me for appointment to the Wenatchee Historic Preservation Board for a second term.

Sincerely,



Robert H. Culp  
115 South Franklin  
Wenatchee, WA 98801

Phone: 662-5926



# City of Wenatchee

Volunteer Commission and Board Application

## COMMISSION/BOARD INFORMATION

Board (s) I would like to be considered for: (If more than one, please rank them in order of preference)

- |  |   |
|--|---|
| <input type="checkbox"/> Arts, Recreation & Parks Commission | <input type="checkbox"/> Greater Wenatchee Regional Events Center PFD Board |
| <input type="checkbox"/> Cemetery Advisory Board             | <input checked="" type="checkbox"/> Historic Preservation Board             |
| <input type="checkbox"/> Civil Service Board                 | <input type="checkbox"/> Lodging Tax Advisory Committee                     |
| <input type="checkbox"/> Code Enforcement Board              | <input type="checkbox"/> Planning Commission                                |
| <input type="checkbox"/> Diversity Advisory Committee        | <input type="checkbox"/> Tourism Promotion Area Board                       |

## APPLICANT INFORMATION

City of Wenatchee Resident  Yes  No

*Residency Requirement: Applicants must reside within the City Limits of Wenatchee except the Arts Commission, Diversity Advisory Committee, Historic Preservation Board, and the Parks & Recreation Advisory Board*

Last Name: Culp First Name: Robert Initial: H.

Physical Address: 115 S. Franklin City: Wenatchee Zip: 98801

Mailing Address: 115 S. Franklin City: Wenatchee Zip: 98801

Day Phone: (509) 663-0544 Evening Phone: (509) 662-5926

E-mail: rhculp@gmail.com Years lived in Wenatchee Valley: 35

Occupation: Civil Engineer Years of Experience: 50

Work Address: 610 N. Chelan City: Wenatchee Zip: 98801

Education and Formal Training: MS Civil Engineering Stanford, BS Civil, BS Industrial Engineering, University of Washington

Have you ever been convicted of a felony or released from prison?  Yes  No

(A conviction record will not necessarily bar you from serving. Factors such as the nature and gravity of the crime, the length of time that has passed since the conviction and/or completion of any sentence, and the nature of the position for which you have applied will be considered.)

### Volunteer/Community Experience:

Organization and Duties: Historic Preservation Board (Chairman 2yr) Length of Service: 4

Organization and Duties: Wenatchee Downtown Association Board/Exec Length of Service: 2

Organization and Duties: Chairman, Centennial Steam Train Length of Service: 1

Organization and Duties: Wenatchee Housing Code Update Committee Length of Service: 1

Organization and Duties: Wenatchee Sign Code Update Committee Length of Service: 1

Skills/Special Interests: Professional engineer, homeowner Brandvick

Historic District, Historic downtown, historic preservation

Experience related to the Commission/Board: Member of board for 4 years, served on city advisory committees for comprehensive plan, housing, signage, Downtown Association treasurer, offered my residence for Historic Homes Tour, hosted at Historic Homes Tour, owner of historic preserved railroad, continuing education at Revitalize Washington and National Main Street

Why are you seeking this appointment? Unique perspective on Wenatchee history - Aunt and Uncle Frank and Belle Reeves founded Wenatchee's first newspaper Wenatchee Advance, both became State Representatives, Belle Secretary of state and occasionally acting Governor - Grandfather was Wenatchee's second doctor, founded Chelan County's first hospital, great grand father founded one of Wenatchee's first hotels

Would any conflict of interest be created as a result of your appointment?  Yes  No

If yes, please explain: \_\_\_\_\_  
\_\_\_\_\_

**REFERENCES**

Name: Chuck Largent  
Address: 911 Gehr Street City: Wenatchee Zip: WA  
Phone: (509) 663-2353 Email: \_\_\_\_\_  
Occupation: Retired - former City Parks Director Years known: 35

Name: Dale Linge  
Address: 3337 L Street City: Washougal, WA Zip: 98671  
Phone: (509) 670-2568 Email: \_\_\_\_\_  
Occupation: Minister Years known: 7

Name: Jerry Winters  
Address: 110 S. Franklin City: Wenatchee Zip: 98801  
Phone: (509) 663-7790 Email: \_\_\_\_\_  
Occupation: Veterinarian - owner of Countryside Clinic Years known: 32

**AFFIDAVIT OF APPLICANT**

I, Robert H. Culp, do hereby certify that the information contained in the foregoing application is true and correct to the best of my knowledge and belief. I also understand that this completed application may be made available for public inspection.

Robert H. Culp  
(Signature)  
Date: November 7, 2019





**City of Wenatchee  
Volunteer Board, Commission and Committee Responsibilities**

To be selected and serve as a City of Wenatchee volunteer Board, Commission or Committee Member is a high honor and provides an unusual opportunity for genuine public service. Although the specific duties of each of the City's Boards vary widely with the purpose for which they are formed, there are certain responsibilities that are common to all members. As a volunteer Board, Commission or Committee representative of the City of Wenatchee, I agree to:

1. Understand my role and scope of responsibility. I will be informed of the individual group's scope of responsibility and operating procedures.
2. Represent the majority views of the group. Individual "opinions" to the public and press are discouraged, and, if given, must be identified as such.
3. Practice open and accountable government. I will be as open as possible about my decisions and actions, and also protect confidential information.
4. Represent the public interest and not special interest groups.
5. Not make decisions in order to gain financial or other benefits for myself, my family, or friends.
6. Serve as a liaison between the City and its citizens and can help reconcile contradictory viewpoints and to build a consensus around common goals and objectives. I will serve as a communication link between community, staff, and City, representing City programs and recommending and providing a channel for citizen expression.
7. Understand my role as a supportive relationship with the City Council and City staff and to follow the proper channel of communication through the designated staff person providing support for the group.
8. Do my homework and be thorough in recommendations. I will review agenda items under consideration prior to the meeting in order to be fully prepared to discuss, evaluate, and act on all matters scheduled for consideration. My conclusions will be based on careful preparation to strengthen the value of the group's recommendation.
9. Adhere to the highest standards of integrity and honesty in all endeavors and strive to safeguard the public trust. I shall announce any direct or remote conflict of interests prior to the discussion (RCW 42.36).
10. Understand that my authority is limited to decisions made by the group, and that in most cases, the decisions are advisory.
11. Understand that in my role I recommend policy while administrators and staff carry out approved policy.
12. Establish a good working relationship with fellow group members. I will respect individual viewpoints and allow other members time to present their views fully before making comments. I will be open and honest and welcome new members.
13. Not use or involve my membership in the conduct of political activities. However, I am not restricted from participating in political activities outside of my involvement in the group.

I hereby pledge to be positive in my role as a volunteer with the City and accept responsibility for my participation.

Signed: Robert H. Cap

Date: November 7, 2019



**City of Wenatchee**  
Volunteer Commission and Board Application

CITY OF WENATCHEE

NOV 12 2019

**COMMISSION/BOARD INFORMATION**

Board (s) I would like to be considered for: (If more than one, please rank them in order of preference)

- |  |   |
|--|---|
| <input type="checkbox"/> Arts, Recreation & Parks Commission | <input type="checkbox"/> Greater Wenatchee Regional Events Center PFD Board |
| <input type="checkbox"/> Cemetery Advisory Board             | <input checked="" type="checkbox"/> Historic Preservation Board             |
| <input type="checkbox"/> Civil Service Board                 | <input type="checkbox"/> Lodging Tax Advisory Committee                     |
| <input type="checkbox"/> Code Enforcement Board              | <input type="checkbox"/> Planning Commission                                |
| <input type="checkbox"/> Diversity Advisory Committee        | <input type="checkbox"/> Tourism Promotion Area Board                       |

**APPLICANT INFORMATION**

City of Wenatchee Resident  Yes  No

*Residency Requirement: Applicants must reside within the City Limits of Wenatchee except the Arts Commission, Diversity Advisory Committee, Historic Preservation Board, and the Parks & Recreation Advisory Board*

Last Name: CAMPBELL First Name: JON Initial: L

Physical Address: 355 JOHNSON PL NE #10 City: E WENATCHEE Zip: 98802

Mailing Address: \_\_\_\_\_ City: \_\_\_\_\_ Zip: \_\_\_\_\_

Day Phone: 509.630.1685 Evening Phone: \_\_\_\_\_

E-mail: JL\_CAMPBELL@YAHOO.COM Years lived in Wenatchee Valley: 40

Occupation: RETIRED Years of Experience: \_\_\_\_\_

Work Address: \_\_\_\_\_ City: \_\_\_\_\_ Zip: \_\_\_\_\_

Education and Formal Training: 3 YEARS OF COLLEGE

Have you ever been convicted of a felony or released from prison?  Yes  No

(A conviction record will not necessarily bar you from serving. Factors such as the nature and gravity of the crime, the length of time that has passed since the conviction and/or completion of any sentence, and the nature of the position for which you have applied will be considered.)

Volunteer/Community Experience:

Organization and Duties: WENATCHEE HISTORIC PRESERVATION BOARD Length of Service: 10

Organization and Duties: APPLE CITY AMATUER RADIO CLUB Length of Service: 28

Organization and Duties: RIDGE TO RIVER - COMMUNICATIONS Length of Service: 10

Organization and Duties: \_\_\_\_\_ Length of Service: \_\_\_\_\_

Organization and Duties: \_\_\_\_\_ Length of Service: \_\_\_\_\_

Skills/Special Interests: \_\_\_\_\_

Experience related to the Commission/Board: I HAVE BEEN ON THE BOARD FOR 10 YEARS.  
MEMBER OF NATIONAL AND WASHINGTON TRUST FOR HISTORIC PRESERVATION  
I LOVE OLDER BUILDINGS.

Why are you seeking this appointment? TO PRESERVE PROTECT AND PROMOTE HISTORIC  
PROPERTIES SO THAT OTHERS CAN APPRECIATE THEM.

Would any conflict of interest be created as a result of your appointment?  Yes  No

If yes, please explain: \_\_\_\_\_  
\_\_\_\_\_

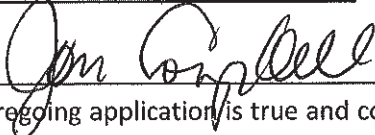
**REFERENCES**

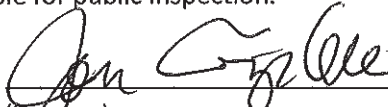
Name: KRIS BASSSETT  
Address: 908 IDAHO City: WENATCHEE Zip: 98802  
Phone: 509.663.5118 Email: kbassett@nwi.net  
Occupation: RETIRED Years known: 10

Name: LISA EARHART  
Address: 2212 3rd st ne City: E WENATCHEE Zip: 98802  
Phone: 509.886.1319 Email: headedforheaven@hotmail.com  
Occupation: BUSINESS OWNER Years known: 31

Name: KEN OSBORNE  
Address: 619 N MISSION ST #204 City: WENATCHEE Zip: 98801  
Phone: 509.665.6900 Email: applesoxbzaseball.com  
Occupation: APPLESOX BASEBALL CLUB Years known: 15

**AFFIDAVIT OF APPLICANT**

I, , do hereby certify that the information contained in the foregoing application is true and correct to the best of my knowledge and belief. I also understand that this completed application may be made available for public inspection.

  
(Signature)  
Date: 11-12-2019





**City of Wenatchee  
Volunteer Board, Commission and Committee Responsibilities**

**To be selected and serve as a City of Wenatchee volunteer Board, Commission or Committee Member is a high honor and provides an unusual opportunity for genuine public service. Although the specific duties of each of the City's Boards vary widely with the purpose for which they are formed, there are certain responsibilities that are common to all members. As a volunteer Board, Commission or Committee representative of the City of Wenatchee, I agree to:**

1. Understand my role and scope of responsibility. I will be informed of the individual group's scope of responsibility and operating procedures.
2. Represent the majority views of the group. Individual "opinions" to the public and press are discouraged, and, if given, must be identified as such.
3. Practice open and accountable government. I will be as open as possible about my decisions and actions, and also protect confidential information.
4. Represent the public interest and not special interest groups.
5. Not make decisions in order to gain financial or other benefits for myself, my family, or friends.
6. Serve as a liaison between the City and its citizens and can help reconcile contradictory viewpoints and to build a consensus around common goals and objectives. I will serve as a communication link between community, staff, and City, representing City programs and recommending and providing a channel for citizen expression.
7. Understand my role as a supportive relationship with the City Council and City staff and to follow the proper channel of communication through the designated staff person providing support for the group.
8. Do my homework and be thorough in recommendations. I will review agenda items under consideration prior to the meeting in order to be fully prepared to discuss, evaluate, and act on all matters scheduled for consideration. My conclusions will be based on careful preparation to strengthen the value of the group's recommendation.
9. Adhere to the highest standards of integrity and honesty in all endeavors and strive to safeguard the public trust. I shall announce any direct or remote conflict of interests prior to the discussion (RCW 42.36).
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11. Understand that in my role I recommend policy while administrators and staff carry out approved policy.
12. Establish a good working relationship with fellow group members. I will respect individual viewpoints and allow other members time to present their views fully before making comments. I will be open and honest and welcome new members.
13. Not use or involve my membership in the conduct of political activities. However, I am not restricted from participating in political activities outside of my involvement in the group.

I hereby pledge to be positive in my role as a volunteer with the City and accept responsibility for my participation.

Signed: \_\_\_\_\_

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

11-12-2019

## **RESOLUTION NO. 2019-53**

**A RESOLUTION,** reappointing two voting representatives to the Wenatchee Historic Preservation Board for a three-year terms.

**WHEREAS,** Robert H. Culp and Jon L. Campbell have expressed interest in being reappointed for three-year terms on the Wenatchee Historic Preservation Board.

**NOW, THEREFORE, BE IT RESOLVED THAT THE CITY COUNCIL OF THE CITY OF WENATCHEE** makes the following reappointments on the Wenatchee Historic Preservation Board:

**NAME & ADDRESS**

**TERM EXPIRES**

Robert H. Culp  
115 S. Franklin Street  
Wenatchee, WA 98801

December 31, 2022

Jon L. Campbell  
355 Johnson Pl NE #10  
East Wenatchee, WA 98802

December 31, 2022

**PASSED BY THE CITY COUNCIL OF THE CITY OF WENATCHEE** at a regular meeting thereof this 5<sup>th</sup> day of December, 2019.

CITY OF WENATCHEE, a Municipal  
Corporation

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

ATTEST:

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

APPROVED:

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



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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  
Stephen Neuenschwander, Planning Manager

**SUBJECT:** Planning Commission Member Re-appointment(s) – Ace Bollinger, Josh Jorgensen, Rani Sampson

**DATE:** December 2, 2019

**MEETING DATE:** December 5, 2019

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**I. OVERVIEW**

In accordance with the City of Wenatchee Zoning Code, the Planning Commission consists of 7 members appointed by a majority of the City Council. The term of each planning commissioner shall be for a period of four years.

Currently, four commissioners have terms that will expire December 31, 2019 – Scott Griffith, Ace Bollinger, Josh Jorgensen, and Rani Sampson. Commissioner Griffith will have reached his participation limit having served three consecutive terms totaling in excess of 13 years. His service has been greatly appreciated and he will certainly be missed.

Commissioners Bollinger, Jorgensen, and Sampson have all expressed a desire to be re-appointed for another four year term. Their re-appointments will enable the Planning Commission to operate with 6 voting members. Interview(s) for the vacant position left by Commissioner Griffith will be conducted at their regular meeting on December 11, 2019.

**II. ACTION REQUESTED**

Staff and the Planning Commission recommend that City Council pass Resolution No. 2019-54, designating the re-appointment of three voting representatives (Ace Bollinger, Josh Jorgensen and Rani Sampson) to the Planning Commission each for a term ending December 31, 2023.

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

None, the Planning Commission is made up of volunteer members.

**IV. REFERENCE(S)**

Resolution 2019-54  
Application – Ace Bollinger  
Application – Josh Jorgensen  
Application – Rani Sampson

**V. ADMINISTRATIVE ROUTING**

Tammy Stanger, City Clerk

## RESOLUTION NO. 2019-54

A **RESOLUTION**, reappointing three voting representatives to the Planning Commission.

**WHEREAS**, Ace Bollinger, Josh Jorgensen and Rani Sampson have expressed interest in being reappointed for four-year terms on the Planning Commission.

**NOW, THEREFORE, BE IT RESOLVED THAT THE CITY COUNCIL OF THE CITY OF WENATCHEE** makes the following reappointment on the Planning Commission:

<u>NAME &amp; ADDRESS</u>	<u>TERM EXPIRES</u>
Jason P. ("Ace") Bollinger P.O. Box 1703 Wenatchee, WA 98807	December 31, 2023
Josh Jorgensen 2321 Riter St. Wenatchee, WA 98801	December 31, 2023
Rani Sampson 1118 Monroe St. Wenatchee, WA 98801	December 31, 2023

**PASSED BY THE CITY COUNCIL OF THE CITY OF WENATCHEE** at a regular meeting thereof this 5<sup>th</sup> day of December, 2019.

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

## Volunteer Commission and Board Application

### COMMISSION/ BOARD INFORMATION

Board (s) I would like to be considered for: (If more than one, please rank them in order of preference)

- |   |   |
|---|---|
| <input type="checkbox"/> Arts Commission              | <input type="checkbox"/> Greater Wenatchee Regional Events Center PFD Board |
| <input type="checkbox"/> Cemetery Advisory Board      | <input type="checkbox"/> Historic Preservation Board                        |
| <input type="checkbox"/> Civil Service Board          | <input type="checkbox"/> Lodging Tax Advisory Committee                     |
| <input type="checkbox"/> Code Enforcement Board       | <input type="checkbox"/> Parks and Recreation Advisory Board                |
| <input type="checkbox"/> Diversity Advisory Committee | <input checked="" type="checkbox"/> Planning Commission                     |
|   | <input type="checkbox"/> Tourism Promotion Area Board                       |

### APPLICANT INFORMATION

Last Name: BOLLINGER First Name: JASON Initial: P

Mailing Address: Po Box 1703 City: WEN Zip: 98807

Residency Requirement: Applicants must reside within the City Limits of Wenatchee except the Arts Commission, Diversity Advisory Committee, Historic Preservation Board, and the Parks & Recreation Advisory Board

Day Phone: 509-679-5003 Evening Phone: SAME

E-mail: gcebollinger@nwi.net Years lived in Wenatchee Valley: 20+

Occupation: GENERAL CONTRACTOR Years of Experience: 20+

Work Address: \_\_\_\_\_ City: \_\_\_\_\_ Zip: \_\_\_\_\_

Education and Formal Training: \_\_\_\_\_

Have you ever been convicted of a felony or released from prison?  Yes  No

(A conviction record will not necessarily bar you from serving. Factors such as the nature and gravity of the crime, the length of time that has passed since the conviction and/or completion of any sentence, and the nature of the position for which you have applied will be considered.)

#### Volunteer/Community Experience:

- |  |                               |
|--|-------------------------------|
| Organization and Duties: <u>WENATCHEE VALLEY VELO</u>            | Length of Service: <u>5+</u>  |
| Organization and Duties: <u>CENTRAL WASHINGTON HOME BUILDERS</u> | Length of Service: <u>12+</u> |
| Organization and Duties: _____                                   | Length of Service: _____      |
| Organization and Duties: _____                                   | Length of Service: _____      |
| Organization and Duties: _____                                   | Length of Service: _____      |
| Skills/ Special Interests: _____                                 |                               |

Experience related to the Commission/ Board: PREVIOUS MEMBER  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Why are you seeking this appointment? \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Would any conflict of interest be created as a result of your appointment?  Yes  No

If yes, please explain: \_\_\_\_\_  
\_\_\_\_\_

REFERENCES

Name: STEVE KING  
Address: \_\_\_\_\_ City: \_\_\_\_\_ Zip: \_\_\_\_\_  
Phone: \_\_\_\_\_ Email: \_\_\_\_\_  
Occupation: \_\_\_\_\_ Years known: 7+

Name: FRANK KUNTZ  
Address: \_\_\_\_\_ City: \_\_\_\_\_ Zip: \_\_\_\_\_  
Phone: \_\_\_\_\_ Email: \_\_\_\_\_  
Occupation: \_\_\_\_\_ Years known: 5+

Name: TOM ROBBINS  
Address: \_\_\_\_\_ City: \_\_\_\_\_ Zip: \_\_\_\_\_  
Phone: \_\_\_\_\_ Email: \_\_\_\_\_  
Occupation: \_\_\_\_\_ Years known: 15+

AFFIDAVIT OF APPLICANT

I, JASON P. BOUSINGER, do hereby certify that the information contained in the foregoing application is true and correct to the best of my knowledge and belief. I also understand that this completed application may be made available for public inspection.

\_\_\_\_\_  
(Signature)  
Date: 11-5-15




### City of Wenatchee Volunteer Board, Commission and Committee Responsibilities

To be selected and serve as a City of Wenatchee volunteer Board, Commission or Committee Member is a high honor and provides an unusual opportunity for genuine public service. Although the specific duties of each of the City's Boards vary widely with the purpose for which they are formed, there are certain responsibilities that are common to all members. As a volunteer Board, Commission or Committee representative of the City of Wenatchee, I agree to:

1. Understand my role and scope of responsibility. I will be informed of the individual group's scope of responsibility and operating procedures.
2. Represent the majority view of the group. Individual "opinion" to the public and press are encouraged and, if given, must be identified as such.
3. Practice open and accountable government. I will be as open as possible about my decisions and actions, and also protect confidential information.
4. Represent the public interest and not special interest groups.
5. Not make decisions in order to gain financial or other benefits for myself, my family, or friends.
6. Serve as a liaison between the City and its citizens and can help reconcile contradictory viewpoints and to build a consensus around common goals and objectives. I will serve as a communication link between community, staff, and City, representing City programs and recommending and providing a channel for citizen expression.
7. Understand my role as a supportive relationship with the City Council and City staff and to follow the proper channel of communication through the designated staff person providing support for the group.
8. Do my homework and be thorough in recommendations. I will review agenda items under consideration prior to the meeting in order to be fully prepared to discuss, evaluate, and act on all matters scheduled for consideration. My conclusion will be based on careful preparation to strengthen the value of the group's recommendation.
9. Adhere to the highest standards of integrity and honesty in all endeavors and strive to safeguard the public trust. I shall announce any direct or remote conflict of interests prior to the discussion (RCW 42.36).
10. Understand that my authority is limited to decisions made by the group, and that in most cases, the decisions are advisory.
11. Understand that in my role I recommend policy while administrators and staff carry out approved policy.
12. Establish a good working relationship with fellow group members. I will respect individual viewpoints and allow other members time to present their views fully before making comments. I will be open and honest and welcome new members.
13. Not use or involve my membership in the conduct of political activities. However, I am not restricted from participating in political activities outside of my involvement in the group.

I hereby pledge to be positive in my role as a volunteer with the City and accept responsibility for my participation.

Signed: 

Date: 11-5-15





**City of Wenatchee**  
Volunteer Commission and Board Application

**COMMISSION/BOARD INFORMATION**

Board (s) I would like to be considered for: (If more than one, please rank them in order of preference)

- |  |   |
|--|---|
| <input type="checkbox"/> Arts, Recreation & Parks Commission | <input type="checkbox"/> Greater Wenatchee Regional Events Center PFD Board |
| <input type="checkbox"/> Cemetery Advisory Board             | <input type="checkbox"/> Historic Preservation Board                        |
| <input type="checkbox"/> Civil Service Board                 | <input type="checkbox"/> Lodging Tax Advisory Committee                     |
| <input type="checkbox"/> Code Enforcement Board              | <input checked="" type="checkbox"/> Planning Commission                     |
| <input type="checkbox"/> Diversity Advisory Committee        | <input type="checkbox"/> Tourism Promotion Area Board                       |

**APPLICANT INFORMATION**

City of Wenatchee Resident  Yes  No

*Residency Requirement: Applicants must reside within the City Limits of Wenatchee except the Arts Commission, Diversity Advisory Committee, Historic Preservation Board, and the Parks & Recreation Advisory Board*

Last Name: Jorgensen First Name: Josh Initial: \_\_\_\_\_

Physical Address: 2321 Riter St City: Wenatchee Zip: 98801

Mailing Address: \_\_\_\_\_ City: \_\_\_\_\_ Zip: \_\_\_\_\_

Day Phone: 509-888-9402 Evening Phone: 509-679-1100

E-mail: jorgensenjosh1@gmail.com Years lived in Wenatchee Valley: 6

Occupation: Ski Resort Manager Years of Experience: 20+

Work Address: 7500 Mission Ridge Rd City: Wenathcee Zip: 98801

Education and Formal Training: \_\_\_\_\_

Have you ever been convicted of a felony or released from prison?  Yes  No

(A conviction record will not necessarily bar you from serving. Factors such as the nature and gravity of the crime, the length of time that has passed since the conviction and/or completion of any sentence, and the nature of the position for which you have applied will be considered.)

Volunteer/Community Experience:

Organization and Duties: Wenatchee Valley Chamber Board Length of Service: 2

Organization and Duties: Mission Ridge Ski Education Foundation (MRST) - BOD Length of Service: 1

Organization and Duties: Wenatchee Valley TREAD Board Length of Service: 1

Organization and Duties: \_\_\_\_\_ Length of Service: \_\_\_\_\_

Organization and Duties: \_\_\_\_\_ Length of Service: \_\_\_\_\_

Skills/Special Interests: \_\_\_\_\_

Experience related to the Commission/Board: Land use and private development on small and large projects.  
Community involvement and communication.

Why are you seeking this appointment? I am interested in supporting our community as it grows and seek to  
see appropriate growth occur as we maintain our style and quality of life.

Would any conflict of interest be created as a result of your appointment?  Yes  No

If yes, please explain: \_\_\_\_\_  
\_\_\_\_\_

**REFERENCES**


Name: Shiloh Shauer  
Address: \_\_\_\_\_ City: \_\_\_\_\_ Zip: \_\_\_\_\_  
Phone: \_\_\_\_\_ Email: \_\_\_\_\_  
Occupation: WVCC Exec. Dir Years known: 4

Name: Larry Scrivanich  
Address: \_\_\_\_\_ City: \_\_\_\_\_ Zip: \_\_\_\_\_  
Phone: \_\_\_\_\_ Email: \_\_\_\_\_  
Occupation: Owner - Mission Ridge Years known: 7

Name: Rufus Woods  
Address: \_\_\_\_\_ City: \_\_\_\_\_ Zip: \_\_\_\_\_  
Phone: \_\_\_\_\_ Email: \_\_\_\_\_  
Occupation: Former Publisher - Wenatchee World Years known: 4

**AFFIDAVIT OF APPLICANT**

I, Josh Jorgensen, do hereby certify that the information contained in the foregoing application is true and correct to the best of my knowledge and belief. I also understand that this completed application may be made available for public inspection.

  
\_\_\_\_\_  
(Signature)  
Date: 8/17/18




**City of Wenatchee  
Volunteer Board, Commission and Committee Responsibilities**

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2. Represent the majority views of the group. Individual "opinions" to the public and press are discouraged, and, if given, must be identified as such.
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Signed:  \_\_\_\_\_ Date: 8/17/18





**City of Wenatchee**  
Volunteer Commission and Board Application

**COMMISSION/BOARD INFORMATION**

Board (s) I would like to be considered for: (If more than one, please rank them in order of preference)

- |  |   |
|--|---|
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| <input type="checkbox"/> Code Enforcement Board              | <input checked="" type="checkbox"/> Planning Commission                     |
| <input type="checkbox"/> Diversity Advisory Committee        | <input type="checkbox"/> Tourism Promotion Area Board                       |

**APPLICANT INFORMATION**

City of Wenatchee Resident  Yes  No

*Residency Requirement: Applicants must reside within the City Limits of Wenatchee except the Arts Commission, Diversity Advisory Committee, Historic Preservation Board, and the Parks & Recreation Advisory Board*

Last Name: Sampson First Name: Rani Initial: K

Physical Address: 1118 Monroe St City: Wenatchee Zip: 98801

Mailing Address: 23 S Wenatchee Ave #320 City: Wenatchee Zip: 98801

Day Phone: 509-663-5588 Evening Phone: 206-369-8088

E-mail: rani@overcastlaw.com Years lived in Wenatchee Valley: seven (7)

Occupation: attorney Years of Experience: Attorney - 12 yrs, Realtor 13 yrs

Work Address: 23 S Wenatchee Ave #320 City: Wenatchee Zip: 98801

Education and Formal Training: Bachelor of Science, Ohio State; Doctor of Jurisprudence, University of Oregon

Have you ever been convicted of a felony or released from prison?  Yes  No  
(A conviction record will not necessarily bar you from serving. Factors such as the nature and gravity of the crime, the length of time that has passed since the conviction and/or completion of any sentence, and the nature of the position for which you have applied will be considered.)

**Volunteer/Community Experience:**

Organization and Duties: Our Valley Our Future - Housing Subcommittee Length of Service: 6 mo

Organization and Duties: WRAC - Board Member Length of Service: 3 yrs

Organization and Duties: WVC Foundation - Board Member (resigned to be a court commissioner) Length of Service: 1 yr

Organization and Duties: Chelan Douglas Land Trust - Finance Committee Length of Service: 5 yrs

Organization and Duties: Mission Ridge - Ski Instructor Length of Service: 4 yrs

Skills/Special Interests: I'm a real estate attorney and was a real estate agent before that.

Experience related to the Commission/Board: I served on the Housing Committee of the Our Valley Our Future group.  
Also, my aunt was a planner for the City of Bellevue for decades. I listened to many dinner conversations about traffic and building codes.  
I was involved in the Bridle Trails Community Club, an official liaison between the City and our neighborhood. Through them, I  
participated in focus groups related to the City's master plan regarding parks and bike paths.

Why are you seeking this appointment? I love this valley and would like to see it continue to prosper.  
At this point in my career, I've accumulated a lot of useful knowledge and skills that would be helpful to the community.  
Also, I'd like to get a sign code adopted to beautify the city (and to defeat the scammers who prey on vulnerable people).

Would any conflict of interest be created as a result of your appointment?  Yes  No

If yes, please explain: I will be alert for conflicts and will recuse myself from any discussions or votes that  
may appear to be a conflict of interest with my clients or organizations

**REFERENCES**

Name: Sally Brawley  
Address: 255 N Georgia Ave City: East Wenatchee Zip: 98802  
Phone: (509) 884-8015 Email: sbrawley@eastmontparks.com  
Occupation: Director of Parks and Recreation Years known: 5

Name: Alan Patterson  
Address: 15 Sunburst St City: Wenatchee Zip: 98801  
Phone: (509) 679 8113 Email: patterson@nwi.net  
Occupation: Immediate past president of WRAC Board of Directors Years known: 3

Name: Sharon Lunz  
Address: 18 N Wenatchee Ave City: Wenatchee Zip: 98801  
Phone: (509) 667-9708 Email: sharon@cdlandtrust.org  
Occupation: Development Director, Chelan Douglas Land Trust Years known: 5

**AFFIDAVIT OF APPLICANT**

I, Rani K. Sampson, do hereby certify that the information contained in the foregoing application is true and correct to the best of my knowledge and belief. I also understand that this completed application may be made available for public inspection.

 July 9, 2018

(Signature)

Date: /s/ Rani K. Sampson; June 22, 2018



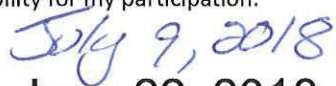
**City of Wenatchee  
Volunteer Board, Commission and Committee Responsibilities**

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I hereby pledge to be positive in my role as a volunteer with the City and accept responsibility for my participation.

  
Signed: /s/ Rani K. Sampson

  
Date: June 22, 2018



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**COUNCIL AGENDA REPORT  
FINANCE DEPARTMENT**

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

**MEETING DATE:** December 5, 2019

**FROM:** Brad Posenjak, Finance Director  
Allison Williams, Executive Services Director

**SUBJECT:** Interlocal Agreement between Chelan County and the City of Wenatchee for the Housing of Inmates

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**I. OVERVIEW**

The City of Wenatchee has a long history of utilizing the Chelan County Regional Jail to house inmates. The County has proposed a new Interlocal Agreement between Chelan County and the City of Wenatchee for the Housing of Inmates. It is a one year agreement that reflects a daily rate of \$120.50 per inmate. To assist with the County's cash-flow needs, the City has agreed to pay a flat monthly fee based on an average daily population (ADP) of 39 inmates. It is our understanding that at the end of the year an adjustment will be made to reflect the actual experience. City staff expect that our average ADP will be less than 39, and will receive a refund at the end of the year.

The new contract is still being review by City staff and final wording is expected to be negotiated by December 31, 2019. The attached contract is in draft form. The City expects some terms of the contract to be clarified, but the basic \$120.50 rate is not expected to change.

**II. ACTION REQUESTED**

A motion to authorize the Mayor's signature on the Interlocal Agreement between Chelan County and the City of Wenatchee for the Housing of Inmates, after final contract language has been negotiated.

**III. FISCAL IMPACT**

The City's inmate housing rates are increasing from \$96 per day to \$120.5 per day. This is a 25% increase, which could increase the General fund contribution by \$350,000. This increase is included in the 2020 budget. This agreement has been reviewed by Finance Committee.

**IV. ATTACHMENTS**

- City of Wenatchee Average Daily Population Statistics
- Draft version of the 2020 Interlocal Agreement between Chelan County and the City of Wenatchee for the Housing of Inmates

**V. ADMINISTRATIVE ROUTING**

Tammy Stanger, City Clerk  
Steve Crown, Police Chief

### City of Wenatchee - Inmate Average Daily Population Statistics

	2011	2012	2013	2014	2015	2016	2017	2018	2019
January	63.44	69.19	55.08	39.01	53.44	59.15	39.19	43.18	41.10
February	67.72	67.04	55.31	40.40	62.95	58.36	53.62	41.30	41.29
March	68.10	73.23	49.80	50.83	57.24	57.57	52.28	43.21	37.95
April	64.54	75.89	50.63	49.44	58.57	56.07	48.69	44.61	35.88
May	68.18	70.72	60.19	42.98	55.31	55.99	54.23	34.84	32.59
June	67.26	64.95	56.99	46.58	62.42	62.75	49.43	42.68	39.59
July	62.48	62.38	44.36	45.18	60.79	60.63	45.84	44.48	37.16
August	56.62	66.49	44.25	49.82	62.55	57.42	48.04	49.75	24.51
September	54.93	71.64	55.01	52.12	77.07	52.67	38.31	43.19	21.84
October	58.58	71.05	51.54	42.80	60.87	63.29	45.88	47.96	
November	58.51	54.13	41.22	52.92	53.49	56.43	46.41	43.94	
December	59.15	52.24	42.61	50.02	61.85	48.00	39.99	42.30	
<b>Annual Average</b>	<b>62.46</b>	<b>66.58</b>	<b>50.58</b>	<b>46.84</b>	<b>60.55</b>	<b>57.36</b>	<b>46.83</b>	<b>43.45</b>	<b>34.66</b>

Annual Expense      1,700,000      1,700,000      1,750,000      1,500,000      1,600,000      1,600,000      1,500,000      1,500,000      1,221,920      1,350,000  
(estimate)

**INTERLOCAL AGREEMENT BETWEEN CHELAN COUNTY, WASHINGTON AND THE CITY OF WENATCHEE, WASHINGTON, FOR THE HOUSING OF INMATES IN THE CHELAN COUNTY REGIONAL JUSTICE CENTER**

**THIS INTERLOCAL AGREEMENT is made and entered into on this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_ by and between the City of WENATCHEE, Washington, a Washington municipal corporation, hereinafter referred to as “City”, and Chelan County, Washington, hereinafter referred to as “Chelan County”, each party having been duly organized and now existing under the laws of the State of Washington.**

**WITNESSETH:**

WHEREAS, The Chelan County Regional Justice Center and the City Mayor or designee are authorized by law to have charge and custody of the County Jail and the City prisoners or inmates, respectively; and

WHEREAS, the City wishes to designate the CCRJC as a place of confinement for the incarceration of one or more inmates lawfully committed to its custody; and

WHEREAS, Chelan County Regional Justice Center is desirous of accepting and keeping in its custody such inmate(s) in the CCRJC for a rate of compensation mutually agreed upon by the parties hereto; and

WHEREAS, RCW 39.34.080 and other Washington law, as amended, authorizes any county to contract with any other county or city to perform any governmental service, activity or undertaking which each contracting county is authorized by law to perform; and

WHEREAS, the governing bodies of each of the parties hereto have determined to enter into this Agreement as authorized and provided for by RCW 39.34.080 and other Washington law, as amended,

NOW, THEREFORE, in consideration of the above and foregoing recitals, the payments to be made, the mutual promises and covenants herein contained, and for other good and valuable consideration, the parties hereto agree as follows:

1. GOVERNING LAW

The parties hereto agree that, except where expressly otherwise provided, the laws and administrative rules and regulations of the State of Washington shall govern in any matter relating to an inmate or inmates confined pursuant to this Agreement.

2. DURATION

This Agreement shall enter into full force and effect from **January 1, 2020 and end December 31, 2020**, subject to earlier termination as provided by Section 3 herein. Nothing in this Agreement shall be construed to require the City to house inmates in Chelan County continuously.



### 3. TERMINATION

(a) By either party. This Agreement may be terminated without cause by written notice from either party to the other party delivered by regular mail to the contact person identified herein, provided that termination shall become effective sixty (60) working days after receipt of such notice. Within said sixty (60) days, the City agrees to remove its inmate(s) from the CCRJC.

(b) By the City due to lack of funding. The obligation of the City to pay Chelan County under the provision of this Agreement beyond the current fiscal year is expressly made contingent upon the appropriation, budgeting availability of sufficient funds by the City. In the event that such funds are not budgeted, appropriated or otherwise made available for the purpose of payment under this Agreement at any time after the current fiscal year, then the City shall have the option of terminating the Agreement upon written notice to Chelan County, except that all services provided to that point shall be compensated at the agreed rate. The termination of this Agreement for this reason will not cause any penalty to be charged to the City.

(c) Termination for Breach. In the event the City breaches or fails to perform or observe any of the terms or conditions herein, and fails to cure such breach or default within seven (7) days of County's giving the City written notice thereof, or, if not reasonably capable of being cured within such seven (7) days, within such other period of time as may be reasonable in the circumstances, County may terminate the City's rights under this Agreement effective 30 days from date of receipt of notice to terminate in addition to and not in limitation of any other remedy of County at law or in equity, and the failure of County to exercise such right at any time shall not waive County's right to terminate for any future breach or default.

(d) In the event of termination of this agreement for any reason, the City shall compensate Chelan County for prisoners housed by Chelan County after notice of such termination until the City retakes its inmates in the same manner and at the same rates as if this Agreement had not been terminated.

### 4. MAILING ADDRESSES

All notices, reports, and correspondence to the respective parties of this Agreement shall be sent to the following:

Chelan County: Chelan County Regional Justice Center  
401 Washington St., Level 2  
Wenatchee, WA 98801

Primary Contact Person: Bill Larson, Director  
Secondary Contact: Nicole Thompson, Business Manager

City of Leavenworth: City of Wenatchee  
Wenatchee City Hall  
129 South Chelan Avenue  
Wenatchee, WA 98807

Primary Contact Person: Frank Kuntz, Mayor

Notices mailed shall be deemed given on the date mailed. The parties shall notify each other in writing of any change of address.

## 5. DEFINITIONS

The parties hereby agree that the following terms shall have the specified meanings unless indicated otherwise herein:

(a) Day. One prisoner day shall be each day or portion thereof which a prisoner appears in custody on the jail management system. The count shall be conducted by the jail management system and each participating jurisdiction shall be charged for each prisoner who is detained in the Regional Justice Center on a charge and/or conviction from the participating jurisdiction. If the prisoner has a pending charge and/or conviction from more than one jurisdiction, excluding the Department of Corrections, the cost for that prisoner shall be divided proportionately.

(b) Inmate Classifications shall be pursuant to the Chelan County Objective Jail Inmate Classification System which is modeled after the National Institute of Corrections Jail Classification System:

- (i) "Minimum" classification shall apply to those inmates who present a low risk to staff and the community.
- (ii) "Medium" classification shall apply to those inmates who present a moderate risk to staff and the community.
- (iii) "Maximum" classification shall apply to those inmates who present a substantial risk to staff and the community.

## 6. COMPENSATION

- (a) Annual Rate for Incarceration. Each successive year by August 31<sup>st</sup> an amendment to the contract will be presented to the City, which will be based upon the average of the monthly post-release actual inmate usage generated from the City during the immediate preceding three years. Chelan County agrees to accept and house all of the City's inmates for annual compensation. This rate includes minimum, medium, and maximum classification inmates. The annual rate for incarceration shall be paid by the City in twelve (12) equal monthly installments due on the fifth (5) day of each month.
- (b) Rate for 2020. The sum is based upon the average number of monthly post-release actual inmate usage generated from the City during the period from July 2016 through June 2019, or an agreed upon Average Daily Population, with the daily cost per inmate of \$120.50 per day. The parties agree that Chelan County will not charge The City a separate booking fee in addition to such annual compensation. The date of booking into the CCRJC of the City's inmates, no matter how little time of a twenty-four (24)

hour day it constitutes, shall count as one day. The annual cost for 2020 will be based on an agreed upon ADP of 39 totaling \$1,715,317.50 with monthly payments calculated at the annual rate divided by twelve (12) months for a monthly rate of \$142,943.13.

- (c) Reporting. Chelan County agrees to provide the City with a list of names of inmates at post release, the number of days housed, including the date and time of booking and date and time of release, for purposes of calculating current and future monthly post-release actual inmate usage.

## 7. RIGHT OF INSPECTION

The City shall have the right to inspect, at all reasonable times, all Chelan County facilities in which inmates of the City are confined in order to determine if such jail maintains standards of confinement acceptable to the City and that such inmates therein are treated equally regardless of race, religion, color, creed or national origin; provided, however, that Chelan County shall be obligated to manage, maintain and operate its facilities consistent with all applicable federal, state and local laws and regulations.

## 8. FURLOUGHS, PASSES, AND WORK RELEASE

Chelan County agrees that no early releases or alternatives to incarceration, including furloughs, passes, electronic home detention or work release shall be granted to any inmate housed pursuant to this Agreement without written authorization by the committing court.

## 9. INMATE ACCOUNTS

Chelan County shall establish and maintain an account for each inmate received from the City and shall credit to such account all money which is received and shall make disbursements, debiting such accounts in accurate amounts for the inmate's personal needs. Disbursements shall be made in limited amounts as are reasonably necessary for personal maintenance. The Director of the CCRJC shall be accountable to the City for such inmate funds. At either the termination of this Agreement, the inmate's death, release from incarceration, or return to either the City or indefinite release to the court, the inmate's money shall be transferred to either the inmate's account in care of the City, at such time the City shall be accountable to the inmate for said fund, or to the inmate.

## 10. INMATE PROPERTY

The City may transfer to Chelan County only limited amounts of personal property of the City's inmates' recovered from or surrendered by inmates to the City upon booking. Personal property in excess of one simple "grocery bag" shall at no time be transferred to Chelan County.

## 11. RESPONSIBILITY FOR OFFENDER'S CUSTODY

It shall be the responsibility of Chelan County to confine the inmate or inmates; to provide treatment, including the furnishing of subsistence and all necessary medical and hospital services and supplies; to provide for the inmates' physical needs; to make available to them programs and/or treatment consistent with the individual needs; to retain them in said custody; to supervise them; to



maintain proper discipline and control; to make certain that they receive no special privileges and that the sentence and orders of the committing court in the State are faithfully executed; provided that nothing herein contained shall be construed to require Chelan County, or any of its agents, to provide service, treatment, facilities or programs for any inmates confined pursuant to this Agreement, which it does not provide for similar inmates not confined pursuant to this Agreement. Nothing herein shall be construed as to require Chelan County to provide services, treatment, facilities or programs to the City's inmates above, beyond or in addition to that required by applicable law.

## 12. MEDICAL SERVICES

(a) Inmates shall receive such medical, psychiatric and dental treatment when emergent and necessary to safeguard their health while housed in the CCRJC. Chelan County shall provide or arrange for the providing of such medical, psychiatric and dental services. Except for routine minor medical services provided in the CCRJC, the City shall pay directly or reimburse Chelan County for any and all costs associated with the delivery of any emergency and/or major medical service provided to the City's inmates. The City shall be responsible for any and all medical, psychiatric and dental treatment provided outside of the CCRJC and shall be billed therefore. Examples of medical services which may be provided in the CCRJC but which are not routine, and for which the City shall be billed include, but are not necessarily limited to, HIV/AIDS treatment, chemotherapy, dialysis treatment, hemophiliac treatment and all prescriptions. No psychiatric or dental treatment can be provided in the CCRJC; all psychiatric and dental treatment of the City's inmates shall be billed to the City.

(b) An adequate record of all such services shall be kept by Chelan County for the City's review at its request, to the extent consistent with confidentiality regulations. Any medical or dental services of major consequence shall be reported to the City as soon as time permits.

(c) Should medical, psychiatric or dental services require hospitalization, the City agrees to compensate Chelan County dollar for dollar any amount expended or cost incurred in providing the same; provided that, except in emergencies, the City will be notified by contacting \_\_\_\_\_ (Name) \_\_\_\_\_ at \_\_\_\_\_ (Telephone Number) \_\_\_\_\_ prior to the inmate's transfer to a hospital, if and when circumstances allow, or as soon afterward as practicable.

## 13. DISCIPLINE

Chelan County shall have physical control over and power to execute disciplinary authority over all inmates of the City's. However, nothing contained herein shall be construed to authorize or permit the imposition of a type of discipline prohibited by applicable law.

## 14. RECORDS AND REPORTS

(a) The City shall forward to Chelan County before or at the time of delivery of each inmate a copy of all inmate records pertaining to the inmate's present incarceration. If additional information is requested regarding a particular inmate, the parties shall mutually cooperate to provide any additional information in a timely manner.

(b) Chelan County shall keep all necessary and pertinent records concerning such inmates in the manner mutually agreed upon by the parties hereto. During an inmate's confinement in Chelan

County, the City shall upon request be entitled to receive and be furnished with copies of any report or records associated with said inmate(s) incarceration.

15. REMOVAL FROM THE JAIL

An inmate of the City's legally confined in Chelan County shall not be removed there from by any person without written authorization from the City or by order of any court having jurisdiction. The City hereby designates \_\_\_\_\_ the official authorized to direct Chelan County to remove the City's inmates from the CCRJC. Chelan County agrees that no early releases or alternatives to incarceration including furloughs, passes, work release, work crews or electronic home detention shall be granted to any inmate without written authorization from the committing court. This paragraph shall not apply to an emergency necessitating the immediate removal of the inmate for medical, psychiatric, dental treatment or other catastrophic condition presenting an eminent danger to the safety of the inmate or to the inmates or personnel of Chelan County. In the event of any such emergency removal, Chelan County shall inform the City of the whereabouts of the inmate or inmates so removed, at the earliest practicable time, and shall exercise all reasonable care for the safe keeping and custody of such inmate or inmates.

16. ESCAPES

In the event any City inmate escapes from Chelan County's custody, Chelan County will use all reasonable means to recapture the inmate. The escape shall be reported immediately to the City. Chelan County shall have the primary responsibility for and authority to direct the pursuit and retaking of the inmate or inmates within its own territory. Any cost in connection therewith shall be chargeable to and borne by Chelan County; however, Chelan County shall not be required to expend unreasonable amounts to pursue and return inmates from other counties, states or countries.

17. DEATH OF AN INMATE

(a) In the event of the death of a City inmate, the Chelan County Coroner shall be notified. The City shall receive copies of any records made at or in connection with such notification.

(b) Chelan County shall immediately notify the City of the death of a City inmate, furnish information as requested, and follow the instructions of the City with regard to the disposition of the body. In the case of an unattended death, suspicious death, or criminal case, the Chelan County Coroner would have authority over the deceased and would coordinate with local law enforcement to finish the investigation prior to the release of the deceased inmate. The City hereby designates \_\_\_\_\_ the official authorized to request information from and provide instructions to Chelan County regarding deceased inmates. The body shall not be released except on written order of said appropriate official of the City. Written notice shall be provided within three (3) weekdays of receipt by the City of notice of such death. All expenses relative to any necessary preparation of the body and shipment charges shall be paid by the City. With the City's consent, Chelan County may arrange for burial and all matters related or incidental thereto, and all such expenses shall be paid by the City. The provisions of this paragraph shall govern only the relations between or among the parties hereto and shall not affect the liability of any relative or other persons for the disposition of the deceased or for any expenses connected therewith.

(c) The City shall receive a certified copy of the death certificate for any of its inmates who have died while in Chelan County's custody.

#### 18. RETAKE OF INMATES

Upon request from Chelan County, the City shall, at its expense, retake any City inmate within thirty-six (36) hours after receipt of such request. In the event the confinement of any City inmate is terminated for any reason, the City shall, at its expense, retake such inmate at the CCRJC Facility.

#### 19. HOLD HARMLESS AND INDEMNIFICATION

Chelan County agrees to hold harmless, indemnify and defend the City, its officers, agents and employees, from and against any and all claims, losses, or liability, for injuries, sickness or death of persons, or damage to property, arising out of any willful misconduct or negligent act, error, or omission of Chelan County, its officers, agents, or employees, in connection with the services required by the Agreement, provided, however, that:

(a) Chelan County's obligations to indemnify, defend and hold harmless shall not extend to injuries, sickness, death or damage caused by or resulting from the sole willful misconduct or negligence of the City, its officers, agents or employees or sub-consultants; and

(b) Chelan County's obligations to indemnify, defend and hold harmless for injuries, sickness, death or damage caused by or resulting from the concurrent negligence or willful misconduct of the Chelan County and the City or of Chelan County and a third party other than an officer, agent or employee of Chelan County, shall apply only to the extent of the negligence or willful misconduct of Chelan County.

#### 20. RIGHT OF REFUSAL AND TRANSPORTATION

(a) Chelan County shall have the right to refuse to accept any inmate from the City when, in the opinion of Chelan County, its inmate census is at capacity that there is a substantial risk that, through usual operation of the jail, the reasonable operational capacity limits of the jail might be reached or exceeded.

(b) Chelan County shall further have the right to refuse to accept any inmate from the City who, in the judgment of Chelan County, has a current illness or injury which may adversely affect the operations of the CCRJC, has a history of serious medical problems, presents a substantial risk of escape, or presents a substantial risk of injury to other persons or property, or is classified as a maximum security inmate pursuant to Chelan County's Objective Jail Classification System. The inmate should be an inmate who has already been sentenced by the jurisdiction, and should not be on pre-trial status.

(c) City prisoners incarcerated in Chelan County pursuant to this Agreement shall be transported to Chelan County and at the expense of Chelan County and shall be returned, if necessary, to the City by Chelan County personnel and at the County's expense provided that notice of the necessity of transport is received by Chelan County three (3) days prior to the time of expected transport. The City



hereby designates \_\_\_\_\_ the official authorized to notify Chelan County of the dates for transport and the specific inmates to be transported.

## 21. INDEPENDENT CONTRACTOR

In providing services under this contract, Chelan County is an independent contractor and neither it or its officers, agents or employees are employees of the City for any purpose, including responsibility for any federal or state tax, industrial insurance or Social Security liability. Neither shall the provision of services under this Agreement give rise to any claim of career service or civil service rights, which may accrue to an employee of the City under any applicable law, rule or regulation.

## 22. GENERAL PROVISIONS

(a) Severability. In the event any provisions of this Agreement shall be determined to be unenforceable or otherwise invalid for any reason, such provisions shall be enforced and valid to the extent permitted by law. All provisions of this Agreement are severable and unenforceability or invalidity of a single provision herein shall not affect the remaining provisions.

(b) Governing Law and Venue. This Agreement shall be governed by the laws of the State of Washington, and venue for any lawsuit shall be the Chelan County Superior Court.

(c) Attorney's Fees. In the event it is necessary for either party to utilize the services of an attorney to enforce any of the terms of this Agreement, such enforcing party shall be entitled to compensation for its reasonable attorney's fees and costs. In the event of litigation regarding any terms of this Agreement, the substantially prevailing party shall be entitled, in addition other relief, to such reasonable attorney's fees and costs as determined by the Court.

(d) Waiver of Breach. The waiver by either party of the breach of any provision of this Agreement by the other party must be in writing and shall not operate nor be construed as a waiver of any subsequent breach by such other party.

(e) Savings Clause. Nothing in this Agreement shall be construed so as to require the commission of any act contrary to law, and wherever there is any conflict between any provisions of this Agreement and any statute, law, public regulation or ordinance, the latter shall prevail but in such event, the provisions of this Agreement affected shall be curtailed and limited only to the extent necessary to bring it within legal requirements.

(f) Filing. This Agreement shall be filed with the Chelan County Auditor's Office pursuant to RCW 39.34.040.

## 23. INTERPRETATION

This Agreement has been submitted to the scrutiny of all parties and their counsel, if desired, and it shall be given a fair and reasonable interpretation in accordance with its words, without consideration or weight given to its being drafted by any party or its counsel. All words used in the singular shall include the plural; the present tense shall include the future tense; and the masculine gender shall include the feminine and neuter gender.

24. ACCESS TO RECORDS CLAUSE

The parties hereby agree that authorized representatives of the parties shall have access to any books, documents, paper and record of the other party that are pertinent to this Agreement for the purposes of making audits, examinations, excerpts and transcriptions. All such records and all other records pertinent to this Agreement, and work undertaken pursuant to this Agreement shall be retained by the parties for a period of three (3) years after the final expiration date of this Agreement or any amendments hereto, unless a longer period is required to resolve audit, findings or litigation. In such cases, the parties may expressly agree by an amendment or separate agreement for such longer period for record retention.

25. ENTIRE AGREEMENT

This Agreement represents the entire integrated Agreement between the City and Chelan County and supercedes all prior negotiations, representations or agreements, either written or oral.

IN WITNESS WHEREOF, the above and foregoing Agreement has been executed in duplicate by the parties hereto and made affective on the day and year first above written.

CITY OF \_\_\_\_\_, WA

BOARD OF CHELAN COUNTY  
COMMISSIONERS

By: \_\_\_\_\_

\_\_\_\_\_  
Kevin Overbay, Chair

ATTEST:

\_\_\_\_\_  
Doug England, Commissioner

\_\_\_\_\_  
City Clerk

\_\_\_\_\_  
Bob Bugert, Commissioner

DATED: \_\_\_\_\_

ATTEST:  
Carlye Baity  
Clerk of the Board

\_\_\_\_\_  
DATED: \_\_\_\_\_

Approved as to Form:

\_\_\_\_\_  
City of \_\_\_\_\_ Attorney

\_\_\_\_\_  
Bill Larson, Director  
Chelan County Regional Justice Center

Approved as to Form:

\_\_\_\_\_  
Douglas Shae, Chelan County Prosecutor



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**COUNCIL AGENDA REPORT  
PUBLIC WORKS DEPARTMENT**

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

**FROM:** John Ricardi, Utilities Manager  
Jessica Shaw, Environmental Manager

**SUBJECT:** Ecology Construction Grant – Walla Walla Street Stormwater Retrofit

**DATE:** December 2, 2019

**MEETING DATE:** December 5, 2019

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**I. OVERVIEW**

In 2013, the City of Wenatchee received a grant for planning and design of water quality improvement projects from the Washington State Department of Ecology. With this grant, the City completed the design for two projects, the Peachey Street Basin water quality improvements and the Walla Walla Avenue stormwater retrofits. The purpose of the Walla Walla Avenue project is to address roadway flooding, prevent sediment from discharging to the Columbia River, and reduce maintenance costs. The City was awarded grant funding to construct this project earlier this year. The funding is from the Ecology Stormwater Financial Assistance Program.

**II. ACTION REQUESTED**

Staff recommends that the City Council authorize the Mayor to sign the Water Quality Combined Financial Assistance Agreement between the State of Washington Department of Ecology and the City of Wenatchee for the Walla Walla Street Stormwater Retrofit project.

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

The estimated project cost is \$998,800. Under the grant agreement, Ecology is providing 75% of the funding for this project with a 25% match from the city. The City's match of \$249,700 is currently budgeted in the stormwater utility capital budget.

**IV. PROPOSED PROJECT SCHEDULE**

Construction is tentatively scheduled for 2022. The grant expires 12/31/2023.

**V. REFERENCE(S)**

1. Agreement WQSWPC-2020-Wenatc-00061 Water Quality Combined Financial Assistance Agreement Between the State of Washington Department of Ecology and the City of Wenatchee

**VI. ADMINISTRATIVE ROUTING**

Tammy Stanger, City Clerk  
Brad Posenjack, Finance Director



## Agreement No. WQC-2020-Wenatc-00061

### WATER QUALITY COMBINED FINANCIAL ASSISTANCE AGREEMENT

BETWEEN

THE STATE OF WASHINGTON DEPARTMENT OF ECOLOGY

AND

CITY OF WENATCHEE

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

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#### GENERAL INFORMATION

Project Title:	Walla Walla Street Stormwater Retrofit
Total Cost:	\$998,800.00
Total Eligible Cost:	\$998,800.00
Ecology Share:	\$749,100.00
Recipient Share:	\$249,700.00
The Effective Date of this Agreement is:	07/01/2019
The Expiration Date of this Agreement is no later than:	12/31/2023
Project Type:	Stormwater Facility

#### Project Short Description:

This project will improve water quality in the Columbia River through installation of BMPs including curb cuts, catch basins with sumps, infiltration trenches, and hydrodynamic separators along Walla Walla Street in Wenatchee, WA. This project will provide treatment for total suspended solids (TSS) and oil (total petroleum hydrocarbons). Additional benefits of this project include increased public safety for vehicles.

#### Project Long Description:

The RECIPIENT constructed a series of seventeen swales and infiltration trenches along Walla Walla Street in 2007. Overflow from the trenches and the surrounding M500 drainage basin discharge to the Linden Tree stormwater pond and then to the Columbia River. Lack of pretreatment and poor design of the system has led to sediment blocking the curb cuts, filling the swales, and clogging the Linden Tree pond, causing dangerous conditions and degraded water quality.

Agreement No: WQC-2020-Wenatc-00061

Project Title: Walla Walla Street Stormwater Retrofit

Recipient Name: City of Wenatchee

This project will provide pretreatment for the new and existing infiltration trenches on Walla Walla Street and pretreatment for the M500 drainage basin stormwater discharges. It will help keep sediment and heavy metals out of the pond and the 303d listed Columbia River. This project includes adding curb inlets and Type 1 catch basins with sumps to collect stormwater from Walla Walla Street and provide pretreatment for the infiltration trenches. The swales will be removed and additional basic treatment infiltration trenches will be added. A continuous deflective separation (CDS) hydrodynamic separator will be added to the inlet from the M500 stormwater drainage basin to further protect the pond from sediment.

Maintenance for the swales and pond cost the RECIPIENT an average of \$85,000 per year since 2007. The estimated maintenance cost for all of the infrastructure installed with this project is expected to be less than \$5,000 per year. The proposed Type 1 catch basins and the hydrodynamic separator will reduce suspended solids in the stormwater discharges by at least 50 percent. This project also improves public safety for vehicles and motorcycles during rain events.

Overall Goal:

This project will help protect and restore water quality in Washington state by reducing stormwater impacts from existing infrastructure and development.



Agreement No: WQC-2020-Wenatc-00061  
Project Title: Walla Walla Street Stormwater Retrofit  
Recipient Name: City of Wenatchee

**RECIPIENT INFORMATION**

Organization Name: City of Wenatchee

Federal Tax ID: 91-6001291

DUNS Number: 075746545

Mailing Address: PO Box 519  
Wenatchee, WA 98807-0519

Physical Address: 1350 McKittrick St, Ste A  
Wenatchee, Washington 98801

Organization Email: [fkuntz@wenatcheewa.gov](mailto:fkuntz@wenatcheewa.gov)

**Contacts**

Agreement No: WQC-2020-Wenatc-00061  
 Project Title: Walla Walla Street Stormwater Retrofit  
 Recipient Name: City of Wenatchee

<p><b>Project Manager</b></p>	<p>Jessica Shaw                  Environmental Manager</p> <p>P.O. Box 519                  Wenatchee, Washington 98807-0519                  Email: <a href="mailto:jshaw@wenatcheewa.gov">jshaw@wenatcheewa.gov</a>                  Phone: (509) 888-3225</p>
<p><b>Billing Contact</b></p>	<p>Natalie Thresher                  Contracts Coordinator</p> <p>1350 McKittrick St, Ste A                  Wenatchee, Washington 98801                  Email: <a href="mailto:nthresher@wenatcheewa.gov">nthresher@wenatcheewa.gov</a>                  Phone: (509) 888-6204</p>
<p><b>Authorized Signatory</b></p>	<p>Frank J. Kuntz                  Mayor</p> <p>129 South Chelan                  P.O. Box 519                  Wenatchee, Washington 98807                  Email: <a href="mailto:fkuntz@wenatcheewa.gov">fkuntz@wenatcheewa.gov</a>                  Phone: (509) 888-6204</p>

State of Washington Department of Ecology  
Agreement No: WQC-2020-Wenatc-00061  
Project Title: Walla Walla Street Stormwater Retrofit  
Recipient Name: City of Wenatchee

## ECOLOGY INFORMATION

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

Physical Address: Water Quality  
300 Desmond Drive SE  
Lacey, WA 98503

## Contacts

<b>Project Manager</b>	Jill Scheffer  1250 W Alder St. Union Gap, Washington 98903-0009 Email: SCHE461@ecy.wa.gov Phone: (509) 454-7298
<b>Financial Manager</b>	Sarah Zehner Water Quality Financial Manager  PO Box 47600 Olympia, Washington 98504-7600 Email: szez461@ecy.wa.gov Phone: (360) 407-7196
<b>Technical Advisor</b>	Doug Howie Senior Stormwater Engineer  PO Box 47600 Olympia, Washington 98504-7600 Email: DOHO461@ecy.wa.gov Phone: (360) 407-6444





**SCOPE OF WORK**

Task Number: 1 **Task Cost: \$10,000.00**

Task Title: Grant and Loan Administration

Task Description:

A. The RECIPIENT shall carry out all work necessary to meet ECOLOGY grant or loan administration requirements. Responsibilities include, but are not limited to: Maintenance of project records; submittal of requests for reimbursement and corresponding backup documentation; progress reports; the EAGL (Ecology Administration of Grants and Loans) recipient closeout report; and a two-page outcome summary report (including photos, if applicable). In the event that the RECIPIENT elects to use a contractor to complete project elements, the RECIPIENT shall retain responsibility for the oversight and management of this funding agreement.

B. The RECIPIENT shall keep documentation that demonstrates the project is in compliance with applicable procurement, contracting, and interlocal agreement requirements; permitting requirements, including application for, receipt of, and compliance with all required permits, licenses, easements, or property rights necessary for the project; and submittal of required performance items. This documentation shall be available upon request.

C. The RECIPIENT shall maintain effective communication with ECOLOGY and maintain up-to-date staff contact information in the EAGL system. The RECIPIENT shall carry out this project in accordance with any completion dates outlined in this agreement.

Task Goal Statement:

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

Task Expected Outcome:

\* Timely and complete submittal of requests for reimbursement, quarterly progress reports, Recipient Closeout Report, and two-page outcome summary report.

\* Properly maintained project documentation.

**Grant and Loan Administration**

**Deliverables**

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

## SCOPE OF WORK

Task Number: 2 **Task Cost:** \$60,000.00

Task Title: Design Plans and Specs, Environmental Review

### Task Description:

The RECIPIENT shall ensure the following items are completed and provide the associated deliverables to ECOLOGY. The RECIPIENT must approve all materials prior to submitting them to ECOLOGY for acceptance.

- A. The RECIPIENT will coordinate the preparation and submittal of State Environmental Policy Act (SEPA) documentation.
- B. The RECIPIENT is responsible for application of, receipt of, and compliance with all required local, state, tribal and federal permits, licenses, easements, or property rights necessary for the project.
- C. The RECIPIENT will comply with Executive Order (05-05) cultural resources review requirements. To initiate cultural resources review the RECIPIENT will:

1. Submit to ECOLOGY the 05-05/106 Form. All submitted materials must conform to the Department of Archeology and Historic Preservation's Washington State Standards for Cultural Resource Reporting.
2. Develop and submit to ECOLOGY an Inadvertent Discovery Plan (IDP), using the ECOLOGY template. The RECIPIENT will ensure that all contractors and subcontractors have a copy of the completed IDP prior to and while working on-site. The IDP template may be found on the ECOLOGY website.

Ground disturbing work (including geotechnical investigations) completed prior to receiving written notice to proceed from ECOLOGY shall not be eligible for reimbursement.

- D. The RECIPIENT will develop a project Design Report. Projects must be designed in accordance with the Stormwater Management Manual for Eastern Washington, Stormwater Management Manual for Western Washington, or equivalent manual. Project must be reviewed and accepted in writing by ECOLOGY to be eligible for reimbursement.

The RECIPIENT will upload a digital copy of the items listed below to EAGL for ECOLOGY review. Reduce design figures to 11x17 inches in size and ensure they are legible.

1. Design Report. Design Report must conform to the Stormwater Project Deliverables Guidance. Refer to the Ecology website for specific guidance.

The RECIPIENT agrees to respond to ECOLOGY comments. The RECIPIENT must receive an Ecology Design Report Acceptance Letter prior to proceeding to 90 Percent design.

2. 90 Percent Design Package. At a minimum, this package must include 90 percent plans, specifications, engineer's opinion of cost, which includes a schedule of eligible costs, and project construction schedule. For current bid inserts and specifications refer to the ECOLOGY website.

Agreement No: WQC-2020-Wenatc-00061

Project Title: Walla Walla Street Stormwater Retrofit

Recipient Name: City of Wenatchee

The RECIPIENT agrees to respond to ECOLOGY comments. The RECIPIENT must receive an Ecology 90 Percent Design Acceptance Letter prior to proceeding Final Design.

3. The RECIPIENT will submit a digital copy of the Final Bid Package to ECOLOGY for review and acceptance prior to advertising the project. The Final Bid Package includes: project plans, specifications, engineer's opinion of cost including a schedule of eligible costs, and project construction schedule.

Task Goal Statement:

The RECIPIENT will complete all design, environmental review, and permitting tasks and respond to ECOLOGY comments in a timely manner.

Task Expected Outcome:

The project will meet the requirements set forth by the State Environmental Policy Act, cultural resource protection requirements, ECOLOGY water quality facility design standards, and all other applicable federal, state, and local laws and regulations.



Agreement No: WQC-2020-Wenatc-00061

Project Title: Walla Walla Street Stormwater Retrofit

Recipient Name: City of Wenatchee

**Design Plans and Specs, Environmental Review****Deliverables**

<b>Number</b>	<b>Description</b>	<b>Due Date</b>
2.1	SEPA determination documentation. Upload to EAGL and notify ECOLOGY when upload is complete.	
2.2	List of permits acquired and environmental review documents. Upload to EAGL and notify ECOLOGY when upload is complete.	
2.3	Submit the ECOLOGY 05-05/106 Form and any supplemental cultural resources documentation including Cultural Resource surveys directly to the Ecology Project Manager. Upload the Final Determination Letter to EAGL.	
2.4	Inadvertent Discovery Plan. Upload to EAGL and notify ECOLOGY when upload is complete.	
2.5	Contract documents (if contracting out for design). Upload to EAGL and notify ECOLOGY when upload is complete.	
2.6	Design Report. Upload to EAGL and notify ECOLOGY when upload is complete.	
2.7	Responses to ECOLOGY Design Report comments. Upload to EAGL and notify ECOLOGY when upload is complete.	
2.8	ECOLOGY Design Report Acceptance Letter. Upload to EAGL and notify ECOLOGY when upload is complete.	
2.9	90 Percent Design Package. Upload to EAGL and notify ECOLOGY when complete.	
2.10	Responses to ECOLOGY 90 Percent Design Package comments. Upload to EAGL and notify ECOLOGY when upload is complete.	
2.11	ECOLOGY 90 Percent Design Acceptance Letter. Upload to EAGL and notify ECOLOGY when upload is complete.	
2.12	Final Bid Package. Upload to EAGL and notify ECOLOGY when upload is complete.	
2.13	Responses to ECOLOGY Final Bid Package comments. Upload to EAGL and notify ECOLOGY when upload is complete.	
2.14	Ecology Final Bid Package Acceptance Letter. Upload to EAGL and notify ECOLOGY when upload is complete.	

## SCOPE OF WORK

Task Number: 3 **Task Cost:** \$120,000.00

Task Title: Construction Management

### Task Description:

- A. The RECIPIENT will provide construction oversight and management of the project.
- B. The RECIPIENT will submit a detailed Construction Quality Assurance Plan (CQAP) to ECOLOGY for review and acceptance before the start of construction. This plan must describe how the RECIPIENT will perform adequate and competent construction oversight. Once accepted by Ecology, upload to EAGL. CQAP development guidance is available on the ECOLOGY website.
- C. The RECIPIENT will conduct a pre-construction conference meeting and invite ECOLOGY to attend.
- D. The RECIPIENT will submit an updated project schedule with projected cash flow to ECOLOGY within 30 days of the start of construction. The RECIPIENT will revise and/or update the project schedule whenever major changes occur and at a minimum of every three months. The RECIPIENT will submit the updated schedule to ECOLOGY with the quarterly report. When changes in the construction schedule affect previous cash flow estimates, The RECIPIENT must submit revised cash flow projections to ECOLOGY.
- E. Prior to execution, the RECIPIENT will submit in writing any eligible change orders that deviate from ECOLOGY-accepted plans and specifications for ECOLOGY review and acceptance. ECOLOGY must review and accept all change orders that affect grant eligible activities prior to implementation, and all other change orders for technical merit. Change orders are to be signed by the contractor, the engineer (if appropriate), and the RECIPIENT prior to submittal to ECOLOGY for acceptance.
- F. The RECIPIENT will operate and maintain the constructed facility for the design life of the facility. Additionally, the RECIPIENT will develop and submit an Operations and Maintenance (O&M) plan for all Water Quality Best Management Practices to ECOLOGY for review. The O&M plan will describe how the RECIPIENT will ensure project success consistent with the design manual used. The O&M plan must also address long-term activities to assure ongoing pollutant removal and flow-control capability of the project in accordance with the design manual. O&M plan development guidance is available on the ECOLOGY website.
- G. Upon completion of construction, the RECIPIENT will provide to ECOLOGY:
1. A Stormwater Construction Completion Form signed by a professional engineer indicating that the project was completed in accordance with the plans and specifications, and major change orders approved by ECOLOGY's Project Engineer and shown on the Record Drawings. The Stormwater Construction Completion Form can be found on the ECOLOGY website.
  2. GIS compatible project area in Shapefile, Geodatabase file, or ECOLOGY-approved equivalent. The project area should include features for treatment facilities and contributing areas.

Task Goal Statement:

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

Task Expected Outcome:

The project will be constructed on schedule and in accordance with accepted plans.

**Construction Management**

**Deliverables**

Number	Description	Due Date
3.1	Construction Quality Assurance Plan. Upload to EAGL and notify ECOLOGY when upload is complete.	
3.2	Pre-construction conferece meeting minutes. Upload to EAGL and notify ECOLOGY when upload is complete.	
3.3	Project Schedule. Upload to EAGL using naming convention D3.3 SCHEDULE MO-DA-YEAR and notify ECOLOGY when upload is complete.	
3.4	Revised construction cost estimates when changes in construction schedule occur. Upload to EAGL using naming convention D3.4 CASHFLOW MO-DA-YEAR and notify ECOLOGY when upload is complete.	
3.5	Change Order(s). Upload to EAGL and notify ECOLOGY when upload is complete.	
3.6	Copy of Facility Operation and Maintenance Plan. Upload to EAGL using naming convention D3.6 OPANDMAINTENANCE MO-DA-YEAR and notify Ecology when upload is complete.	
3.7	Stormwater Construction Completion Form. Upload to EAGL and notify ECOLOGY when upload is complete.	
3.8	Project Area Shapefile, Geodatabase file, or ECOLOGY-approved equivalent. The project area should include as-built features for treatment facilities and contributing areas. Upload to EAGL and notify ECOLOGY when upload is complete.	

**SCOPE OF WORK**

Task Number: 4 **Task Cost: \$808,800.00**

Task Title: Construction

Task Description:

- A. The RECIPIENT will complete construction of the project in accordance with ECOLOGY-accepted plans and specifications. The construction project will include installation of curb cuts, catch basins with sumps, infiltration trenches, and hydrodynamic separators to mitigate runoff from 47 acres of pollution generating impervious surfaces.
  
- B. Calculate and submit an equivalent new/re-development area for the completed retrofit project(s) using the methods outlined in the Stormwater Project Deliverables Guidance.; Section D.

Task Goal Statement:

Construction of the project in accordance with ECOLOGY-accepted plans and specifications.

Task Expected Outcome:

The constructed project will provide water quality benefits including reductions in total suspended solids (TSS) and oil (total petroleum hydrocarbons).

**Construction**

**Deliverables**

Number	Description	Due Date
4.1	Contract documents (e.g. bid announcement, bid award, and bid tabulations). Upload to EAGL and notify ECOLOGY when upload is complete.	
4.2	Signed and dated construction contract. Upload to EAGL and notify ECOLOGY when upload is complete.	
4.3	Completed equivalent new/redevelopment area determination. Upload to EAGL and notify ECOLOGY when upload is complete.	



**BUDGET**

**Funding Distribution EG200346**

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

Funding Title: SFAP  
 Funding Effective Date: 07/01/2019  
 Funding Source:

Funding Type: Grant  
 Funding Expiration Date: 12/31/2023

Title: SFAP - SFY20  
 Type: State  
 Funding Source %: 100%  
 Description: Environmental Legacy Stewardship Account (ELSA) - State

Approved Indirect Costs Rate: Approved State Indirect Rate: 24%  
 Recipient Match %: 25%  
 InKind Interlocal Allowed: No  
 InKind Other Allowed: No  
 Is this Funding Distribution used to match a federal grant? No

SFAP	Task Total
Grant and Loan Administration	\$ 10,000.00
Design Plans and Specs, Environmental Review	\$ 60,000.00
Construction Management	\$ 120,000.00
Construction	\$ 808,800.00

**Total: \$ 998,800.00**

**Funding Distribution Summary**

**Recipient / Ecology Share**

<b>Funding Distribution Name</b>	<b>Recipient Match %</b>	<b>Recipient Share</b>	<b>Ecology Share</b>	<b>Total</b>
SFAP	25.00 %	\$ 249,700.00	\$ 749,100.00	\$ 998,800.00
<b>Total</b>		<b>\$ 249,700.00</b>	<b>\$ 749,100.00</b>	<b>\$ 998,800.00</b>

**AGREEMENT SPECIFIC TERMS AND CONDITIONS**

N/A

**SPECIAL TERMS AND CONDITIONS**

**GENERAL FEDERAL CONDITIONS**

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

**A. CERTIFICATION REGARDING SUSPENSION, DEBARMENT, INELIGIBILITY OR VOLUNTARY**

**EXCLUSION:**

1. The RECIPIENT/CONTRACTOR, by signing this agreement, certifies that it is not suspended, debarred, proposed for debarment, declared ineligible or otherwise excluded from contracting with the federal government, or from receiving contracts paid for with federal funds. If the RECIPIENT/CONTRACTOR is unable to certify to the statements contained in the certification, they must provide an explanation as to why they cannot.
2. The RECIPIENT/CONTRACTOR shall provide immediate written notice to ECOLOGY if at any time the RECIPIENT/CONTRACTOR learns that its certification was erroneous when submitted or had become erroneous by reason of changed circumstances.
3. The terms covered transaction, debarred, suspended, ineligible, lower tier covered transaction, participant, person, primary covered transaction, principal, proposal, and voluntarily excluded, as used in this clause, have the meaning set out in the Definitions and Coverage sections of rules implementing Executive Order 12549. You may contact ECOLOGY for assistance in obtaining a copy of those regulations.
4. The RECIPIENT/CONTRACTOR agrees it shall not knowingly enter into any lower tier covered transaction with a person who is proposed for debarment under the applicable Code of Federal Regulations, debarred, suspended, declared ineligible, or voluntarily excluded from participation in this covered transaction.
5. The RECIPIENT/CONTRACTOR further agrees by signing this agreement, that it will include this clause titled "CERTIFICATION REGARDING SUSPENSION, DEBARMENT, INELIGIBILITY OR VOLUNTARY EXCLUSION" without modification in all lower tier covered transactions and in all solicitations for lower tier covered transactions.
6. Pursuant to 2CFR180.330, the RECIPIENT/CONTRACTOR is responsible for ensuring that any lower tier covered transaction complies with certification of suspension and debarment requirements.
7. RECIPIENT/CONTRACTOR acknowledges that failing to disclose the information required in the Code of Federal

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Regulations may result in the delay or negation of this funding agreement, or pursuance of legal remedies, including suspension and debarment.

8. RECIPIENT/CONTRACTOR agrees to keep proof in its agreement file, that it, and all lower tier recipients or contractors, are not suspended or debarred, and will make this proof available to ECOLOGY before requests for reimbursements will be approved for payment. RECIPIENT/CONTRACTOR must run a search in <http://www.sam.gov> and print a copy of completed searches to document proof of compliance.

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

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

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

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

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

For more details on FFATA requirements, see [www.fsrs.gov](http://www.fsrs.gov) <http://www.fsrs.gov>.

## GENERAL TERMS AND CONDITIONS

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

#### GENERAL TERMS AND CONDITIONS AS OF LAST UPDATED 7-1-2019 VERSION

##### 1. ADMINISTRATIVE REQUIREMENTS

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

##### 2. AMENDMENTS AND MODIFICATIONS

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

##### 3. ACCESSIBILITY REQUIREMENTS FOR COVERED TECHNOLOGY

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

##### 4. ARCHAEOLOGICAL AND CULTURAL RESOURCES

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

RECIPIENT shall:

- a) Contact the ECOLOGY Program issuing the grant or loan to discuss any Cultural Resources requirements for their project:
  - For capital construction projects or land acquisitions for capital construction projects, if required, comply with Governor Executive Order 05-05, Archaeology and Cultural Resources.
  - For projects with any federal involvement, if required, comply with the National Historic Preservation Act.
  - Any cultural resources federal or state requirements must be completed prior to the start of any work on the project site.
- b) If required by the ECOLOGY Program, submit an Inadvertent Discovery Plan (IDP) to ECOLOGY prior to implementing any project that involves ground disturbing activities. ECOLOGY will provide the IDP form.

RECIPIENT shall:

- Keep the IDP at the project site.



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- Make the IDP readily available to anyone working at the project site.
  - Discuss the IDP with staff and contractors working at the project site.
  - Implement the IDP when cultural resources or human remains are found at the project site.
- c) If any archeological or historic resources are found while conducting work under this Agreement:
- Immediately stop work and notify the ECOLOGY Program, the Department of Archaeology and Historic Preservation at (360) 586-3064, any affected Tribe, and the local government.
- d) If any human remains are found while conducting work under this Agreement:
- Immediately stop work and notify the local Law Enforcement Agency or Medical Examiner/Coroner's Office, and then the ECOLOGY Program.
- e) Comply with RCW 27.53, RCW 27.44.055, and RCW 68.50.645, and all other applicable local, state, and federal laws protecting cultural resources and human remains.

## 5. ASSIGNMENT

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

## 6. COMMUNICATION

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

## 7. COMPENSATION

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

## 8. COMPLIANCE WITH ALL LAWS

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

- a) RECIPIENT agrees to comply with all applicable laws, regulations, and policies of the United States and the State of

Washington which affect wages and job safety.

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

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

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

#### 9. CONFLICT OF INTEREST

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

#### 10. CONTRACTING FOR GOODS AND SERVICES

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

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

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

#### 11. DISPUTES

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

- a) RECIPIENT notifies the funding program of an appeal request.
- b) Appeal request must be in writing and state the disputed issue(s).
- c) RECIPIENT has the opportunity to be heard and offer evidence in support of its appeal.
- d) ECOLOGY reviews the RECIPIENT's appeal.
- e) ECOLOGY sends a written answer within ten (10) business days, unless more time is needed, after concluding the review. The decision of ECOLOGY from an appeal will be final and conclusive, unless within thirty (30) days from the date of such decision, the RECIPIENT furnishes to the Director of ECOLOGY a written appeal. The decision of the Director or duly authorized representative will be final and conclusive.

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

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

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

accordance with the decision rendered.

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

## 12. ENVIRONMENTAL DATA STANDARDS

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

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

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

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

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

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

## 13. GOVERNING LAW

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

## 14. INDEMNIFICATION

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

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

## 15. INDEPENDENT STATUS

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

## 16. KICKBACKS

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

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

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

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

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

#### 18. ORDER OF PRECEDENCE

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

#### 19. PRESENTATION AND PROMOTIONAL MATERIALS

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

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

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

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

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

#### 20. PROGRESS REPORTING

- a) RECIPIENT must satisfactorily demonstrate the timely use of funds by submitting payment requests and progress reports to ECOLOGY. ECOLOGY reserves the right to amend or terminate this Agreement if the RECIPIENT does not document timely use of funds.
- b) RECIPIENT must submit a progress report with each payment request. Payment requests will not be processed without a progress report. ECOLOGY will define the elements and frequency of progress reports.
- c) RECIPIENT shall use ECOLOGY's provided progress report format.
- d) Quarterly progress reports will cover the periods from January 1 through March 31, April 1 through June 30, July 1 through



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September 30, and October 1 through December 31. Reports shall be submitted within thirty (30) days after the end of the quarter being reported.

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

## 21. PROPERTY RIGHTS

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

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

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

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

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

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

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

2. RECIPIENT shall provide satisfactory evidence of title or ability to acquire title for each parcel prior to disbursement of funds provided by this Agreement. Such evidence may include title insurance policies, Torrens certificates, or abstracts, and attorney's opinions establishing that the land is free from any impediment, lien, or claim which would impair the uses intended by this Agreement.

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

## 22. RECORDS, AUDITS, AND INSPECTIONS

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

All records shall:

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

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

c) Clearly indicate total receipts and expenditures related to this Agreement.

d) Be open for audit or inspection by ECOLOGY, or by any duly authorized audit representative of the State of Washington, for a period of at least three (3) years after the final grant payment or loan repayment, or any dispute resolution hereunder. RECIPIENT shall provide clarification and make necessary adjustments if any audits or inspections identify discrepancies in the records.

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

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

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

### 23. RECOVERY OF FUNDS

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

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

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

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

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

### 24. SEVERABILITY

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

### 25. STATE ENVIRONMENTAL POLICY ACT (SEPA)

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

### 26. SUSPENSION

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

### 27. SUSTAINABLE PRACTICES

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

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

b) Purchasing may include such items as: sustainably produced products and services, EPEAT registered computers and

imaging equipment, independently certified green cleaning products, remanufactured toner cartridges, products with reduced packaging, office products that are refillable, rechargeable, and recyclable, 100% post-consumer recycled paper, and toxic free products.

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

## 28. TERMINATION

### a) For Cause

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

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

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

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

### b) For Convenience

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

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

In the event of termination or suspension, ECOLOGY will reimburse eligible costs incurred by the RECIPIENT through the effective date of termination or suspension. Reimbursed costs must be agreed to by ECOLOGY and the RECIPIENT. In no event shall ECOLOGY's reimbursement exceed ECOLOGY's total responsibility under the agreement and any amendments. If payments have been discontinued by ECOLOGY due to unavailable funds, the RECIPIENT shall not be obligated to repay monies which had been paid to the RECIPIENT prior to such termination.

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

### c) By Mutual Agreement

Agreement No: WQC-2020-Wenatc-00061  
Project Title: Walla Walla Street Stormwater Retrofit  
Recipient Name: City of Wenatchee

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

d) In Event of Termination

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

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

29. THIRD PARTY BENEFICIARY

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

30. WAIVER

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



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## COUNCIL AGENDA REPORT

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

**FROM:** Allison Williams, Executive Services Director; Dale Cantrell, IS Director; Rob Jammerman, Public Works Director; Brad Posenjak, Finance Director

**SUBJECT:** Public Hearing for Franchise Renewal with Spectrum Pacific West, LLC, locally known as Charter Communications

**DATE:** **November 27, 2019**

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**Overview:** The City of Wenatchee has had a franchise agreement with Falcon Video Communications, locally known as Charter Communications, since July 13, 1995. The current franchise (which was last renewed in January 2013) expires at the end of this year and during the term of the current franchise the agreement was transferred and the franchise is with Spectrum Pacific West, LLC, locally known as Charter Communications.

WCC 5.04.130 guides the process for the consideration of a renewal of a franchise. Upon receiving notice in mid-2018 from Spectrum/Charter, staff began negotiations under the informal process with the first negotiation call on August 20, 2018. After the initial meeting a redlined version of the existing franchise was received from Spectrum Charter and staff began the update process which included outreach about the franchise areas where changes were proposed. Under city code, staff may elect to undertake a full assessment of cable related needs, however for a renewal, the past record of the franchisee provides a basis for renewing the franchise and an opportunity must be provided for public comment. Staff believes it is in the best interest of the public to follow through with renewal and following is an overview of the key material changes to the Franchise:

- 1) Staff has proposed new language in 8.6 regarding Construction Bonds which provides an option for covering multiple projects with one bond and is consistent with other franchises.
- 2) Staff proposed updated language in Section 8.10 in regard to Relocation of Facilities. The language we have requested is consistent with our Zayo franchise which was approved in June 2012.
- 3) PEG was the largest area of change requested. PEG (Public Educational and Government programming) is being underutilized and so staff conducted outreach regarding the use of Public Access programming. Internal and external interviews were done, including review of renewals done by other cities with regard to PEG. After review staff and Spectrum/Charter drafted language that would give channels back for their use with the option that the City could reclaim a channel if the programming requirements could be met (Section 13). In addition, there was a new FCC ruling which determined that PEG fees could be taken out of the remittance for the franchise.

Essentially, with the changes in video accessibility and technology, the public is using other means for public access education.

- 4) There were several other language changes which staff can address if Council has questions after reviewing the redline.
- 5) Staff has advertised for a public hearing for this evening for comment regarding the new franchise.

**Recommended Action for the December 5<sup>th</sup> Public Hearing:** Staff and Spectrum/Charter are down to just language differences in Section 8.10. As the City has incorporated this language into the Zayo franchise and desires that it be added to this franchise, staff recommends holding this public hearing, taking any comment, and staff will return with the final franchise for approval at the December 12<sup>th</sup> meeting of the City Council.