CITY OF COVINGTON
CITY COUNCIL SPECIAL MEETING AGENDA – 6:20 P.M.
CITY COUNCIL REGULAR MEETING AGENDA – APPROXIMATELY 7:00 P.M.

www.covingtonwa.gov

Tuesday, May 22, 2018
City Council Chambers
7:00 p.m. 16720 SE 271st Street, Suite 100, Covington

Council will interview Youth Council and Arts Commission applicants beginning at 6:20 p.m.

CALL CITY COUNCIL REGULAR MEETING TO ORDER – approximately 7:00 p.m.

ROLL CALL/PLEDGE OF ALLEGIANCE

APPROVAL OF AGENDA

PUBLIC COMMUNICATION

- Otters and Pollutants in the Green-Duwamish River (Michelle Wainstein, Woodland Park Zoo)

PUBLIC COMMENT Speakers will state their name, address, and organization. Comments are directed to the City Council, not the audience or staff. Comments are not intended for conversation or debate and are limited to no more than four minutes per speaker. Speakers may request additional time on a future agenda as time allows. *

NOTICE to all participants: Pursuant to state law, RCW 42.17A.555, campaigning for any ballot measure or candidate in City Hall and/or during any portion of the council meeting, including the audience comment portion of the meeting, is PROHIBITED.

APPROVE CONSENT AGENDA

C-1. Minutes: April 24, 2018 Joint Study Session with Youth Council; April 24, 2018 Regular Meeting; and May 8, 2018 Joint Study Session with CEDC & Chamber Board (Scott)

C-2. Vouchers (Hendrickson)

C-3. Appoint Voting Delegate(s) for Association of Washington Cities 2018 Business Meeting (Council)

C-4. Appoint Voting Delegate for the 2018 Puget Sound Regional Council General Assembly (Council)

C-5. Approve SoCo Park Acquisition Grant Agreement (Newton)

C-6. Approve Covington Community Park Phase II Wetland Mitigation Monitoring Agreement (Newton)

REPORTS OF COMMISSIONS

- Economic Development Council Co-Chair Josh Lyons
- Youth Council Member
- Human Services Chair Leslie Hamada
- Arts Chair Ed White
- Parks & Recreation Chair Laura Morrissey
- Planning Chair Chele Dimmett

PUBLIC HEARING

1. To Receive Public Testimony on Proposed 2019-2024 Transportation Improvement Program (Lindskov)
NEW BUSINESS

2. Consider Appointments to Arts Commission (Council)
3. Consider Appointment to Youth Council (Council)
4. Consider Resolution Naming the Covington Community Park Pavilion in Honor of Margaret Harto (Newton)
5. Consider Awarding Construction Contract for Covington Aquatic Center Fall Protection Project (Newton)
6. Discuss Ordinance Extending Comcast Cable TV Franchise for Five Years (Hardy)

FUTURE AGENDA ITEMS

COUNCIL/STAFF COMMENTS

PUBLIC COMMENT *See Guidelines on Public Comments above in First Public Comment Section

EXECUTIVE SESSION – if needed

ADJOURN

Americans with Disabilities Act – reasonable accommodations provided upon request a minimum of 24 hours in advance (253-480-2400).
SUBJECT: APPROVAL OF MINUTES: APRIL 24, 2018 CITY COUNCIL SPECIAL MEETING – JOINT STUDY SESSION WITH YOUTH COUNCIL MINUTES; APRIL 24, 2018 CITY COUNCIL REGULAR MEETING MINUTES; AND MAY 8, 2018 CITY COUNCIL SPECIAL MEETING – JOINT STUDY SESSION WITH COVINGTON ECONOMIC DEVELOPMENT COUNCIL & COVINGTON CHAMBER OF COMMERCE BOARD OF DIRECTOR MINUTES

RECOMMENDED BY: Sharon G. Scott, City Clerk

ATTACHMENT(S): Proposed Minutes

PREPARED BY: Joan Michaud, Senior Deputy City Clerk

EXPLANATION:

ALTERNATIVES:

FISCAL IMPACT:

CITY COUNCIL ACTION: ______Ordinance ______Resolution  X Motion ______ Other

Councilmember __________ moves, Councilmember __________ seconds, to approve the April 24, 2018 City Council Special Meeting – Joint Study Session with Youth Council Minutes; April 24, 2018 City Council Regular Meeting Minutes; and May 8, 2018 City Council Special Meeting – Joint Study Session with Covington Economic Development Council & Covington Chamber of Commerce Board of Director Minutes
City of Covington  
City Council Special Meeting  
Joint Study Session with Youth Council Minutes  
Tuesday, April 24, 2018

The Joint Study Session with the Youth Council - Special Meeting of the City Council of the City of Covington was called to order in the City Council Chambers, 16720 SE 271st Street, Suite 100, Covington, Washington, Tuesday, April 24, 2018, at 6:10 p.m. with Mayor Wagner presiding.

COUNCILMEMBERS PRESENT:
Jeff Wagner, Joe Cimaomo, Margaret Harto, Fran Hollums, Marlla Mhoon, Paul Selland, and Sean Smith.

YOUTH COUNCIL MEMBERS PRESENT:
Alex Markovich, Alayna Galfo, and Anna McLaughlin.

YOUTH COUNCIL MEMBERS ABSENT:

STAFF PRESENT:
Regan Bolli, City Manager; Jaquelyn Ball, Youth Council Staff Liaison; Brian Ball, Youth Council Adult Leader; Chele Dimmett, Youth Council Adult Leader; and Sharon Scott, City Clerk/Executive Assistant.

Mayor Wagner called the joint study session to order.

ITEMS FOR DISCUSSION:

Alex Markovich gave the report on this item.


Alex Markovich led the discussion on this item.

Councilmembers and Youth Councilmembers provided comments and discussed items.

ADJOURNMENT:
There being no further business, the meeting was adjourned at 6:50 p.m.

Prepared by:                      Submitted by:
__________________________________________  ________________________________
Joan Michaud                      Sharon Scott
Senior Deputy City Clerk          City Clerk

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City of Covington
Regular City Council Meeting Minutes
Tuesday, April 24, 2018

The Regular Meeting of the City Council of the City of Covington was called to order in the City Council Chambers, 16720 SE 271st Street, Suite 100, Covington, Washington, Tuesday, April 24, 2018, at 7:01 p.m., with Mayor Wagner presiding.

COUNCIL MEMBERS PRESENT:
Jeff Wagner, Joe Cimaomo, Margaret Harto, Fran Hollums, Marlla Mhoon, Paul Selland, and Sean Smith.

STAFF PRESENT:
Regan Bolli, City Manager; Andrew McCurdy, Covington Police Chief; Ethan Newton, Parks & Recreation Director; Richard Hart, Community Development Director; Rob Hendrickson, Finance Director; Kathy Hardy, City Attorney; and Sharon Scott, City Clerk/Executive Assistant.

Mayor Wagner opened the meeting with the Pledge of Allegiance.

Mayor Wagner called for a moment of silence for former First Lady Barbara Bush.

APPROVAL OF AGENDA:
Council Action: Councilmember Mhoon moved and Councilmember Harto seconded to approve the Agenda. Vote: 7-0. Motion carried.

PUBLIC COMMUNICATION:
- Parks & Recreation Commission Chair Laura Morrissey accepted the May 2018 National Water Safety Month Proclamation.

- Parks & Recreation Commission Chair Laura Morrissey accepted the Arbor Day Proclamation.

PUBLIC COMMENT:
Mayor Wagner called for public comments.

Ed White, Covington resident, commented on how well the Love of Covington event went. Mr. White also expressed appreciation for Mayor Wagner calling for a moment of silence for former First Lady Barbara Bush and noted that public servants did not get enough recognition.

There being no further comments, Mayor Wagner closed the public comment period.

APPROVE CONSENT AGENDA:
C-1. Minutes: April 10, 2018 City Council Special & Regular Meeting Minutes.

C-2. Vouchers: Vouchers #37320 - #37386, including ACH payments in the amount of $952,698.13, dated April 13, 2018; and Paylocity Payroll Vouchers #1008401878 -
#1008401891 and #1008401899 inclusive, plus employee direct deposits and wire transfers, in the amount of $210,308.78, dated April 6, 2018.

C-3. Accept 180th Avenue SE and SE 256th Street Induction Loop Replacement Project.

C-4. Authorize City Manager to Execute a Contract with The Watershed Company for Periodic Review of Shoreline Master Program.

C-5. Authorize the City Manager to Execute an Agreement Between King County and City of Covington for 2017 WaterWorks Council Allocated Grant.

Council Action: Councilmember Mhoon moved and Councilmember Hollums seconded to approve the Consent Agenda. Vote: 7-0. Motion carried.

REPORTS OF COMMISSIONS:
Economic Development Council – City Manager Regan Bolli gave the report.
Youth Council – No report needed.
Human Services Commission – Chair Leslie Hamada gave the report.
Arts Commission – Chair Ed White gave the report.
Parks & Recreation Commission – No report needed.
Planning Commission – No report needed.

PUBLIC HEARING:

Community Development Director Richard Hart gave the staff report on this item.

Mayor Wagner called for public comments for the public hearing.

There being no comments, Mayor Wagner closed the public comment period for the public hearing.

ORDINANCE NO. 02-2018

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF COVINGTON, WASHINGTON, RELATING TO TEMPORARY AND PERMANENT SIGNS; CONTINUING INTERIM ZONING REGULATIONS FOR TEMPORARY AND PERMANENT SIGNS; ADMINISTRATION, PERMITTING, AND ENFORCEMENT IN THE COVINGTON MUNICIPAL CODE (CMC) CHAPTER 18.55; ADOPTING FINDINGS OF FACT; PROVIDING FOR SEVERABILITY; AND ESTABLISHING AN EFFECTIVE DATE.

Council Action: Councilmember Harto moved and Councilmember Cimaomo seconded to pass Ordinance No. 02-2018, in substantial form as that provided in the agenda packet, to
continue the interim sign regulations for an additional six months for both temporary and permanent signs until November 9, 2018. Vote: 7-0. Motion carried.

FUTURE AGENDA ITEMS:
Councilmembers reviewed future agenda items.

COUNCIL/STAFF COMMENTS:
Councilmembers and staff made comments.

Council Action: There was Council consensus to cancel the June 26 meeting.

Councilmember Mhoon mentioned that she would be attending the Puget Sound Regional Council annual meeting.

PUBLIC COMMENT:
Mayor Wagner called for public comments.

Mary Pritchard, Covington resident, suggested that home school children be provided the opportunity to participate in the Art Walk. She also suggested the city ban plastic bags and straws.

There being no further comments, Mayor Wagner closed the public comment period.

ADJOURNMENT:
There being no further business, the meeting was adjourned at 8:01 p.m.

Prepared by: Submitted by:
__________________________________  ____________________________________
Joan Michaud          Sharon Scott
Senior Deputy City Clerk   City Clerk
City of Covington  
City Council Special Meeting  
Joint Study Session with Covington Economic Development Council and  
Covington Chamber of Commerce Board of Directors Minutes  
Tuesday, May 8, 2018

The Special Meeting - Joint Study Session with the Covington Economic Development Council and Covington Chamber of Commerce Board of Directors was called to order in the City Council Chambers, 16720 SE 271st Street, Suite 100, Covington, Washington, Tuesday, May 8, 2018, at 6:02 p.m., with Mayor Wagner presiding.

COUNCILMEMBERS PRESENT:  
Jeff Wagner, Joe Cimaomo, Margaret Harto, Fran Hollums, Marlla Mhoon, Paul Selland, and Sean Smith.

CHAMBER OF COMMERCE BOARD OF DIRECTORS PRESENT:  
Scott Beusch, Adam Turley, Dave Wilson, Jeff Wagner, and Jennifer Liggett.

CHAMBER OF COMMERCE BOARD OF DIRECTORS ABSENT:  
Tom Keowth, Natalie Routh, Regan Bolli, and Sherry Tower.

ECONOMIC DEVELOPMENT COUNCILMEMBERS PRESENT:  
Josh Lyons, Adam Turley, and Laura Roth.

ECONOMIC DEVELOPMENT COUNCILMEMBERS ABSENT:  
Sandra Davidson, Kathy Fosjord, Grady Hollenbeck, Matthew McMahen, Jared Koukal, Zach Steele, and Jon Stave.

CITY STAFF PRESENT:  
Karla Slate, Communications & Marketing Manager and Sharon Scott, City Clerk/Executive Assistant.

Mayor Wagner called the joint study session to order.

ITEMS FOR DISCUSSION:

1. Play Unplugged.

Josh Lyons and Adam Turley gave a report on the Play Unplugged program. Mr. Lyons provided an overview and report on the 2017 activities. Mr. Turley talked about the 2018 goals.


Mr. Lyons gave a report on the history of the mascot discussions thus far, and Mr. Turley reported on the proposals. Mayor Pro Tem Smith suggested the firms provide different proposal options
for the Council to review. Mr. Lyons noted that eventually CEDC would ask for Council direction
to pursue a proposal.

There was Council consensus to pursue proposals from the two firms that Ms. Slate mentioned.

3. Receive Direction from City Council and Chamber on CEDC Direction.

Mr. Lyons talked about ensuring that both the downtown core and Lakepointe Urban Village
project are successful and mentioned CEDC could get started on that effort now.

The Chamber Board and City Council concurred that CEDC should move forward in that direction.

**ADJOURNMENT:**
There being no further business, the meeting was adjourned at 6:53 p.m.

Prepared by:      Submitted by:

__________________________________      ______________________________________
Joan Michaud      Sharon Scott
Senior Deputy City Clerk    City Clerk
Consent Agenda Item C-2
Covington City Council Meeting
Date: May 22, 2018

SUBJECT: APPROVAL OF VOUCHERS

RECOMMENDED BY: Rob Hendrickson, Finance Director

ATTACHMENT(S): Vouchers: Vouchers #37461 - #37506, including ACH payments in the amount of $456,641.23, dated May 11, 2018; and Paylocity Payroll Vouchers #1008527509 - #1008527525 inclusive, plus employee direct deposits and wire transfers, in the amount of $213,543.54, dated May 4, 2018.

PREPARED BY: Casey Parker, Senior Accountant

CITY COUNCIL ACTION: _______ Ordinance _______ Resolution _______ Motion _______ Other

Councilmember _______ moves, Councilmember _______ seconds, to approve for payment Vouchers: Vouchers #37461 - #37506, including ACH payments in the amount of $456,641.23, dated May 11, 2018; and Paylocity Payroll Vouchers #1008527509 - #1008527525 inclusive, plus employee direct deposits and wire transfers, in the amount of $213,543.54, dated May 4, 2018.
SUBJECT: APPOINT VOTING DELEGATES FOR THE 2018 ASSOCIATION OF WASHINGTON CITIES ANNUAL BUSINESS MEETING

RECOMMENDED BY: Regan Bolli, City Manager

ATTACHMENT(S): None

PREPARED BY: Sharon Scott, City Clerk/Executive Assistant

EXPLANATION:
The Association of Washington Cities (AWC) will hold its annual business meeting this year on June 28 in Yakima. Each city selects up to three delegates to vote on AWC policy at the annual business meeting held during the conference. Also at the annual business meeting:

- You elect your board of directors – the people who guide your association’s activities.
- You debate the hot issues that impact cities.
- Hear about AWC’s legislative work and what happened during the legislative session directly from AWC’s lobbyists. Find out how it impacts your city and what bills survived.

Mayor Wagner and Councilmember Harto are registered to attend the conference.

ALTERNATIVES:
Not Applicable

FISCAL IMPACT:
None.

CITY COUNCIL ACTION: _____Ordinance _____ Resolution X Motion _____ Other

Councilmember ____________ moves, and Councilmember _________________ seconds to appoint Mayor Wagner and Councilmember Harto as the voting delegates to represent the City of Covington at the 2018 Association of Washington Cities Annual Business Meeting.

REVIEWED BY: City Manager, City Clerk
SUBJECT: APPOINT VOTING DELEGATE(S) FOR THE 2018 PUGET SOUND REGIONAL COUNCIL GENERAL ASSEMBLY

RECOMMENDED BY: Regan Bolli, City Manager

ATTACHMENT(S): None

PREPARED BY: Sharon Scott, City Clerk/Executive Assistant

EXPLANATION:
The Puget Sound Regional Council (PSRC) will hold its General Assembly on May 31 in Seattle. PSRC includes all mayors, county executives, commissioners, and councilmembers of PSRC member jurisdictions. Each elected representative is a voting member of the General Assembly, which meets at least annually to vote on major decisions, establish the budget, and elect new officers. Councilmember Mhoon is registered to attend the conference.

ALTERNATIVES:
Not Applicable

FISCAL IMPACT:
None.

CITY COUNCIL ACTION: _____Ordinance _____ Resolution _____ Motion _____ Other

    Councilmember ___________ moves, and Councilmember _________________
    seconds to appoint Councilmember Mhoon as the voting delegate to represent
    the City of Covington at the 2018 General Assembly.

REVIEWED BY: City Manager, City Clerk
SUBJECT: AUTHORIZING THE CITY MANAGER TO SIGN THE PROJECT AGREEMENT FOR PARCEL ACQUISITIONS FOR SOCO PARK.

RECOMMENDED BY: Ethan Newton, Parks and Recreation Director

ATTACHMENT(S):
1. Funding Board Project Agreement, #16-1680a, Covington SoCo Park – Phase 2

PREPARED BY: Ethan Newton, Parks and Recreation Director

EXPLANATION:
The city has prioritized in the Parks Capital Improvement Program and the city’s capital budget the purchase of two parcels on Wax Road to add to the property that was purchased in 2016 to create SoCo Park. To secure funding for these acquisitions, the council approved a resolution authorizing this Recreation and Conservation Office (RCO) grant application in April of 2016. The result was an RCO grant award for $592,362, which combined with $641,191 of additional funding through King County Conservation Future Tax (CFT) program, provide a majority of the funding necessary for the acquisitions.

This proposed agreement secures the RCO funding and commits the city to acquire these parcels and make improvements to provide public access to SoCo Park.

ALTERNATIVES:
1. Do not authorize the City Manager to execute the project agreement and do not pursue these property acquisitions.

FISCAL IMPACT:
Funding for SoCo Park acquisitions has been approved in the city’s 2018 budget as follows:
- $592,362 RCO grant funding
- $641,191 CFT funding
- $317,178 General Fund

CITY COUNCIL ACTION:  _____ Ordinance  _____ Resolution  __X__ Motion  _____ Other

Council member ________ moves, Council member ____________ seconds, to authorize the City Manager to execute the RCO Funding Board Project Agreement for property acquisitions for SoCo Park – Phase 2 in substantial form as that presented.

REVIEWED BY:
Finance Director, City Attorney, City Manager
ATTACHMENT 1

Funding Board Project Agreement

Project Sponsor: City of Covington
Project Title: Covington SoCo Park - Phase 2
Project Number: 16-1680A
Approval Date: 2/1/2018

A. PARTIES OF THE AGREEMENT

This Funding Board Project Agreement (Agreement) is entered into between the State of Washington by and through the Recreation and Conservation Funding Board (RCFB or funding board) and the Recreation and Conservation Office (RCO), P.O. Box 40817, Olympia, Washington 98504-0817 and City of Covington (Sponsor, and primary Sponsor), 16720 SE 271st St Ste 100, Covington, WA 98042, 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 185301301.

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

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

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

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

B. PURPOSE OF AGREEMENT

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

C. DESCRIPTION OF PROJECT

The City of Covington will use this grant to buy the two remaining parcels, totaling 2.25 acres, for a critical expansion of the existing 3-acre SoCo Park. SoCo Park is a neighborhood park located adjacent to the newly developing downtown area of the city between Jenkins Creek and Wax Road, King County. This expansion will provide passive recreation opportunities to neighboring communities such as trails, picnicking, open lawn areas for informal play, play equipment and gathering areas. The primary recreation opportunity provided by this project will be passive recreation.

D. PERIOD OF PERFORMANCE

The period of performance begins on April 9, 2018 (project start date) and ends on December 31, 2020 (project end date). No allowable cost incurred before or after this period is eligible for reimbursement unless specifically provided for by written amendment or addendum to this Agreement or specifically provided for by WAC Titles 266, 420; or RCFB and/or SRFB policies published in RCO manuals as of the effective date of this agreement.

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

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

E. STANDARD TERMS AND CONDITIONS INCORPORATED

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

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

G. PROJECT FUNDING
The total grant award provided by the funding board for this project shall not exceed $592,362.00. The funding board shall not pay any amount beyond that approved for grant funding of the project and within the funding board's percentage as identified below. The Sponsor shall be responsible for all total project costs that exceed this amount. The minimum matching share provided by the Sponsor shall be as indicated below:

<table>
<thead>
<tr>
<th></th>
<th>Percentage</th>
<th>Dollar Amount</th>
<th>Source of Funding</th>
</tr>
</thead>
<tbody>
<tr>
<td>RCFB - WWRP - Local Parks</td>
<td>50.00%</td>
<td>$592,362.00</td>
<td>State</td>
</tr>
<tr>
<td>Project Sponsor</td>
<td>50.00%</td>
<td>$592,363.00</td>
<td></td>
</tr>
<tr>
<td>Total Project Cost</td>
<td>100.00%</td>
<td>$1,184,725.00</td>
<td></td>
</tr>
</tbody>
</table>

H. FEDERAL FUND INFORMATION
This Agreement is not a federal subaward. This Agreement is funded with a grant from the State of Washington.

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

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

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

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

K. COMPLIANCE WITH APPLICABLE STATUTES, RULES, AND RCFB-SRFB POLICIES
This agreement is governed by, and the Sponsor shall comply with, all applicable state and federal laws and regulations, including any applicable RCFB and/or SRFB policies published in RCO manuals or on the RCO Website as exist on the effective date of this Agreement and any amendments to this Agreement. Provided, any update in law, rule, policy or a manual that is incorporated as a result of an amendment shall apply only prospectively and shall not require that an act previously done in compliance with existing requirements be redone.

L. SPECIAL CONDITIONS
1. Cultural Resources - Survey Required
Section 8 of 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 to Proceed before any ground disturbing activities can begin. Construction started without a Notice to Proceed will be considered a breach of contract. In the event that archaeological or historic materials are discovered while conducting ground disturbing activities, work in the immediate vicinity must stop and the Sponsor must ensure compliance with the provisions found in Section 8 of this agreement.
M. AGREEMENT CONTACTS
The parties will provide all written communications and notices under this Agreement to the mail address or the email address listed below if not both:

**Project Contact**
Name: Ethan Newton  
Title: Parks & Recreation Director  
Address: 16720 SE 271st St, Ste 100 Covington, WA 98042  
Email: enewton@covingtonwa.gov

**RCO - RCFB**
Karl Jacobs  
Natural Resources Building  
PO Box 40917  
Olympia, Washington 98504-0917  
karl.jacobs@rco.wa.gov

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

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

O. EFFECTIVE DATE
This Agreement, for project 16-1680A, shall be subject to the written approval of the RCO's authorized representative and shall not be effective and binding until the date signed by both the Sponsor and the RCO, whichever is later (effective date). Reimbursements for eligible and allowable costs incurred within the period of performance identified in Section D: PERIOD OF PERFORMANCE are allowed only when this Agreement is fully executed and an original is received by RCO.

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

**City of Covington**
By:  
Name: (printed)  
Title:  
Date: ________________

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

By:  
Kaleen Cottingham  
Director  
Recreation and Conservation Office  

Pre-approved as to form:  

By:  
Assistant Attorney General  
Date: October 6, 2017
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SECTION 46. SEVERABILITY
SECTION 1.  CITATIONS, HEADINGS AND DEFINITIONS

A.  Any citations referencing specific documents refer to the current version on the effective date of this Agreement or the effective date of any amendment thereto.

B.  Headings used in this Agreement are for reference purposes only and shall not be considered a substantive part of this Agreement.

C.  Definitions.  As used throughout this Agreement, the following terms shall have the meaning set forth below:

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

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

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

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

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

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

C.F.R. – Code of Federal Regulations

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

conversion – A conversion occurs 1) when facilities acquired, developed, renovated or restored within the project area are changed to a use other than that for which funds were approved, without obtaining prior written formal RCO or board approval, 2) when property interests are conveyed to a third party not otherwise eligible to receive grants in the program from which funding was approved without obtaining prior written formal RCO or board approval, or 3) when obligations to operate and maintain the funded property are not complied with after reasonable opportunity to cure.
development project – A project that results in the construction of, or work resulting in, new elements, including but not limited to structures, facilities, and/or materials to enhance outdoor recreation resources.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

match or matching share – The portion of the total project cost provided by the Sponsor.
milestone – An important event with a defined date to track an activity related to implementation of a funded project and monitor significant stages of project accomplishment.

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

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

Office – Means the Recreation and Conservation Office or RCO.

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

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

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

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

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

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

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

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

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

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

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

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

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

**RCO** – Recreation and Conservation Office – The state office that provides administrative support to the Recreation and Conservation Funding Board and Salmon Recovery Funding Board. RCO includes the director and staff, created by RCW 78A.25.110 and 79A.25.150 and charged with administering this Agreement by RCW 77.85.110 and 79A.25.240.

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

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

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

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

**RCFB** – Recreation and Conservation Funding Board

**RCW** – Revised Code of Washington

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

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

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

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

**SRFB** – Salmon Recovery Funding Board

**subaward** – Funds allocated to the RCO from another organization, for which RCO makes available to or assigns to another organization via this Agreement. Also, a subaward may be an award provided by a pass-through entity to a subrecipient for the subrecipient to carry out part of any award received by the pass-through entity. It does not include payments to a contractor or payments to an individual that is a beneficiary of a federal or other program. A subaward may be provided through any form of legal agreement, including an agreement that the pass-through entity considers a contract. Also see 2 C.F.R. § 200.92 (2013). For federal subawards, a subaward is for the purpose of carrying out a portion of a Federal award and creates a federal assistance relationship with the subrecipient (2 C.F.R. § 200.330 (2013)). If this Agreement is a federal subaward, the subaward amount is the grant program amount in Section G: Project Funding.
subrecipient – Subrecipient means an entity that receives a subaward. For non-federal entities receiving federal funds, a subrecipient is an entity that receives a subaward from a pass-through entity to carry out part of a federal program; but does not include an individual that is a beneficiary of such program. A subrecipient may also be a recipient of other federal awards directly from a federal awarding agency (2 C.F.R. § 200.93 (2013)). If this Agreement is a federal subaward, the Sponsor is the subrecipient.

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


SECTION 2. PERFORMANCE BY THE SPONSOR

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

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

SECTION 3. ASSIGNMENT

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

SECTION 4. RESPONSIBILITY FOR PROJECT

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

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

SECTION 5. INDEMNIFICATION

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

Provided that nothing herein shall require a Sponsor to defend or indemnify the State against and hold harmless the State from claims, demands or suits based solely upon the negligence of the State, its employees and/or agents for whom the State is vicariously liable.
Provided further that if the claims or suits are caused by or result from the concurrent negligence of (a) the Sponsor or the Sponsor’s agents, employees, contractors, subcontractors or vendors, of any tier, or any other persons for whom the Sponsor is legally liable, and (b) the State its employees and agents for whom it is vicariously liable, the indemnity obligation shall be valid and enforceable only to the extent of the Sponsor’s negligence or the negligence of the Sponsor’s agents, employees, contractors, subcontractors or vendors, of any tier, or any other persons for whom the Sponsor may be legally liable.

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

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

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

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

SECTION 6. INDEPENDENT CAPACITY OF THE SPONSOR

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

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

SECTION 7. CONFLICT OF INTEREST

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

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

SECTION 8. COMPLIANCE WITH APPLICABLE LAW
In implementing the Agreement, the Sponsor shall comply with all applicable federal, state, and local laws (including without limitation all applicable ordinances, codes, rules, and regulations). Such compliance includes, without any limitation as to other applicable laws, the following laws:

A. **Nondiscrimination Laws.** The Sponsor shall comply with all applicable federal, state, and local nondiscrimination laws and/or policies, including but not limited to: the Americans with Disabilities Act; Civil Rights Act; and the Age Discrimination Act. In the event of the Sponsor's noncompliance or refusal to comply with any nondiscrimination law or policy, the Agreement may be rescinded, cancelled, or terminated in whole or in part, and the Sponsor may be declared ineligible for further grant awards from the funding board. The Sponsor is responsible for any and all costs or liability arising from the Sponsor's failure to so comply with applicable law.

B. **Secular Use of Funds.** No funds awarded under this grant may be used to pay for any religious activities, worship, or instruction, or for lands and facilities for religious activities, worship, or instruction. Religious activities, worship, or instruction may be a minor use of the grant supported recreation and conservation land or facility.

C. **Wages and Job Safety.** The Sponsor agrees to comply with all applicable laws, regulations, and policies of the United States and the State of Washington or other jurisdiction which affect wages and job safety. The Sponsor agrees when state prevailing wage laws (RCW 39.12) are applicable, to comply with such laws, to pay the prevailing rate of wage to all workers, laborers, or mechanics employed in the performance of any part of this contract, and to file a statement of intent to pay prevailing wage with the Washington State Department of Labor and Industries as required by RCW 39.12.040. The Sponsor also agrees to comply with the provisions of the rules and regulations of the Washington State Department of Labor and Industries.

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

D. **Archaeological and Cultural Resources.** RCO facilitates the review of applicable projects for potential impacts to archaeological sites and state cultural resources. The Sponsor must assist RCO in compliance with Governor's Executive Order 05-05 or the National Historic Preservation Act before and after initiating ground-disturbing activity or construction, repair, installation, rehabilitation, renovation, or maintenance work on lands, natural resources, or structures. The funding board requires documented compliance with Executive Order 05-05 or Section 106 of the National Historic Preservation Act, whichever is applicable to the project. If a federal agency declines to consult, the Sponsor shall comply with the requirements of Executive Order 05-05. In the event that archaeological or historic materials are discovered during project activities, work in the location of discovery and immediate vicinity must stop instantly, the area must be secured, and notification must be provided to the following: concerned Tribes' cultural staff and cultural committees, RCO, and the State Department of Archaeology and Historic Preservation. If human remains are discovered during project activity, work in the location of discovery and immediate vicinity must stop instantly, the area must be secured, and notification provided to the concerned Tribe's cultural staff and cultural committee, RCO, State Department of Archaeology, the coroner and local law enforcement in the most expeditious manner possible according to RCW 68.50.
E. Restrictions on Grant Use. No part of any funds provided under this grant shall be used, other than for normal and recognized executive-legislative relationships, for publicity or propaganda purposes, or for the preparation, distribution, or use of any kit, pamphlet, booklet, publication, radio, television, or video presentation designed to support or defeat legislation pending before the U.S. Congress or any state legislature.

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

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

SECTION 9. RECORDS

A. Digital Records. If requested by RCO, the Sponsor must provide a digital file(s) of the project property and funded project site in a format specified by the RCO.

B. Maintenance. The Sponsor shall maintain books, records, documents, data and other evidence relating to this Agreement and performance of the services described herein, including but not limited to accounting procedures and practices which sufficiently and properly reflect all direct and indirect costs of any nature expended in the performance of this Agreement. Sponsor shall retain such records for a period of six years from the date RCO deems the project complete, as defined in Section 11: PROJECT REIMBURSEMENTS. If any litigation, claim or audit is started before the expiration of the six (6) year period, the records shall be retained until all litigation, claims, or audit findings involving the records have been resolved.

C. Access to Records and Data. At no additional cost, the records relating to the Agreement, including materials generated under the Agreement, shall be subject at all reasonable times to inspection, review or audit by RCO, personnel duly authorized by RCO, the Office of the State Auditor, and federal and state officials so authorized by law, regulation or agreement. This includes access to all information that supports the costs submitted for payment under the grant and all findings, conclusions, and recommendations of the Sponsor’s reports, including computer models and methodology for those models.

D. Public Records. Sponsor acknowledges that the funding board is subject to RCW 42.56 and that this Agreement and any records Sponsor submits or has submitted to the State shall be a public record as defined in RCW 42.56. RCO administers public records requests per WAC 286-06 and 420-04. Additionally, in compliance with RCW 77.85.130(3), Sponsor agrees to disclose any information in regards to expenditure of any funding received from the SRFB. By submitting any record to the State, Sponsor understands that the State may be requested to disclose or copy that record under the state public records law, currently codified at RCW 42.56. The Sponsor warrants that it possesses such legal rights as are necessary to permit the State to disclose and copy such document to respond to a request under state public records laws. The Sponsor hereby agrees to release the State from any claims arising out of allowing such review or copying pursuant to a public records act request, and to indemnify against any claims arising from allowing such review or copying and pay the reasonable cost of state’s defense of such claims.

SECTION 10. PROJECT FUNDING
A. **Authority.** This Agreement is funded through a grant award from the recreation and conservation funding board per WAC 286 and/or the salmon recovery funding board per WAC 420. The director of RCO enters into this Agreement per delegated authority in RCW 79A.25.020 and 77.85.120.

B. **Additional Amounts.** The funding board shall not be obligated to pay any amount beyond the dollar amount as identified in this Agreement, unless an additional amount has been approved in advance by the funding board or director and incorporated by written amendment into this Agreement.

C. **Before the Agreement.** No expenditure made, or obligation incurred, by the Sponsor before the project start date shall be eligible for grant funds, in whole or in part, unless specifically provided for by funding board policy, such as a waiver of retroactivity or program specific eligible pre-Agreement costs. For reimbursements of such costs, this Agreement must be fully executed and an original received by RCO. The dollar amounts identified in this Agreement may be reduced as necessary to exclude any such expenditure from reimbursement.

D. **Requirements for Federal Subawards.** Pre-Agreement costs before the federal award date in Section H: FEDERAL FUND INFORMATION are ineligible unless approved by the federal award agency (2 C.F.R § 200.458 (2013)).

E. **After the Period of Performance.** No expenditure made, or obligation incurred, following the period of performance shall be eligible, in whole or in part, for grant funds hereunder. In addition to any remedy the funding board may have under this Agreement, the grant amounts identified in this Agreement shall be reduced to exclude any such expenditure from participation.

SECTION 11. **PROJECT REIMBURSEMENTS**

A. **Reimbursement Basis.** This Agreement is administered on a reimbursement basis per WAC 286-13 and/or 420-12. Only the primary Sponsor may request reimbursement for eligible and allowable costs incurred during the period of performance. The primary Sponsor may only request reimbursement after (1) this Agreement has been fully executed and (2) the Sponsor has remitted payment to its vendors. RCO will authorize disbursement of project funds only on a reimbursable basis at the percentage as defined in Section G: PROJECT FUNDING. Reimbursement shall not be approved for any expenditure not incurred by the Sponsor or for a donation used as part of its matching share. RCO does not reimburse for donations. All reimbursement requests must include proper documentation of expenditures as required by RCO.

B. **Reimbursement Request Frequency.** The primary Sponsor is required to submit a reimbursement request to RCO, at a minimum for each project at least once a year for reimbursable activities occurring between July 1 and June 30 or as identified in the milestones. Sponsors must refer to the most recently published/adopted RCO policies and procedures regarding reimbursement requirements.

C. **Compliance and Payment.** The obligation of RCO to pay any amount(s) under this Agreement is expressly conditioned on strict compliance with the terms of this Agreement and other agreements between RCO and the Sponsor.

D. **Retainage Held Until Project Complete.** RCO reserves the right to withhold disbursement of the total amount of the grant to the Sponsor until the project has been completed. A project is considered "complete" when:

1. All approved or required activities outlined in the Agreement are done;
2. On-site signs are in place (if applicable);
3. A final project report is submitted to and accepted by RCO;
4. Any other required documents and media are complete and submitted to RCO;
5. A final reimbursement request is submitted to RCO;

6. The completed project has been accepted by RCO;

7. Final amendments have been processed;

8. Fiscal transactions are complete, and

9. RCO has accepted a final boundary map, if requested by RCO, for which the Agreement terms will apply in the future.

10. Notice of Grant (if applicable) filed with the county lands records office and a stamped copy received by RCO

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

1. Are verifiable from the non-Federal entity’s (Sponsor’s) records;

2. Are not included as contributions for any other Federal award;

3. Are necessary and reasonable for accomplishment of project or program objectives;


5. Are not paid by the Federal Government under another Federal award, except where the Federal statute authorizing a program specifically provides that Federal funds made available for such program can be applied to matching or cost sharing requirements of other Federal programs;

6. Are provided for in the approved budget when required by the Federal awarding agency identified in Section H: FEDERAL FUND INFORMATION of this Agreement; and

7. Conform to other provisions of 2 C.F.R. Part 200, Subpart D—Post Federal Award Requirements (2013), as applicable.

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

1. Submit, no later than 90 calendar days after the end date of the period of performance, all financial, performance, and other reports as required by the terms and conditions of the Federal award. The Federal awarding agency or pass-through entity (RCO) may approve extensions when requested by the Sponsor.

2. Liquidate all obligations incurred under the Federal award not later than 90 calendar days after the end date of the period of performance as specified in the terms and conditions of the Federal award.

3. Refund any balances of unobligated cash that the Federal awarding agency or pass-through entity (RCO) paid in advance or paid and that are not authorized to be retained by the non-Federal entity (Sponsor) for use in other projects. See OMB Circular A-129 and see 2 C.F.R § 200.345 Collection of amounts due (2013), for requirements regarding unreturned amounts that become delinquent debts.

SECTION 12. ADVANCE PAYMENTS

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

SECTION 13. RECOVERY OF PAYMENTS

A. Recovery for Noncompliance. In the event that the Sponsor fails to expend funds under this Agreement in accordance with state and federal laws, and/or the provisions of the Agreement, or meet its percentage of the project total, RCO reserves the right to recover grant award funds in the amount equivalent to the extent of noncompliance in addition to any other remedies available at law or in equity.

B. Overpayment Payments. The Sponsor shall reimburse RCO for any overpayment or erroneous payments made under the Agreement. Repayment by the Sponsor of such funds under this recovery provision shall occur within 30 days of demand by RCO. Interest shall accrue at the rate of twelve percent (12%) per annum from the time that payment becomes due and owing.

C. Requirements for Federal Subawards. RCO, acting as a pass-through entity, may impose any of the remedies as authorized in 2 C.F.R §§ 200.207 Specific conditions and/or 200.338 Remedies for noncompliance (2013).

SECTION 14. COVENANT AGAINST CONTINGENT FEES

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

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

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

A. Income.

1. Farm and Forest Account (Farmland and Forestland Preservation Grants). Excepted from this section is income generated and fees paid on/for properties which received funds from the Farm and Forest Account (RCW 79A.15.130).

2. Firearms and Archery Range Recreation Projects. Excepted from this section are safety classes (firearm and/or hunter) for which a facility/range fee must not be charged (RCW 79A.25.210).

3. Compatible source. The source of any income generated in a funded project or project area must be compatible with the funding source and the Agreement and any policies adopted by the RCFB or SRFB.
B. **Use of Income.** Subject to any limitations contained in applicable state or federal law and applicable rules and policies, income or fees generated at a project work site (including entrance, utility corridor permit, cattle grazing, timber harvesting, farming, etc.) during or after the reimbursement period cited in the Agreement, must be used to offset:

1. The Sponsor's matching resources;
2. The project's total cost;
3. The expense of operation, maintenance, stewardship, monitoring, and/or repair of the facility or program assisted by the funding board grant;
4. The expense of operation, maintenance, stewardship, monitoring, and/or repair of other similar units in the Sponsor's system;
5. Capital expenses for similar acquisition and/or development and renovation; and/or
6. Other purposes explicitly approved by RCO

C. **Fees.** User and/or other fees may be charged in connection with land acquired or facilities developed, maintained, renovated, or restored with funding board grants if the fees are consistent with the:

1. Grant program laws, rules, policies, and funding board policies;
2. Value of any service(s) furnished;
3. Value of any opportunities furnished; and
4. Prevailing range of public fees in the state for the activity involved.


**SECTION 16. PROCUREMENT REQUIREMENTS**

A. **Procurement Requirements.** If the Sponsor has, or is required to have, a procurement process that follows applicable state and/or federal law or procurement rules and principles, it must be followed, documented, and retained. If no such process exists the Sponsor must follow these minimum procedures:

1. Publish a notice to the public requesting bids/proposals for the project;
2. Specify in the notice the date for submittal of bids/proposals;
3. Specify in the notice the general procedure and criteria for selection; and
4. Sponsor must contract or hire from within its bid pool. If bids are unacceptable the process needs to be repeated until a suitable bid is selected.
5. Comply with the same legal standards regarding unlawful discrimination based upon race, gender, ethnicity, sex, or sex-orientation that are applicable to state agencies in selecting a bidder or proposer. Alternatively, Sponsor may choose a bid from a bidding cooperative if authorized to do so.
This procedure creates no rights for the benefit of third parties, including any proposers, and may not be enforced or subject to review of any kind or manner by any entity other than the RCO. Sponsors may be required to certify to the RCO that they have followed any applicable state and/or federal procedures or the above minimum procedure where state or federal procedures do not apply.

B. Requirements for Federal Subawards.


2. For RTP subawards, Sponsors follow such policies and procedures allowed by the State when procuring property and services under a Federal award (2 C.F.R § 1201.317 (2013)). State procurement policies are in subsection A of this section.

SECTION 17. TREATMENT OF EQUIPMENT AND ASSETS

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

A. Discontinued Use. Equipment obtained under this Agreement shall remain in the possession of the Sponsor for the duration of the project, or RULES of applicable grant assisted program. When the Sponsor discontinues use of the equipment for the purpose for which it was funded, RCO may require the Sponsor to deliver the equipment to RCO, or to dispose of the equipment according to RCO published policies.

B. Loss or Damage. The Sponsor shall be responsible for any loss or damage to equipment.

C. Requirements for Federal Subawards. Except in the RTP, procedures for managing equipment (including replacement equipment), whether acquired in whole or in part under a Federal award or match for the award, until disposition takes place will, at a minimum, meet the following requirements (2 C.F.R § 200.313 (2013)):

1. Property records must be maintained that include a description of the property, a serial number or other identification number, the source of funding for the property (including the Federal Award Identification Number), who holds title, the acquisition date, and cost of the property, percentage of Federal participation in the project costs for the Federal award under which the property was acquired, the location, use and condition of the property, and any ultimate disposition data including the date of disposal and sale price of the property.

2. A physical inventory of the property must be taken and the results reconciled with the property records at least once every two years.

3. A control system must be developed to ensure adequate safeguards to prevent loss, damage, or theft of the property. Any loss, damage, or theft must be investigated.

4. Adequate maintenance procedures must be developed to keep the property in good condition.

5. If the non-Federal entity is authorized or required to sell the property, proper sales procedures must be established to ensure the highest possible return.

D. Requirements for RTP Subawards.

1. The subrecipient (Sponsor) shall follow such policies and procedures prescribed by and allowed by the State, as well as federal law and federal rules issued by the Federal Highways Administration and 2 CFR 200.
2. Sponsor may be required to pay prevailing wage rates as required by the Davis Bacon Act as amended.

SECTION 18. RIGHT OF INSPECTION

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

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

SECTION 19. STEWARDSHIP AND MONITORING

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

SECTION 20. PREFERENCES FOR RESIDENTS

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

SECTION 21. ACKNOWLEDGMENT AND SIGNS

A. Publications. The Sponsor shall include language which acknowledges the funding contribution of the applicable grant program to this project in any release or other publication developed or modified for, or referring to, the project during the project period and in the future.

B. Signs.

1. During the period of performance through the period of long-term obligation, the Sponsor shall post openly visible signs or other appropriate media at entrances and other locations on the project area that acknowledge the applicable grant program's funding contribution, unless exempted in funding board policy or waived by the director; and

2. During the period of long-term obligation, the Sponsor shall post openly visible signs or other appropriate media at entrances and other locations to notify the public of the availability of the site for reasonable public access.

C. Ceremonies. The Sponsor shall notify RCO no later than two weeks before a dedication ceremony for this project. The Sponsor shall verbally acknowledge the applicable grant program's funding contribution at all dedication ceremonies.

D. Federally Funded Projects. When issuing statements, press releases, requests for proposals, bid solicitations, and other documents describing a project funded in whole or in part with federal money provided for in this grant, Sponsors shall clearly state:

1. The fund source;

2. The percentage of the total costs of the project that is financed with federal money;
3. The dollar amount of federal funds for the project; and

4. The percentage and dollar amount of the total costs of the project that is financed by nongovernmental sources.

SECTION 22. PROVISIONS FOR BOATING PROJECT GRANTS

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

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

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

A. Operations and Maintenance. Properties, structures, and facilities developed, maintained, or operated with the assistance of money granted by the board and within the project area shall be built, operated, and maintained according to applicable regulations, laws, building codes, and health and public safety standards to assure a reasonably safe condition and to prevent premature deterioration (WAC 286.13.130). It is the Sponsor’s sole responsibility to ensure the same are operated and maintained in a safe and operable condition. The RCO does not conduct safety inspections or employ or train staff for that purpose.

B. Document Review and Approval. Prior to commencing construction or finalizing the design, the Sponsor agrees to submit one copy of all construction and restoration plans and specifications to RCO for review solely for compliance with the scope of work to be identified in the Agreement. RCO does not review, and disclaims any responsibility to review for safety, suitability, engineering, compliance with code, or any matters other than the scope so identified. Although RCO staff may provide tentative guidance to a Sponsor on matters related to site accessibility by persons with a disability, it is the Sponsor’s responsibility to confirm that all legal requirements for accessibility are met even if the RCO guidance would not meet such requirements.

1. Change orders that impact the amount of funding or changes to the scope of the project as described to and approved by the funding board or RCO must receive prior written approval of the board or RCO.

C. Control and Tenure. The Sponsor must provide documentation that shows appropriate tenure (such as landowner agreement, long-term lease, easement, or fee simple ownership) for the land proposed for construction. The documentation must meet current RCO requirements identified in the appropriate grant program policy manual as of the effective date of this Agreement and determines the long-term compliance period unless otherwise approved by the board.

D. Nondiscrimination. Except where a nondiscrimination clause required by a federal funding agency is used, the Sponsor shall insert the following nondiscrimination clause in each contract for construction of this project:

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

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

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

A. **Evidence of Land Value.** Before disbursement of funds by RCO as provided under this Agreement, the Sponsor agrees to supply documentation acceptable to RCO that the cost of the property rights acquired has been established according to funding board policy.

B. **Evidence of Title.** The Sponsor agrees to provide documentation that shows the type of ownership interest for the property that has been acquired. This shall be done before any payment of financial assistance.

C. **Legal Description of Real Property Rights Acquired.** The legal description of the real property rights purchased with funding assistance provided through this Agreement (and protected by a recorded conveyance of rights to the State of Washington) shall be delivered to RCO before final payment.

D. **Conveyance of Rights to the State of Washington.** When real property rights (both fee simple and lesser interests) are acquired, the Sponsor agrees to execute an appropriate document conveying certain rights and responsibilities to RCO, on behalf of the State of Washington. These documents include a Deed of Right, Assignment of Rights, Easements and/or Leases as described below. The Sponsor agrees to use document language provided by RCO, to record the executed document in the County where the real property lies, and to provide a copy of the recorded document to RCO. The document required will vary depending on the funding board project type, the real property rights being acquired and whether or not those rights are being acquired in perpetuity.

1. **Deed of Right.** The Deed of Right conveys to the people of the state of Washington the right to preserve, protect, access, and/or use the property for public purposes consistent with the funding source and project agreement. See WAC 286 or 420. Sponsors shall use this document when acquiring real property rights that include the underlying land. This document may also be applicable for those easements where the Sponsor has acquired a perpetual easement for public purposes.

2. **Assignment of Rights.** The Assignment of Rights document transfers certain rights to RCO and the state such as public access, access for compliance, and enforcement. Sponsors shall use this document when an easement or lease is being acquired under this Agreement. The Assignment of Rights requires the signature of the underlying landowner and must be incorporated by reference in the easement document.

3. **Easements and Leases.** The Sponsor may incorporate required language from the Deed of Right or Assignment of Rights directly into the easement or lease document, thereby eliminating the requirement for a separate document. Language will depend on the situation; Sponsor must obtain RCO approval on the draft language prior to executing the easement or lease.
E. Real Property Acquisition and Relocation Assistance.

1. Federal Acquisition Policies. When federal funds are part of this Agreement, the Sponsor agrees to comply with the terms and conditions of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, 84 Stat. 1894 (1970)—Public Law 91-646, as amended, and applicable regulations and procedures of the federal agency implementing that Act.

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

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

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

G. Hazardous Substances.

1. Certification. The Sponsor shall inspect, investigate, and conduct an environmental audit of the proposed acquisition site for the presence of hazardous substances, as defined in RCW 70.105D.020(13), and certify:

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

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

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

3. Hold Harmless. The Sponsor will defend, protect and hold harmless the State and any and all of its employees and/or agents, from and against any and all liability, cost (including but not limited to all costs of defense and attorneys’ fees) and any and all loss of any nature from any and all claims or suits resulting from the presence of, or the release or threatened release of, hazardous substances on the property the Sponsor is acquiring, except to the extent, if any, that the State, its officers and agents caused or contributed to the release. The funding board and RCO are included within the term State, as are all other agencies, departments, boards, councils, committees, divisions, bureaus, offices, societies, or other entities of state government.

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

SECTION 25. LONG-TERM OBLIGATIONS OF THE PROJECTS AND SPONSORS
A. **Long-Term Obligations of RCFB Projects.** Sponsor shall comply with WAC 286-13-160, 170, and 180.

B. **Long-Term Obligations of SRFB Projects.** Sponsor shall comply with WAC 420.

C. **Perpetuity.** For acquisition, development, and restoration projects, or a combination thereof, unless otherwise allowed by policy, program rules, or this Agreement, or approved in writing by RCO or the funding board, RCO requires that the project area continue to function as intended after the period of performance in perpetuity.

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

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

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

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

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

A. **Property and facility operation and maintenance.** Sponsor must ensure that properties or facilities assisted with funding board funds, including undeveloped sites, are built, operated, used, and maintained:

1. According to applicable federal, state, and local laws and regulations, including public health standards and building codes;
2. In a reasonably safe condition for the project’s intended use;
3. Throughout its estimated useful service life so as to prevent undue deterioration;
4. In compliance with all federal and state nondiscrimination laws, regulations and policies.

B. **Open to the public.** Unless otherwise specifically provided for in the Agreement of funding board policies, and in compliance with applicable statutes, rules, and funding board policies, facilities must be open and accessible to the general public, and must:
1. Be constructed, maintained, and operated to meet or exceed the minimum requirements of the most current guidelines or rules, local or state codes, Uniform Federal Accessibility Standards, guidelines, or rules, including but not limited to: the International Building Code, the Americans with Disabilities Act, and the Architectural Barriers Act, as amended and updated.

2. Appear attractive and inviting to the public except for brief installation, construction, or maintenance periods.

3. Be available for appropriate use by the general public at reasonable hours and times of the year, according to the type of area or facility, unless otherwise stated in RCO manuals, by a decision of the board, or by RCO in writing. Sponsor shall notify the public of the availability for use by posting and updating that information on its website and by maintaining at entrances and/or other locations openly visible signs with such information.

SECTION 27.  RECORDED NOTICE OF GRANT

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

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

A corporate Sponsor, including any nonprofit Sponsor, shall:

A. Maintain corporate status with the state, including registering with the Washington Secretary of State’s office, throughout the Sponsor’s obligation to the project as identified in the Agreement.

B. Notify RCO before corporate dissolution at any time during the period of performance or long-term obligations. Within 30 days of dissolution the Sponsor shall name a qualified successor that will agree in writing to assume any on-going project responsibilities, and transfer all property and assets to the successor. A qualified successor is any party eligible to apply for funds in the subject grant program and capable of complying with the terms and conditions of this Agreement. RCO will process an amendment transferring the Sponsor’s obligation to the qualified successor if requirements are met.

C. Maintain sites or facilities open to the public and may not limit access to members.

SECTION 29.  PROVISIONS FOR FEDERAL SUBAWARDS ONLY

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

A. Sub-Recipient (Sponsor) must comply with the cost principles of 2 C.F.R. Part 200 Subpart E (2013). Unless otherwise indicated, the cost principles apply to the use of funds provided under this Agreement to include match and any in-kind matching donations. The applicability of the cost principles depends on the type of organization incurring the costs.

B. Binding Official. Per 2 CFR 200.415, Sponsor certifies through its actions or those of authorized staff, at the time of a request for reimbursement, the following: “To the best of my knowledge and belief that the report is true, complete, and accurate, and the expenditures, disbursements and cash receipts are for the purposes and objectives set forth in the terms and conditions of the Federal award. I am aware that any false, fictitious, or fraudulent information, or the omission of any material fact, may subject me to criminal, civil or administrative penalties for fraud, false statements, false claims or otherwise. (U.S. Code Title 18, Section 1001 and Title 31, Sections 3729-3730 and 3801-3812).”

1. **Federally Assisted Construction Contract.** The regulation at 41 C.F.R. § 60-1.3 defines a "federally assisted construction contract" as any agreement or modification thereof between any applicant and a person for construction work which is paid for in whole or in part with funds obtained from the Government or borrowed on the credit of the Government pursuant to any Federal program involving a grant, contract, loan, insurance, or guarantee, or undertaken pursuant to any Federal program involving such grant, contract, loan, insurance, or guarantee, or any application or modification thereof approved by the Government for a grant, contract, loan, insurance, or guarantee under which the applicant itself participates in the construction work.

2. **Construction Work.** The regulation at 41 C.F.R. § 60-1.3 defines "construction work" as the construction, rehabilitation, alteration, conversion, extension, demolition or repair of buildings, highways, or other changes or improvements to real property, including facilities providing utility services. The term also includes the supervision, inspection, and other onsite functions incidental to the actual construction.

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

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

The contracts must also include a provision for compliance with the Copeland "Anti-Kickback" Act (40 U. S. C. 3145), as supplemented by Department of Labor regulations (29 C.F.R Part 3, "Contractors and Subcontractors on Public Building or Public Work Financed in Whole or in Part by Loans or Grants from the United States"). The Act provides that each contractor or subrecipient (Sponsor) must be prohibited from inducing, by any means, any person employed in the construction, completion, or repair of public work, to give up any part of the compensation to which he or she is otherwise entitled. The non-Federal entity (Sponsor) must report all suspected or reported violations to the Federal awarding agency identified in Section H: Federal Fund Information.
E. **Contract Work Hours and Safety Standards Act (40 U.S.C. 3701-3708).** Where applicable, all contracts awarded by the non-federal entity (Sponsor) in excess of $100,000 that involve the employment of mechanics or laborers must include a provision for compliance with 40 U.S.C. 3702 and 3704, as supplemented by Department of Labor regulations (29 C.F.R. Part 5). Under 40 U.S.C. 3702 of the Act, each contractor must be required to compute the wages of every mechanic and laborer on the basis of a standard work week of 40 hours. Work in excess of the standard work week is permissible provided that the worker is compensated at a rate of not less than one and a half times the basic rate of pay for all hours worked in excess of 40 hours in the work week.

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

F. **Rights to Inventions Made Under a Contract or Agreement.** If the Federal award meets the definition of "funding agreement" under 37 C.F.R § 401.2(a) and the recipient or subrecipient (Sponsor) wishes to enter into a contract with a small business firm or nonprofit organization regarding the substitution of parties, assignment or performance of experimental, developmental, or research work under that "funding agreement," the recipient or subrecipient (Sponsor) must comply with the requirements of 37 C.F.R Part 401, "Rights to Inventions Made by Nonprofit Organizations and Small Business Firms Under Government Grants, Contracts and Cooperative Agreements," and any implementing regulations issued by the awarding agency.

G. **Clean Air Act (42 U.S.C. 7401-7671q,) and the Federal Water Pollution Control Act (33 U.S.C. 1251-1387), as Amended.** Contracts and subgrants of amounts in excess of $150,000 must contain a provision that requires the non-Federal award to agree to comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act (42 U.S.C. 7401-7671q) and the Federal Water Pollution Control Act as amended (33 U.S.C. 1251-1387). Violations must be reported to the Federal awarding agency identified in Section H: Federal Fund Information and the Regional Office of the Environmental Protection Agency (EPA).

H. **Byrd Anti-Lobbying Amendment (31 U.S.C. 1352).** By signing this Agreement, the Sponsor certifies (per the certification requirements of 31 U.S.C.) that none of the funds that the Sponsor has (directly or indirectly) received or will receive for this project from the United States or any agency thereof, have been used or shall be used to engage in the lobbying of the Federal Government or in litigation against the United States. Such lobbying includes any influence or attempt to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this project. Contractors that apply or bid for an award exceeding $100,000 must file the required certification. Each tier certifies to the tier above that it will not and has not used federal appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of any agency, a member of Congress, officer or employee of Congress, or an employee of a member of Congress in connection with obtaining any federal contract, grant or any other award covered by 31 U.S.C. 1352. Each tier must also disclose any lobbying with non-federal funds that takes place in connection with obtaining any federal award. Such disclosures are forwarded from tier to tier up to the non-federal award.
I. **Procurement of Recovered Materials.** A non-federal entity (Sponsor) that is a state agency or agency of a political subdivision of a state and its contractors must comply with section 6002 of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act. The requirements of Section 6002 include procuring only items designated in guidelines of the Environmental Protection Agency (EPA) at 40 C.F.R part 247 that contain the highest percentage of recovered materials practicable, consistent with maintaining a satisfactory level of competition, where the purchase price of the item exceeds $10,000 or the value of the quantity acquired during the preceding fiscal year exceeded $10,000; procuring solid waste management services in a manner that maximizes energy and resource recovery; and establishing an affirmative procurement program for procurement of recovered materials identified in the EPA guidelines.

J. **Required Insurance.** The non-federal entity (Sponsor) must, at a minimum, provide the equivalent insurance coverage for real property and equipment acquired or improved with federal funds as provided to property owned by the non-federal entity. Federally-owned property need not be insured unless required by the terms and conditions of the Federal award (2 C.F.R § 200.310 (2013)).

K. **Debarment and Suspension (Executive Orders 12549 and 12689).** The Sponsor must not award a contract to parties listed on the government-wide exclusions in the System for Award Management (SAM), in accordance with the Office of Management and Budget (OMB) guidelines at 2 C.F.R § 180 that implement Executive Orders 12549 (3 C.F.R part 1986 Comp., p. 189) and 12689 (3 C.F.R part 1989 Comp., p. 235), “Debarment and Suspension.” SAM Exclusions contains the names of parties debarred, suspended, or otherwise excluded by agencies, as well as parties declared ineligible under statutory or regulatory authority other than Executive Order 12549.

L. **Conflict of Interest.** Sponsor agrees to abide by the conflict of interest policy and requirements of the federal funding agency established pursuant to 2 C.F.R 200.

SECTION 30. **PROVISIONS FOR BOATING INFRASTRUCTURE GRANTS**

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

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

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

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

B. **Insurance Endorsement.** The liability insurance policy, including any endorsement or addition, shall name Washington State, the funding board, and RCO as additional insured and shall be in a form approved by the funding board or director.
C. **Length of Insurance.** The policy, endorsement or other addition, or a similar liability insurance policy meeting the requirements of this section, shall be kept in force throughout the Sponsor’s obligation to the project as identified in this Agreement in Section F. LONG-TERM OBLIGATIONS.

D. **Notice of Cancellation.** The policy, as modified by any endorsement or other addition, shall provide that the issuing company shall give written notice to RCO not less than thirty (30) calendar days in advance of any cancellation of the policy by the insurer, and within ten (10) calendar days following any termination of the policy by the Sponsor.

E. **Government Agencies.** The requirement of Subsection A through D above shall not apply if the Sponsor is a federal, state, or municipal government which has established a program of self-insurance or a policy of self-insurance with respect to claims arising from its facilities or activities generally, including such facilities as firearms or archery ranges, when the applicant declares and describes that program or policy as part of its application to the funding board.

F. **Sole Duty of the Sponsor.** By this requirement, the funding board and RCO does not assume any duty to any individual person with respect to death, injury, or damage to property which that person may suffer while present at, or in the vicinity of, the facility to which this grant relates. Any such person, or any other person making claims based on such death, injury, or damage, must look to the Sponsor, or others, for any and all remedies that may be available by law.

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

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

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

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

A. Section 15 - Income and Income Use;

B. Section 19 - Stewardship and Monitoring;

C. Section 21 - Acknowledgement and Signs;

D. Section 24 -- Provisions Applying To Acquisition Projects, Sub-sections D, F, and G;

E. Section 25C -Perpetuity; and

F. Section 26 -- Construction, Operation, Use and Maintenance of Assisted Projects.

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

For habitat restoration projects funded in part or whole with federal funds administered by the SRFB the Sponsor shall not commence with clearing of riparian trees or in-water work unless either the Sponsor has complied with 50 C.F.R. § 223.203 (b)(8) (2000), limit 8 or until an Endangered Species Act consultation is finalized in writing by the National Oceanic and Atmospheric Administration. Violation of this requirement may be grounds for terminating this Agreement. This section shall not be the basis for any enforcement responsibility by RCO.
SECTION 35. PROVISIONS FOR PUGET SOUND ACQUISITION AND RESTORATION PROJECTS ONLY

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

The Sponsor agrees to the following terms and conditions:

A. **Cost Principles/Indirect Costs For State Agencies.** GRANT RECIPIENT agrees to comply with the cost principles of 2 CFR 200 Subpart E as appropriate to the award. In addition to the US Environmental Protection Agency's General Terms and Conditions "Indirect Cost Rate Agreements," if the recipient does not have a previously established indirect cost rate, it agrees to prepare and submit its indirect cost rate proposal in accordance with 2 CFR 200 Appendix VII.

B. **Credit and Acknowledgement.** In addition to Section 21: Acknowledgement and Signs, materials produced must display both the Environmental Protection Agency (EPA) and Puget Sound Partnership (PSP) logos and the following credit line: "This project has been funded wholly or in part by the United States Environmental Protection Agency. The contents of this document do not necessarily reflect the views and policies of the Environmental Protection Agency, nor does mention of trade names or commercial products constitute endorsement or recommendation for use." This requirement is for the life of the product, whether during or after the Agreement period of performance.

C. **Hotel Motel Fire Safety Act.** Sponsor agrees to ensure that all conference, meeting, convention, or training space funded in whole or part with federal funds, complies with the federal Hotel and Motel Fire Safety Act (PL 101-391, as amended). Sponsors may search the Hotel-Motel National Master List @ [http://www.usfa.dhs.gov/applications/hotel](http://www.usfa.dhs.gov/applications/hotel) to see if a property is in compliance or to find other information about the Act.

D. **Drug Free Workplace Certification.** Sub-recipient (Sponsor) shall make an ongoing, good faith effort to maintain a drug-free workplace pursuant to the specific requirements set forth in 2 C.F.R. Part 1536 Subpart B. Additionally, in accordance with these regulations, the recipient organization shall identify all known workplaces under its federal awards, and keep this information on file during the performance of the award. Sponsors who are individuals must comply with the drug-free provisions set forth in 2 C.F.R. Part 1536 Subpart C. The consequences for violating this condition are detailed under 2 C.F.R. Part 1536 Subpart E.

E. **Management Fees.** Management fees or similar charges in excess of the direct costs and approved indirect rates are not allowable. The term "management fees or similar charges" refers to the expenses added to direct costs in order to accumulate and reserve funds for ongoing business expenses, unforeseen liabilities or for other similar costs that are not allowable. Management fees or similar charges may not be used to improve or expand the project funded under this Agreement, except for the extent authorized as a direct cost of carrying out the scope of work.

F. **Trafficking in Persons and Trafficking Victim Protection Act of 2000 (TVPA).** This provision applies only to a sub-recipient (Sponsor), and all sub-awardees of sub-recipient (Sponsor), if any. Sub-recipient (Sponsor) shall include the following statement in all sub-awards made to any private entity under this Agreement.

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

The sub-recipient (Sponsor), and all sub-awardees of sub-recipient (Sponsor) must inform RCO immediately of any information you receive from any source alleging a violation of this prohibition during the award term.
The federal agency funding this Agreement may unilaterally terminate, without penalty, the funding award if this prohibition is violated, Section 106 of the Trafficking Victims Protection Act of 2000, as amended.

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

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

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

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

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

H. **Reimbursement Limitation.** If the Sponsor expends more than the amount of RCO funding in this Agreement in anticipation of receiving additional funds from the RCO, it does so at its own risk. RCO is not legally obligated to reimburse the Sponsor for costs incurred in excess of the RCO approved budget.

I. **Disadvantaged Business Enterprise Requirements.** The Sponsor agrees to comply with the requirements of EPA's Utilization of Small, Minority and Women's Business Enterprises in procurements made under this award.

J. **Minority and Women's Business Participation.** Sponsor agrees to solicit and recruit, to the maximum extent possible, certified minority owned (MBE) and women owned (WBE) businesses in purchases and contracts initiated after the effective date of this Agreement.

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

- Purchased Goods 8% MBE 4% WBE
- Purchased Services 10% MBE 4% WBE
- Professional Services 10% MBE 4% WBE

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

1. Include qualified minority and women's businesses on solicitation lists.
2. Assure that qualified minority and women's business are solicited whenever they are potential sources of services or supplies.
3. Divide the total requirements, when economically feasible, into smaller tasks or quantities, to permit maximum participation by qualified minority and women’s businesses.

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

5. Use the services and assistance of the State Office of Minority and Women’s Business Enterprises (OMWBE) and the Office of Minority Business Enterprises of the U.S. Department of Commerce, as appropriate.

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

1. There are any funds budgeted in the contractual/services, equipment or construction lines of the award;

2. $3,000 or more is included for supplies; or

3. There are funds budgeted for subawards or loans in which the expected budget(s) meet the conditions as

4. Described in items (a) and (b).

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

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

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

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

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

1. Ensure Disadvantaged Business Enterprise (DBEs) are made aware of contracting opportunities to the fullest extent practicable through outreach and recruitment activities. For Indian Tribal, State and Local and Government Sponsors, this will include placing DBEs on solicitation lists and soliciting them whenever they are potential sources.
2. Make information on forthcoming opportunities available to DBEs and arrange time frames for contracts and establish delivery schedules, where the requirements permit, in a way that encourages and facilitates participation by DBEs in the competitive process. This includes, whenever possible, posting solicitations for bids or proposals for a minimum of 30 calendar days before the bid or proposal closing date.

3. Consider in the contracting process whether firms competing for large contracts could subcontract with DBEs. For Indian Tribal, State and local Government Sponsors, this will include dividing total requirements when economically feasible into smaller tasks or quantities to permit maximum participation by DBEs in the competitive process.

4. Encourage contracting with a consortium of DBEs when an agreement is too large for one of these firms to handle individually.

5. Use the services and assistance of the Small Business Administration (SBA) and the Minority Business Development of the Department of Commerce.

6. If the Sponsor awards subcontracts, require the Sponsor to take the steps in paragraphs (a) through (e) of this section.

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

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

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


3. Legal expenses required in the administration of Federal programs are allowable. Legal expenses for prosecution of claims against the Federal Government are unallowable.

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

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

As of January 1, 2014, the limit is $602.24 per day $75.28 per hour.
O. Peer Review. Where appropriate, prior to finalizing any significant technical products the Principal Investigator (PI) of this project must solicit advice, review, and feedback from a technical review or advisory group consisting of relevant subject matter specialists. A record of comments and a brief description of how respective comments are addressed by the PI will be provided to the Project Monitor prior to releasing any final reports or products resulting from the funded study.

P. International Travel (Including Canada). All International Travel must be approved by the US Environmental Protection Agency's Office of International and Tribal Affairs (OITA) BEFORE travel occurs. Even a brief trip to a foreign country, for example to attend a conference, requires OITA approval. Please contact your Partnership Project manager as soon as possible if travel is planned out of the country, including Canada and/or Mexico, so that they can submit a request to the EPA Project Officer if they approve of such travel.

Q. Unliquidated Obligations (ULO). Sub-recipients, and all sub-awardees of Sub-Recipients, if any, should manage their agreement and subaward funding in ways that reduce the length of time that federal funds obligated and committed to subaward projects are unspent (not yet drawn down through disbursements to sub-recipients and sub-awardees).

SECTION 36. ORDER OF PRECEDENCE

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

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

SECTION 37. LIMITATION OF AUTHORITY

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

SECTION 38. WAIVER OF DEFAULT

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

SECTION 39. APPLICATION REPRESENTATIONS – MISREPRESENTATIONS OR INACCURACY OR BREACH
The funding board and RCO rely on the Sponsor's application in making its determinations as to eligibility for, selection for, and scope of, funding grants. Any misrepresentation, error or inaccuracy in any part of the application may be deemed a breach of this Agreement.

SECTION 40. SPECIFIC PERFORMANCE

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

SECTION 41. TERMINATION AND SUSPENSION

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

A. For Cause.

1. The funding board or the director may suspend or terminate the obligation to provide funding to the Sponsor under this Agreement:
   a. If the Sponsor breaches any of the Sponsor's obligations under this Agreement;
   b. If the Sponsor fails to make progress satisfactory to the funding board or director toward completion of the project by the completion date set out in this Agreement. Included in progress is adherence to milestones and other defined deadlines; or
   c. If the primary and secondary Sponsor(s) cannot mutually agree on the process and actions needed to implement the project;

2. Prior to termination, the RCO or the funding board shall notify the Sponsor in writing of the opportunity to cure. If corrective action is not taken within 30 days or such other time period that the director or board approves in writing, the Agreement may be terminated. In the event of termination, the Sponsor shall be liable for damages or other relief as authorized by law and/or this Agreement.

3. RCO reserves the right to suspend all or part of the Agreement, withhold further payments, or prohibit the Sponsor from incurring additional obligations of funds during the investigation of any alleged breach and pending corrective action by the Sponsor, or a decision by the RCO to terminate the Contract.

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

1. The Sponsor was not in default; or

2. Failure to perform was outside Sponsor's control, fault or negligence.
C. Rights of Remedies of the RCO.

1. The rights and remedies of RCO provided in this Agreement are not exclusive and are in addition to any other rights and remedies provided by law.

2. In the event this Agreement is terminated by the funding board or director, after any portion of the grant amount has been paid to the Sponsor under this Agreement, the funding board or director may require that any amount paid be repaid to RCO for redeposit into the account from which the funds were derived. However, any repayment shall be limited to the extent it would be inequitable and represent a manifest injustice in circumstances where the project will fulfill its fundamental purpose for substantially the entire period of performance and of long-term obligation.

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

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

SECTION 42. DISPUTE HEARING

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

A. The disputed issues;

B. The relative positions of the parties;

C. The Sponsor's name, address, project title, and the assigned project number.

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

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

The parties shall be bound by the decision of the disputes panel, unless the remedy directed by that panel shall be without the authority of either or both parties to perform, as necessary, or is otherwise unlawful.
Request for a disputes hearing under this section by either party shall be delivered or mailed to the other party. The request shall be delivered or mailed within thirty (30) days of the date the requesting party has received notice of the action or position of the other party which it wishes to dispute. The written agreement to use the process under this section for resolution of those issues shall be delivered or mailed by the receiving party to the requesting party within thirty (30) days of receipt by the receiving party of the request.

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

SECTION 43. ATTORNEYS' FEES

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

SECTION 44. GOVERNING LAW/VENUE

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

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

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

A. Notwithstanding the above venue provision, if the State of Washington intends to initiate legal action against a federally recognized Indian tribe relating to the performance, breach, or enforcement of this Agreement, it shall so notify the Tribe. If the Tribe believes that a good faith basis exists for subject matter jurisdiction of such an action in federal court, the Tribe shall so notify the State within five days of receipt of such notice and state the basis for such jurisdiction. If the Tribe so notifies the State, the State shall bring such action in federal court, otherwise the State may sue the Tribe in the Thurston County Superior Court, or such other superior court where venue is proper, if not proper in Thurston County. Interpretation of the Agreement shall be according to applicable State law, except to the extent preempted by federal law. In the event suit is brought in federal court and the federal court determines that it lacks subject matter jurisdiction to resolve the dispute between the State and Tribal Party, then the State may bring suit in Thurston County Superior Court or such other superior court where venue is proper, if not proper in Thurston County.

B. Any judicial award, determination, order, decree or other relief, whether in law or equity or otherwise, resulting from such actions under subsection A above, shall be binding and enforceable on the parties. Any money judgment or award against a Tribe, tribal officers, or employees, or the State of Washington, its agencies, or its officers and employees may exceed the amount of funding awarded under this Agreement.

C. As requested by RCO, the Tribe shall provide to RCO its governing requirements and procedures for entering into Agreement with RCO and waiving its sovereign immunity. In addition, the tribe shall provide to RCO all authorizations the Tribe requires to authorize the person(s) signing the Agreement on the Tribe's behalf to bind the Tribe and waive the Tribe's sovereign immunity as provided herein.
D. The Tribe hereby waives its sovereign immunity for suit in federal and state court for the limited purposes of allowing the State to bring and prosecute to completion such actions relating to the performance, breach, or enforcement of this Agreement as provided in subsection A above, and to bring actions to enforce any judgment arising from such actions. This waiver is not for the benefit of any third party and shall not be enforceable by any third party or by any assignee of the parties. In any enforcement action, the parties shall bear their own enforcement costs, including attorneys' fees.

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

SECTION 46. SEVERABILITY

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

Project Sponsor: City of Covington
Project Title: Covington SoCo Park - Phase 2
Program: WWRP - Local Parks
Project Number: 16-1680
Project Type: Acquisition
Approval: 2/1/2018

Acquisition Metrics

Property: Smith Property (Worksite #1, SoCo Phase 2)

Real Property Acquisition
Land
Acres by Acreage Type (fee simple):
  Uplands
  Wetlands

Existing structures on site:

Incidentals
Appraisal
Appraisal Review
Closing, Recording, Taxes, Title
Cultural resources (Acq)
Demolition
  Buildings / structures to be demolished:

Environmental Audits

Fencing (Acq)
  Number of linear feet of fencing to be built:
Noxious weed control
  Acres treated for noxious weeds by method:
    Mechanical
Signs (Acq)
  Number of permanent signs that identify site and funding partners:
Survey (Acq)

Wetland Delineations

Administrative Costs (Acq)
Administrative costs (Acq)

Property: Wenham Property (Worksite #1, SoCo Phase 2)
Eligible Scope Activities

Real Property Acquisition

Land

Acres by Acreage Type (fee simple):
Uplands
Wetlands

Existing structures on site:

Incidentals

Appraisal
Appraisal Review
Closing, Recording, Taxes, Title
Cultural resources (Acq)
Demolition
Buildings / structures to be demolished:

Environmental Audits

Fencing (Acq)
Number of linear feet of fencing to be built:

Noxious weed control
Acres treated for noxious weeds by method:
Mechanical

Signs (Acq)
Number of permanent signs that identify site and funding partners:

Survey (Acq)

Wetland Delineations

Administrative Costs (Acq)
Administrative costs (Acq)
# Milestone Report By Project

**Project Number:** 16-1680 A  
**Project Name:** Covington SoCo Park - Phase 2  
**Sponsor:** Covington City of  
**Project Manager:** Karl Jacobs

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**X = Milestone Complete**  
**! = Critical Milestone**
CONSENT AGENDA ITEM C-6
Covington City Council Meeting
Date: May 22, 2018

SUBJECT: AUTHORIZE THE CITY MANAGER TO EXECUTE AN AGREEMENT WITH ENVIRONMENTAL SCIENCE ASSOCIATES TO PROVIDE WETLAND MITIGATION MONITORING RELATED TO THE COVINGTON COMMUNITY PARK PHASE 2 PROJECT.

RECOMMENDED BY: Ethan Newton, Parks and Recreation Director

ATTACHMENTS:
1. Consultant Services Agreement with Environmental Science Associates

PREPARED BY: Ethan Newton, Parks and Recreation Director

EXPLANATION:
The Army Corps of Engineers permit (NWS-2016-944) for the Covington Community Park Phase 2 project contains requirements for wetland mitigation monitoring for 10 years. The attached agreement allows for Environmental Science Associates (ESA) to provide this monitoring through the first 5 years. The decision to contract for monitoring services for the last 5 years will be made at a future time.

ESA is a sub-consultant to the project’s landscape architects MacLeod Reckord and is familiar with the project, design and site. ESA has also been providing wetland mitigation monitoring related to the phase 1 project that was completed in 2013. Continuing to utilize ESA for wetland mitigation monitoring at this park site continues to be the best option to comply with the Army Corps of Engineers permit NWS2016-944, given ESA’s knowledge of the site, and their history of completing this type of work for phase 1.

ALTERNATIVES:
1. Do not authorize executing this agreement and provide direction for complying with Army Corp of Engineers permit.

FISCAL IMPACT:
The total cost of the agreement is $39,916. In 2018, the cost will be $4,308, which is included in Covington Community Park Phase 2 budget that was approved as part of the 2018 city budget. Costs for years 2019 – 2023 would need to be included in future city budgets.

CITY COUNCIL ACTION: ___ Ordinance ___ Resolution ___ Motion ___ Other

Council member ___________ moves, Council member ___________ seconds, to authorize the City Manager to execute a contract with Environmental Science Associates to provide wetland mitigation monitoring related to the Covington Community Park Phase 2 project.

REVIEWED BY: Finance Director, City Attorney, City Manager
CONSULTANT SERVICES AGREEMENT
between the City of Covington and
Environmental Science Associates

THIS AGREEMENT is made between the City of Covington ("City"), a Washington municipal corporation, and Environmental Science Associates ("Consultant"), a corporation.

I. DESCRIPTION OF WORK. Consultant shall perform the following services for the City: wetland mitigation monitoring as described in the attached Exhibit A. Consultant further represents that the services furnished under this Agreement will be performed in accordance with generally accepted professional practices within the Puget Sound region in effect at the time those services are performed.

II. TERM OF AGREEMENT. The parties agree that work will begin on the tasks described in Section I upon the effective date of this Agreement, and Consultant shall complete the work by December 31, 2023. This Agreement may be extended for additional periods of time upon the mutual written agreement of the City and the Consultant.

III. COMPENSATION. The City shall pay the Consultant, based on time and materials, a total amount not to exceed $39,916 for the services described in this Agreement. This is the maximum amount to be paid under this Agreement for the work described in Section I above, and shall not be exceeded without the prior written authorization of the City in the form of a negotiated and executed amendment to this agreement. The Consultant shall invoice the City monthly based on time and materials incurred during the preceding month. All hourly rates charged shall remain locked at the negotiated rates throughout the term of this Agreement. The Consultant’s billing rates shall be as delineated in Exhibit A.

If sufficient funds are not appropriated or allocated for payment under this agreement for any future fiscal period, the City shall notify the Contractor and the City shall not be obligated to make payments for services or amounts incurred after the end of the City’s current fiscal period.

IV. INDEPENDENT CONTRACTOR. The parties intend that an Independent Contractor-Employer Relationship will be created by this Agreement. By their execution of this Agreement, and in accordance with RCW Chapter 51.08, the parties make the following representations:

A. The Consultant controls and directs the performance and details of its work, the City being interested only in the results obtained under this Agreement.

B. The Consultant maintains and pays for its own place of business from which Consultant’s services under this Agreement will be performed.

C. The Consultant has an established and independent business that is eligible for a business deduction for federal income tax purposes that existed before the City retained Consultant’s services, or the Consultant is engaged in an independently established trade, occupation, profession, or business of the same nature as that involved under this Agreement.

D. The Consultant is responsible for filing as they become due all necessary tax documents with appropriate federal and state agencies, including the Internal Revenue Service and the state Department of Revenue.
E. The Consultant has registered its business and established an account with the state Department of Revenue and other state agencies as may be required by Consultant’s business, and has obtained a Unified Business Identifier (UBI) number from the State of Washington.

F. The Consultant maintains a set of books dedicated to the expenses and earnings of its business.

V. TERMINATION. Either party may terminate this Agreement, with or without cause, upon providing the other party thirty (30) days’ written notice at its address set forth on the signature block of this Agreement. After termination, the City may take possession of all records and data within the Consultant’s possession pertaining to this project, which may be used by the City without restriction. If the City’s use of Consultant’s records or data is not related to this project, it shall be without liability or legal exposure to the Consultant.

VI. DISCRIMINATION. In all Consultant services, programs, activities, hiring, and employment made possible by or resulting from this Agreement, Consultant and its employees, agents, and subcontractors shall not discriminate in violation of and at all times shall comply with Chapter 49.60 RCW, Title VII of the Civil Rights Act of 1964, the Americans With Disabilities Act, Section 504 of the Rehabilitation Act of 1973, and any other applicable federal, state, or local law or regulation regarding non-discrimination. Any material violation of this provision shall be grounds for termination of this Agreement by the City and may result in ineligibility for further City agreements.

VII. INDEMNIFICATION. Consultant shall defend, indemnify and hold the City, its officers, officials, employees, agents and volunteers harmless from any and all claims, injuries, damages, losses or suits, including all legal costs and attorney fees, arising out of or in connection with the Consultant's performance of this Agreement, except for that portion of the injuries and damages caused by the City's negligence. The City's inspection or acceptance of any of Consultant's work when completed shall not be grounds to avoid any of these covenants of indemnification. The provisions of this section shall survive the expiration or termination of this Agreement.

In the event Consultant refuses tender of defense in any suit or any claim, if that tender was made pursuant to this indemnification clause, and if that refusal is subsequently determined by a court having jurisdiction (or other agreed tribunal) to have been a wrongful refusal on the Consultant’s part, then Consultant shall pay all the City's costs for defense, including all reasonable expert witness fees and reasonable attorneys’ fees, plus the City’s legal costs and fees incurred because there was a wrongful refusal on the Consultant’s part.

VIII. INSURANCE. The Consultant shall procure and maintain for the duration of the Agreement, insurance of the types and in the amounts as follows:

A. **Workers’ compensation and employer's liability insurance** in amounts sufficient pursuant to the laws of the State of Washington;

B. **Commercial general liability insurance** covering liability arising from premises, operations, independent Consultants, personal injury and advertising injury and written on ISO occurrence form CG 00 01 with combined single limits of liability not less than $1,000,000 each occurrence, $2,000,000 general aggregate for bodily injury, including personal injury or death, products liability and property damage.
C. **Automobile liability insurance** covering all owned, non-owned, hired and leased vehicles and written on Insurance Services Office (ISO) form CA 00 01 or a substitute form providing equivalent liability coverage with combined single limits of liability not less than $1,000,000 per accident for bodily injury, including personal injury or death and property damage. If necessary, the policy shall be endorsed to provide contractual liability coverage.

D. **Professional liability insurance** covering any negligent professional acts, errors or omissions for which the Consultant is legally responsible and with combined single limits of liability not less than $1,000,000 per claim and $1,000,000 policy aggregate limit for damages sustained by reason of or in the course of operation under this Agreement.

The City shall be named as additional insured on all such insurance policies, with the exception of professional liability and workers' compensation coverage(s) if the Consultant participates in a state-run workers’ comp program. The Consultant shall provide original certificates of insurance and a copy of the amendatory endorsement, concurrent with the execution of this Agreement, evidencing such coverage and, at City's request, furnish the City with copies of all insurance policies and with evidence of payment of premiums or fees of such policies. Insurance is to be placed with insurers with a current A.M. Best rating of not less than A:VII. All insurance policies shall contain a clause of endorsement providing that they may not be terminated or materially amended during the Term of this Agreement, except after thirty (30) days prior written notice to the City. If the Consultant's insurance policies are "claims made," the Consultant shall be required to maintain tail coverage for a minimum period of three (3) years from the date this Agreement is actually terminated or upon project completion and acceptance by the City. The Consultant's failure to maintain such insurance policies shall be grounds for the City's immediate termination of this Agreement.

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

IX. **COMPLIANCE WITH LAWS.** Consultant agrees to comply with all federal, state, and municipal laws, rules, and regulations that are now in effect or in the future become applicable to Consultant's business, equipment, and personnel engaged in operations covered by this Agreement or accruing out of the performance of those services.

X. **OWNERSHIP AND USE OF RECORDS AND DOCUMENTS.** Original documents, drawings, designs, reports, or any other records developed or created under this Agreement shall belong to and become the property of the City. All records submitted by the City to the Consultant will be safeguarded by the Consultant. Consultant shall make such data, documents, and files available to the City upon the City's request.

XI. **CITY'S RIGHT OF INSPECTION.** Even though Consultant is an independent contractor with the authority to control and direct the performance and details of the work authorized under this Agreement, the work must meet the approval of the City and shall be subject to the City's general right of inspection to secure satisfactory completion.

XII. **WORK PERFORMED AT CONSULTANT'S RISK.** Consultant shall take all necessary precautions and shall be responsible for the safety of its employees, agents, and subcontractors in the performance of the contract work and shall utilize all protection necessary for that purpose. All work shall be done at Consultant's own risk, and Consultant shall be responsible for any loss of or damage to materials, tools, or other articles used or held for use in connection with the work.
XIII. MISCELLANEOUS PROVISIONS.

A. Non-Waiver of Breach. The failure of the City to insist upon strict performance of any of the covenants and agreements contained in this Agreement, or to exercise any option conferred by this Agreement in one or more instances shall not be construed to be a waiver or relinquishment of those covenants, agreements or options, and the same shall be and remain in full force and effect.

B. Resolution of Disputes and Governing Law. This Agreement shall be governed by and construed in accordance with the laws of the State of Washington. If the parties are unable to settle any dispute, difference or claim arising from the parties’ performance of this Agreement, the exclusive means of resolving that dispute, difference or claim, shall only be by filing suit exclusively under the venue, rules and jurisdiction of the King County Superior Court, King County, Washington, unless the parties agree in writing to an alternative dispute resolution process. In any claim or lawsuit for damages arising from the parties' performance of this Agreement, each party shall pay all its legal costs and attorney's fees incurred in defending or bringing such claim or lawsuit, including all appeals, in addition to any other recovery or award provided by law; provided, however, nothing in this paragraph shall be construed to limit the City's right to indemnification under Section VII of this Agreement.

C. Written Notice. All communications regarding this Agreement shall be sent to the parties at the addresses listed on the signature page of the Agreement, unless notified to the contrary in writing. Any written notice shall become effective three (3) business days after the date of mailing by registered or certified mail and shall be deemed sufficiently given if sent to the addressee at the address stated in this Agreement or such other address as may be later specified in writing pursuant to this Section.

D. Assignment. Any assignment of this Agreement by either party without the written consent of the non-assigning party shall be void.

E. Modification. No waiver, alteration, or modification of any of the provisions of this Agreement shall be binding unless in writing and signed by a duly authorized representative of the City and Consultant.

F. Entire Agreement. The written provisions and terms of this Agreement, together with any attached Exhibits, shall supersede all prior verbal statements of any officer or other representative of the City, and such statements shall not be effective or be construed as entering into or forming a part of or altering in any manner this Agreement. Should any language in any of the Exhibits to this Agreement conflict with any language contained in this Agreement, the terms of this Agreement shall prevail.

G. Public Records Act. The Consultant acknowledges that the City is a public agency subject to the Public Records Act codified in RCW Chapter 42.56 and documents, notes, emails, and other records prepared or gathered by the Consultant in its performance of this Agreement may be subject to public review and disclosure, even if those records are not produced to or possessed by the City of Covington. As such, the Consultant agrees to cooperate fully with the City in satisfying the City’s duties and obligations under the Public Records Act.

H. City Business License Required. Prior to commencing the tasks described in Section I, Consultant agrees to provide proof of a current City of Covington business license pursuant to Chapter 5.10 of the Covington Municipal Code.
I. Counterparts and Signatures by Fax or Email. This Agreement may be executed in any number of counterparts, each of which shall constitute an original, and all of which will together constitute this one Agreement. Further, upon executing this Agreement, either party may deliver the signature page to the other by fax or email and that signature shall have the same force and effect as if the Agreement bearing the original signature was received in person.

IN WITNESS, the parties below execute this Agreement, which shall become effective on the last date entered below. All acts consistent with the authority of this Agreement and prior to its effective date are ratified and affirmed, and the terms of the Agreement shall be deemed to have applied.

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<td>By:__________________________</td>
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<tr>
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<td>Print Name: Regan Bolli</td>
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<td>Its:__________________________</td>
<td>Its: City Manager</td>
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NOTICES TO BE SENT TO:

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<tr>
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<tr>
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<td>(253) 480-2401 (facsimile)</td>
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APPROVED AS TO FORM:

Kathy Hardy, City Attorney
City of Covington
Covington Community Park (Phase 2) Wetland Mitigation Monitoring

Scope of Work Detail

The City of Covington (City) has requested a Scope of Work and associated fees from Environmental Science Associates (ESA) to conduct monitoring of the wetland mitigation conducted for Phase 2 of the Covington Community Park project. This scope is divided into five tasks, which include five separate monitoring years (Years 0, 1, 2, 3, and 5). Work will be billed on a time and materials basis. Costs were calculated using a 3% annual escalation for years 2 through 5. A detailed Scope of Work is provided below, which outlines ESA’s responsibilities under this Scope of Work. The cost estimate is also attached to this Scope of Work.

Construction of the wetland mitigation for Phase 2 of the Covington Community Park project began in 2016 and planting of the mitigation areas was largely completed in February-March 2018. The Corps of Engineers permit (NWS-2016-944) requirements are slightly different than those for Phase 1 and state that Year 1 monitoring is to start at least one year after completion of the mitigation construction, which would be 2019. The permit requirements include an as-built report and plan for Year 0, and monitoring in Years 1, 2, 3, 5, 7, and 10. This scope of work includes Years 0, 1, 2, 3, and 5 only. We assume that Years 7 and 10 would be monitored by City staff or negotiated at a later date.

ESA wrote the mitigation plan and provided input on the design for both Phase 1 and Phase 2 as a subcontractor to the project design team. ESA has also been conducting mitigation monitoring for Phase 1 for the City. Remaining on the Phase 1 monitoring contract is Year 5 monitoring in Spring and late summer 2018 and Year 7 in 2020. Phase 1 and 2 monitoring will be conducted concurrently in 2020 since the monitoring schedules overlap that year.

TASK 1 – As-Built Report and Plan (2018)

The as-built report will serve as a baseline to compare progress toward achieving performance standards specified in the Mitigation Plan (ESA 2016). The MacLeod Reckord planting plan sheets (dated June 8, 2017) will be used as a basemap for the as-built and will be marked-up to reflect general site conditions after planting. ESA will mark approximate locations for vegetation monitoring plots and photo points at each of the wetland creation areas on the as-built to guide monitoring efforts and provide documentation of vegetation development. ESA has conducted plant materials inspections at the park site in 2018 and will use the observations and photographs taken on site to develop the as-built report.

Cost Task 1: $4,308
TASK 2 – Year 1 Monitoring (2019)

Task 2.1 – On-site Monitoring

Two ESA wetland biologists will conduct monitoring at the Phase 2 mitigation site. Site work will include vegetation monitoring plots at locations specified in the as-built report, observation of wetland hydrology, and notes on general wildlife habitat features as described in the Mitigation Plan. The Mitigation Plan specifies that hydrologic observations will be made in the early spring (generally considered to be March). ESA biologist will conduct a one-day site visit in March to look for other indicators of wetland hydrology, such as signs of recent flooding or hydric soil indicators. Photographs will be taken at each of the photo point locations indicated in the as-built report and included in the report (Task 2.2) to provide further documentation of site conditions. ESA will conduct a second site visit in the late summer to monitor vegetation parameters.

Deliverables: None

Assumptions:

- ESA will make two one-day site visits per year. Field work will be conducted once in early spring (March) and again in late summer (August or September).

Task 2.2 – Year 1 Monitoring Report

ESA will produce a report documenting the findings of the mitigation monitoring conducted under Task 2.1. The report will include details of site conditions and will compare the results to the performance standards specified in the Mitigation Plan. Recommendations for maintenance or adaptive management needs will be made if appropriate. Photographs taken of vegetation development will be included in the report.

Deliverables: ESA will deliver an electronic copy (pdf file) of the Draft report for City review within three weeks of completing site work. ESA will revise the report based on comments from the City and deliver two bound copies and one electronic copy of the Final report to the City within two weeks of receiving comments on the Draft version.

Assumptions:

- ESA will rely on the 2018 as-built plan for mitigation boundaries, monitoring locations, photo points, and other project features.
- The City will provide documentation of maintenance actions (weeding, replanting, etc.) taken in 2018 and 2019.
- Site hydrology monitoring will be conducted as soon as contract is approved; likely June 2019.
- Site vegetation monitoring will be conducted late in the 2019 growing season (Aug-Sept).
- Site monitoring can be completed by two staff in two days.

Cost Task 2: $8,747

TASK 3 – Year 2 Monitoring (2020)

Task 3.1 – On-site Monitoring

Two ESA wetland biologists will conduct monitoring at the Phase 2 mitigation site. Site work will include vegetation monitoring plots at locations specified in the as-built report, observation of wetland hydrology, and notes on general wildlife habitat features as described in the Mitigation Plan. The Mitigation Plan specifies that hydrologic observations
will be made in the early spring; generally considered to be March. ESA biologist will look for other indicators of wetland hydrology, such as signs of recent flooding or hydric soil indicators. Photographs will be taken at each of the photo point locations indicated in the as-built report and included in the report (Task 3.2) to provide further documentation of site conditions.

Deliverables: None

Assumptions:

- ESA will make two one-day site visits per year. Field work will be conducted once in early spring (March) and again in late summer (August or September).

Task 3.2 – Year 2 Monitoring Report

ESA will produce a report documenting the findings of the mitigation monitoring conducted under Task 3.1. The report will include details on site conditions and will compare the results to the performance standards specified in the Mitigation Plan. Recommendations for maintenance or adaptive management needs will be made if appropriate. Photographs taken of vegetation development will be included in the report.

Deliverables: ESA will deliver an electronic copy (pdf file) of the Draft report for City review within three weeks of completing site work. ESA will revise the report based on comments from the City and deliver two bound copies and one electronic copy of the Final report to the City within two weeks of receiving comments on the Draft version.

Assumptions:

- ESA will rely on the 2018 as-built plan for mitigation boundaries, monitoring locations, photo points, and other project features.
- The City will provide documentation of maintenance actions (weeding, replanting, etc.) taken in 2019 and 2020.
- Site hydrology monitoring will be conducted in early spring (March).
- Site vegetation monitoring will be conducted late in the growing season (Aug-Sept).
- Site monitoring can be completed by two staff in two days.

Cost Task 3: $7,550

TASK 4 – Year 3 Monitoring (2021)

Task 4.1 – On-site Monitoring

Two ESA wetland biologists will conduct monitoring at the Phase 2 mitigation site. Site work will include vegetation monitoring plots at locations specified in the as-built report, observation of wetland hydrology, and notes on general wildlife habitat features as described in the Mitigation Plan. The Mitigation Plan specifies that hydrologic observations will be made in the early spring; generally considered to be March. ESA biologist will look for other indicators of wetland hydrology, such as signs of recent flooding or hydric soil indicators. Photographs will be taken at each of the photo point locations indicated in the as-built report and included in the report (Task 4.2) to provide further documentation of site conditions.

Deliverables: None

Assumptions:
• ESA will make two one-day site visits per year. Field work will be conducted once in early spring (March) and again in late summer (August or September).

Task 4.2 – Year 3 Monitoring Report

ESA will produce a report documenting the findings of the mitigation monitoring conducted under Task 4.1. The report will include details on site conditions and will compare the results to the performance standards specified in the Mitigation Plan. Recommendations for maintenance or adaptive management needs will be made if appropriate. Photographs taken of vegetation development will be included in the report.

Deliverables: ESA will deliver an electronic copy (pdf file) of the Draft report for City review within three weeks of completing site work. ESA will revise the report based on comments from the City and deliver two bound copies and one electronic copy of the Final report to the City within two weeks of receiving comments on the Draft version.

Assumptions:
• ESA will rely on the 2018 as-built plan for mitigation boundaries, monitoring locations, photo points, and other project features.
• The City will provide documentation of maintenance actions (weeding, replanting, etc.) taken in 2020 and 2021.
• Site hydrology monitoring will be conducted in early spring (March).
• Site vegetation monitoring will be conducted late in the growing season (Aug-Sept).
• Site monitoring can be completed by two staff in two days.

Cost Task 4: $7,852

TASK 5 – Year 5 Monitoring (2023)

Task 5.1 – On-site Monitoring

The Mitigation Plan requires a wetland delineation of the boundaries of all four created wetland areas. Ecology typically requires this delineation in Year 5. Two ESA wetland biologists will conduct the wetland delineation during the early spring hydrologic monitoring site visit. The boundaries of the created wetlands will be marked with flagging tape and a GPS unit will be used to mark location of each flag. Vegetation monitoring will take place in late summer or early fall as in the previous monitoring years. Photographs will be taken at each of the photo point locations indicated in the as-built report and included in the report (Task 5.2) to provide further documentation of site conditions.

Deliverables: None

Assumptions:
• ESA will make two one-day site visits per year. Field work will be conducted once in early spring (March) and again in late summer (August or September).

Task 5.2 – Year 5 Monitoring and Delineation Report

ESA will produce a report documenting the findings of the wetland delineation and mitigation monitoring conducted under Task 5.1. The report will include details on site conditions and will compare the results to the performance standards specified in the Mitigation Plan. A map showing the wetland polygons as located by GPS will be included in
the area of the GPS wetland polygons will be reported and compared with the designed areas reported in the Mitigation Plan. Recommendations for maintenance or adaptive management needs will be made if appropriate. Photographs taken of vegetation development will be included in the report.

**Deliverables:** ESA will deliver an electronic copy (pdf file) of the Draft report for City review within three weeks of completing site work. ESA will revise the report based on comments from the City and deliver one electronic copy of the Final report to the City within two weeks of receiving comments on the Draft version.

**Assumptions:**

- ESA will rely on the 2018 as-built plan for mitigation boundaries, monitoring locations, photo points, and other project features.
- The City will provide documentation of maintenance actions (weeding, replanting, etc.) taken in 2022 and 2023.
- Site hydrology monitoring and wetland delineation will be conducted in early spring (March).
- Site vegetation monitoring will be conducted late in the growing season (Aug-Sept).
- Site monitoring and delineation can be completed by two staff in two days.

**Cost Task 5: $11,459**

**SCHEDULE:**

- ESA will prepare monitoring equipment and finalize methods with City staff within two weeks of receiving a signed contract.
- Task 1 (as-built) will be conducted in 2018.
- Task 2 (Year 1) will be conducted in 2019.
- Task 3 (Year 2) will be conducted in 2020.
- Task 4 (Year 3) will be conducted in 2022.
- Task 5 (Year 5) will be conducted in 2023.
- Field work will be conducted once in early spring (March) and again in late summer (August or September).
- ESA will deliver monitoring reports to the City before the end of October so that the City can review and submit to review agencies before the end of the year.
- City staff will conduct monitoring during Years 7 and 10 or as required following Year 5.

**Total Cost of Contract: $39,916**
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**Budget Total:** $39,915

**Task 1 As-Built Report**
- Hours: 0.50
- Rate: $185.00
- Cost: $87.50

**Task 2.1 Fieldwork and prep**
- Hours: 16.00
- Rate: $155.00
- Cost: $2,524

**Task 2.2 Report**
- Hours: 2.00
- Rate: $130.00
- Cost: $260

**Mileage**
- Miles: 140
- Rate: $0.55
- Cost: $77

**Subtotal**
- Total Hours: 35.50
- Total Cost: $4,308

**Task 3.1 Fieldwork and prep**
- Hours: 16.00
- Rate: $130.00
- Cost: $2,080

**Task 3.2 Report**
- Hours: 2.00
- Rate: $85.00
- Cost: $170

**Mileage**
- Miles: 140
- Rate: $0.55
- Cost: $77

**Subtotal**
- Total Hours: 27.50
- Total Cost: $2,327

**Task 4.1 Fieldwork and prep**
- Hours: 16.00
- Rate: $130.00
- Cost: $2,080

**Task 4.2 Report**
- Hours: 2.00
- Rate: $85.00
- Cost: $170

**Mileage**
- Miles: 140
- Rate: $0.55
- Cost: $77

**Subtotal**
- Total Hours: 18.00
- Total Cost: $2,327

**Task 5.1 Fieldwork and prep**
- Hours: 20.00
- Rate: $105.00
- Cost: $2,100

**Task 5.2 Report**
- Hours: 6.00
- Rate: $85.00
- Cost: $510

**Mileage**
- Miles: 140
- Rate: $0.55
- Cost: $77

**Subtotal**
- Total Hours: 8.60
- Total Cost: $2,787

**Total Hours**
- Hours: 183.00
- Cost: $18,300

**Total Reimbursables**
- Cost: $39,915
SUBJECT: RECEIVE PUBLIC TESTIMONY ON THE PROPOSED SIX-YEAR 2019 – 2024 TRANSPORTATION IMPROVEMENT PROGRAM (TIP).

RECOMMENDED BY: Don Vondran, Public Works Director

ATTACHMENT(S):
1. 2019 – 2024 TIP Summary Spreadsheet
2. 2019 – 2024 TIP Map
3. 2019 – 2024 TIP Project Descriptions

PREPARED BY: Robert Lindskov, City Engineer

EXPLANATION:
The city is required by RCW 35.77.010 to annually prepare and adopt a comprehensive transportation program for the ensuing six calendar years and to forward a copy of that Six-Year Transportation Improvement Program (TIP) to the Washington State Secretary of Transportation by July 31st. The TIP represents the first six years of the 20-year transportation (street) capital improvement program. The projects contained in the proposed City of Covington Six-Year TIP 2019 – 2024 are consistent with the transportation projects identified in the Transportation Element of the City’s Comprehensive Plan adopted January 12, 2016.

As a segment of the public involvement process, the City Council must hold a public hearing to receive testimony on the TIP. This hearing has been properly noticed in the paper of local circulation. The notification was in the Covington Reporter on May 4, 2018.

On June 27, 2017, the City Council adopted the 2018-2023 Six-Year Transportation Improvement Program in Resolution No. 2017-5. The TIP we are presenting tonight remains unchanged from last year (see attachments for details).

ALTERNATIVES:
Direct staff to modify the draft 2019 – 2024 Six-Year TIP.

FISCAL IMPACT:
The fiscal impact of each proposed project is indicated in the draft Six-Year TIP 2019 – 2024. The specific revenue source(s) for the city portion of the funds for each project is determined each year during the budget process. Additional revenues are needed to fund these projects. Possible sources are grants, appropriations and traffic impact fees.

CITY COUNCIL ACTION: _____Ordinance _____Resolution _____Motion  __X__Other

HOLD PUBLIC HEARING. PROVIDE INPUT TO STAFF.

REVIEWED BY: City Manager, City Attorney, Finance Director
<table>
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<tr>
<th>Priority</th>
<th>City CIP #, Project Name, Termini, Major Class of Work</th>
<th>Phase</th>
<th>Funded</th>
<th>2019</th>
<th>2020</th>
<th>2021</th>
<th>2022</th>
<th>2023</th>
<th>2024</th>
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Expenditure Schedule in Thousands

CITY OF COVINGTON
2019 to 2024 Transportation Improvement Program
Summary

ATTACHMENT 1
City of Covington
6-Year Transportation Improvement Projects 2019-2024

This map is intended for planning purposes only. Information was compiled from the most accurate sources generally available.

ATTACHMENT 2

Created By: Shawn Buck 04/30/2018

O:\Covington_GIS_Library\PROJECT_FOLDER\Public_Works\Streets\TIP_Maps\6_Year_TIP\6_Year_TIP.mxd
Annual Citywide ADA Improvements - Various Locations

Associated with the adoption of the City’s ADA policy, the City has begun a larger initiative to bring city facilities into compliance with the ADA. First year Public Works efforts are aimed at installing truncated domes at various locations throughout the city.

Capital Improvement Project Priorities

1. **CIP 1127  SE 272nd Street between Jenkins Creek and 185th Place SE**

This project is to widen and reconstruct a portion of SE 272nd Street between Jenkins Creek and 185th Place SE. This project will include the crossing of Jenkins Creek with a new structure for the stream, widening the street from 2-lanes to 5-lanes including curb and gutter, 8’ sidewalks, access control features, landscaping and provisions for u-turns.

2. **CIP 1201  204th Avenue SE between SE 272nd Street SE and SE 259th Street**

The new roadway connection will provide overall benefits to the citywide street system by providing more options for vehicles traveling between SE 272nd Street and SR 18. This collector arterial will be widened to two 12-foot lanes, one 14-foot turn lane/median, and two 5-foot wide bike lanes. Each side of the roadway will also include a curb, a gutter, a 5-foot landscape buffer, and a 5-foot sidewalk.
3. **CIP 1086  164th Avenue SE between SE 264th Street and vicinity SE 269th Street**

This project will install a 5’ separated walkway on the east side of 164th Avenue SE between SE 264th Street and just south of SE 269th Street. This project will also install a drainage swale with underdrainage to convey and treat surface water. Once completed, this will provide a continuous separated walkway/sidewalk from Kentwood High School to the Covington Library.

4. **CIP 1145  SE 256th Street between 168th Avenue SE and 173rd Avenue SE**

This project replaces the culvert crossing over Little Soos Creek and widens SE 256th to 5 lanes. The project includes curb, gutter, 8’ sidewalk, landscaping, bike lanes, illumination and undergrounding of utilities. Project length is about 1500 feet. This project will complete a gap in our pedestrian/non-motorized transportation system.

5. **CIP 1128  SE 272nd Street between 185th Place SE and 192nd Avenue SE**

This project is to widen and reconstruct a portion of SE 272nd Street between 185th Place SE and 192nd Avenue SE. This project will widen the street from 2-lanes to 5-lanes including curb and gutter, 8’ sidewalks, access control features, landscaping and provisions for u-turns.
6. **CIP 1063 SE 272nd Street between 160th Avenue SE and 164th Avenue SE**

This project provides for design and future construction of additional turn lanes, channelization, and signal modifications. Widening SE 272nd Street will require modifications to the existing stream crossing at the intersection. Project length is 800 feet. Construct street section consistent with the existing SR 516 section including illumination, landscaping, 10’ wide sidewalks with street trees in planting wells.

7. **CIP 1056 SE 256th Street between 172nd Avenue SE and 180th Avenue SE**  
**CIP 1149 180th Avenue SE between SE 256th Street and SE Wax Road (N)**

Portions of these two larger CIP projects (see map) are being combined to provide improvements adjacent to the new fire station at SE 256th Street and 180th Avenue SE. The improvements will include widening the north side of SE 256th Street from 180th Avenue SE to 176th Avenue SE to match the section at 168th Avenue SE. The frontage along 180th Avenue SE will be widened from the intersection to Crestwood Elementary School.

8. **Town Center 1 SE 276th Street between 168th Place SE and SE Wax Road**

This is a new route; new alignment roadway that will support the Town Center vision and meet the Town Center Design Guidelines. The schedule of these projects will be primarily driven by development and may be constructed in portions.
9. **Town Center 2  171st Avenue SE (Main Street) between SE 275th Street and SE 276th Street**

This is a new route; new alignment roadway that will support the Town Center vision and meet the Town Center Design Guidelines. The schedule of these projects will be primarily driven by development and may be constructed in portions.

![Town Center 2 Map](image1)

10. **CIP 1124  185th Place SE Extension - Wax Road/180th Ave SE to SE 272nd Street**

This project connects SE Wax Road/180th Avenue SE to SE 272nd Street via a new route and alignment designated as 185th Place SE. The street section will consist of a 3-lane urban arterial standard with curb, gutter and 8’ sidewalks, landscaping strips, illumination and stormwater infrastructure. The project will also include crossing Jenkins Creek. The actual route and alignment will be determined during design.

![CIP 1124 Map](image2)
SUBJECT: CONSIDER APPOINTMENTS TO OPENINGS ON THE ARTS COMMISSION

RECOMMENDED BY: Pat Patterson, Recreation Manager

ATTACHMENTS: See Interview Schedule and applications provided separately.

PREPARED BY: Joan Michaud, Senior Deputy City Clerk

EXPLANATION:
Two position terms on the Arts Commission are due to expire on May 31, 2018 (Positions No. 5 and No. 6). The City has received one new application and one incumbent application for these positions.

The current applicants are:

<table>
<thead>
<tr>
<th>Name of Applicant</th>
<th>Resides/Works</th>
<th>Attendance Last 12 Months</th>
</tr>
</thead>
<tbody>
<tr>
<td>Ruby Shrestha (interviewed January 9)</td>
<td>Resides inside city limits</td>
<td>N/A</td>
</tr>
<tr>
<td>Ed White (interviewed May 22; current Position No. 5 &amp; chair of Arts Commission)</td>
<td>Resides inside city limits</td>
<td>100%</td>
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</table>

Current Arts Commission Rules state:

2.70.020 Membership, terms, residence requirements.
(1) Membership. The Arts Commission shall consist of seven members appointed by the City Council, two of which may be youth members who must be between the ages of 14 and 18 at the start of their terms. Up to two of the members may reside outside the City, but those outside must reside within a three-mile radius of the City limits. The remaining five members must work or reside within the City limits.

ALTERNATIVES:
Not appoint at this time and direct staff to continue to advertise for additional applicants to be considered for the open positions.

CITY COUNCIL ACTION: ___ Ordinance ___ Resolution ___ Motion ___ Other

Councilmember ____________ moves, Councilmember ____________ seconds, to appoint ____________ to fill Position No. 5 on the Arts Commission with a term expiring May 31, 2021.

Councilmember ____________ moves, Councilmember ____________ seconds, to appoint ____________ to fill Position No. 6 on the Arts Commission with a term expiring May 31, 2021.

REVIEWED BY: Recreation Manager, City Manager
SUBJECT: CONSIDER APPOINTMENT TO YOUTH COUNCIL

RECOMMENDED BY: Regan Bolli, City Manager

ATTACHMENTS:
1. Resolution No. 2016-19 Creating Youth Council
2. Resolution No. 2017-09 Establishing a Set Number of Members
3. Application provided separately.

PREPARED BY: Sharon Scott, City Clerk

EXPLANATION:
Council adopted Resolution No. 2016-19 creating a Youth Council on October 25, 2016 and amended that resolution on September 12, 2017 with Resolution No. 2017-09 to establish a set number of 15 members. The Youth Council currently consists of two adult leaders and nine youth members.

Council interviewed Summer Chisam on May 22, 2018.

ALTERNATIVES:
Not appoint at this time and direct staff to continue to advertise for additional applicants to be considered for the Youth Council.

CITY COUNCIL ACTION: _____ Ordinance _____ Resolution ______ Motion _____ Other

Councilmember __________ moves, Councilmember __________ seconds, to appoint ____________ to fill Position No. 10 on the Youth Council with a term expiring May 31, 2019.

REVIEWED BY: Recreation Specialist, City Clerk, City Manager
RESOLUTION NO. 2016-19

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF COVINGTON, KING COUNTY, WASHINGTON, ESTABLISHING A YOUTH COUNCIL

WHEREAS, it is important and beneficial to all residents of the City of Covington (the "City") to foster involvement of the community's youth in the process of government and the ideals of public service; and

WHEREAS, it is desirable to expand the City's connections to the community; and

WHEREAS, it is desirable to increase the number of volunteers who help the City achieve its goals; and

WHEREAS, it is important to obtain community input on key issues facing the City;

NOW THEREFORE, THE CITY COUNCIL OF THE CITY OF COVINGTON, WASHINGTON, hereby resolves as follows:

Section 1. Covington Youth Council Established. The Covington City Council hereby establishes the Covington Youth Council, which shall be referred to as the "Youth Council". The city manager shall designate appropriate city staff to advise and provide administrative assistance to the Youth Council leaders and members.

Section 2. Purpose. The purpose of the Youth Council shall be as follows:

2.1. Involve youth in local government.

2.2. Increase volunteerism among youth in civic affairs.

2.3. Increase communication with youth in the Covington community.

2.4. Involve youth in planning youth activities for the Covington community.

2.5. Serve as an advisory body to the City Council on matters dealing with youth in the Covington community.

Section 3. Adult Leader Positions. The Youth Council shall be guided and mentored by at least two (2) non-voting adult leaders. The adult leader positions shall be appointed and fulfilled pursuant to the following:

3.1 Appointment. Notice of Vacancies. Unless otherwise directed by the council, the city clerk's office shall advertise notice of vacant positions so that any interested and qualified individual may submit an application.
3.2 Applicant Interviews and Appointment. The city council will endeavor to interview all applicants for an available position; provided that the mayor and mayor pro tem may limit the number of applicants interviewed by the council as a whole when the gross number of applicants is so large as to be an undue burden on the council’s schedule.

- All interviews for available positions shall be scheduled at either a special or committee of the whole council meeting. For the purpose of any special or committee of the whole council meeting in which interviews are the only agenda item, the council may proceed with calling the meeting to order and conducting said interviews so long as three (3) or more council members are present.

- The council shall also interview applicants seeking reappointment for the same position, unless otherwise determined by a majority of the council.

- Appointments will be made during a regularly scheduled council meeting.

- Upon appointment, new appointees will receive a briefing by city staff regarding the duties and responsibilities of the members of the Covington Youth Council.

3.1. Appointment; Term. The City Council, by majority vote, shall appoint at least two (2) adult leaders to the Youth Council. Upon establishment of the Youth Council, all adult leader positions shall be initially appointed for a two-year term. Thereafter, upon the expiration or vacancy of an adult position, the City Council, by majority vote, shall appoint individuals to the adult leader positions in staggered-length terms to be determined by the City Council (e.g. one adult leader position assigned to a one-year term and the other adult leader position assigned to a two-year term; or, one adult leader position assigned to a two-year term and the other adult leader position assigned to a three-year term, etc.).

3.2. Removal. The City Council may remove an adult leader from their position at any time without reason upon a majority vote of the council.

Section 4. Youth Council Members. Voting members of the Youth Council shall be appointed and serve pursuant to the following:

4.1. Selection and Appointment. The city clerk’s office shall advertise notice of vacant positions so that any interested and qualified individual may submit an application. Applicants shall be interviewed by the City Council and the adult leaders. The City Council shall make the final decision on appointments.
4.2. **Member Criteria.** Youth Council members shall be between the ages of fifteen (15) and eighteen (18) at the time of selection and reside or attend school within the City of Covington or a 3-mile radius of the City of Covington city limits.

4.3. **Term.** Selected Youth Council members shall each serve for a term of one (1) year. There is no limit on the number of terms a Youth Council member may apply for and be appointed to.

4.4. **Removal.** The City Council, by majority vote, may remove a member of the Youth Council at any time without reason. The City Council may take such action only upon the recommendation of all adult leaders.

**Section 5. Organization and Rules.** The Youth Council shall recommend such rules for governing its procedures as it deems necessary or advisable to the City Council for approval and shall keep a record of its proceedings, which record shall be a public record. The Youth Council shall hold regular meetings at least once every two (2) months and, pursuant to Section 8.0 of the Covington City Council Policies and Procedures, shall comply with the requirements of the Open Public Meetings Act (RCW 42.30).

**ADOPTED** by the City Council of the City of Covington, Washington, in open and regular session this 25th day of October, 2016, and signed in authentication thereof.

**JEFF WAGNER, MAYOR**

**ATTESTED:**

Sharon Scott, City Clerk

**APPROVED AS TO FORM:**

Sara Springer, City Attorney
RESOLUTION NO. 2017-09

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF COVINGTON, KING COUNTY, WASHINGTON, AMENDING RESOLUTION NO. 2016-19, SECTION 4.3. TO ESTABLISH A SET NUMBER OF MEMBERS

WHEREAS, it is important and beneficial to all residents of the City of Covington (the “City”) to foster involvement of the community’s youth in the process of government and the ideals of public service; and

WHEREAS, it is desirable to expand the City’s connections to the community; and

WHEREAS, it is desirable to increase the number of volunteers who help the City achieve its goals; and

WHEREAS, it is important to obtain community input on key issues facing the City;

NOW THEREFORE, THE CITY COUNCIL OF THE CITY OF COVINGTON, WASHINGTON, hereby resolves as follows:

Section 1. Covington Youth Council Established. The Covington City Council hereby establishes the Covington Youth Council, which shall be referred to as the “Youth Council”. The city manager shall designate appropriate city staff to advise and provide administrative assistance to the Youth Council leaders and members.

Section 2. Purpose. The purpose of the Youth Council shall be as follows:

2.1. Involve youth in local government.

2.2. Increase volunteerism among youth in civic affairs.

2.3. Increase communication with youth in the Covington community.

2.4. Involve youth in planning youth activities for the Covington community.

2.5. Serve as an advisory body to the City Council on matters dealing with youth in the Covington community.

Section 3. Adult Leader Positions. The Youth Council shall be guided and mentored by at least two (2) non-voting adult leaders. The adult leader positions shall be appointed and fulfilled pursuant to the following:
3.1 **Appointment. Notice of Vacancies.** Unless otherwise directed by the council, the city clerk’s office shall advertise notice of vacant positions so that any interested and qualified individual may submit an application.

3.2 **Applicant Interviews and Appointment.** The city council will endeavor to interview all applicants for an available position; provided that the mayor and mayor pro tem may limit the number of applicants interviewed by the council as a whole when the gross number of applicants is so large as to be an undue burden on the council’s schedule.

- All interviews for available positions shall be scheduled at either a special or committee of the whole council meeting. For the purpose of any special or committee of the whole council meeting in which interviews are the only agenda item, the council may proceed with calling the meeting to order and conducting said interviews so long as three (3) or more council members are present.

- The council shall also interview applicants seeking reappointment for the same position, unless otherwise determined by a majority of the council.

- Appointments will be made during a regularly scheduled council meeting.

- Upon appointment, new appointees will receive a briefing by city staff regarding the duties and responsibilities of the members of the Covington Youth Council.

3.1. **Appointment; Term.** The City Council, by majority vote, shall appoint at least two (2) adult leaders to the Youth Council. Upon establishment of the Youth Council, all adult leader positions shall be initially appointed for a two-year term. Thereafter, upon the expiration or vacancy of an adult position, the City Council, by majority vote, shall appoint individuals to the adult leader positions in staggered-length terms to be determined by the City Council (e.g. one adult leader position assigned to a one-year term and the other adult leader position assigned to a two-year term; or, one adult leader position assigned to a two-year term and the other adult leader position assigned to a three-year term, etc.).

3.2. **Removal.** The City Council may remove an adult leader from their position at any time without reason upon a majority vote of the council.

**Section 4. Youth Council Members.** Voting members of the Youth Council shall be appointed and serve pursuant to the following:

4.1. **Selection and Appointment.** The city clerk’s office shall advertise notice of vacant positions so that any interested and qualified individual may submit an application.
Applicants shall be interviewed by the City Council and the adult leaders. The City Council shall make the final decision on appointments.

4.2. Member Criteria. Youth Council members shall be between the ages of fifteen (15) and eighteen (18) at the time of selection and reside or attend school within the City of Covington or a 3-mile radius of the City of Covington city limits.

4.3. Number of Members - Terms. The Covington Youth Council shall consist of a maximum of 15 members. Selected Youth Council members shall each serve for a term of one (1) year. There is no limit on the number of terms a Youth Council member may apply for and be appointed to.

4.4. Removal. The City Council, by majority vote, may remove a member of the Youth Council at any time without reason. The City Council may take such action only upon the recommendation of all adult leaders.

Section 5. Organization and Rules. The Youth Council shall recommend such rules for governing its procedures as it deems necessary or advisable to the City Council for approval and shall keep a record of its proceedings, which record shall be a public record. The Youth Council shall hold regular meetings at least once every two (2) months and, pursuant to Section 8.0 of the Covington City Council Policies and Procedures, shall comply with the requirements of the Open Public Meetings Act (RCW 42.30).

ADOPTED by the City Council of the City of Covington, Washington, in open and regular session this 12th day of September 2017, and signed in authentication thereof.

JEFF WAGNER, MAYOR

ATTESTED:
Sharon Scott, City Clerk

APPROVED AS TO FORM:
Kathy Hardy, City Attorney
SUBJECT: CONSIDER RESOLUTION NAMING THE COVINGTON COMMUNITY PARK PAVILION IN HONOR OF MARGARET HARTO

RECOMMENDED BY: Ethan Newton, Parks and Recreation Director

ATTACHMENT(S):
1. Resolution 07-34
2. Proposed Resolution
3. Design Options

PREPARED BY: Ethan Newton, Parks and Recreation Director

EXPLANATION:
The Covington Parks and Recreation Commission recommends naming the Covington Community Park pavilion in honor of Council Member Margaret Harto for the countless amount of time and resources she has dedicated towards making Covington a better place and improving the quality of life for the Covington community.

Harto was Mayor of Covington from January 2006-2016; she also served a two-year term as Mayor Pro Tem. Harto was appointed to the City Council in February 2002 and elected to a full term in 2003. She served four years as a member and chair of the City's first Youth and Family Service Commission. Harto has earned recognition as a Certified Municipal Leader from the Association of Washington Cities. Prior to her involvement with the City of Covington, Harto served in leadership positions at local, state and national levels of the Parent Teacher Association, including President of the Washington State PTA and the National PTA Board of Directors. She has been involved in the organization and operation of numerous local and regional family advocacy and human service programs including:

- South King County Health and Safety Network;
- South King County Youth Violence Prevention Committee;
- Kent Drinking Driver Task Force;
- Reach Out Covington;
- Council for At-Risk Children and Youth; and
- Kent Youth & Family Services Lighthouse.

Harto also served eight years as a member of the South Community Council for United Way of King County. Harto is a charter member of the Foothills Kiwanis Club in Covington and past Lt. Governor of Pacific Northwest Kiwanis Division 32. In 2001 she organized the first American Cancer Society "Relay For Life" for the Covington/Maple Valley/Black Diamond communities and chaired that event for three years. She currently volunteers with Friends of the Covington Library and her church.
Harto has worked as a consultant to non-profit groups in the areas of organizational infrastructure, leadership development and strategic planning. She and her husband have been residents of Covington since 1969, and raised four children in the community - all graduates of the Kent School District. Their family now includes three grand-daughters and two grandsons.

In accordance with the city’s naming policy (see attached Res. No. 07-34) the following steps have been completed:

- The name proposal was received at the February 21, 2018 Parks and Recreation Commission Meeting, after which 90-days has lapsed before the final recommendation on its adoption.
- The Parks and Recreation Commission held a public hearing at the commission’s March 21, 2018 meeting. At the same meeting, the commission passed a motion to recommend naming the pavilion in honor of Margaret Harto. The commission’s recommendation was reported to council at the March 27, 2018 council meeting during commission reports.

Three design options for the naming the pavilion are attached. The Parks and Recreation Commission will consider these design option at the commission’s May 16, 2018 meeting. The commissions preferred design option will be shared with the council on May 22, 2018.

The proposal to name the pavilion in Covington Community Park after Margaret Harto is being brought forward to the council for final consideration with the attached resolution. If the council chooses to name the pavilion in honor of Margaret Harto, please provide staff direction on preference for design.

ALTERNATIVES:
1. Pass a resolution to name the Covington Community Park pavilion in honor of Margaret Harto and provide staff direction on design.
2. Choose not to pass the resolution and not name the pavilion.

FISCAL IMPACT:
The three design options are estimated to cost in the range $4,500 to $6,000. There is available funding in the project budget for any of the three designs.

CITY COUNCIL ACTION:    ___Ornance  ___Resolution  ___Motion  ___Other

Council member _________ moves, Council member ___________ seconds, to pass a resolution, in substantial form as presented, to name the pavilion in Covington Community Park after Margaret Harto.

REVIEWED BY:  Finance Director, City Attorney, City Manager
ATTACHMENT 1

RESOLUTION NO. 07-34

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF COVINGTON, KING COUNTY, WASHINGTON ADOPTING POLICIES FOR NAMING CITY PARKS AND OTHER CITY FACILITIES

Whereas, the City Council wishes to have an established policy on the naming of City parks and other public facilities so that appropriate names are chosen with the proper amount of public input and time; now, therefore

BE IT RESOLVED by the City Council of the City of Covington, King County, Washington, as follows:

Section 1. The policy regarding the naming of public parks, recreational areas and other public facilities is hereby adopted in the form as attached hereto as Exhibit "A".

PASSED in open and regular session on this 10th day of July, 2007.

Margaret Harto
MAYOR MARGARET HARTO

Attested:

Jackie R. Cronk, City Clerk

APPROVED AS TO FORM:

Bruce Disend, City Attorney
CITY OF COVINGTON
WASHINGTON

Parks, Recreation and Public Facilities Naming Policy

1.0 Purpose

1.1 The purpose of this policy is to outline the procedures and criteria for the official naming of parks, recreation and public facilities.

2.0 General Considerations

2.1 The naming of parks and recreation facilities should be approached with caution, patience and deliberation.

2.1 A name, once adopted, will be bestowed with the intention that it will be permanent.

2.2 In the event a name change for a facility is sought, the City Council will delay a final decision for ninety days (90) after its initial consideration of the change. Such a change will follow the process of Sections 3.0 and 4.0.

3.0 Procedures

3.1 Suggestions for names for any park, recreation and public facility will be solicited from neighborhood residents, citizens, employees, and/or organizations. All suggestions, solicited or not, will be recorded and forwarded to the Parks Commission for review and consideration.

3.2 The Parks Commission, following such review and consideration of a Public Hearing, will recommend a name.

3.3 Selected name will be forwarded to the Covington City Council for final action.
3.4 Following adoption of the park, recreation, or facility name, the Parks Commission will request action for the City to identify the facility with appropriate signage, specifying the name.

4.0 Criteria

4.1 Existing facility names in the park system will be reviewed to avoid duplication, confusion, similarity, and/or inappropriateness.

4.2 In naming a facility or park the following criteria will be used:
   4.2.1 Neighborhood or geographical identification (e.g. Covington Firs, Timberlane).
   4.2.2 A natural or geological feature (e.g., Jenkins Creek).
   4.2.3 Historical or Cultural Significance
   4.2.4 Names of persons

4.3 Facilities named for living persons will generally be avoided, except under consideration when an individual was instrumental in the acquisition of park acreage or public property, whose name is of historical significance to the area, or has otherwise provided substantial public service to the citizens of Covington.

4.4 In circumstances where the selection of a name for a park, recreation or public facility considers a person's name, there shall be a time lapse of at least ninety days (90) between receipt of a name proposal and the final recommendation on its adoption.
RESOLUTION NO. 2018-07

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF COVINGTON, KING COUNTY, WASHINGTON, NAMING THE COVINGTON COMMUNITY PARK PAVILION IN HONOR OF MARGARET HARTO.

WHEREAS, Margaret Harto has devoted substantial time and resources into making Covington a better place; and

WHEREAS, the public service of Margaret Harto has improved the quality of life of the Covington community,

NOW THEREFORE, BE IT RESOLVED by the City Council of the City of Covington, King County, Washington, that the pavilion in Covington Community Park shall be named the “Margaret Harto Pavilion” in her honor for the great service she has provided to the Covington community.

ADOPTED in open and regular session on this 22nd day of May 2018, and signed in authentication thereof.

_____________________________
Mayor Jeff Wagner

ATTESTED:

_____________________________
Sharon Scott, City Clerk

APPROVED AS TO FORM:

_____________________________
Kathy Hardy, City Attorney
OPTION 1 - EAST ELEVATION

NEW CAST ALUM DIMENSIONAL LETTER SIGNAGE:
1. COPY AS SHOWN
2. FONT HT = 12"
3. FONT STYLE = TBD
4. COLOR = MILL ALUMINUM
5. MOUNT = PIN-MOUNTED ON STAND-OFFS TO FASCIA STEEL

OPTION 2 - WEST ELEVATION

NEW STEEL PLATE DIMENSIONAL LETTER SIGNAGE, PAINT (SPECIAL COATING):
1. COPY AS SHOWN
2. FONT HT = 12"-1/8"
3. FONT STYLE = TBD
4. COLOR = BLACK TO MATCH STEEL
5. MOUNT = WELDED TO TOP FLANGE OF C-CHANNEL

MARGARET HARTO PAVILLION

MARGARET HARTO PAVILLION

COVINGTON COMMUNITY PARK - PHASE 2
STAGE NAMING OPTIONS

CONCEPTUAL
OPTION 3

NOTES:

1. INSTALL PAINTED S BEAM TO MATCH ENTRY SIGNAGE (S10 X 25.4 X 8") WITH 4" +/- HEIGHT LETTERS CUT THROUGH BEAM.
2. WELD BEAM TO 4X4 HSS POSTS SET INTO CONCRETE FOOTINGS - SET BACK FROM SITE WALL 30" - 36".
3. A's, P's AND O's WILL REQUIRE ATTACHMENTS FOR CENTER CUT OUTS OF LETTERS.

PAVILION EAST ELEVATION WITH DEDICATION SIGN

1/4" = 1' - 0"

COVINGTON COMMUNITY PARK
Phase 2
SUBJECT:  CONSIDER AWARDING CONSTRUCTION CONTRACT FOR COVINGTON AQUATIC CENTER – FALL PROTECTION PROJECT

RECOMMENDED BY:  Ethan Newton, Parks and Recreation Director

ATTACHMENT(S):
1. Invitation to Bid
2. Bid Summary
3. Agreement with Oak Hills Construction, LLC

PREPARED BY:  Ethan Newton, Parks and Recreation Director

EXPLANATION: On April 6, 2018 and April 13, 2018, the city advertised an invitation for the Covington Aquatic Center – Fall Protection Project (“Project”). Bid openings for the Project occurred on April 30th, 2018.

Work under this contract will include, but not be limited to furnishing and installing fall protection at the Covington Aquatic Center (18230 SE 240th St., Covington, WA 98042) as outlined in the project drawings and specifications. Components of the project include installation of a fall protection system for the roof, a fall protection system for the pool (when drained), a ladder for the pool filter/surge tank, and handrails for the entry stairs.

During the bidding process, the city issued two addendums to clarify bid documents and to respond to bidder inquiries. Three bids were received by the city ranging from $242,424.85 to $259,583.65. The architect’s estimate for the Project was $280,000. The lowest responsive and responsible bid was submitted by Oak Hills Construction, LLC in the amount of $242,424.85.

The 2018 approved city budget for this project is $199,250 (this includes all costs, such as design, permitting, taxes, etc.) based upon information available at the time of budget development. It was after the city budget was developed and approved that the city learned that the architect’s estimate for the project was determined to be $280,000. Given that this project is a safety-oriented project to correct items identified in an AWC safety audit, it is recommended to proceed with the project and to make a budget adjustment, if the city does not experience savings in other areas of the budget to offset the shortfall in allocated funds.

Given that a qualifying bid was received for this safety-oriented project, staff’s recommendation to council is to award the contract for the Project to Oak Hills Construction, LLC in the amount of $242,424.85.

ALTERNATIVES:
1. Reject all bids and rebid the Project, which would delay the Project.
2. Reject all bids and choose not to proceed with the Project.
FISCAL IMPACT:
This project has a budget of $199,250 and was approved as part of the 2018 operating budget. This contract for $242,424.85 will utilize these funds. Any shortfall in allocated funds will require an offset in other areas of the budget or a budget adjustment.

CITY COUNCIL ACTION:  ____Ordinance  ____Resolution  ___X_Motion  ____Other

Council member ________ moves, Council member ________ seconds, to award the contract for the Covington Aquatic Center – Fall Protection Project to Oak Hills Construction, LLC as the lowest responsive and responsible bidder in the amount of $242,424.85 and to authorize the City Manager to execute an agreement with Oak Hills Construction, LLC for the same.

REVIEWED BY:  Finance Director, City Attorney, City Manager
INVITATION TO BID
CITY OF COVINGTON
DEPARTMENT OF PARKS AND RECREATION
COVINGTON AQUATIC CENTER - FALL PROTECTION

MANDATORY PRE-BID MEETING: Thursday, April 19, 2018, 9:00 a.m. local Pacific Time, 18230 SE 240th St., Covington, WA 98042

BID DUE DATE: Monday, April 30, 2018, 2:00 p.m. EXACTLY, local Pacific Time

INVITATION: Your firm is invited to bid on this City of Covington Parks and Recreation Department project (“Project”). Bids will be accepted by hand delivery or mail to the following addresses:

By hand delivery: City of Covington, 16720 SE 271st St. #100, Covington, WA 98042, Reception Desk.
By mail: City of Covington, Department of Parks and Recreation, 16720 SE 271st St. #100, Covington, WA 98042

Bids submitted by mail or hand delivery must identify the Bidder’s name and be labeled:
Attention: Ethan Newton

COVINGTON AQUATIC CENTER - FALL PROTECTION

BID DUE DATE: Bids are due no later than Tuesday, April 30, 2018, 2:00 p.m. EXACTLY, local Pacific Time, and will be opened and publicly read aloud immediately at the deadline listed above. Any proposals received after the above stated time of opening will not be considered. It is the sole responsibility of the Bidder to deliver the bid to the designated place by the designated time. Oral, telephonic, faxed, emailed, or telegraphic bids are invalid and will not receive consideration.

PROJECT DESCRIPTION: Work under this contract will include, but not be limited to furnishing and installing fall protection at the Covington Aquatic Center (18230 SE 240th St., Covington, WA 98042) as outlined in the drawings and specifications herein, for the City of Covington, through final inspection, all in accordance with the contract documents and WSDOT Standard Specifications. The work to be performed includes furnishing all labor, permits, materials, and equipment necessary for the construction of the above-referenced project, related appurtenances, and performing all work as required by the contract in accordance with the Contract Drawings, Specifications and WSDOT Standard Specifications, Instruction to Bidders, and all contents of the Project Manual, all of which are made a part hereof. The Architect’s Estimates (including tax) for the Project’s Base Bid is $280,000.

PRE-BID QUESTIONS: All pre-bid questions and clarifications shall be made in writing to Ethan Newton at enewton@covingtonwa.gov no later than 5 working days prior to bid opening. The subject line of the email must read “PREBID QUESTION” and reference the name of the Project. Answers to questions will be presented to all recipients of bid packages no later than 3 working days before bids are due.

BID BOND: All proposals shall be accompanied by a bid deposit in certified check, cashier’s check, or surety bond in the amount equal to at least five percent (5%) of the amount of the proposal. The check shall be made payable to the City of Covington. Should the successful bidder fail to enter into the contract and furnish satisfactory Performance Bond within the time stated in the specifications, the proposal deposit will be forfeited to the City of Covington.
REJECTION OF BID: The City of Covington reserves the right to reject any and all bids, and to waive irregularities in the bid or in the bidding. No Bidder may withdraw its proposal after the hour set for the opening thereof, or before award of contract, unless the award is delayed for a period exceeding sixty (60) days.

TIME OF COMPLETION: The successful Bidder will be required to fully complete all work in all respects within 120 calendar days from the date written in the notice to proceed. Notice to Proceed (NTP) is intended to be issued following approval by City Council on Tuesday, May 22, 2018.

BID DOCUMENTS: Obtaining Bid Documents:

1. Free of Charge: Access to project bid documents (plans, specifications, addenda, and Bidders List) is provided to Prime Bidders, Subcontractors, and Vendors by going to www.bxwa.com and clicking on "Posted Projects," "Public Works," and "City of Covington." This online plan room provides Bidders with fully usable online documents with the ability to: download, view, print, order full/partial plan sets from numerous reprographic sources, and a free online digitizer/take-off tool. It is recommended that Bidders “Register” in order to receive automatic e-mail notification of future addenda and to place themselves on the “Self-Registered Bidders List." Bidders that do not register will not be automatically notified of addenda and will need to periodically check the online plan room for addenda issued on this project. Contact Builders Exchange of Washington at (425) 258-1303 should you require assistance with access or registration.

EQUAL OPPORTUNITY: The City of Covington in accordance with Title VI of the Civil Rights Act of 1964, 78 Stat. 252, 42 USC 2000d to 2000d-4 and Title 49, Code of Federal Regulations, Department of Transportation, Subtitle A, Office of the Secretary, Part 21, Nondiscrimination in Federally-Assisted Programs of the Department of Transportation issued pursuant to such Act, hereby notifies all bidders that it will affirmatively ensure that in any contract entered into pursuant to this advertisement, disadvantaged business enterprises as defined at 49 CFR Part 26 will be afforded full opportunity to submit bids in response to this invitation and will not be discriminated against on the grounds of race, color, national origin, or sex in consideration for an award.

Dates of Publication: Covington Reporter April 6, 2018 and April 13, 2018
Daily Journal of Commerce April 6, 2018
## Bid Summary
### Covington Aquatic Center - Fall Protection
#### Bid Opening: 2:00 PM, Monday, April 30, 2018

**Architect's Estimate:** $280,000 (includes tax)

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<tr>
<th>Company Name</th>
<th>Total Base Bid Amount</th>
<th>Receipt of Addenda 1-2 (Y/N)</th>
<th>Proposal Signature Page (Y/N)</th>
<th>5% Certified Check, Cashier's Check, or Bid Bond (Y/N)</th>
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<td>Oak Hills Construction, LLC</td>
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<td>Rainproof Contracting LLC</td>
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CONTRACT AGREEMENT

THIS AGREEMENT, made and entered into this 22nd day of May, 2018 by and between THE CITY OF COVINGTON, Washington, a municipal corporation of the State of Washington, hereinafter referred to as "City" and Oak Hills Construction, LLC, hereinafter referred to as "Contractor."

RECITALS

WHEREAS, the City desires to contract with the Contractor for the City of Covington, Covington Aquatic Center – Fall Protection project; and

WHEREAS, pursuant to the invitation of the City, the Contractor did file with the City a Bid Proposal containing an offer; and

WHEREAS, the City has determined that the Contractor's offer was the lowest responsive and responsible quote submitted;

NOW THEREFORE, in consideration of the terms and conditions contained in this Agreement, the parties covenant and agree as follows:

1) The Contractor shall within the time stipulated, (to-wit: within 120 days from date of commencement hereof as required by the Contract, of which this Agreement is a component part) perform all the Scope of Work under this contract will include, but not be limited to furnishing and installing fall protection at the Covington Aquatic Center (18230 SE 240th St., Covington, WA 98042) as outlined in the plans and specifications herein, for the City of Covington, through final inspection; all in accordance with the contract documents and WSDOT Standard Specifications. The work to be performed includes furnishing all equipment, labor, materials, and permits necessary for the construction of the of the above referenced project and related appurtenances, and performing all required work in accordance with the Plans, Specifications, the current WSDOT Standard Specifications, and addenda, all of which are made a part hereof.

All the foregoing shall be timely performed, furnished, constructed, installed, and completed in strict conformity with the plans and specifications, including any and all addenda issued by the City and all other documents hereinafter enumerated, and in full compliance with all applicable codes, ordinances, and regulations of the City of Covington and any other governmental authority having jurisdiction thereover. It is further agreed and stipulated that all of said labor, materials, appliances, machines, tools, equipment, and services shall be furnished and the construction installation performed and completed to the satisfaction and the approval of the City's Parks and Recreation Director as being in such conformity with the plans, specifications, and all requirements of or arising under the Contract.

2) The aforesaid Contract, entered into by the acceptance of the Contractor's Bid Proposal and signing of this Agreement, consists of the following documents, all of which are component parts of the Contract and as fully a part thereof as if herein set out in full, and if not attached, as if hereto attached.

   a) This Agreement
   b) Bid Proposal
   c) Subcontractor List
   d) Plans
   e) Specifications
   f) Addenda, if any
3) If the Contractor refuses or fails to prosecute the work or any part thereof, with such diligence as will insure its completion within the time specified in this Contract, or any extension in writing thereof, or fails to complete said work with such time, or if the Contractor is adjudged bankrupt, or if he makes a general assignment for the benefit of his creditors, or if a receiver is appointed on account of the Contractor’s insolvency, or if he or any of his subcontractors violate any of the provisions of this Contract, the City may then serve written notice upon him and his surety of its intention to terminate the Contract. Unless within ten (10) days after the serving of such notice the violation or non-compliance ceases and satisfactory arrangement for the correction thereof is made, this Contract will, upon the expiration of said ten (10) day period, cease and terminate in every respect. In the event of any such termination, the City shall immediately serve written notice thereof upon the surety and the Contractor and the surety will have the right to take over and perform the Contract; but if the surety within thirty (30) days after the serving upon it of the notice of termination does not perform the Contract or does not commence performance within fifteen (15) days from the date of serving such notice, the City itself may take over the work under the Contract and prosecute the same to completion by any method it deems advisable, for the account and at the expense of the Contractor, and his surety is liable to the City for any excess cost or other damages occasioned the City thereby. In such event, the City, if it so elects, may, without liability for so doing, take possession of and utilize in completing the Contract such materials, machinery, appliances, equipment, plants, and other properties belonging to the Contractor as may be on site of the Project and useful therein.

4) The foregoing provisions are in addition to and not in limitation of any other rights or remedies available to the City.

5) Contractor shall defend, indemnify, and hold the City, its officers, officials, employees, agents, volunteers and assigns harmless from any and all claims, injuries, damages, losses or suits, including all legal costs and attorney fees, arising out of or in connection with the performance of this contract, except for injuries and damages caused by the sole negligence of the City.

The City’s inspection or acceptance of any of Contractor’s work when completed shall not be grounds to avoid any of these covenants of indemnification.

Should a court of competent jurisdiction determine that this contract is subject to RCW 4.24.115, then, in the event of liability for damages arising out of bodily injury to persons or damages to property caused by or resulting from the concurrent negligence of the Contractor and the City, its officers, officials, employees, agents and volunteers, the Contractor’s liability hereunder shall be only to the extent of the Contractor’s negligence.

IT IS FURTHER SPECIFICALLY AND EXPRESSLY UNDERSTOOD THAT THE INDEMNIFICATION PROVIDED HEREIN CONSTITUTES THE CONTRACTOR’S WAIVER OF IMMUNITY UNDER INDUSTRIAL INSURANCE, TITLE 51 RCW, SOLELY FOR THE PURPOSES OF THIS INDEMNIFICATION. THE PARTIES FURTHER ACKNOWLEDGE THAT THEY HAVE MUTUALLY NEGOTIATED THIS WAIVER.

The provisions of this section shall survive the expiration or termination of this contract.

6) Any notice from one party to the other party under the Contract shall be in writing and shall be dated and signed by the party giving notice or by a duly authorized representative of the party.
Any such notice shall be given by personal delivery thereof or by depositing it in the United States mail, postage prepaid, certified or registered mail.

7) The Contractor shall commence performance of the Contract no later than 10 calendar days after Contract final execution, and shall complete the full performance of the Contract not later than 120 days from the date of commencement. For each and every working day of delay after the established day of completion, the City will be damaged by a sum calculated and imposed in compliance with the most current WSDOT Standard Specifications, Section 1-08.9, Liquidated Damages (and not as a penalty, which the Contractor must pay to the City.

8) Neither the final certificate of payment nor any provision in the Contract nor partial or entire use of any installation provided for by this Contract relieves the Contractor of liability in respect to any warranties or responsibility for faulty materials or workmanship. The Contractor must remedy any defects in the work and pay for any damage to other work resulting therefrom and occurring within one (1) year from the date of final acceptance unless a longer period is specified. The City will give notice of observed defects with reasonable promptness after discovery thereof, and Contractor is obligated to take immediate steps to correct and remedy any such defect, fault, or breach at the sole cost and expense of Contractor. Additionally, all manufacturer's warranties or guarantees on electrical and mechanical equipment, consistent with those provided as customary trade practice, shall be assigned to the City at the time of Project acceptance.

9) The Contractor and each subcontractor, if any, shall submit to the City such schedules of quantities and costs, progress schedules, payrolls, reports, estimates, records, and miscellaneous data pertaining to the Contract as the City requests from time to time.

10) The Contractor shall furnish a surety bond or bonds as security for the faithful performance of the Contract, including the payment of all persons and firms performing labor on the construction project under this Contract or furnishing materials in connection with this Contract; said bond to be in the full amount of the Contract price as specified in Paragraph 11. The surety or sureties on such bond or bonds must be duly licensed as a surety in the State of Washington.

11) The total amount of this contract is the sum of $242,424.85 which includes any required Washington State Sales Tax. Payments will be made to Contractor as specified in the "WSDOT Standard Specifications" of this Contract.
APPROVED AND AGREED TO BY:

CITY OF COVINGTON, WASHINGTON                                  CONTRACTOR, WASHINGTON

By:                     By:                      

Title:  City Manager                      Title:                      

Date:                      Date:                      

Attest/Authenticated:       Approved as to Form:

___________________________       _______________________________
City Clerk       City Attorney

**Attention:**

If Contractor is a Corporation, the name of the corporation should be listed in full and both President and Secretary must sign the contract, OR if one signature is permitted by corporation by-laws, a copy of the by-laws shall be furnished to the City and made a part of the contract document.

If business is a Partnership, the full name of each partner should be listed followed by d/b/a (doing business as) and firm or trade name; any one partner may sign the contract.

If business is an individual proprietorship, the name of the owner should appear followed by d/b/a and name of the company.

END OF SECTION
SUBJECT: ORDINANCE EXTENDING COMCAST CABLE TV FRANCHISE

RECOMMENDED BY: Kathy Hardy, City Attorney

ATTACHMENT(S):
1. Ordinance extending Comcast Cable TV Franchise
2. Existing Comcast Cable TV franchise that expired June 24, 2011

PREPARED BY: Kathy Hardy, City Attorney

EXPLANATION:
Comcast Cable Communications Management, LLC has been operating their cable TV utility in Covington under a franchise that expired on June 24, 2011. The city and Comcast have been operating in good faith under the terms of that franchise since its expiration. The city and Comcast have enjoyed and fostered a good working relationship, and the franchise terms have been working for both parties. Comcast recently approached Covington and inquired about extending the current franchise an additional five years. The City Attorney consulted with two telecom/cable franchise attorneys who specialize in this area of law and who are familiar both with the city’s current franchise and with what other cities are obtaining from Comcast in their franchise terms. Cities typically pay $10,000.00 to negotiate a franchise renewal, and some cities have spent as much as $100,000.00 negotiating franchise renewals, not to mention extensive staff time. Despite this expense of time and funds, most cities are not obtaining terms more favorable than Covington’s existing franchise. The two franchise attorneys the city consulted both strongly recommended the city extend the existing franchise. In addition, Finance, Community Development, Parks and Recreation, and Public Works had no desired changes to the franchise; things are working well. For these reasons, the City Attorney is recommending that we accept Comcast’s offer to extend the existing franchise five years.

ALTERNATIVES:
1. Do not extend the franchise and direct staff to negotiate a new franchise.

FISCAL IMPACT:
There is no fiscal impact if we extend the current franchise. If we elect to negotiate a new franchise, it will likely cost $10,000.00.

CITY COUNCIL ACTION:  X Ordinance ___ Resolution ___ Motion ___ Other

   Council member __________ moves, Council member ___________ seconds, to adopt an ordinance extending the Comcast Cable TV franchise as shown in Attachment 1.

REVIEWED BY: City Manager; City Attorney; Finance Director; Public Works Director; Community Development Director; Parks and Recreation Director.
ORDINANCE NO. 03-2018

AN ORDINANCE OF THE CITY OF COVINGTON, KING COUNTY, WASHINGTON AUTHORIZING THE CITY COUNCIL TO EXTEND A CABLE TV FRANCHISE AGREEMENT WITH COMCAST CABLE COMMUNICATIONS MANAGEMENT, LLC.

WHEREAS, the City of Covington ("the City") entered into a cable TV franchise agreement with Comcast Cable Communications Management, LLC as authorized by Ordinance No. 05-06 on June 13, 2006; and

WHEREAS, pursuant to Section 3 of the above referred to agreement, the agreement is five (5) years in duration and contains a provision that it may be extended by mutual agreement; and

WHEREAS, the City and Comcast Cable Communications Management, LLC have reached a mutual agreement for a five (5) year extension.

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF COVINGTON, WASHINGTON, DO HEREBY ORDAIN AS FOLLOWS:

Section 1. That the Franchise Agreement with Comcast Cable Communications Management, LLC referred to in Ordinance No. 05-06 shall be extended for a period of five (5) years, expiring five (5) years from the effective date of this ordinance number 03-2018.

Section 2. The Franchise Agreement, which is being extended for a period of five (5) years, is attached hereto and incorporated by reference as Exhibit “1.”

Section 3. If any provision of this ordinance and/or the attached Exhibit “1” is determined to be invalid or unenforceable for any reason by federal, state, or local law, the remaining provisions of this ordinance and/or the provisions set forth in the attached Exhibit “1” will remain in force and affect.

Section 4. Upon the approval of the City Attorney, the City Clerk is authorized to make any necessary corrections to this ordinance including, but not limited to, the correction of scrivener’s/clerical errors, references, ordinance numbering, section/subsection numbers, and any reference thereto.

Section 5. Neither party waives any rights which it enjoys under law as a result of agreeing to this extension.
Section 6. This ordinance shall be in full effect on June 20, 2018, which is five (5) days after publication in the City’s newspaper of record. A summary of this ordinance may be published in lieu of publishing the ordinance in its entirety.

PASSED BY THE CITY COUNCIL OF THE CITY OF COVINGTON, WASHINGTON, at a regular meeting thereof this 12th day of June 2018.

Mayor Jeff Wagner

INTRODUCED: May 22, 2018
PASSED: June 12, 2018
PUBLISHED: June 15, 2018
EFFECTIVE: June 20, 2018

ATTESTED:

Sharon Scott, City Clerk

APPROVED AS TO FORM:

Kathy Hardy, City Attorney

ACCEPTED this _____ day of ________, 2018 subject to applicable federal, state and local law.

Comcast Cable Communications Management, LLC
By: _______________________
Amy Lynch-Vice President-Washington Region
Franchise Agreement

Between

The City of Covington
&

Comcast of Washington IV, Inc.
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ORDINANCE NO. 05-06

AN ORDINANCE OF THE CITY OF COVINGTON, WASHINGTON GRANTING A FIVE (5) YEAR FRANCHISE TO PROVIDE CABLE TELEVISION SERVICE WITHIN THE CITY OF COVINGTON TO COMCAST OF WASHINGTON IV, INC. (FORMERLY TCI CABLEVISION OF WASHINGTON, INC.); SETTING FORTH THE TERMS AND CONDITIONS OF SAID SERVICE, ESTABLISHING DAMAGES, AND FIXING AN EFFECTIVE DATE.

WHEREAS, Comcast of Washington IV, Inc. has been operating a Cable Television System within the City pursuant to an existing cable television Franchise; and

WHEREAS, the Comcast of Washington IV, Inc. has requested that its current cable Franchise be renewed following the expiration of its current Franchise; and

WHEREAS, the City has analyzed and considered the technical ability, financial condition, legal qualification, and general character of Comcast of Washington IV, Inc. and has determined that it is in the best interest of the City and its residents to renew the cable Franchise; and

WHEREAS, Comcast of Washington IV, Inc. and the City have agreed to be bound by the conditions hereinafter set forth; now therefore:
City of Covington / Comcast Franchise Ordinance

Section 1: Definitions.

A. "Abandonment" means the disconnection by the Operator of specific Facilities from the Cable System.

B. "Activated" means the status of any capacity or part of the Cable System in which any Cable Service requiring the use of that capacity or part is available without further Installation of Cable System equipment other than Subscriber premises equipment, whether hardware or software.

C. "Affiliate" when used in connection with the Operator, means any Person who owns or controls, is owned or controlled by, or is under common ownership or control with, the Operator.

D. "Applicant" means any Person who files an application for an initial franchise to provide Cable Services within the City.

E. "Bad Debt" means amounts lawfully billed to a Subscriber and owed by the Subscriber for Cable Service and accrued as revenues on the books of the Operator, but not collected after reasonable efforts have been made by the Operator to collect the charges.

F. "Basic Service" means any Cable Service Tier that includes, at a minimum, the retransmission of local television Broadcast Signals.

G. "Bi-Directional" means that the Cable System is capable of providing both Upstream and Downstream transmissions.

H. "Broadcast Signal" means a television or radio signal transmitted over the air to a wide geographic audience, and received by a Cable System by antenna, microwave, satellite dishes or any other means.
City of Covington / Comcast Franchise Ordinance


J. "Cable Operator" means any Person or groups of Persons, including the Operator, who provide(s) Cable Service over a Cable System and directly or through one or more Affiliates owns a significant interest in such Cable System or who otherwise control(s) or is (are) responsible for, through any arrangement, the management and operation of such a Cable System in the City.

K. "Cable Service" means the one-way transmission to Subscribers of video programming or other programming service, and Subscriber interaction, if any, which is required for the selection or use of such video programming or other programming service.

L. "Cable System" has the meaning specified in Section 602 of the Cable Act. When used herein, the term "Cable System" shall refer to the Operator's Cable System in the Franchise Area.

M. "Channel" means a portion of the frequency band capable of carrying a video programming service or combination of video programming services whether by analog or digital signal.

N. "City" is the City of Covington, a city of the State of Washington, existing pursuant to the Washington State Constitution, and the laws of the State of Washington.

O. "Council" means the Council of the City of Covington or any future board constituting the legislative body of the City of Covington.

P. "Downstream" means carrying a transmission from the Headend to remote points on the Cable System or to Interconnection points on the Cable System.
City of Covington / Comcast Franchise Ordinance

Q. “Emergency” means a condition of imminent danger to the health, safety, and welfare of property or Persons located within the City including, without limitation, damage to Persons or property from natural consequences, such as storms, earthquakes, riots or wars.

R. “Expanded Basic Service” means the Tier of optional video programming services, which is the level of Cable Service received by most Subscribers above Basic Service, and does not include Premium Services.

S. “Facilities” means the component parts of the Cable System, including but not limited to coaxial cable, fiber-optic cable, amplifiers, taps, connectors, power supplies, electronics, towers, antennas, satellite dishes and optronics located in the Rights-of-Way.

T. “FCC” means the Federal Communications Commission.

U. “Fiber Optic” means a transmission medium of optical fiber cable, along with all associated optronics and equipment, capable of carrying Cable Service by means of electric light-wave impulses.

V. “Franchise” means the document in which this definition appears, i.e., the contractual agreement, executed between the City and the Operator, containing the specific provisions of the authorization granted, including references, specifications, requirements and other related matters.

W. “Franchise Area” means the area within the jurisdictional boundaries of the City, including any areas annexed by the City during the term of this Franchise.

X. “Franchise Fee” means any tax, fee or assessment of any kind imposed by the City or other government entity on the Operator or Subscriber, or both, solely because of their status as such. Franchise Fees shall not include any tax, fee or assessment of general applicability, capital costs required by this Franchise to be incurred by the Operator for public, educational or
governmental access and equipment, or requirements or charges incidental to the awarding or enforcing of the Franchise including payments for bonds, insurance, indemnification, penalties or liquidated damages.

Y. "Gross Revenues" means any and all revenues derived by the Operator or an Affiliate from the operation of the Cable System to provide Cable Services in the City, other than revenue from transactions related to real property, the Capital Contribution in support of PEG Access Channels, Bad Debt and any taxes on services furnished by the Operator, imposed on the Operator or any Subscriber or used by any governmental unit, agency or instrumentality and collected by the Operator for such entity. However, Gross Revenues shall include Franchise Fee revenue and revenues received by the Operator or an Affiliate from local and national advertising sales, home shopping channels, and similar sources. When the revenue of the Operator includes Gross Revenues from sources outside of the City, the Operator shall allocate the appropriate percentage of Gross Revenues by multiplying the revenues received by a fraction the numerator of which is the number of Operator's Subscribers in the City and the denominator of which is the total number of all Subscribers. The City acknowledges that Grantee shall maintain its books and records in accordance with Generally Accepted Accounting Principles and subject to applicable laws.

Z. "Headend" means the Operator's primary facility for signal reception and dissemination on its Cable System, including cables, antennas, wires, satellite dishes, monitors, lasers, switchers, modulators, processors for Broadcast Signals, and all other related equipment and Facilities.

AA. "Installation" means the connection of the Cable System by means of a cable drop from feeder cable to Subscribers' terminals.
City of Covington / Comcast Franchise Ordinance

AB. “Institutional Network” or “I-Net” means that part of a Cable System’s Facilities or capacity designated for non-commercial communications to, from and among the City, fire districts, government agencies, Schools and libraries via fiber-optic cable owned by the Operator.

AC. “Leased Access Channel” means any Channel commercially available for programming for a fee or charge by the Operator to members of the general public in accordance with 47 U.S.C. §522.

AD. “Node” means that portion of the Cable System where Fiber Optic cables and coaxial cables meet. The Node consists of an enclosure housing optronics and electronics that convert light into radio frequency (“RF”) signals and RF signals into light necessary for the delivery of Bi-Directional Cable Services to Subscribers over a hybrid fiber-coaxial cable (“HFC”) Cable System.

AE. “Operator” means Comcast of Washington IV, Inc., or its lawful successor, transferee or assignee.

AF. “Person” means any individual, sole proprietorship, partnership, association, government or corporation, or any other form of entity or organization.

AG. “Premium Service” means programming choices (such as movie Channels, pay-per-view programs, or video on demand) offered to Subscribers on a per-Channel, per-program or per-event basis.

AH. “Public, Education and Government (PEG) Access Channels” means Channel capacity designated by the Operator for the transmission of public, educational, or government access use in accordance with this Franchise and 47 U.S.C. §521.

AI. "Right of Way" shall mean the surface of, and the space above and below, any public street, highway, freeway, bridge, land path, alley, court, boulevard, sidewalk, parkway, way, lane,
public way, drive, circle, or other public right-of-way, including, but not limited to, public utility easements, dedicated utility strips, or rights-of-way dedicated for compatible uses and any temporary or permanent fixtures or improvements located thereon now or hereafter held by the City in the Service Area which the City and the Operator may use for the purpose of installing, operating, repairing, and maintaining the Cable System. Right of way shall also mean any easement now or hereafter held by the City within the Service Area for the purpose of public travel, or for utility or public service use dedicated for compatible uses, and shall include other easements or rights-of-way as shall within their proper use and meaning authorize the City and the Operator to the use thereof for the purposes of installing and operating the Operator's Cable System over poles, wires, cables, conductors, ducts, conduits, vaults, manholes, amplifiers, appliances, attachments, and other property as may be ordinarily necessary and pertinent to the Cable System.

AJ. "Route Map" means a geographic representation of the Operator's Cable System as it exists within the public Rights-of-Way and within private easements in the Franchise Area.

AK. "Subscriber" means any Person who or which elects to subscribe to, for any purpose, Cable Service provided by the Operator by means of or in connection with the Cable System and whose premises are physically wired and lawfully Activated to receive Cable Service from the Operator's Cable System.

AL. "Tier" means a group of Channels for which a single periodic subscription fee is charged.

AM. "Upstream" means carrying a transmission to the Headend from remote points on the Cable System or from Interconnection points on the Cable System.
Section 2: Franchise Granted.

A. Grant. The City of Covington (hereinafter known as the “City”) hereby grants to Comcast of Washington IV, Inc. (hereinafter known as the “Operator”) renewal of its Franchise, in accordance with the provisions of federal, state and local law, authorizing the Operator to construct, reconstruct, upgrade, maintain and operate a Cable System in, along, among, upon, across, above, over, under, or in any manner connected with the streets and public rights-of-way within the Franchise area, and for that purpose to erect, install, construct, repair, replace, reconstruct, maintain, or retain in, on, over, under, upon, across, or along any street or public right-of-way such Facilities and equipment as may be necessary or appurtenant to the Cable System.

B. Other Ordinances. This Franchise and all rights and privileges granted hereunder are subject to, and the Operator must exercise all rights in accordance with, applicable law, as amended over the Franchise term. However, this Franchise is a contract, subject only to the City’s exercise of its police powers and applicable law, and in case of any conflict between the express terms of this Franchise and any ordinance enacted by the City, this Franchise shall govern. This Franchise does not confer rights or immunities upon the Operator other than as expressly provided herein. Notwithstanding the forgoing, the Operator does not waive its right to challenge the lawfulness of a particular enactment, including on the grounds that a particular action is an unconstitutional impairment of contractual rights.

C. Police Powers. In accepting the Franchise, the Operator acknowledges that its rights hereunder are subject to the legitimate rights of the police powers of the City to enforce general ordinances necessary to protect the safety and welfare of the public and it agrees to comply with all applicable general laws enacted by the City pursuant to such power. Additionally
City of Covington / Comcast Franchise Ordinance

the Council expressly reserves unto itself all its police powers to adopt additional ordinances necessary to protect the health, safety and welfare of the general public in relation to the rights granted under this Franchise. The City reserves the right to use, occupy and enjoy any Public Rights-of-Way or other public places for any purpose, including without limitation, the construction of any water, sewer or storm drainage system, Installation of traffic signals, street lights, trees, landscaping, bicycle paths and lanes, equestrian trails, sidewalks, other pedestrian amenities, other City services, or uses not limited to the enumerated items as listed herein, and other public street improvement projects. The Council reserves the right to delegate its authority for Franchise administration to a designated agent.

Section 3: Length of Franchise.

The length of this Franchise shall be for a term of five (5) years with a possible five (5) year extension, commencing on the effective date of this Franchise, unless extended by mutual agreement, or terminated sooner as hereinafter provided.

Section 4: Franchise Area.

The Operator's service area shall be the entire incorporated area of the City, in its present incorporated form or in any later reorganized, consolidated, enlarged through annexation, or re-incorporated form ("Franchise Area").

Section 5: Franchise Fee.

The Operator shall pay to the City quarterly, on or before the thirtieth (30th) day after the end of each quarter (March, June, September, December), a Franchise Fee in a sum equal to five percent (5%) of Gross Revenues as is defined in this Franchise, for the preceding three calendar months. Revenues that are derived as a portion of a national or regional service shall be computed on a per Subscriber basis if such determination cannot be achieved by other means.
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The City may modify the Franchise fee if so permitted by federal and state law. Prior to implementation of any modification in Franchise fees the Operator may request a public hearing by the City Council to discuss said modification. Following such a hearing the City Council may require the implementation of such modification in accordance with the provisions of this Franchise, subject to applicable law.

A. Late Payment. Any quarterly Franchise fee not paid by the Operator within thirty (30) days of the end of a quarter shall bear interest at the maximum rate allowed under State law, from the date due until paid.

B. Financial Reports. Each Franchise fee payment shall be accompanied by a financial report in a form approved by the City and compatible with the Operator’s computer system, showing the basis for the Operator's computation, including, revenues received by the Operator within the City from such items as Basic Service, Expanded Basic Service, pay TV service, other applicable sources of revenue, and such other information directly related to confirming the amount of the Operator’s Gross Revenues as may be reasonably required by the City.

C. Audit by City. The City may, upon seven (7) business days advance notice, inspect the books and records of the Operator during normal business hours, for the purpose of confirming the actual Gross Revenues collected by the Operator for the previous year. In the event that such audit discloses a discrepancy of more than ten percent (10%) between the financial report submitted by the Operator with a quarterly payment and the actual quarterly Gross Revenues collected by the Operator, the Operator agrees to pay to the City for the actual cost of the audit. In the event that such audit results in a determination that additional Franchise fees are due the City, the Operator further agrees to pay interest as required for late payments on
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such additional Franchise fees computed from the date on which such additional Franchise fees were due and payable.

D. Non-Waiver. Acceptance of any Franchise fee payment by the City shall not be construed as an agreement by the City that the Franchise fee paid is in fact the correct amount, nor shall acceptance of payment by the City be construed as a release or waiver of any claim the City may have for further or additional sums payable under the provisions of this Ordinance.

E. Taxes. Nothing in this Section shall limit the Operator's obligation to pay applicable local, state, or federal taxes.

Section 6: Technical Standards.

A. Subject to federal, state and local law, the Operator shall comply with FCC rules, Part 76, Subpart K, Section 76.601 through 76.610 and as may be hereafter amended by the FCC, and, at the minimum, the following:

1. Applicable City, state and national/federal codes and ordinances;
2. Applicable Utility Joint Attachment Practices;
3. The National Electric Safety Code; ANSI C2;
4. City Utility Code Requirements;
5. City rights-of-way procedures.

If the City makes a written request to monitor the semi-annual FCC Proof of Performance Test, the City, as is its right under the pertinent FCC regulations, may, at its option, monitor the taking of such tests. The Operator shall provide a copy of the results of the system evaluation to the City upon request.

B. The Cable System must have back-up power supplies capable of providing power to the system for two hours in the event of an electrical outage.
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C. The Operator shall comply with FCC closed captioning rules and regulations.

D. The Operator must have TDD/TTY (or equivalent) equipment at the company office, and a telephone number listed on Subscriber bills, in local telephone directories and with directory assistance for such equipment, that will allow hearing impaired customers to contact the company.

Section 7: Technical Evaluation.

A. If deemed necessary by the City, the City may review the Cable System's technical performance. During such evaluations, the Operator shall fully cooperate with the City and shall provide without cost such reasonable information and documents as the City may reasonably require to determine the Operator's compliance with this Franchise.

B. If the City experiences reoccurring problems with the Operator's Cable System, the City may retain an independent consultant to conduct an analysis of the Cable System and its performance and the City's consultant shall submit a report of such analysis to the City. The City or its consultant shall provide thirty (30) days prior written notice to the Operator of any requested testing of the Cable System, in accordance with federal law. The Operator shall be required to conduct testing on the thirtieth day, counted from the date of Operator’s receipt of the request unless another date is chosen by mutual agreement, and the City has the right to be present during the test. The City shall take into consideration efforts taken by the Operator to correct deficiencies, if any. The report prepared by the consultant in response to the City's request for a System evaluation shall include:

1. A description of the technical problem in Cable System performance that precipitated the special tests;

2. Which Cable System components were tested;
3. The equipment used and procedures employed in testing;

4. The results of the testing and system evaluation, including a description of any problem(s) found;

5. The method, if any, by which specific performance problems may be resolved;

6. Any other information pertinent to said tests and analyses that may be required by the City.

C. If the tests indicate that the Cable System is not in compliance with FCC Technical Standards or the requirements of the Franchise or applicable law, the Operator shall reimburse the City for its costs involved in conducting such tests.

D. The City may inspect any of the Operator’s Cable System located in the Rights-of-Way at any reasonable time during business hours upon at least forty-eight (48) hours notice, or in case of Emergency, upon demand without prior notice.

Section 8: Cable System Architecture.

Prior to the effective date of this Franchise, the Operator completed a Franchise-required upgrade of its Cable System. Concurrently, the Operator modified its Cable System from a traditional “Christmas tree architecture” to a Hybrid Fiber Coaxial, fiber-to-the-Node system architecture, with fiber-optic cable deployed from the Headend to the Node and coaxial cable deployed from the Node to Subscribers’ homes. Active and passive devices are capable of passing a minimum of 750 MHz and capable of delivering high quality analog or digital video signals meeting, or exceeding, FCC technical quality standards. Cable system Nodes are designed for future segmentation as necessary to maximize shared bandwidth. During the term of this Franchise, the Operator agrees to maintain the Cable System in a manner consistent with, or in excess of these specifications.
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Section 9: Franchise Review and Extension.

A. Upon thirty (30) days written request of City, but no more than annually, a franchise review may be held. The City will conduct all such reviews. The purpose of the review is to ensure, with the benefit of full opportunity for public comment, that; the Operator continues to effectively serve the public in light of new developments in cable technology together with related developments in cable law and regulation; and community needs and interests, with consideration of all financial, technological and operation impacts that may affect the Operator. During evaluations under this section, Operator will fully cooperate with City and provide information and documents in accordance with this Franchise as required by City to perform the evaluation.

B. If, after completion of the review, the City and the Operator agree that the public interest will be served by modifying certain Franchise obligations and/or extending the term of the Franchise, the City, with the express agreement of the Operator, may modify the obligations and extend the term of the Franchise accordingly for a maximum of five (5) years.

C. Both the City and the Operator agree to make a full and good faith effort to participate in the review.

Section 10: Construction Standards.

The Operator shall not commence construction within the City without a valid permit issued in accordance with City codes and regulations, except as provided in this Franchise.

Section 11: Construction in Right-of-Way.

A. Right-of-Way permit. The Operator shall submit an application for, pay the permit fee, and obtain a Right-of-Way permit to perform construction work in any Public Rights-of-Way in accordance with applicable local regulations. No work, other than Emergency repairs, routine aerial maintenance and non-invasive, or standard aerial Installation, shall commence.
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without such a permit. Emergency repairs may be made immediately as provided for in Section 20 of this Agreement.

B. Issuance of Right-of-Way permit. Construction permits shall be approved by the City within forty-five (45) days of receipt of a completed permit application, so long as the permit request complies with the requirements of this Franchise, subject to further conditions, restrictions or regulations affecting the time, place and manner of performing the work. A permit application shall be considered complete when accompanied by all required information, plans and fees.

C. Display of Right-of-Way permit. The Operator shall maintain a copy of the construction permit and approved plans at the construction site, which shall be displayed and made available for inspection by the City Manager or designee at all times when construction work is occurring.

D. Construction Schedule. The Operator shall comply fully with construction timelines outlined in an approved construction permit issued by the City.

E. Locator service compliance. The Operator, before commencing any construction in the Public Right-of-Ways, shall call for location in accordance with RCW 19.122.

F. Placement. All transmission lines, equipment, and structures shall be located and placed in accordance with a valid permit so as to cause minimum interference with the rights and reasonable convenience of adjacent property owners. All Facilities shall be maintained in a safe condition, and in good order and repair. Suitable barricades, flags, lights, flares, or other devices shall be used during construction activities at such times and places as are reasonably required for the safety of the public. Any poles or other fixtures placed in any street by the Operator shall be placed in such manner as not to interfere with the usual travel on such Public Right-of-Way.
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Exact placement within the Right-of-Way shall be coordinated with the City and other utilities in order to provide for maintenance and future expansion, as well as, for the safety of the public. The City reserves the reasonable right as to final placement.

G. Interference with use of streets. When installing, locating, constructing or maintaining Facilities, the Operator shall not interfere with the use of any street to any greater extent than is necessary, and shall leave the surface of any such street in as good condition as it was prior to performance by the Operator of such work.

H. Completion of construction. The Operator shall promptly complete all construction activities so as to minimize disruption of the Right of ways and other public and private property. All construction work authorized by a permit within Right of ways, including restoration, must be completed within 90 days of the date of issuance or at such other interval as the City may specify in writing upon issuance of the permit.

I. Non-complying Work. Upon order of the City Manager or designee, all work which does not comply with the provisions of this Franchise shall be brought into compliance with this Franchise.

Section 12: Temporary Relocation or Removal.

A. Temporary Aerial Relocation or Removal at the Request of the City. Upon receipt of thirty (30) days’ prior written notice from the City, the Operator, at its own expense, and within the time period prescribed by the City, shall protect, support, temporarily disconnect, relocate, or remove any of its Facilities or property within the public Rights-of-Way when, in the judgment of the City, the same is required for reason of traffic conditions, public safety or improvements of that portion of the Rights-of-Way. In the event such relocation is required due to Emergency repairs, as deemed necessary by the City, such relocation or moving shall be
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accomplished within twenty-four (24) hours. Nothing herein shall be deemed a taking of the property of the Operator, and the Operator shall be entitled to no surcharge by reason of this provision. This Section does not apply to overhead to underground conversions, see Section 16 for terms and conditions.

B. Temporary Relocation at Request of Third Party. The Operator shall, on the request of any Person holding a building moving permit issued by the City, temporarily raise or lower its Cable System to permit the moving of such building, provided:

1. the expense of such temporary raising or lowering of the Cable System is paid by said Person, including if required by the Operator, making such payment in advance; and

2. the Operator is given not less than thirty (30) days advance written notice to arrange for such temporary wire changes.

Section 13: Documentation of Location of Facilities.

A. Route Map. Upon request, the Operator shall submit a Route Map to the City Manager or designee that complies with the following provisions:

1. Certification by an engineer employed by the Operator that the Route Map accurately depicts, based upon information available, the location of all Cable System Facilities including pedestals.

2. Depiction of drop service lines to individual Subscribers is not required.

3. Identification of Facilities as aerial or underground.

4. A list of any known existing surveys and other existing information that provide more-detailed information regarding the location of underground Facilities.
5. Submittals shall be provided in hardcopy, and if available, electronically as an AutoCAD or ArcView file.

B. Report of Underground Facilities. In order to efficiently and safely design or construct Right-of-Way improvements in a specific area, the City Manager or designee may require the Operator to submit a report of existing System Facilities for a specific area of the City that will be impacted as a result of a planned Right-of-Way improvement. Within sixty (60) days after receipt by the Operator of a request from the City Manager or designee, the Operator shall submit a report of underground System Facilities that shall comply with the following provisions:

1. Certification by an engineer employed by the Operator that the report accurately depicts the location of all underground Cable System Facilities, including drop service lines to individual Subscribers. The accuracy of this report shall be noted based upon the capability of the locating equipment used.

2. The accurate depth of the underground Facility, as may be available based upon the capability of the locating device used. The accuracy of this information shall be noted.

Submittals shall be provided in hardcopy, and if available, electronically as an AutoCAD or ArcView file.

3. The City and Operator recognize the importance of making best efforts to communicate during the planning and construction phases of Right-of-Way improvement projects. To that end, the City and Operator agree to work cooperatively and to be reasonable and timely in requesting and providing necessary information. In the event the City reasonably determines that more precise information is needed for a specific aspect of a Right-of-Way project, the Operator agrees to take the necessary steps to provide such
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precise information within sixty (60) days of receipt of request. If it is necessary for the Operator to pot-hole or excavate and restore portions of the Right-of-Way to respond to the City’s information request, the Operator agrees to take such steps at its expense, and the City agrees to waive all permitting and inspection fees therefore.

Section 14: Restoration of Improvements.

Upon completion of any construction work, the Operator shall promptly repair, but in no event longer than such time as may be established by the City during permit review, any and all public and private property, improvements, fixtures, structures and Facilities which are damaged during the course of construction, restoring the same to their like condition before construction commenced.

Section 15: Landscape Restoration.

All trees, landscaping and grounds removed, damaged or disturbed as a result of the construction, Installation, maintenance, operation, repair or replacement of the Cable System, which is done pursuant to a Franchise, shall be replaced or restored to the condition existing prior to performance of the work.

Section 16: Aerial and Underground Construction.

A. Facilities Placement. If all of the transmission and distribution facilities of all of the respective wireline service providers in any given area within the Franchise Area are or will be moved underground, the Operator shall place its Cable Systems’ distribution cables underground; provided that such underground locations are actually capable of accommodating the Operator’s cable and other equipment without significant technical degradation of the Cable System’s signal quality. In any region(s) of the Franchise Area where the transmission or distribution facilities of any of the respective wireline service providers are both aerial and underground, the Operator shall have the discretion to construct, operate, and maintain all of its
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distribution cables, or any part thereof, aerially or underground. In areas where a wireline service providers wiring is aerial, the Operator may install aerial cable, except when a property owner or resident requests underground Installation and agrees to bear the additional cost in excess of aerial Installation. The Operator shall utilize existing poles and conduit wherever possible. Nothing in this Section shall be construed to require the Operator to construct, operate, or maintain underground any ground-mounted appurtenances such as customer taps, line extenders, system passive devices, amplifiers, power supplies, fiber splices, Nodes, pedestals, or other related equipment.

B. City Driven Relocation Projects. In the case of a City project requiring utility relocation where the City hires and designates an independent contractor to accommodate and coordinate the conversion of overhead utilities within a City capital improvement project, then the Operator shall participate in the joint trenching portion of the project and Operator shall pay, to the City, Operator's portion of the traffic control and trench costs, including excavation and other associated costs, trench bedding, and backfill commensurate with Operator's proportionate share of trench usage. However, notwithstanding anything to the contrary set forth herein, if bids from the City's contractor for placement of Operator's conduits and vaults/pedestals in the supplied joint trench, in the reasonable estimation of the Operator, are not acceptable, the Operator shall have the option to utilize contractor(s) of its choice to complete the required work. The City's contractor shall coordinate with the Operator's contractor(s) to provide reasonable notice and time to complete the placement of the Operator's Facilities in the supplied joint trench.
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C. Request for Relocation By Third Party. The Operator shall, upon reasonable prior written request of any Person, relocate its wires or cables underground; provided (i) the Operator may impose a charge for all time and material costs associated with the project on any Person for the relocation of its Facilities, and such charge may be required to be paid in advance of the relocation of its wires or cables, and (ii) Operator is granted a permit for such work by the City.

D. Relocation Due To Development. In the event an underground conversion of cable Facilities is required as part of the street improvement condition(s) of a new subdivision, site development permit and/or planned development, the developer shall be responsible for all time and material costs associated with the conditioned underground conversion of cable Facilities. The Operator and/or its authorized contractor are the only agent allowed to complete the reconnection aspects of the conversion.

E. Damage to Cable System. This Franchise shall in no way limit the Operator’s right to recoup all time and material costs associated with any damage to its Cable System from the Person responsible for such damage. The City shall be liable for any damage caused to Operator’s Cable System as a result of any public works, public improvements, construction, excavation, grading, filling, or work of any kind by or on behalf of the City. This provision is not applicable in instances wherein City must cut or remove Cable System Facilities due to an Emergency or work required by the City, but not performed by the City or one of its authorized contractors.

Section 17: Additional ducts and conduits and their occupants.

A. If the Operator is constructing underground conduit for its own use, the City may require the Operator to construct excess conduit capacity in the public ways, provided that the City enters into a contract with the Operator consistent with RCW 80.36.150. The contract rates to be charged should recover the incremental costs of the Operator, (calculated as the difference
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between what the Operator would have paid for the construction of its conduit and the additional cost only of construction of the excess conduit).

B. The City shall not require that the additional conduit space be connected to the access structure and vaults of the Operator.

Section 18: Operator Occupancy of City Owned Conduit.

If the City owns or leases conduit in the path of the Operator’s proposed Facilities, provided it is technologically feasible for the Operator to occupy the conduit owned or leased by City, and further that the City shall provide the Operator with access structure and vaults connecting the additional conduit to the Operator’s Cable System to be accessed solely by the Operator, the Operator shall be required to occupy the conduit owned or leased by City in order to reduce the necessity to excavate the Public Way. The Operator shall pay to City a fee for such occupancy which shall be the cost the Operator would have expended to construct its own conduit from the outset, as certified by the Operator’s engineer and approved by the City engineer. City and Operator may agree to amortize the fee through annual payments to City over the term of the Franchise, including the time value of money.

Section 19: Notice of Work.

The City and the Operator agree that it is beneficial for both parties to be aware of any potential impacts due to future construction projects in the City. Therefore, both the City and the Operator agree to make a good faith effort to notify one another of planned construction projects that are of significant size and located in the Rights-of-Way, as soon as possible. It is hoped that by doing this, both parties may be afforded ample time to prepare and/or participate to any degree necessary.
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Section 20: Repair and Emergency Work.
In the event of an unexpected repair or Emergency, the Operator may commence such repair and Emergency response work as required under the circumstances, provided the Operator shall notify the City Manager as promptly as possible, before such repair or Emergency work or as soon thereafter as possible if advance notice is not practicable.

Section 21: Annual Reports.
Upon request of the City, the Operator shall furnish a report including the following:

1. Most recent corporate annual report;
2. A copy of the 10-K Report, if required;
3. The number of homes for which cable is available;
4. The number of Subscribers with Basic Service;
5. The number of residents subscribing to each additional Tier of Service;
6. The number of Subscribers with Premium Services;
7. The number of Pay-per-View purchases;
8. The number of Installations in the period;
9. The number of disconnects in the period;
10. Total number of miles of cable in the City;
11. A statement of its current billing practices and a sample copy of the bill format;
12. A current copy of its Subscriber work order;
13. A current copy of its Installation packet;
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14. Report on operations – Upon reasonable notice, such other reports with respect to its local operation, affairs, transactions or property as necessary to verify compliance with this Franchise and are permitted by law.

15. Total number and summary of all written complaints received by category, length of time taken to resolve and action taken to provide resolution;

16. A list of the current programming;

17. A copy of the most current Proof of Performance Report.

Section 22: Customer Service.

The Operator shall at all times be in compliance with FCC Customer Service Standards 76.309, Subpart II (Appendix “A”), as may be amended, which standards are incorporated into this Franchise by reference ("FCC Customer Service Standards"). The City reserves the right to enact and enforce any customer protection law, in accordance with federal law.

Section 23: Telephone Response.

In order that the City may be informed of the Operator's success in achieving satisfactory customer service in its telephone answering functions, the Operator shall, within thirty (30) days of the end of each calendar quarter, provide a summary report of calls handled at the Customer Sales and Service Center facility taking calls from City customers. This report will provide the following:

1. Percentage of calls answered within 30 seconds;

2. Number of calls received;

3. Average handle time;

4. Number of calls abandoned by the caller;

5. Average speed of answer;
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6. Percentage of time all lines busy.

This data will be compared to minimum customer service standards of the FCC then in effect.

Section 24: Failure to Improve Customer Service.

The City or its designee shall review telephone response and customer service information with the Operator. Failure to comply with customer service standards may result in imposition of damages in accordance with Section 42 of this Franchise.

Section 25: Periodic Meetings.

Upon request, and with thirty (30) days prior written notice from the City, the Operator shall meet with designated City officials and/or designated representative(s) to review the performance of the Operator under this Franchise for the preceding reporting period. The subjects may include, but are not limited to those items covered in the periodic reports and performance tests.

Section 26: Refunds for Outages.

After notification from a Subscriber of an outage, the Operator will credit the Subscriber's account, provided request by the Subscriber for such refund is made within thirty (30) days of the reported outage and the length of the outage was in excess of six (6) hours.

Section 27: Discounts.

The Operator shall offer a discount of thirty (30) percent from the normal charge for Basic Service to those individuals age sixty-five (65) or older or handicapped who are the legal owner or lessee/tenant of their residence provided that their combined disposable income from all sources does not exceed income levels used by the City for other utility discounts. The City or its designee shall be responsible for certifying to the Operator that such applicants conform to the specific criteria. Nothing in this section is intended to affect or change the tax benefit, if any, to the Operator of offering said discounts.
Section 28: Future PEG Access Channel.

A. For the purpose of meeting the community's need for PEG access programming, the Operator shall make available one (1) PEG Access Channel throughout the term of this Franchise. As of the effective date of this Franchise, the City is not controlling and operating said PEG Access Channel. Nothing in this Franchise prevents the City from collaborating with another neighboring community(s), serviced by the Operator, to facilitate the City's needs for PEG access programming. If such partnership is developed, the City shall request in writing, that the Operator add the partnering community's PEG Access Channel as the City's designated PEG Access Channel. However, if the City opts to control and operate their own PEG Access Channel, upon receipt of forty-five (45) days written notice, the City and Operator shall meet to discuss and mutually agree upon an implementation plan to activate said Channel.

B. The City acknowledges that the Operator’s Cable System provides additional benefits to access programming needs beyond the requirement listed above. This is accomplished through the inclusion of other regional access programming within the regional Channel line-up that services the Franchise Area. The Operator will endeavor to provide the Subscribers in the Franchise Area with the other regional access Channels so long as the programmers offer them for use on the Cable System.

Section 29: Future Capital Fee.

In the event the City and Operator decide that City specific PEG access programming and/or an I-Net is required and can be accommodated, and that a capital fee for capital expenditures is also required, then upon sixty (60) days prior notice to Subscribers, the Operator shall collect from Subscribers and pay to the City a capital fee not to exceed thirty cents ($.30) per Subscriber per month. Payment of said PEG access capital fee to the City shall follow the
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Franchise’s required Franchise Fee payment schedule. If the remaining term of this Franchise does not accommodate the full capital needs of the City, both parties may review the possibilities of extending the term of the Franchise, to potentially increase the capital contribution collected and paid to the City. These funds may be used by the City for capital expenditures related to PEG access programming and/or I-Net matters including, without limitation, for equipment purchases, construction and relocation costs. The City and Operator agree that as permitted in 47 CFR 76.985, all amounts paid as the capital fee may be treated as external costs and separately stated on Subscriber’s bills.

Section 30: Management and Control of Access Channels.

In the event of implementation for a City controlled PEG Access Channel, the City may authorize a designated access provider to control, operate, and manage the use of any and all City specific PEG access facilities, including without limitation, the operation of the City’s specific PEG Access Channel. The City or its designee may formulate rules for the operation of the City’s specific PEG Access Channel, consistent with the Franchise. Nothing herein shall prohibit the City from authorizing itself to be a designated access provider. The Operator shall cooperate with the City and designated access provider in the use of the Cable System and City’s specific access facilities for the provision of the PEG Access Channel.

Section 31: Access Reporting.

Upon the Operator’s written request, the City shall submit a report annually on the use of the City specific PEG Access Channel and capital fee. The City shall submit a report to the Operator within one hundred twenty (120) days of a written request. The Operator may review the records of the City regarding the use of the capital fee.
Section 32: Change In Technology.

In the event that after the City’s specific PEG Access Channel is activated, if the Operator makes any change in the Cable System and related equipment and Facilities or in Operator’s signal delivery technology, which directly or indirectly affects the signal quality or transmission of the City’s PEG access programming, the Operator shall at its own expense take necessary technical steps or provide necessary technical assistance, including the acquisition of all necessary equipment, and full training of City’s access personnel to ensure that the capabilities of access programming are not diminished or adversely affected by such change. For example, this provision shall apply if Basic Services on the Cable System is converted from an analog to a digital format, such that the Access Channels must also be converted to digital in order to be received by Subscribers.

Section 33: Access Channels On Lowest Level of Service.

The City’s PEG Access Channel provided to Subscribers under this Franchise shall be included by Operator, without limitation, as a part of the lowest level of service.

Section 34: Return Line.

Within sixty (60) days of request, the Operator shall provide an estimate of costs associated with the construction and activation of one return line capable of transmitting video programming to enable the distribution of the City’s specific PEG access programming to Subscribers on the City’s specific PEG Access Channel. The return line shall run from a location to be determined by the City to the Operator’s Facilities. Within one-hundred-eighty (180) days of the City’s directive, the Operator shall construct and activate a return line in accordance with the cost estimate previously provided. The City agrees to pay the costs of the return line within sixty (60) days of construction/activation and receipt of an invoice from the Operator.
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Section 35: Technical Quality.

The Operator shall maintain the City’s specific PEG Access Channel at the same level of technical quality and reliability as other Channels carried on the Cable System. The Operator shall conduct routine maintenance and shall repair and replace, if necessary, all Operator’s transmission equipment, including fiber transmitters and receivers, Channel modulators, associated cable and equipment, required to carry a quality signal from the City’s designated access providers’ facilities to the Operator’s Facilities for the City’s specific PEG Access Channel.

Section 36: Complimentary Cable Service For Public Buildings.

The Operator, upon request, shall provide without charge, a standard Installation and one outlet of Basic Cable Service to those administrative buildings owned, leased, or built by the City during the contract term, and which are occupied by the City, as well as fire station(s), police station(s), and K-12 public school(s) that are passed by its Cable System; Provided, however, that the City shall have first obtained a written right of entry agreement with said fire department, police department and/or K-12 public school district. The Cable Service provided shall not be distributed beyond the originally installed outlet without authorization from Operator. The Cable Service provided shall not be used for commercial purposes. The City shall hold the Operator harmless from any and all liability or claims arising out of the provision and use of Cable Service required by this Section. The Operator shall not be required to provide an outlet to such buildings where a non-standard Installation is required, unless the City or building owner/occupant agrees to pay the incremental cost of any necessary Cable System extension and/or non-standard Installations. A list of current locations is attached in Appendix “B”.

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Section 37: Institutional Network (I-Net).

At any time during this Franchise agreement, upon receipt of the notice, the City and the Operator shall meet to discuss the Institutional Network communications needs of the City and the ability of the Operator to accommodate them. I-Net design shall be based upon the Cable System architecture, taking into account the needs of the City and current available technology.

Section 38: Internet alternative.

In the event that the City elects to obtain access to the internet to accomplish its communications, objectives in accordance with this section, the Operator shall provide, without charge, one cable modem per City site listed in Appendix B, and one Ethernet card, and any software necessary or access to such service. There shall be no charge for unrestricted usage in accordance with the City's internet usage policies. The using facility shall be responsible for the provisions, maintenance, updating and replacement as necessary any other hardware such as a personal computers and related equipment required for access to such service, as well as the cost of installing additional outlets if so requested. Further, the Operator shall not be obligated to provide such service to any using facility unless the using facility agrees, on a form as approved by the City, to take reasonable precautions to prevent any inappropriate or illegal use of such service, and agrees to hold the Operator harmless against and from all claims, demands, costs or liabilities of every kind of nature whatsoever arising out of use of such service within the using facility, including, but not limited to, reasonable attorneys' fees and costs.

Section 39: Coverage.

Subject to the density considerations in Section 40, the City shall be provided with Cable Service in the entire Franchise area. If such a condition does not now exist in its present Franchise Area, the Operator shall complete such wiring and be in a position to offer Cable Service to all residents within six (6) months of the effective date of the Franchise. Areas
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subsequently annexed by the City shall be provided with Cable Service within six (6) months; provided, however, that said annexed areas are located within the Urban Growth Area and immediately adjacent to the City limits, as both exist on the effective date of this Franchise.

Section 40: Distribution Line Extension Charges.
The Operator shall make Cable Service available to every residential dwelling unit within the Franchise Area where the minimum density is at least thirty (30) dwelling units per strand mile in areas served by overhead facilities and sixty (60) dwelling units per strand mile in areas served by underground facilities. The Operator may elect to provide Cable Service to areas not meeting the above density standard and charge the requesting resident(s) for the line extension on a time and material cost basis.

Section 41: New Developments.
The City shall provide the Operator with written notice of the issuance of formal approvals for new subdivisions and/or planned developments within the Franchise Area requiring underground Installation and/or conversion of cable Facilities as part of the approval condition(s).

Section 42: Extraordinary Installation Charges.

A. All residents requesting Cable Service and living within one hundred twenty-five (125) feet of existing cable distribution or trunk lines shall have the cable installed at the prevailing published Installation rate.

B. In the event a request is made for service and the residence is more than one hundred twenty-five (125) feet from an existing cable distribution or trunk line, such Installation shall be completed on a time and material cost basis for that portion of the service line extending beyond one-hundred twenty-five (125) feet.
Section 43: Non-Discrimination.

A. In connection with rates, charges, Facilities, rules, regulations and in all Operator's services, programs or activities, and all Operator's hiring and employment made possible by or resulting from this Franchise, there shall be no discrimination by the Operator or by Operator's employees, agents, subcontractors or representatives against any Person because of sex, age (except minimum age and retirement provisions), race, creed, national origin, sexual orientation, marital status or the presence of any disability, including sensory, mental or physical handicaps, unless based upon a bona fide occupational qualification in relationship to hiring and employment. This requirement shall apply, but not be limited to the following: employment, advertising, layoff or termination, rates of pay or other forms of compensation, and selection for training, including apprenticeship. The Operator shall not violate any applicable federal, state or local law or regulation regarding non-discrimination.

B. Any material violation of this provision shall be grounds for termination of a Franchise by the City and, in the case of the Operator's breach, may result in ineligibility for further City agreements; provided, that nothing in this ordinance shall be deemed to prohibit the establishment of a graduated scale of charges and classified rate schedules to which any Subscriber coming within such classification would be entitled, and provided further that connection and/or service charges may be waived or modified during promotional campaigns of an Operator. The Operator will not deny access to Cable Service to any group of potential residential Subscribers because of the income of the residents of the local area in which the group resides.
Section 44: Parental Control Devices.

Upon request by a Subscriber, the Operator shall make available and may charge the Subscriber a fee not to exceed the Operator's actual cost including applicable handling fees, a device by which the Subscriber can prohibit viewing and audio reception of a particular Cable Service or video programming service.

Section 45: Devices for the Hearing Impaired.

The Operator shall comply with FCC closed captioning requirements, 47 CFR 76.606, or any successor rules and regulations thereto.

Section 46: Rates.

At least annually, in accordance with applicable law, or at any time upon written request from the City, the Operator shall file with the City a complete schedule of rates and charges. During the term of this Franchise, and in accordance with applicable law, the Operator shall provide thirty (30) days prior written notice to the City and Subscribers of any change in its published rates and charges.

Section 47: Continuity of Service.

A. It shall be the right of all Subscribers to continue receiving Cable Service so long as their financial and other obligations to the Operator are fulfilled. In this regard the Operator shall act, so far as it is within its control, to ensure that all Subscribers receive continuous uninterrupted service during the term of the Franchise.

B. In the event the Operator fails to operate a Cable System for seventy-two (72) continuous and consecutive hours without prior notification to and approval of the Council or without just cause such as an impossibility to operate the Cable System because of the occurrence of an Emergency or other circumstances reasonably beyond the Operator's control, the City may, after notice and an opportunity for the Operator to commence operations at its
option, operate the Cable System or designate someone to operate the Cable System until such time as the Operator restores Cable Service or a replacement operator is selected. If the City is required to fulfill this obligation for the Operator, the Operator shall reimburse the City for all reasonable costs in excess of revenues from the Cable System received by the City that are the result of the Operator’s failure to perform.

Section 48: Non-Compliance.

A. In the event the City believes that the Operator has not complied with the terms of the Franchise, the City shall notify the Operator in writing by certified mail. The notice shall state the specific nature of the perceived deficiency in the operation of the Cable System, or the Operator’s failure to comply with material conditions of the Franchise, and set forth a cure period of no less than thirty (30) days. During the cure period, the Operator will be allowed to rectify the alleged improper condition, to respond to the City contesting the assertion of noncompliance, or, in the event that by the nature of default such default cannot be cured within the period set by the City, initiate reasonable steps to remedy such default and notify the City of the steps being taken and the projected date that they will be completed.

B. If the Operator fails to respond to the notice of non-compliance from the City in accordance with the procedures set forth above, or in the event that the alleged default is not remedied within the cure period, or the City believes the remedy proposed by the Operator is unreasonable and the City intends to continue its investigation into the default, then the City shall schedule a public hearing. The City shall provide the Operator at least ten (10) days prior written notice of the hearing, which specifies the time, place and purpose of the hearing, and provide the Operator the opportunity to be heard.
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Section 49: Remedies.

If the City determines that the Operator is not in compliance with any material provision of the Franchise, the City may elect to:

1. Seek specific performance of any provision, which reasonably lends itself to such remedy, as an alternative to damages; or

2. Impose damages of One Hundred Dollars ($100.00) per day for every day in which the Operator is not in compliance with the Franchise, for a maximum of one hundred twenty (120) days.

3. Nothing in this Franchise shall be construed as limiting any remedies that the City may have, at law or in equity, for enforcement of this Franchise.

Section 50: Revocation Notice and Duty to Cure.

This Franchise may be revoked for a substantial default of a material provision by the Operator. In the event that the City believes that grounds exist for revocation of a Franchise, the City shall informally discuss the matter with the Operator. If these discussions do not lead to resolution of the problem, the Operator shall be given written notice of the apparent violation or noncompliance, including a short and concise statement of the nature and general facts of the violation or noncompliance, and be given thirty (30) days to furnish evidence:

1. That corrective action has been, or is being actively and expeditiously pursued, to remedy the violation or noncompliance.

2. That rebuts the alleged violation or noncompliance.

3. That it would be in the public interest to impose some damages or sanction less than revocation.
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Section 51: Hearing.

A. In the event that the Operator fails to provide evidence reasonably satisfactory to the City as provided hereunder, the City Council may seek revocation of the Franchise at a legislative hearing. The City shall give written notice of its intent to revoke the Franchise. The notice shall set forth the exact nature of the noncompliance and specify the time and place of the hearing. The Operator shall be afforded at least forty-five (45) days prior written notice of the hearing.

B. At the legislative hearing, the Operator shall be provided a fair opportunity for full participation, including the right to be represented by legal counsel, to introduce evidence, and to question witnesses. A complete verbatim record and transcript shall be made of the legislative hearing and the cost shall be shared equally between the parties. The City Council shall hear any Person interested in the revocation, and shall allow the Operator, in particular, an opportunity to state its position on the matter.

Section 52: Standards for Revocation or Lesser Sanctions.

A. Within ninety (90) days after the legislative hearing, the City Council shall determine whether to revoke the Franchise and declare that the Franchise is revoked; or establish damages consistent with Section 49, or a lesser sanction and cure, considering the nature, circumstances, extent and gravity of the violation, based upon the record of the legislative hearing.

B. If the City determines that the Franchise is to be revoked, the City shall set forth the reasons for such a decision and shall transmit a copy of the decision to the Operator. The Operator shall be bound by the City’s decision to revoke the Franchise unless it appeals the
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decision to a court of competent jurisdiction within thirty (30) days. The Operator shall be entitled to such relief as the Court may deem appropriate.

Section 53: Removal and Abandonment of Facilities.

In the event that the use of any part of the Cable System is discontinued for any reason for a continuous period of twelve (12) months, or in the event such Cable System equipment or Facilities have been installed in any Right of ways or Rights-of-Way without complying with the requirements of this Franchise or other City ordinances, or the Franchise has been terminated in accordance with this Franchise, upon receiving ten (10) business days prior written demand from the City, the Operator shall promptly remove, at its expense, such affected equipment or Facilities, other than any which the City may permit to be abandoned in place, from the Right of ways of Rights-of-Way. Said removal shall be completed within one-hundred eighty (180) days from receipt of the City's written demand. In the event of such removal, the Operator shall promptly restore the Right of ways or Rights-of-Way from which such property has been removed to a condition satisfactory to the City. Any affected equipment or Facilities of the Operator remaining in place one-hundred eighty-one (181) days after the termination or expiration of the Franchise, and upon written notice from the City, shall be considered permanently abandoned. The City may extend such time not to exceed an additional ninety (90) days with prior written request from the Operator, such request shall not be unreasonably withheld. Any equipment or Facilities of the Operator that the City allows to be abandoned in place shall be abandoned in such a manner as the City shall prescribe. Upon permanent Abandonment of the equipment or Facilities of the Operator in place, the equipment or Facilities shall become that of the City, and the Operator shall submit to the City Clerk an instrument in writing, to be approved by the City Attorney, transferring to the City the ownership of such
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equipment or Facilities. None of the foregoing affects or limits the Operator's rights to compensation for an involuntary abandonment of its equipment or Facilities under state or federal law.

Section 54: Grant of Other Franchises and PEG Access Channel Interconnection.

A. In the event the City enters into a franchise with any other Person or entity other than the Operator to use the Rights-of-Way for the purpose of constructing or operating a cable system or providing Cable Service to any part of the Franchise Area in which the Operator is providing Cable Service under the terms and conditions of this Franchise, the terms and conditions thereof, taken as a whole, shall be substantially similar and neither more favorable nor less burdensome to such Person than those contained herein in order that one cable provider not be granted an unfair competitive advantage over another.

B. In furtherance of the foregoing, the City and Operator recognize and acknowledge that other cable franchises granted by the City might contain provisions and conditions that are different than the provisions and conditions that the Operator has negotiated and accepted in this Franchise. Nothing in this Franchise shall be construed so as to require identical provisions and conditions in other cable franchises granted by the City.

C. Additionally, the Operator shall not be required by the City to interconnect PEG Access Channels with a newly authorized cable operator or a facilities based entity, legally authorized by state or federal law, who makes available for purchase by Subscribers or customers, Cable Services within the Franchise Area, without a franchise or other similar lawful authorization granted by the City.
Section 55: Franchise Non-Transferable.

A. The Cable System and this Franchise shall not be sold, assigned, transferred, leased, or disposed of, either in whole or in part, either by involuntary sale or by voluntary sale, merger, consolidation, nor shall title thereto, either legal or equitable, or any right, interest, or property therein pass to or vest in any Person or entity without the prior written consent of the City, which consent shall not be unreasonably withheld.

B. The Operator shall promptly notify the City of any actual or proposed change in, or transfer of, or acquisition by any other party of control of the Operator. The word "control" as used herein is not limited to majority stockholders but includes actual working control in whatever manner exercised. A rebuttable presumption that a transfer of control has occurred shall arise on the acquisition or accumulation by any Person or group of Persons of ten percent (10%) of the shares or the general partnership interest in the Operator, except that this sentence shall not apply in the case of a transfer to any Person or group already owning at least a ten percent (10%) interest of the shares or the general partnership interest in the Operator. Every change, transfer or acquisition of control of the Operator shall make this Franchise subject to cancellation unless and until the City shall have consented thereto.

C. The parties to the sale or transfer shall make a written request to the City for its approval of a sale or transfer and furnish all information required by law and the City.

D. The City shall render a final written decision on the request within one-hundred twenty (120) days of the request, provided it has received all requested information. Subject to the foregoing, if the City fails to render a final decision on the request within one-hundred twenty (120) days, such request shall be deemed granted unless the requesting party and the City agree to an extension of time.
E. Within thirty (30) days of any transfer or sale, if approved or deemed granted by the City, Operator shall file with the City evidence of completion of such sale or transfer of ownership or control, certified and sworn to as correct by Operator and transferee.

F. In reviewing a request for sale or transfer, the City may inquire into the legal, technical and financial qualifications of the prospective controlling party or transferee, and Operator shall assist the City in so inquiring. The City may condition said sale or transfer upon such terms and conditions as it deems reasonably appropriate, provided, however, any such terms and conditions so attached shall be related to the legal, technical, and financial qualifications of the prospective controlling party or transferee and to the resolution of outstanding and unresolved issues of noncompliance with the terms and conditions of this Franchise by Operator.

G. The consent or approval of the City to any transfer by the Operator shall not constitute a waiver or release of any rights of the City, and any transfer shall, by its terms, be expressly subordinate to the terms and conditions of this Franchise.

H. Notwithstanding anything to the contrary in this Section, the prior approval of the City shall not be required for any sale, assignment or transfer of the Franchise or Cable System to an entity controlling, controlled by or under the same common control as Operator provided that the proposed assignee or transferee must show financial responsibility as may be determined necessary by the City and must agree in writing to comply with all provisions of the Franchise.

Section 56: Insurance.

The Operator shall maintain in full force and effect, at its own cost and expense, during the term of the Franchise, Commercial General and Auto Liability Insurance in the amount of two million dollars ($2,000,000) combined single limit for bodily injury, and property damage.
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The Operator shall provide a Certificate of Insurance designating the City as an additional insured and a copy of the amendatory endorsements, including the additional insured endorsement, evidencing the insurance requirements of the Operator before issuance of the Franchise. Such insurance shall be non cancelable except upon thirty (30) days' prior written notice to the City. The Operator's insurance coverage shall be primary insurance as respects the City. Any Insurance, self-insurance or insurance pool coverage maintained by the City shall be excess of the Operator's insurance and shall not contribute with it.

Section 57: Indemnification.

A. The Operator shall, at its sole cost and expense, indemnify, defend, and hold harmless the City, its officials, boards, commissions, duly authorized agents and employees against any and all claims, suits, causes of action, proceedings, and judgments for damage arising out of the operation and construction of the cable television system under this Franchise, except that no such requirement shall apply where such claims, suits, causes of actions, proceedings, and judgments for damage are occasioned solely by the negligence, gross negligence or intentional acts of the City or its officials, boards, commissions, agents and employees while acting on behalf of the City. These damages shall include, but not be limited to, claims made against the City by the Operator's employees from which the Operator would otherwise be immune under Title 51 RCW, penalties arising out of patent and copyright infringements, and damages arising out of any failure by the Operator to secure consent or license from the owners, authorized distributors or licensees of programs to be delivered by the Operators Cable System whether or not any act or omission complained of is authorized, allowed, or prohibited by this Franchise.

B. The City shall give the Operator written notice of any claim or of the commencement of any action, suit or other proceeding covered by the indemnity in this Section
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within fourteen (14) days of receipt. In the event any such claim arises, the City or any other indemified party shall tender the defense thereof to the Operator and the Operator shall have the obligation and duty to defend, through services of competent counsel, settle or compromise any claims arising thereunder. If the City determines that it is necessary for it to employ separate counsel, the costs for such separate counsel shall be the responsibility of the City.

Section 58: Independent Contractors.

This Franchise shall not be construed to provide that the Operator is the agent or legal representative of the City for any purpose whatsoever. The Operator is not granted any express or implied right or authority to assume or create any obligation or responsibility on behalf of or in the name of the City or to bind the City in any manner whatsoever.

Section 59: Performance Bond.

A. Within sixty (60) days of the Effective Date of this Franchise, Operator will provide a performance bond to the City, in the total sum of $250,000.00 which will remain in effect for the term of this Franchise in a form acceptable to the City. The performance bond is to ensure the faithful performance of Operator’s obligations under the Franchise including the payment by the Operator of any penalties, claims, liens, fees, or taxes due the City which arise by reason of the operation, maintenance, or construction of the Cable System within the Franchise Area, except as otherwise provided herein. In the event Operator undertakes construction, the cost of which exceeds $100,000, the City shall have the option of requesting the Operator provide and maintain, at its sole cost and expense, an additional performance bond. The amount of the bond shall not exceed one-hundred twenty percent (120%) of the cost of the work or improvements covered by the bond based on estimated costs immediately following the expiration of the bond. Operator will pay all premiums or other costs associated with
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maintaining the bond. The City may reduce the amount of the performance bond consistent with Operator’s performance of its responsibilities under this Franchise and applicable law.

B. The performance bond will be from a major financial institution or surety. The performance bond will not require the consent of the Operator prior to the collection by the City of any amounts covered by the performance bond. The City will provide to Operator reasonable written notice and opportunity to cure any alleged non-compliance of any provision of the Franchise or any penalties, claims, liens, fees or taxes due the City.

C. If the Franchise is terminated, or upon expiration or transfer of the Franchise, the City will return the original bond or sign the necessary documentation to release the bond promptly if Operator does not have any unexpired obligations with respect to right of way work and does not owe funds to the City or is not in default of a material provision of the Franchise.

Section 60: General Provisions.

A. Entire Agreement. This Franchise contains all of the agreements of the parties with respect to any matter covered or mentioned in this Franchise and no prior agreements or understandings pertaining to any such matters shall be effective for any purpose.

B. Modification. The provisions of this Franchise may be amended or added to by the mutual agreement of both of the parties. Provided, however, that such modifications shall not be effective until approved by the City Council via ordinance and such modification is accepted by the Operator.

C. Full Force and Effect. Any provision of this Franchise which is declared invalid, void or illegal by a court of competent jurisdiction shall in no way affect, impair, or invalidate any other provision hereof and such other provisions shall remain in full force and effect.
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D. Attorney Fees. If any suit or other action is instituted in connection with any controversy arising under this Franchise, the court shall determine which party shall be entitled to recover all or part of its reasonable attorneys fees, costs and expenses in connection therewith, in addition to such other relief as the court may deem proper.

E. No Waiver. Failure of the City to declare any breach or default immediately upon the occurrence thereof, or delay in taking any action in connection with, shall not waive such breach or default, but the City shall have the right to declare any such breach or default at any time. Failure of the City to declare one breach or default does not act as a waiver of the City's right to declare another breach or default.

F. Governing Law. This Franchise shall be made in and shall be governed by and interpreted in accordance with the laws of the State of Washington. Venue over any dispute arising hereunder shall be in the King County Superior Court or the United States District Court for the Western District of Washington at Seattle.

G. Notices. Any notices required to be given or permitted hereunder shall be delivered to the parties at the following addresses:

OPERATOR: Comcast of Washington IV, Inc.  
4020 Auburn Way North  
Auburn, WA 98002  
Attn: Franchise Director

CITY: City of Covington  
16720 SE 271st Street Ste. 100  
Covington, WA 98042  
Attn: City Manager

With a copy to: Comcast of Washington IV, Inc.  
PO Box 3042  
Bothell, WA 98041-3042  
Attn: Franchise Department
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Notices may be delivered personally, or deposited in the United States mail, first-class postage prepaid, to the address set forth herein, unless specifically directed otherwise herein. Any notice so posted in the United States mail shall be deemed received three (3) days after the date of mailing.

H. Captions. The respective captions of the sections of this Franchise are inserted for convenience of reference only and shall not be deemed to modify or otherwise affect in any respect any of the provisions of this Franchise.

I. Time of Essence. Time is of the essence of this Franchise and each and all of its provisions in which performance is a factor.

J. Remedies Cumulative. Subject to applicable law, any remedies provided for under the terms of this Franchise are not intended to be exclusive but shall be cumulative with all other remedies available to the City at law, in equity or by statute.

K. Force Majeure. The Operator shall not be held in default under, or in noncompliance with, the provisions of this Franchise, nor suffer any enforcement or penalty relating to noncompliance or default, where such noncompliance or alleged defaults occurred or were caused by circumstances reasonably beyond the ability of the Operator to anticipate and control. This provision includes work delays caused by waiting for utility providers to service or monitor their utility poles to which the Operator's Cable System is attached, as well as unavailability of materials and/or qualified labor to perform the work necessary.

Furthermore, the parties hereby agree that it is not the City's intention to subject the Operator to penalties, fines, forfeitures or revocation of the Franchise for violations of the Franchise where the violation was a good faith error that resulted in no or minimal negative impact on the Subscribers within the Franchise area, or where strict performance would result in
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practical difficulties and hardship to the Operator which outweigh the benefit to be derived by the City and/or Subscribers.

L. Severability. If any section, sentence, paragraph, term or provision hereof is determined to be illegal, invalid, or unconstitutional, by any court of competent jurisdiction or by any state or federal regulatory authority having jurisdiction thereof, such determination shall have no effect on the validity of any other section, sentence, paragraph, term or provision hereof, all of which will remain in full force and effect for the term of the Franchise.

Section 61: Successors or Assigns.

This Franchise, including all Appendices, shall be binding on the Operator, its heirs, successors and assigns.

Section 62: Acceptance.

This Franchise and its terms and provisions shall be unconditionally accepted by the Operator by the submission of a written instrument, executed and sworn to by a corporate officer of the Operator before a Notary Public, and filed with the City within sixty (60) days after the effective date of this Franchise. Such instrument shall evidence the unconditional acceptance of this Franchise and the promise to comply with and abide by all its provisions, terms and conditions.

Section 63: Ratification.

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

Section 64: Effective Date.

This Ordinance, being an exercise of a power specifically delegated to the City’s legislative body, is not subject to referendum, shall be in full force and effect five (5) days after its passage and publication of a summary consisting of the title.
PASSED by the City Council and approved by its Mayor this 13th day of June, 2006.

THE CITY OF COVINGTON

Margaret Harto
Margaret Harto, Mayor

Attest:

Jackie R. Cronk
Jackie R. Cronk, City Clerk

Approved as to Form:

City Attorney

June 19, 2006

Published Date

Effective Date: June 24, 2006
Appendix A

FCC Customer Service Standards

Title 47 CFR, Part 76 (Cable Television Service), Subpart H (General Operating Requirements) is amended as follows:

1. The authority citation for Part 76 is revised to read as follows:


2. Section 76.309 will be added to the Commission's Rules and will read as follows:

   Section 76.309 Customer Service Obligations

   (a) A cable franchise authority may enforce the customer service standards set forth in section (c) of this rule against cable operators. The franchise authority must provide affected cable operators ninety (90) days written notice of its intent to enforce the standards.

   (b) Nothing in this rule should be construed to prevent or prohibit:

      (1) A franchising authority and a cable operator from agreeing to customer service requirements that exceed the standards set forth in section (c) of this rule;

      (2) A franchising authority from enforcing, through the end of the franchise term, pre-existing customer service requirements that exceed the standards set forth in section (c) of this rule and are contained in current franchise agreements;

      (3) Any State or any franchising authority from enacting or enforcing any consumer protection law, to the extent not specifically preempted herein;

      (4) The establishment or enforcement of any State or municipal law or regulation concerning customer service that imposes customer service requirements that exceed, or address matters not addressed by, the standards set forth in section (c) of this rule.

   (c) Effective July 1, 1993, a cable operator shall be subject to the following customer service standards:

      (1) Cable system office hours and telephone availability:
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(A) The cable operator will maintain a local, toll-free or collect call telephone access line which will be available to its subscribers 24 hours a day, seven days a week.

(F) Trained company representatives will be available to respond to customer telephone inquiries during normal business hours.

(I) After normal business hours, the access line may be answered by a service or an automated response system, including an answering machine. Inquiries received after normal business hours must be responded to by a trained company representative on the next business day.

(B) Under normal operating conditions, telephone answer time by a customer representative, including wait time, shall not exceed thirty (30) seconds when the connection is made. If the call needs to be transferred, transfer time shall not exceed thirty (30) seconds. These standards shall be met no less than ninety (90) percent of the time under normal operating conditions, measured on a quarterly basis.

(C) The operator will not be required to acquire equipment or perform surveys to measure compliance with the telephone answering standards above unless an historical record of complaints indicates a clear failure to comply.

(D) Under normal operating conditions, the customer will receive a busy signal less than three (3) percent of the time.

(E) Customer service center and bill payment locations will be open at least during normal business hours and will be conveniently located.

(2) Installations, outages and service calls- Under normal operating conditions, each of the following four standards will be met no less than ninety five (95) percent of the time measured on a quarterly basis:

(A) Standard installations will be performed within seven (7) business days after an order has been placed. "Standard" installations are those that are located up to 125 feet from the existing distribution system.

(B) Excluding conditions beyond the control of the operator, the cable operator will begin working on "service interruptions" promptly and in no event later than 24 hours after the interruption becomes known. The cable operator must begin actions to correct other service problems the next business day after notification of the service problem.

(C) The "appointment window" alternatives for installations, service calls, and other installation activities will be either a specific time or, at maximum, a four-hour time block during normal business hours. (The operator may schedule service calls and other installation activities outside of normal business hours for the express convenience of the customer.)

(D) An operator may not cancel an appointment with a customer after the close of business on the business day prior to the scheduled appointment.

(E) If a cable operator representative is running late for an appointment with a customer and will not be able to keep the appointment as scheduled, the customer will be contacted. The appointment will be rescheduled, as necessary, at a time which is convenient for the customer.
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(3) Communications between cable operators and cable subscribers:

(A) Notifications to subscribers:

(1) The cable operator shall provide written information on each of the following areas at the time of installation of service, at least annually to all subscribers, and at any time upon request:

(i) products and services offered;

(ii) prices and options for programming and conditions of subscription to programming and other services;

(iii) installation and service maintenance policies;

(iv) instructions on how to use the cable service;

(v) channel positions of programming carried on the system; and,

(vi) billing and complaint procedures, including the address and telephone number of the local franchise authority's cable office.

(2) Customers will be notified of any changes in rates, programming services or channel positions as soon as possible through announcements on the cable system and in writing. Notice must be given to subscribers a minimum of thirty (30) days in advance of such changes if the change is within the control of the cable operator. In addition, the cable operator shall notify subscribers thirty (30) days in advance of any significant changes in the other information required by the preceding paragraph.

(B) Billing:

(i) Bills will be clear, concise and understandable. Bills must be fully itemized, with itemizations including, but not limited to, basic and premium service charges and equipment charges. Bills will also clearly delineate all activity during the billing period including optional charges, rebates and credits.

(ii) In case of a billing dispute, the cable operator must respond to a written complaint from a subscriber within thirty (30) days.

(C) Refunds- Refund checks will be issued promptly, but no later than either:

(i) the customer's next billing cycle following resolution of the request or thirty (30) days, whichever is earlier, or

(ii) the return of the equipment supplied by the cable operator if service is terminated.

(D) Credits- Credits for service will be issued no later than the customer's next billing cycle following the determination that a credit is warranted.
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(4) Definitions-

(A) Normal Business Hours- The term "normal business hours" means those hours during which most similar businesses in the community are open to serve customers. In all cases, "normal business hours" must include some evening hours at least one night per week and/or some weekend hours.

(B) Normal Operating Conditions- The term "normal operating conditions" means those service conditions which are within the control of the cable operator. Those conditions which are not within the control of the cable operator include, but are not limited to, natural disasters, civil disturbances, power outages, telephone network outages, and severe or unusual weather conditions. Those conditions which are ordinarily within the control of the cable operator include, but are not limited to, special promotions, pay-per-view events, rate increases, regular peak or seasonal demand periods, and maintenance or upgrade of the cable system.

(C) Service Interruption- The term "service interruption" means the loss of pictures or sound on one or more cable channels.
Public Buildings

A) Covington City Hall 16720 SE 271st Street, Suite 100
B) Covington Aquatic Center at Tahoma 18230 SE 240th St
DISCUSSION OF
FUTURE AGENDA TOPICS:

6:20 p.m. Tuesday, June 12, 2018 Special Meeting
Interviews for Youth Council

7:00 Tuesday, June 12, 2018 Regular Meeting

(Draft Agenda Attached)
Tuesday, June 12, 2018

CALL CITY COUNCIL REGULAR MEETING TO ORDER – approximately 7:00 p.m.

ROLL CALL/PLEDGE OF ALLEGIANCE

APPROVAL OF AGENDA

PUBLIC COMMUNICATION - NONE

PUBLIC COMMENT Speakers will state their name, address, and organization. Comments are directed to the City Council, not the audience or staff. Comments are not intended for conversation or debate and are limited to no more than four minutes per speaker. Speakers may request additional time on a future agenda as time allows. *

NOTICE to all participants: Pursuant to state law, RCW 42.17A.555, campaigning for any ballot measure or candidate in City Hall and/or during any portion of the council meeting, including the audience comment portion of the meeting, is PROHIBITED.

APPROVE CONSENT AGENDA
C-1. Minutes: May 22, 2018 Special & Regular Meeting (Scott)
C-2. Vouchers (Hendrickson)
C-3. Pass Ordinance Authorizing Five-Year Extension of Comcast Cable Franchise Agreement (Hardy)
C-4. Ratify Two Puget Sound Energy Easements for Utility Equipment at Covington Community Park (Newton)

NEW BUSINESS
1. Discuss Selection of Citizen and Honorary Citizen of the Year (Slate)
2. Consider Resolution Adopting Six-Year 2019-2024 Transportation Improvement Program (Lindskov)
3. Consider Zoning Code Amendment to Approve Setback on East Side of Wax Road (Hart)

FUTURE AGENDA ITEMS

COUNCIL/STAFF COMMENTS

PUBLIC COMMENT *See Guidelines on Public Comments above in First Public Comment Section

EXECUTIVE SESSION – if needed

ADJOURN

Americans with Disabilities Act – reasonable accommodations provided upon request a minimum of 24 hours in advance (253-480-2400).