



# Meeting Agenda

## City Council

City Hall  
601 4th Avenue E  
Olympia, WA 98501

Information: 360.753.8244

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**Tuesday, June 14, 2016**

**7:00 PM**

**Council Chambers**

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**1. ROLL CALL**

**1.A ANNOUNCEMENTS**

**1.B APPROVAL OF AGENDA**

**2. SPECIAL RECOGNITION**

**2.A** [16-0694](#) Special Recognition - Fireworks Ban Reminder

Attachments: [9.48 Weapons and Fireworks.pdf](#)

**3. PUBLIC COMMUNICATION**

*(Estimated Time: 0-30 Minutes) (Sign-up Sheets are provided in the Foyer.)*

*During this portion of the meeting, citizens may address the City Council regarding items related to City business, including items on the Agenda. In order for the City Council to maintain impartiality and the appearance of fairness in upcoming matters and to comply with Public Disclosure Law for political campaigns, speakers will not be permitted to make public comments before the Council in these three areas: (1) on agenda items for which the City Council either held a Public Hearing in the last 45 days, or will hold a Public Hearing within 45 days, or (2) where the public testimony may implicate a matter on which the City Council will be required to act in a quasi-judicial capacity, or (3) where the speaker promotes or opposes a candidate for public office or a ballot measure.*

*Individual comments are limited to three (3) minutes or less. In order to hear as many people as possible during the 30-minutes set aside for Public Communication, the City Council will refrain from commenting on individual remarks until all public comment has been taken. The City Council will allow for additional public comment to be taken at the end of the meeting for those who signed up at the beginning of the meeting and did not get an opportunity to speak during the allotted 30-minutes.*

**COUNCIL RESPONSE TO PUBLIC COMMUNICATION (Optional)**

**4. CONSENT CALENDAR**

*(Items of a Routine Nature)*

**4.A** [16-0736](#) Approval of June 7, 2016 City Council Meeting Minutes

Attachments: [Minutes](#)

**4.C** [16-0661](#) Approval of the Drinking Water State Revolving Fund (DWSRF) Loan for the Fones Road Booster Pump Station

Attachments: [Loan Contract](#)

[Project Map](#)

- 4.D [16-0662](#) Approval of the Drinking Water State Revolving Fund (DWSRF) Loan for the McAllister Wellfield Corrosion Control Facility  
*Attachments:* [Loan Contract](#)  
[Project Map- Corrosion Control Facility](#)

- 4.F [16-0702](#) Growth Management Act (GMA) Periodic Review Resolution  
*Attachments:* [GMA Update Resolution](#)  
[DEVELOPMENT CODE AMENDMENTS FOR COMPREHENSIVE PLAN](#)

**4. SECOND READINGS**

- 4.G [16-0660](#) Approval of Appropriation of Transportation Impact Fees for Right-of-Way Acquisition  
*Attachments:* [Ordinance](#)
- 4.H [16-0688](#) Approval of Ordinance Regarding Transportation Network Companies  
*Attachments:* [Ordinance](#)  
[Interlocal Agreement](#)  
[March 9 TNC Public Meeting Comments](#)

**4. FIRST READINGS**

- 4.B [16-0696](#) Approval of Amendment to OMC 9.48.160 Relating to Fireworks to Modify the Violation from Misdemeanor to a Civil Infraction  
*Attachments:* [Fireworks Penalty Ordinance.pdf](#)
- 4.E [16-0690](#) Adoption of the 2015 State-Mandated Building Code Revisions  
*Attachments:* [Ordinance](#)
- 4.I [16-0706](#) Approval of Amendment to Ordinance #7006 related to the Operating Budget  
*Attachments:* [Ordinance](#)
- 4.J [16-0707](#) Approval of Amendment to Ordinance #7007 related to the Capital Budget  
*Attachments:* [Ordinance](#)
- 4.K [16-0708](#) Approval of Amendment to Ordinance #6996 Related to Special Funds  
*Attachments:* [Ordinance](#)

**5. PUBLIC HEARING - None**

**6. OTHER BUSINESS**

- 6.A**     [16-0327](#)     Approval of Ordinance Amending Wastewater Regulations for Septic Systems

**Attachments:**   [WMP Ordinance](#)  
                          [LUEC Minutes 6-19-14](#)  
                          [UAC Letter](#)

- 6.B**     [16-0747](#)     Discussion of a Draft Ordinance Creating a Graduated Income Tax on Wage Earners in the City of Olympia

**Attachments:**   [Draft Ordinance](#)  
                          [Memo and Motion from Mayor Pro Tem to Councilmembers](#)  
                          [May 17 Administrative Challenges and Costs Presentation](#)  
                          [Opportunity for Olympia Initiative Petition](#)

**7. CONTINUED PUBLIC COMMUNICATION**

*(If needed for those who signed up earlier and did not get an opportunity to speak during the allotted 30 minutes)*

**8. REPORTS AND REFERRALS****8.A COUNCIL INTERGOVERNMENTAL/COMMITTEE REPORTS AND REFERRALS****8.B CITY MANAGER'S REPORT AND REFERRALS****9. ADJOURNMENT**

*The City of Olympia is committed to the non-discriminatory treatment of all persons in employment and the delivery of services and resources. If you require accommodation for your attendance at the City Council meeting, please contact the Council's Executive Assistant at 360.753.8244 at least 48 hours in advance of the meeting. For hearing impaired, please contact us by dialing the Washington State Relay Service at 7-1-1 or 1.800.833.6384.*



## City Council

### Special Recognition - Fireworks Ban Reminder

**Agenda Date:** 6/14/2016  
**Agenda Item Number:** 2.A  
**File Number:** 16-0694

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**Type:** recognition **Version:** 1 **Status:** Recognition

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**Title**

Special Recognition - Fireworks Ban Reminder

**Recommended Action**

**Committee Recommendation:**

Not referred to a committee.

**City Manager Recommendation:**

Receive the information. Briefing only; no action requested

**Report**

**Issue:**

Whether to receive a short educational presentation by Fire Marshal Robert Bradley on an effort to increase compliance with the City of Olympia's fireworks ban.

**Staff Contact:**

Robert Bradley, Fire Marshal, Assistant Chief  
360.753.8458

**Presenter(s):**

Robert Bradley

**Background and Analysis:**

The citizens of Olympia made it clear to the City that they supported a fireworks ban. That ban was put in place by the City Council and for the last 3 years the Fire Department has used an informational process to help as many residents as possible know about this ban.

Assistant Fire Chief, Fire Marshal, Robert Bradley will give a short presentation reminding everyone of the fireworks ban in the City as we approach the Fourth of July Holiday.

**Neighborhood/Community Interests (if known):**

Citizens supported this ban in a past informational ballot item. The City has produced fireworks ban signs for residents to display in their neighborhood. The signs are available for pick up at City Hall on a first come/first served basis while supplies last.

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**Type:** recognition **Version:** 1 **Status:** Recognition

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**Options:**

N/A

**Financial Impact:**

N/A

**Attachments:**

Chapter 9.48 Weapons and Fireworks





## Chapter 9.48 WEAPONS AND FIREWORKS

### 9.48.000 Chapter Contents

#### Sections:

- [9.48.012](#) Possession of weapons – Where prohibited.
- [9.48.140](#) Discharge of firearms prohibited.
- [9.48.160](#) Fireworks.
- [9.48.170](#) State statutes adopted by reference.

#### **9.48.012 Possession of weapons – Where prohibited** SHARE

It is unlawful for any person to enter any stadium or convention center operated by the city or other municipal corporation when he or she knowingly possesses or knowingly has under his or her control a weapon as defined in RCW [70.74.010](#)  or listed in RCW [9.41.250](#)  except that such restrictions shall not apply to (1) any pistol in the possession of a person licensed under RCW [9.41.070](#)  or exempt from the licensing requirement by RCW [9.41.060](#) ; or (2) any showing, demonstration, or lecture involving the exhibition of firearms.

(Ord. 5589 §1, 1996; Ord. 4637 §§1, 5, 1985).

#### **9.48.140 Discharge of firearms prohibited** SHARE

It is unlawful for any person to willfully discharge a firearm in any place where there is reasonable likelihood that humans, domestic animals or property will be jeopardized. This section shall not abridge the right of the individual guaranteed by Article I, Section 24 of the State Constitution to bear arms in defense of self or others.

(Ord. 5589 §2, 1996; Ord. 3957 §8(O), 1976).

#### **9.48.160 Fireworks** SHARE

A. The definitions set forth below shall govern the construction of this chapter:

"Consumer Fireworks" means any composition or device, in a finished state, containing any combustible or explosive substance for the purpose of producing a visible or audible effect by combustion, explosion, deflagration, or detonation, and not included within the definition of display fireworks or small firework devices, as set forth in this section.

"Display fireworks" means large fireworks designed primarily to produce visible or audible effects by combustion, deflagration, or detonation and includes, but is not limited to, salutes containing more than 2 grams (130 mg) of explosive materials, aerial shells containing more than 40 grams of pyrotechnic

compositions, and other display pieces which exceed the limits of explosive materials for classification as "consumer fireworks" and are classified as fireworks UN0333, UN0334, or UN0335 by the United States Department of Transportation at 49 C.F.R. Sec. 172.101 as of June 13, 2002, and including fused setpieces containing components which exceed 50 mg of salute powder.

"Fire nuisance" means anything or any act which increases, or may cause an increase of, the hazard or menace of fire to a greater degree than customarily recognized as normal by persons in the public service of preventing, suppressing, or extinguishing fire; or which may obstruct, delay, or hinder, or may become the cause of any obstruction, delay, or a hindrance to the prevention or extinguishment of fire.

"Importer" includes any person who for any purpose other than personal use:

- (1) Brings fireworks into this state or causes fireworks to be brought into this state;
- (2) Procures the delivery or receives shipments of any fireworks into this state; or
- (3) Buys or contracts to buy fireworks for shipment into this state.

"License" means a nontransferable formal authorization which the Chief of the Washington State Patrol, through the Director of Fire Protection, is authorized to issue under this chapter to allow a person to engage in the act specifically designated therein.

"Licensee" means any person issued a fireworks license in conformance with this chapter.

"Local fire official" means the chief of a local fire department or a chief fire protection officer or such other person as may be designated by the governing body of a city or county to act as a local fire official under this chapter.

"Manufacturer" includes any person who manufactures, makes, constructs, fabricates, or produces any fireworks article or device but does not include persons who assemble or fabricate sets or mechanical pieces in public displays of fireworks or persons who assemble consumer fireworks items or sets or packages containing consumer fireworks items.

"Permit" means the official authorization granted by a city or county for the purpose of establishing and maintaining a place within the jurisdiction of the city or county where fireworks are manufactured, constructed, produced, packaged, stored, sold, or exchanged and the official authorization granted by a city or county for a public display of fireworks.

"Person" includes any individual, firm, partnership, joint venture, association, concern, corporation, estate, trust, business trust, receiver, syndicate, or any other group or combination acting as a unit.

"Public display of fireworks" means an entertainment feature where the public is or could be admitted or allowed to view the display or discharge of display fireworks.

"Pyrotechnic operator" includes any individual who by experience and training has demonstrated the required skill and ability for safely setting up and discharging display fireworks.

"Retailer" includes any person who, at a fixed location or place of business, offers for sale, sells, or exchanges for consideration consumer fireworks to a consumer or user.

"Small firework devices" means those devices commonly referred to as trick and novelty devices, including such items as snakes, glowworms, trick noise makers, party poppers, snappers or pop-its, paper caps containing not more than 25/100 grams of explosive compound for each cap, trick matches or similar devices. Such term also includes combustibles used in auto burglar alarms.

"Special effects" means any combination of chemical elements or chemical compounds capable of burning independently of the oxygen of the atmosphere, and designed and intended to produce an audible, visual, mechanical, or thermal effect as an integral part of a motion picture, radio, television, theatrical, or opera production, or live entertainment.

"Wholesaler" includes any person who sells fireworks to a retailer or any other person for resale and any person who sells display fireworks to public display licensees.

B. RCW Chapter [70.77](#).

1. The following sections of RCW Chapter [70.77](#) relating to the manufacture, importation, possession, sale, discharge, display or transportation of fireworks are adopted by reference as though fully set forth in this chapter, to the extent not in conflict with the Olympia Municipal Code:

RCW <a href="#">70.77.255</a> (1)-(3)	RCW <a href="#">70.77.295</a>
.260	.401
.265	.405
.270	.410
.280	.415
.285	.420
.290	.435
	.450



.480  
.510  
.515  
.520  
.525  
.530  
.535  
.545

C. International Fire Code. The provisions of Chapter 33 of the International Fire Code as incorporated by reference in Section 16.04.020 of the Olympia Municipal Code shall be considered supplemental to the provisions of RCW Chapter 70.77 as adopted by reference in subsection B unless a conflict exists, in which case, the provisions of RCW Chapter 70.77 as adopted in subsection B shall prevail.

D. Sales, possession and discharge of fireworks.

1. Small firework devices may be sold and used at all times.
2. Consumer fireworks shall not be sold or discharged in the city.
3. The sale, use and possession of display fireworks or any other type of fireworks not otherwise regulated by Section 9.48.160 of the Olympia Municipal Code shall be unlawful unless sold, possessed or used in accordance with the provisions of Chapter 70.77 of the Revised Code of Washington.

E. Fireworks permits. Any person, firm or corporation intending to sell, possess or discharge display fireworks within the City, shall be required as a condition of such sale, possession or discharge, to secure from the City Fire Marshal a permit for such activities. The fee for such permits shall be effective for the full calendar year in which the permit is secured. The City Fire Marshal is directed to issue such permits only if the applicant is in compliance with the terms of this chapter and Chapter 70.77 of the Revised Code of Washington upon application and payment of the permit fee. For public displays the basic fee shall be twenty-five dollars (\$25) with an additional twenty-five dollars (\$25) for each hour of inspection above one hour, with a one hundred dollar (\$100) maximum fee.

F. Fireworks--Unlawful sales. Any person, firm or corporation selling consumer fireworks in the City at any time shall be guilty of a misdemeanor.

G. Fireworks--Unlawful transfer. Any person who knowingly sells, transfers or agrees to sell or transfer within the City any display fireworks to any person who is not a fireworks licensee as provided for in Chapter 70.77 of the Revised Code of Washington shall be guilty of a gross misdemeanor.

H. Fireworks--Unlawful possession or discharge. It shall be unlawful for any person, within the City of Olympia to:

1. Possess display fireworks which are not authorized to be in the possession of a licensee pursuant to Chapter [70.77](#) of the Revised Code of Washington. Possession of less than one pound of said unauthorized display fireworks, exclusive of external packaging, shall constitute a misdemeanor and possession of one pound or more of said non-authorized display fireworks, exclusive of external packaging, shall constitute a gross misdemeanor. For purposes of this subsection, the term "external packaging" means any materials that are not an integral part of the operative unit of the fireworks.
2. Discharge consumer fireworks in the City. Violation of this subsection shall constitute a misdemeanor.
3. Discharge or otherwise use any fireworks in a reckless manner which creates a substantial risk of death or serious physical injury to another person or damage to the property of another. A violation of this subsection shall constitute a gross misdemeanor.
4. To allow rubbish to accumulate in any premises in which fireworks are stored or sold or to permit a fire nuisance to exist on such premises. A violation of this subsection shall constitute a misdemeanor.

(Ord. 6792 §1, 2011; Ord. 6311 §1, 2004; Ord. 6190 §1, §2, 2002; Ord. 5362 §1, 1993; Ord. 4365 §1, 1982; Ord. 3957 §8(Q), 1976).

**9.48.170 State statutes adopted by reference** [SHARE](#)

The following sections of RCW Chapter [9.41](#), as now or hereafter amended, relating to firearms and dangerous weapons, defining crimes and prescribing penalties, are hereby adopted by reference as though fully set forth in this chapter:

RCW	9.41.010	RCW	9.41.0975	RCW	9.41.250
	9.41.050		9.41.098		9.41.260
	9.41.060		9.41.110		9.41.270
	9.41.070		9.41.120		9.41.280
	9.41.075		9.41.140		9.41.300
	9.41.090		9.41.230		9.41.800
	9.41.094		9.41.240		9.41.810

(Ord. 5589 §4, 1996).





City Hall  
601 4th Avenue E.  
Olympia, WA 98501  
360-753-8244

## City Council

### Approval of June 7, 2016 City Council Meeting Minutes

**Agenda Date:** 6/14/2016  
**Agenda Item Number:** 4.A  
**File Number:** 16-0736

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**Type:** minutes   **Version:** 1   **Status:** Consent Calendar

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**Title**

Approval of June 7, 2016 City Council Meeting Minutes



# Meeting Minutes - Draft

## City Council

City Hall  
601 4th Avenue E  
Olympia, WA 98501

Information: 360.753.8244

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**Tuesday, June 7, 2016**

**7:00 PM**

**Council Chambers**

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### 1. ROLL CALL

**Present:** 7 - Mayor Cheryl Selby, Mayor Pro Tem Nathaniel Jones, Councilmember Jessica Bateman, Councilmember Jim Cooper, Councilmember Clark Gilman, Councilmember Julie Hankins and Councilmember Jeannine Roe

### 1.A ANNOUNCEMENTS

After calling the meeting to order, Mayor Selby recessed the meeting at 7:00 p.m for 10 minutes due to disruption.

**After the meeting reconvened at 7:10 p.m., Mayor Selby moved to recess to Executive Session, seconded by Mayor Pro Tem Jones. The motions passed unanimously.**

**The motion carried by the following vote:**

**Aye:** 7 - Mayor Selby, Mayor Pro Tem Jones, Councilmember Bateman, Councilmember Cooper, Councilmember Gilman, Councilmember Hankins and Councilmember Roe

### EXECUTIVE SESSION - ADDED

[16-0734](#) Executive Session Pursuant to RCW 42.30.110(1)(b) - Real Estate Matter and RCW 42.30.110(1)(i) - Litigation Matter

The meeting recessed to Executive Session at 7:10 p.m. to discuss a Real Estate Matter and Litigation Matter. Mayor Selby announced no decisions will be made, the meeting is expected to last no longer than one hour, and the Council will reconvene immediately following the Executive Session. The City Attorney was present at the Executive Session. The Council reconvened at 8:10 p.m.

**No decisions were made.**

### 1.B APPROVAL OF AGENDA

The Council postponed the Special Recognition agenda items for a future date.

**The agenda was approved as amended.**

**2. SPECIAL RECOGNITION**

- 2.A**    [16-0711](#)        Special Recognition - Olympia Police Department Community Partner Award

**The recognition was postponed.**

- 2.B**    [16-0724](#)        Special Recognition - Hands on Children's Museum Annual Report

**The recognition was postponed.**

**3. PUBLIC COMMUNICATION**

Brian McConaghy, Chip Halsey, Jonathan Hopkins, Andrea Ahl and Mark Woody.

**COUNCIL RESPONSE TO PUBLIC COMMUNICATION (Optional)****4. CONSENT CALENDAR**

- 4.A**    [16-0664](#)        Approval of May 17, 2017 Study Session Meeting Minutes

**The minutes were approved.**

- 4.B**    [16-0665](#)        Approval of May 17, 2016 Council Meeting Minutes

**The minutes were approved.**

- 4.C**    [16-0722](#)        Bills and Payroll Certification

Payroll check numbers 88847 through 88946 and Direct Deposit transmissions: Total: \$5,940,646.63; Claim check numbers 3673202 through 3674498: Total: \$3,042,577.03.

**The decision was approved.**

- 4.D**    [16-0723](#)        Approval of Location, Time, Facilitator, and Agenda for the City Council's Mid-Year Retreat - June 11, 2016

**The decision was approved.**

- 4.E**    [15-1198](#)        Approval of Development of a Poet Laureate Program

**The decision was approved.**

- 4.F**    [16-0532](#)        Approval of Appointments to the Heritage Commission and Bicycle & Pedestrian Advisory Committee to Fill Vacancies

**The decision was approved.**

- 4.G**    [16-0623](#)        Approval to Grant Utility Easements Over City-Owned Property to

Astound Broadband, LLC

**The decision was approved.**

- 4.H [16-0686](#) Approval of Hawthorne Land Acquisition

**The contract was approved.**

- 4.I [16-0659](#) Approval of Resolution Recommending Setting Aside Right of Way for Future City Owned Ashton Woods Property

**The resolution was approved.**

- 4.J [16-0638](#) Approval of a Right-of-Way Donation Dedication Deed from Mr. Jay Kobza for the Boulevard Road and Morse-Merryman Road Roundabout Project

**The decision was approved.**

- 4.K [16-0710](#) Approval of Application for the 2016 Department of Justice Assistance Grant (JAG)

**The decision was approved.**

#### 4. SECOND READINGS

- 4.L [16-0606](#) Approval of Ordinance Amending Rezone Hearing Body

**The ordinance was adopted on second reading.**

- 4.M [16-0607](#) Approval of Ordinance Amending High-Density Corridor-1 Zoning District Text

**The ordinance was adopted on second reading.**

- 4.N [16-0642](#) Approval of Ordinance amending Olympia Municipal Code (OMC) Chapter 9.40 Relating to Offenses Against Property by Adopting by Reference Vehicle Prowling in the Second Degree Pursuant to RCW 9A.52.100, Theft Third Degree Pursuant to RCW 9A.56.050 and Possessing Stolen Property Third Degree Pursuant to RCW 9A.56.170

**The ordinance was adopted on second reading.**

- 4.O [16-0643](#) Approval of Ordinance Amending Olympia Municipal Code (OMC) Chapter 9.44 by Adopting the Crime of Minor in Possession or Consumption of Alcohol, Supplying Liquor to Minor, and Minor Exhibiting the Effects of Having Consumed Liquor Pursuant to RCW 66.44.270

**The ordinance was adopted on second reading.**

- 4.P**     [16-0644](#)     Approval of Ordinance Amending Olympia Municipal Code (OMC) Chapter 9.08 Relating to Obstructing a Public Servant or Officer and Making a False or Misleading Statement to a Public Servant

**The ordinance was adopted on second reading.**

- 4.Q**     [16-0645](#)     Approval of Ordinance Amending Olympia Municipal Code (OMC) Chapter 9.24 Relating to Crimes Against Public Decency by Adopting the Crime of Indecent Exposure Pursuant to RCW 9.88.010

**The ordinance was adopted on second reading.**

#### **4.     FIRST READINGS**

- 4.R**     [16-0660](#)     Approval of Appropriation of Transportation Impact Fees for Right-of-Way Acquisition

**The ordinance was approved on first reading and moved to second reading.**

#### **Approval of the Consent Agenda**

**Mayor Pro Tem Jones moved, seconded by Councilmember Hankins, to adopt the Consent Calendar. The motion carried by the following vote:**

**Aye:**         7 - Mayor Selby, Mayor Pro Tem Jones, Councilmember Bateman, Councilmember Cooper, Councilmember Gilman, Councilmember Hankins and Councilmember Roe

#### **5.     PUBLIC HEARING - None**

#### **6.     OTHER BUSINESS**

- 6.A**     [16-0688](#)     Approval of Ordinance and Interlocal Agreement Regarding Transportation Network Companies

Assistant City Manager Jay Burney gave a brief overview of the Transportation Network Companies ordinance and corresponding interlocal agreement. Councilmembers asked clarifying questions.

**The ordinance was approved on first reading and moved to second reading.**

- 6.B**     [16-0533](#)     Public Process for the Community Development Block Grant (CDBG) Program Year 2016 Action Plan

Community Development Block Grant (CDBG) Manager Anna Schlecht shared the General Government Committee recommendation for the CDBG Program Year 2016 Action Plan and to commence the public process. Councilmembers asked clarifying questions.

**The recommendation was approved.**



**7. CONTINUED PUBLIC COMMUNICATION****8. REPORTS AND REFERRALS****8.A COUNCIL INTERGOVERNMENTAL/COMMITTEE REPORTS AND REFERRALS**

Councilmembers reported on meetings and events attended.

**8.B CITY MANAGER'S REPORT AND REFERRALS**

City Manager Steve Hall asked for Council direction regarding a \$10,000 funding request from TOGETHER! to fund the continuation of services at the Evergreen Villages Community Center. The Council directed staff to use Council goal funds for this purpose.

**9. EXECUTIVE SESSION****9.A [16-0721](#) Executive Session Pursuant to RCW 42.30.110(1)(b) - Real Estate Matter and RCW 42.30.110(1)(i) - Litigation Matter**

The meeting recessed to Executive Session at 9:35 p.m. to discuss a Real Estate Matter and Litigation Matter. Mayor Selby announced no decisions will be made, the meeting is expected to last no longer than 20 minutes, and the Council will adjourn immediately following the Executive Session. The City Attorney was present at the Executive Session.

**No decisions were made.**

**10. ADJOURNMENT**

The meeting adjourned at 10:00 p.m.



## City Council

### Approval of Amendment to OMC 9.48.160 Relating to Fireworks to Modify the Violation from Misdemeanor to a Civil Infraction

**Agenda Date:** 6/14/2016  
**Agenda Item Number:** 4.B  
**File Number:** 16-0696

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**Type:** ordinance **Version:** 1 **Status:** 1st Reading-Consent

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#### **Title**

Approval of Amendment to OMC 9.48.160 Relating to Fireworks to Modify the Violation from Misdemeanor to a Civil Infraction

#### **Recommended Action**

##### **Committee Recommendation:**

Not referred to a committee.

##### **City Manager Recommendation:**

Move to approve the Ordinance amendment to OMC 9.48.160 on first reading and move to second reading.

#### **Report**

##### **Issue:**

Whether to approve the Ordinance amending OMC 9.48.160 relating to fireworks to change the violation from a misdemeanor to a civil infraction.

##### **Staff Contact:**

Robert Bradley, Fire Marshal, Assistant Fire Chief  
360.753.8458

##### **Presenter(s):**

Robert Bradley, Fire Marshal, Assistant Fire Chief

##### **Background and Analysis:**

The citizens of Olympia made it clear to the City that they supported a fireworks ban. The ban was put in place by the City Council using state language stating violators being subject to a misdemeanor. For the last three years the Fire and Police Departments have enforced the ban through educational intervention. Changing the violation of the ban from a Misdemeanor to a Civil Infraction gives the Olympia Police Department a more realistic tool for enforcement. Olympia Police Department is in agreement to this amendment.

##### **Neighborhood/Community Interests (if known):**

The CNA was provided with a presentation.

**Options:**

1. Approve the amendment to OMC 9.48.160 to change the violation from a misdemeanor to a civil infraction.
2. Do not approve the amendment to OMC 9.48.160 to change the violation from a misdemeanor to a civil infraction.

**Financial Impact:**

N/A

**Attachments:**

Proposed Ordinance with modifications.

Ordinance No. \_\_\_\_\_

**AN ORDINANCE OF THE CITY OF OLYMPIA, WASHINGTON, REDUCING THE PENALTY FOR THE DISCHARGE OF CONSUMER FIREWORKS IN THE CITY IN OLYMPIA AND AMENDING OLYMPIA MUNICIPAL CODE SECTION 9.48.160**

**WHEREAS**, the Olympia City Council determines it to be in the best interest of the City of Olympia to reduce the penalty for the discharge of consumer fireworks in the City from a misdemeanor to a civil infraction;

**NOW, THEREFORE, THE OLYMPIA CITY COUNCIL ORDAINS AS FOLLOWS:**

**Section 1. OMC 9.48.160 of Olympia Municipal Code Chapter 9.48 is hereby amended to read as follows:**

**9.48.160 Fireworks**

A. The definitions set forth below shall govern the construction of this chapter:

"Consumer Fireworks" means any composition or device, in a finished state, containing any combustible or explosive substance for the purpose of producing a visible or audible effect by combustion, explosion, deflagration, or detonation, and not included within the definition of display fireworks or small firework devices, as set forth in this section.

"Display fireworks" means large fireworks designed primarily to produce visible or audible effects by combustion, deflagration, or detonation and includes, but is not limited to, salutes containing more than 2 grams (130 mg) of explosive materials, aerial shells containing more than 40 grams of pyrotechnic compositions, and other display pieces which exceed the limits of explosive materials for classification as "consumer fireworks" and are classified as fireworks UN0333, UN0334, or UN0335 by the United States Department of Transportation at 49 C.F.R. Sec. 172.101 as of June 13, 2002, and including fused setpieces containing components which exceed 50 mg of salute powder.

"Fire nuisance" means anything or any act which increases, or may cause an increase of, the hazard or menace of fire to a greater degree than customarily recognized as normal by persons in the public service of preventing, suppressing, or extinguishing fire; or which may obstruct, delay, or hinder, or may become the cause of any obstruction, delay, or a hindrance to the prevention or extinguishment of fire.

"Importer" includes any person who for any purpose other than personal use:

- (1) Brings fireworks into this state or causes fireworks to be brought into this state;
- (2) Procures the delivery or receives shipments of any fireworks into this state; or

(3) Buys or contracts to buy fireworks for shipment into this state.

"License" means a nontransferable formal authorization which the Chief of the Washington State Patrol, through the Director of Fire Protection, is authorized to issue under this chapter to allow a person to engage in the act specifically designated therein.

"Licensee" means any person issued a fireworks license in conformance with this chapter.

"Local fire official" means the chief of a local fire department or a chief fire protection officer or such other person as may be designated by the governing body of a city or county to act as a local fire official under this chapter.

"Manufacturer" includes any person who manufactures, makes, constructs, fabricates, or produces any fireworks article or device but does not include persons who assemble or fabricate sets or mechanical pieces in public displays of fireworks or persons who assemble consumer fireworks items or sets or packages containing consumer fireworks items.

"Permit" means the official authorization granted by a city or county for the purpose of establishing and maintaining a place within the jurisdiction of the city or county where fireworks are manufactured, constructed, produced, packaged, stored, sold, or exchanged and the official authorization granted by a city or county for a public display of fireworks.

"Person" includes any individual, firm, partnership, joint venture, association, concern, corporation, estate, trust, business trust, receiver, syndicate, or any other group or combination acting as a unit.

"Public display of fireworks" means an entertainment feature where the public is or could be admitted or allowed to view the display or discharge of display fireworks.

"Pyrotechnic operator" includes any individual who by experience and training has demonstrated the required skill and ability for safely setting up and discharging display fireworks.

"Retailer" includes any person who, at a fixed location or place of business, offers for sale, sells, or exchanges for consideration consumer fireworks to a consumer or user.

"Small firework devices" means those devices commonly referred to as trick and novelty devices, including such items as snakes, glowworms, trick noise makers, party poppers, snappers or pop-its, paper caps containing not more than 25/100 grams of explosive compound for each cap, trick matches or similar devices. Such term also includes combustibles used in auto burglar alarms.

"Special effects" means any combination of chemical elements or chemical compounds capable of burning independently of the oxygen of the atmosphere, and designed and intended to produce an audible, visual, mechanical, or thermal effect as an integral part of a motion picture, radio, television, theatrical, or opera production, or live entertainment.

"Wholesaler" includes any person who sells fireworks to a retailer or any other person for resale and any person who sells display fireworks to public display licensees.

B. RCW Chapter 70.77.

1. The following sections of RCW Chapter 70.77 relating to the manufacture, importation, possession, sale, discharge, display or transportation of fireworks are adopted by reference as though fully set forth in this chapter, to the extent not in conflict with the Olympia Municipal Code:

RCW 70.77.255 (1)-(3)	RCW 70.77.295
.260	.401
.265	.405
.270	.410
.280	.415
.285	.420
.290	.435
	.450
	.480
	.510
	.515
	.520
	.525
	.530
	.535
	.545

C. International Fire Code. The provisions of Chapter 33 of the International Fire Code as incorporated by reference in Section 16.04.020 of the Olympia Municipal Code shall be considered supplemental to the

provisions of RCW Chapter 70.77 as adopted by reference in subsection B unless a conflict exists, in which case, the provisions of RCW Chapter 70.77 as adopted in subsection B shall prevail.

D. Sales, possession and discharge of fireworks.

1. Small firework devices may be sold and used at all times.
2. Consumer fireworks shall not be sold or discharged in the city.
3. The sale, use and possession of display fireworks or any other type of fireworks not otherwise regulated by Section 9.48.160 of the Olympia Municipal Code shall be unlawful unless sold, possessed or used in accordance with the provisions of Chapter 70.77 of the Revised Code of Washington.

E. Fireworks permits. Any person, firm or corporation intending to sell, possess or discharge display fireworks within the City, shall be required as a condition of such sale, possession or discharge, to secure from the City Fire Marshal a permit for such activities. The fee for such permits shall be effective for the full calendar year in which the permit is secured. The City Fire Marshal is directed to issue such permits only if the applicant is in compliance with the terms of this chapter and Chapter 70.77 of the Revised Code of Washington upon application and payment of the permit fee. For public displays the basic fee shall be twenty-five dollars (\$25) with an additional twenty-five dollars (\$25) for each hour of inspection above one hour, with a one hundred dollar (\$100) maximum fee.

F. Fireworks--Unlawful sales. Any person, firm or corporation selling consumer fireworks in the City at any time shall be guilty of a misdemeanor.

G. Fireworks--Unlawful transfer. Any person who knowingly sells, transfers or agrees to sell or transfer within the City any display fireworks to any person who is not a fireworks licensee as provided for in Chapter 70.77 of the Revised Code of Washington shall be guilty of a gross misdemeanor.

H. Fireworks--Unlawful possession or discharge. It shall be unlawful for any person, within the City of Olympia to:

1. Possess display fireworks which are not authorized to be in the possession of a licensee pursuant to Chapter 70.77 of the Revised Code of Washington. Possession of less than one pound of said unauthorized display fireworks, exclusive of external packaging, shall constitute a misdemeanor and possession of one pound or more of said non-authorized display fireworks, exclusive of external packaging, shall constitute a gross misdemeanor. For purposes of this subsection, the term "external packaging" means any materials that are not an integral part of the operative unit of the fireworks.

2. Discharge consumer fireworks in the City. Violation of this subsection shall constitute a ~~misdemeanor~~ civil infraction.

3. Discharge or otherwise use any fireworks in a reckless manner which creates a substantial risk of death or serious physical injury to another person or damage to the property of another. A violation of this subsection shall constitute a gross misdemeanor.

4. To allow rubbish to accumulate in any premises in which fireworks are stored or sold or to permit a fire nuisance to exist on such premises. A violation of this subsection shall constitute a misdemeanor.

**Section 2. Severability.** If any provision of this Ordinance or its application to any person or circumstance is held invalid, the remainder of the ordinance or application of the provisions to other persons or circumstances shall remain unaffected.

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

**Section 4. Effective Date.** This Ordinance shall take effect five (5) days after publication, as provided by law.

\_\_\_\_\_  
MAYOR

**ATTEST:**

\_\_\_\_\_  
CITY CLERK

**APPROVED AS TO FORM:**

  
\_\_\_\_\_  
DEPUTY CITY ATTORNEY

**PASSED:**

**APPROVED:**

**PUBLISHED:**





## City Council

### Approval of the Drinking Water State Revolving Fund (DWSRF) Loan for the Fones Road Booster Pump Station

**Agenda Date:** 6/14/2016  
**Agenda Item Number:** 4.C  
**File Number:** 16-0661

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**Type:** contract   **Version:** 2   **Status:** Consent Calendar

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#### **Title**

Approval of the Drinking Water State Revolving Fund (DWSRF) Loan for the Fones Road Booster Pump Station

#### **Recommended Action**

##### **Committee Recommendation:**

Not referred to a committee

##### **City Manager Recommendation:**

Move to approve the Drinking Water State Revolving Fund Loan for the Fones Road Booster Pump Station and authorize the City Manager to sign the loan contract in the amount of \$1,931,982.

#### **Report**

##### **Issue:**

Whether to confirm staff's recommendation to approve the Drinking Water State Revolving Fund Loan for the Fones Road Booster Pump Station.

##### **Staff Contact:**

Tim Richardson, P.E., Project Manager, Public Works Engineering, 360.753.8749

##### **Presenter(s):**

None - Consent Calendar Item.

#### **Background and Analysis:**

The Drinking Water State Revolving Fund is a program that provides low interest loans to water utilities to upgrade the water system. The Washington State Department of Health, Public Works Board, and Department of Commerce administer the loans.

The loans fund improvements that protect public health and help meet State drinking water regulations. The program seeks to protect public health by ensuring safe and reliable drinking water.

This loan will provide funding to replace an aging drinking water pump station. The City-owned station supplies water from the McAllister Wellfield to the eastside of Olympia. The 45-year old facility

is essential, yet increasingly unreliable. It is located underground on Fones Road adjacent to the Woodland Trail.

A new above ground facility will be located in the same area on property currently owned by the City. It will ensure adequate water pressure, supply for fire protection and summer usage, and the ability to fill the Hoffman water reservoir. It will also serve the soon-to-be constructed Log Cabin reservoir. The project is included in Olympia's adopted Water System Plan.

Once Council has approved the loan, Staff will bid the project. Construction will start later in the summer or early fall. Construction is expected to be complete in the summer of 2017.

**Neighborhood/Community Interests (if known):**

The project team will inform nearby businesses and the Bicycle and Pedestrian Advisory Committee (BPAC) of the project. In addition, the project team will inform the public of project construction via social media such as Twitter.

**Options:**

1. Approve the DWSRF Loan for the Fones Road Booster Pump Station and authorize the City Manager to sign the loan contract in the amount of \$1,931,982.
  - Project proceeds as planned. The City delivers on its commitment to construct the project this year.
  - Olympia's Water System Plan is followed, ensuring the City meets drinking water requirements for the eastside.
2. Reject the loan and direct staff to investigate other potential funding sources for the project.
  - Investigating other potential funding sources will delay construction.

**Financial Impact:**

Total cost for this project is approximately \$2.6 million dollars as detailed below. Funding for this project is through the Drinking Water Utility, largely with a low-interest loan from the Washington Drinking Water State Revolving Fund. With the loan, there are sufficient funds in the budget to complete this project.

Funding Sources:

DWSRF Loan	\$ 1,931,982
Drinking Water Utility	\$ 637,675

<b>Total Project Costs</b>	<b>\$ 2,569,657</b>
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**Attachments:**

DWSRF Loan Contract  
Project Map



**Washington State  
Public Works Board**

1011 Plum Street SE  
Post Office Box 42525  
Olympia, Washington 98504-2525

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**Capital Agreement between:**

**Olympia  
and**

**Public Works Board**

**For:**

**Project Name: Fones Rd Booster Pump Station**

**Loan Number: DM16-952-045**

**Loan Type: DWSRF NT**

**Contract Start Date:** \_\_\_\_\_ **Contract Execution Date** \_\_\_\_\_



**Department of Commerce**

**Innovation is in our nature.**

Washington State Department of Commerce

[www.commerce.wa.gov](http://www.commerce.wa.gov)

# DECLARATIONS

## CLIENT INFORMATION

Legal Name:	Olympia
Loan Number:	DM16-952-045
Award Year:	2016
State Wide Vendor Number:	SWV0008653-00

## PROJECT INFORMATION

Project Title:	Fones Rd Booster Pump Station
Project City:	Olympia
Project State:	Washington
Project Zip Code:	98507-1967

## LOAN INFORMATION

Loan Amount:	\$1,931,982
Loan Fee (Included in loan amount if applicable)	\$19,129
Loan Forgiveness %:	0%
Loan Term:	20 Years
Interest Rate:	1.5%
Payment Month:	October 1st
Earliest Date for Construction Reimbursement:	7/1/2015
Time of Performance	48 months from Contract execution date to Project Completion date.

## FUNDING INFORMATION

Total Amount of Federal Award (as applicable)	[To be determined]
Federal Award Date	[To be determined]
Federal Award ID # (FAIN)	[To be determined]
Amount of Federal Funds Obligated by this action	[To be determined]
Awarding Official	[To be determined]

## SPECIAL TERMS AND CONDITIONS GOVERNING THIS LOAN AGREEMENT

The following sections of this contract are hereby deleted:

**Section 2.2 - ADMINISTRATIVE COST ALLOCATION (final sentence):** "An approved current federal indirect cost rate may be applied up to the maximum administrative budget allowed".

**Section 2.24. - INDIRECT COSTS (entire section).**

## LOAN SECURITY CONDITION GOVERNING THIS LOAN AGREEMENT

This loan is a revenue obligation of the Contractor payable solely from the net revenue of the Water system. Payments shall be made from the net revenue of the utility after the payment of the principal and interest on any revenue bonds, notes, warrants or other obligations of the utility having a lien on that net revenue. As used here, "net revenue" means gross revenue minus expenses of maintenance and operations. The Board grants the Contractor the right to issue future bonds and notes that constitute a lien and charge on net revenue superior to the lien and charge of this loan Contract. This option may be used only if the entire project is a domestic water, sanitary sewer, storm sewer, or solid waste utility project.

## **DECLARATIONS (continued)**

Loan Number:  
Project Title:

**DM16-952-045**  
**Fones Rd Booster Pump Station**

### Scope of Work:

**Project work consists of replacing the underground Fones Road Booster Pump Station with an above ground booster pump station. The project will include demolition of the existing underground booster pump station and pipe abandonment. The new booster pump station will include three 1,000 gpm pumps and associated piping, valves and appurtenances. New 12 inch ductile iron inlet and outlet piping will connect to the existing main in Fones Road and will be extended about 200 feet to the pump station. New electrical equipment and generator, telemetry and security components will be included. the project has the following elements: concrete masonry unit (CMU) building with metal roof, pumps, pipes, emergency power generator, telemetry system and controls (SCADA), vaults for valves, meters and associated appurtenances, security system, clearing and grading, electrical motors and controls, fencing, landscaping, storm water runoff, and demolition of existing booster pump station and pump abandonment.**

**CONTRACT FACE SHEET**  
**Contract Number: DM16-952-045**  
**Drinking Water State Revolving Fund (DWSRF)**  
**2016**

<b>1. Contractor</b> Olympia 601 4th Ave E Olympia, WA 98507		<b>2. Contractor Doing Business As (optional)</b> N/A	
<b>3. Contractor Representative</b> N/A		<b>4. Public Works Board Representative</b> N/A	
<b>5. Contract Amount</b> \$1,931,982	<b>6. Funding Source</b> Federal: <input checked="" type="checkbox"/> State: <input checked="" type="checkbox"/> Other: <input type="checkbox"/> N/A: <input type="checkbox"/>	<b>7. Contract Start Date</b> Contract Execution Date	<b>8. Contract End Date</b> October 1, 2036
<b>9. Federal Funds (as applicable)</b> N/A	<b>Federal Agency</b> EPA	<b>CFDA Number</b> 66.468	
<b>10. Tax ID #</b> N/A	<b>11. SWV #</b> SWV0008653-00	<b>12. UBI #</b>	<b>13. DUNS #</b> 75732198
<b>14. Contract Purpose</b> The purpose of this Contract is to provide funding for a project of a local government that furthers the goals and objectives of the Drinking Water State Revolving Fund Loan Program. The project will be undertaken by the Contractor and will include the activities described in the Declared Scope of Work. The Board, defined as the Washington State Public Works Board, and Contractor acknowledge and accept the terms of this Contract and attachments and have executed this Contract on the date below to start as of the date and year last written below. The rights and obligations of both parties to this Contract are governed by this Contract and the following other documents incorporated by reference: Contractor Terms and Conditions including Declarations Page; Attachment I: Attorney's Certification; Attachment II: Federal and State Requirements; Attachment III: Disadvantaged Business Enterprise Requirements; Attachment IV: Certification Regarding Debarment, Suspension, and Other Responsibility Matters; Attachment V: DWSRF Eligible Project Costs; and Attachment VI: Labor Standard Provisions for Subrecipients that are Governmental Entities.			
<b>FOR THE CONTRACTOR</b>  _____ Signature  _____ Print Name  _____ Title  _____ Date		<b>FOR PUBLIC WORKS BOARD</b>  _____ Stan Finkelstein, Public Works Board Chair  _____ Date  <b>APPROVED AS TO FORM ONLY</b>  This 30th Day of November, 2015 _____ Bob Ferguson Attorney General  _____ <i>Signature on file</i> Kathryn Wyatt Assistant Attorney General	



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# CONTRACT TERMS AND CONDITIONS

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## DRINKING WATER STATE REVOLVING FUND NEW TRADITIONAL (MUNICIPAL)

### Part 1. SPECIAL TERMS AND CONDITIONS

#### 1.1. DEFINITIONS

As used throughout this Drinking Water State Revolving Fund Loan Contract, the following terms shall have the meaning set forth below:

- A. AWARD YEAR shall mean the calendar year in which the funds were awarded to the Board for use in making loans under this program.
- B. "Board" shall mean the Washington State Public Works Board created in Revised Code of Washington (RCW) 43.155.030, and who is a Party to the Contract.
- C. "Contract" shall mean this Drinking Water State Revolving Fund Loan.
- D. "Contractor" shall mean the Local Government identified on the Contract Face Sheet performing service(s) under this Contract and who is a Party to the Contract, and shall include all employees and agents of the Contractor.
- E. The "Contract End Date" shall mean the date the contract expires. This date shall occur in the final year of the LOAN TERM unless otherwise amended, as counted from the AWARD YEAR. The actual date of contract execution shall have no effect on the Contract End Date.
- F. "Deferral Period" shall be from the date of contract execution until the date of project completion. The Deferral Period shall not exceed 4 years in length.
- G. "Department of Commerce" and "Commerce" shall mean the Washington State Department of Commerce.
- H. "Department of Health" shall mean the Washington State Department of Health, Office of Drinking Water, who is the recipient of the Drinking Water State Revolving Fund grant and regulates drinking water systems in the State of Washington.
- I. "Iron and steel products" are the following products made primarily of iron or steel: lined or unlined pipes and fittings, manhole covers and other municipal castings, hydrants, tanks, flanges, pipe clamps and restraints, valves, structural steel, reinforced precast concrete, and construction materials.
- J. PAYMENT MONTH shall mean the day and month of the year in which payments are due.

#### 1.2. AUTHORITY

Acting under the authority of RCW 70.119A.170 and RCW 43.155.040, the Board has awarded the Contractor a Drinking Water State Revolving Fund loan for an approved project. The Contractor will be a sub-recipient of funds provided by the United States Environmental Protection Agency, CFDA Number 66.468, Title: Safe Drinking Water State Revolving Fund, award year of this contract.

#### 1.3. PURPOSE

The Board and the Contractor have entered into this Contract to undertake a local project that furthers the goals and objectives of the Drinking Water State Revolving Fund Loan Program. The project will be undertaken by the Contractor and will include the activities described in the SCOPE OF WORK shown on the Declarations page. The project must be undertaken in accordance with the loan Program Special Terms and Conditions and all applicable federal, state and local laws and ordinances, including but not limited to those specifically enumerated in Attachment II: Federal and State Requirements, which by this reference are incorporated into this Contract as though set forth fully herein.

#### 1.4. ORDER OF PRECEDENCE

In the event of an inconsistency in this Contract, the inconsistency shall be resolved by giving precedence in the following order:

- A. Applicable federal and State of Washington statutes and regulations.

- B. Special Terms and Conditions including attachments.
- C. General Terms and Conditions.

**1.5. AMOUNT OF LOAN**

The Board, using funds appropriated from the Drinking Water Assistance Account, shall loan the Contractor a sum not to exceed the amount shown as LOAN AMOUNT on the attached Declarations Page. This loan amount includes a loan fee, if applicable, which is shown on the Declarations Page as LOAN FEE.

**1.6. LOAN FEE**

If the loan fee applies, it will be assessed at loan execution.

The amount of the loan fee (if applicable) represents one percent (1%) of the loan request and shall not be reduced, regardless of the actual final loan amount at project completion. If the loan fee applies and the total loan amount is increased by amendment, an additional loan fee equal to one percent (1%) of the additional loan amount will be assessed at amendment execution. The amount of any loan fee will be displayed on the Declarations Page as LOAN FEE.

**1.7. TERM OF LOAN**

Unless otherwise amended, the term of the loan shall not exceed the period shown on the Declarations Page as LOAN TERM. The term shall start in the AWARD YEAR.

Except as herein provided, under no circumstances shall the loan repayment period exceed 20 years from the contract execution date.

The loan term may be extended for a disadvantaged community up to 30 years, provided that a recipient completes loan repayment no later than 30 years after project completion and the term of the loan does not exceed the expected design life of the project.

**1.8. RATE AND LOAN FORGIVENESS**

The interest rate shall be the declared INTEREST RATE per annum on the outstanding principal balance, based on a three hundred and sixty (360) day year composed of twelve (12) thirty (30) day months. The amount of loan forgiveness (if applicable) shall be as stated on the attached Declarations Page, and identified therein as LOAN FORGIVENESS %.

If project is completed within 24 months of contract execution and includes the basic interest rate, the interest rate will be decreased to one percent (1.0%) at project completion. The calculation of interest rate will apply to the remaining payments beginning from the date the Project Completion report is certified.

This loan forgiveness shall be applied at project completion and shall apply to the lesser of the loan amount or the actual eligible costs and that declared percent on any accrued interest. The percent of loan forgiveness and interest rate shall not be changed, regardless of the actual cost of the project and the Affordability Index at project completion.

**1.9. DISBURSEMENT OF LOAN PROCEEDS AND REQUIRED DOCUMENTATION**

If funding or appropriation is not available at the time the Contractor submits a request for a loan disbursement, the issuance of a warrant will be delayed or suspended until such time funds become available. Therefore, subject to availability of funds, warrants shall be issued to the Contractor for payment of allowable expenses incurred by the Contractor while undertaking and administering approved project activities in accordance with the declared SCOPE OF WORK.

The loan funds will be disbursed to the Contractor as follows:

Ten percent (10%) of loan proceeds will be held until project completion. The total Drinking Water State Revolving Fund Loan shall not exceed one hundred percent (100%) of the actual eligible project costs.

When requesting reimbursement for costs incurred, the Contractor shall submit a signed and completed Invoice Voucher (Form A19), referencing the declared SCOPE OF WORK project activity performed, and any appropriate documentation such as bills, invoices, and receipts. The purchase of any land necessary and integral to the project must be included in the declared SCOPE OF WORK and be documented with an appraisal or other market valuation and a valid purchase and sale agreement. The Invoice Voucher must be certified by an official of the Contractor with authority to bind the Contractor.

Each A19 Reimbursement Voucher must be accompanied by a Project Status Report, which describes, in narrative form, the progress made on the project since the last invoice was submitted, as well as a report of project status to date. The Department of Commerce (Commerce) will not release payment for any reimbursement request received until the Project Status Report is received. After approving the Voucher and the Project Status Report, Commerce shall promptly release funds to the Contractor.

Construction expenses incurred after the date shown as EARLIEST DATE FOR CONSTRUCTION REIMBURSEMENT on the Declarations Page are eligible for reimbursement. Requests for reimbursements for costs related to construction activities will not be accepted until the Contractor has met the following conditions:

- A. Issued a Notice to Proceed which follows the formal award of a construction contract;
- B. Completed the State Environmental Review Process;
- C. Complied with all provisions of Section 106 of the National Historic Preservation Act of 1966;
- D. Complied with Section 1.19: Prevailing Wage;
- E. Obtained approval from the Department of Health of the project report and related construction documents for all applicable activities described in the declared SCOPE OF WORK; and
- F. Complied with any other loan conditions required by Department of Health or The Board.

An electronic copy (emailed PDF or a FAX) of a signed A19 Reimbursement Voucher and other required documentation is the preferred method for requesting reimbursement. Submit the electronic requests to your Federal Programs Unit (FPU) representative or fax to 360-586-8440. This electronic submittal may be 25 pages or less. If you choose to send your vouchers and backup documentation electronically, please DO NOT mail in the original. You will receive email notification from your FPU representative that the electronic request has been received.

Commerce will pay the Contractor upon acceptance of the work performed and receipt of properly completed invoices. Invoices may be submitted to Commerce not more often than monthly.

Payment shall be considered timely if made by Commerce within thirty (30) calendar days after receipt of properly completed invoices. Payment shall be sent to the address designated by the Contractor.

The Board may, at its sole discretion, withhold payments claimed by the Contractor for services rendered if the Contractor fails to satisfactorily comply with any term or condition of this contract.

No payments in advance or in anticipation of services or supplies to be provided under this contract shall be made by the Board.

In the event that the Contractor receives reimbursement for costs that are later determined by the Board to be ineligible, these funds shall be repaid to the Drinking Water Assistance Account by payment to the Department of Commerce, or its successor, together with the submission of the Project Completion Amendment.

At the time of project completion, the Contractor shall submit to the Board a Certified Project Completion Request certifying the total actual project costs, and a final voucher for the remaining eligible funds. The Certified Project Completion Request shall include a copy of the Construction Completion Report as submitted to Department of Health.

#### **1.10. TIME OF PERFORMANCE**

The Contractor shall begin the activities identified within the declared SCOPE OF WORK no later than thirty (30) days after Contract execution. No later than eighteen (18) months after Contract execution, the Contractor shall issue a 'Notice to Proceed', which follows the formal award of a construction contract.

The Contractor must reach project completion within the period specified on the Declarations Page as TIME OF PERFORMANCE.

Failure to meet Time of Performance within the time frame described in this section shall constitute default under this Contract, and as a result, this Contract may be terminated. In the event of extenuating circumstances, the Contractor may request, in writing, at least 90 days prior to the expiration of project completion date that the Board extend the deadline for project completion. The Board may extend the time of project completion.

#### **1.11. PROJECT COMPLETION AMENDMENT AND THE CERTIFIED PROJECT COMPLETION REPORT**

The Contractor shall initiate a Project Completion Amendment by submitting a Certified Project Completion Report when activities identified in the declared SCOPE OF WORK are complete and the Contractor agrees that no additional eligible costs will be reimbursed.

In the Project Completion Amendment, the Contractor will provide the following information to the Board:

- A. A certified statement of the actual dollar amounts spent, from all fund sources, in completing the project as described in the declared SCOPE OF WORK.
- B. Certification that all costs associated with the project have been incurred. Costs are incurred when goods and services are received and/or contract work is performed.
- C. A copy of the Department of Health Construction Completion Report as submitted to Department of Health.
- D. Evidence documenting compliance with audit requirements as referenced in Section 1.27.
- E. A final voucher for the remaining eligible funds.

The Project Completion Amendment shall serve as an amendment to this Contract determining the final loan amount and term of the loan.

#### **1.12. REPAYMENT**

An assistance recipient begins annual repayment of the loan no later than one year after contract execution. The first repayment installment is due on the first day of the month shown as PAYMENT MONTH on the Declarations Page. Interest only will be charged for this first payment if a draw is made prior to this date. All subsequent payments shall consist of principal and accrued interest due that month of each year during the remaining term of the loan.

Repayment of the loan under this Contract shall include the declared INTEREST RATE per annum. Interest will begin to accrue from the date each payment is issued to the Contractor. The final payment shall be on or before the completion of the declared LOAN TERM, payable on or before the declared PAYMENT MONTH of an amount sufficient to bring the loan balance to zero.

The Contractor has the right to repay the unpaid balance of the loan in full at any time or make accelerated payments without penalty.

The Contractor will repay the loan in accordance with the preceding conditions through the use of a check, money order, or equivalent means made payable to the Washington State Department of Commerce, or its successor.

#### **1.13. DEFAULT IN REPAYMENT**

Loan repayments shall be made in accordance with Section 1.12 of this Contract. A payment not received within thirty (30) days of the due date shall be declared delinquent. Delinquent payments shall be assessed a monthly penalty beginning on the first (1<sup>st</sup>) day past the due date. The penalty will be one percent (1%) per month or twelve percent (12%) per annum of the delinquent payment amount. These same penalty terms shall apply if the repayment of loan funds determined to be ineligible costs are not repaid within thirty (30) days as provided for in Section 1.9.

The Contractor acknowledges and agrees to the Board's right, upon delinquency in the payment of any annual installment, to notify any other entity, creditors, or potential creditors of the Contractor of such delinquency. Contractor shall be responsible for all legal fees incurred by the Board in any action undertaken to enforce its rights under this section.

#### **1.14. LOAN SECURITY**

Loan Security may be required as a performance condition of this contract. If such performance condition is required it shall be indicated on the attached Declarations Page and identified therein as LOAN SECURITY CONDITION.

The Board grants the Contractor the right to issue future bonds and notes that constitute a lien and charge on the revenue source superior to the lien and charge of this Loan Contract. Nothing in this section shall absolve the Contractor of its obligation to make loan repayments when due, and to adjust rates, fees, or surcharges, if necessary, to meet its obligations under this Contract.

#### **1.15. HISTORICAL AND CULTURAL ARTIFACTS**

The Contractor acknowledges that the project funded by this Contract is subject to Section 106 of the National Historic Preservation Act of 1966.

Contractor agrees that Contractor is legally and financially responsible for compliance with all laws, regulations, and agreements related to the preservation of historical or cultural artifacts and agrees to hold harmless the State of Washington in relation to any claim related to such historical or cultural artifacts discovered, disturbed, or damaged as a result of Contractor's public works project funded under this Contract.

The Contractor agrees that, in no case shall construction activities, ground disturbance, or excavation of any sort, begin until the Contractor has complied with all provisions of Section 106 of the National Historic Preservation Act of 1966, as amended.

In addition, the Contractor shall not conduct or authorize destructive project planning activities before completing compliance with Section 106 of the National Historic Preservation Act of 1966, as amended.

If historical or cultural artifacts are discovered during construction, the Contractor shall immediately stop construction and implement reasonable measures to protect the discovery site from further disturbance, take reasonable steps to ensure confidentiality of the discovery site, restrict access to the site, and notify the concerned tribe's cultural staff or committee, Tribal Historical Preservation Officer (THPO), Cultural Resources Program Manager at Washington State Department of Health, and the State's Historical Preservation Officer (SHPO) at the Washington State Department of Archaeology and Historic Preservation (DAHP). If human remains are uncovered, the Contractor shall report the presence and location of the remains to the coroner and local enforcement immediately, then contact the concerned tribe's cultural staff or committee and DAHP.

The Contractor shall require the above provisions to be contained in all contracts for work or services related to the declared SCOPE OF WORK. In no case shall construction activities begin until the Contractor has complied with all provisions of Section 106 of the National Historic Preservation Act of 1966.

In addition to the requirements set forth in this Contract, the Contractor agrees to comply with Native American Graves Protection and Repatriation Act, Archaeological Resources Protection Act, Revised Code of Washington (RCW) 27.44 regarding Indian Graves and Records; RCW 27.53 regarding Archaeological Sites and Resources; RCW 68.60 regarding Abandoned and Historic Cemeteries and Historic Graves; and Washington Administrative Code (WAC) 25-48 regarding Archaeological Excavation and Removal Permits.

#### **1.16. FEDERAL AND STATE REQUIREMENTS**

The Contractor assures compliance with all applicable federal, state and local laws, requirements, and ordinances as they pertain to the design, implementation, and administration of the approved project, including but not limited to those listed in Attachments II, III, and IV.

#### **1.17. COMPETITIVE BIDDING REQUIREMENTS**

Pursuant to 40 CFR, Section 33.501(b) and (c), the Contractor also agrees to create and maintain a bidders list for both Disadvantaged Business Enterprises (DBE) and Non-Disadvantaged Business Enterprises (non-DBE). The purpose of a bidders list is to provide the recipient and entities receiving identified loans who conduct competitive bidding with as accurate a database as possible about the universe of DBE and non-DBE prime and subcontractors. The list must include all firms that bid or quote on prime contracts or bid or quote subcontracts on Environmental Protection Agency assisted projects, including both DBE and non-DBE. The bidders list must be kept at least until the grant project period has expired and the recipient is no longer receiving Environmental Protection Agency funding under the grant. For entities receiving identified loans, the bidders list must only be kept until the project period for the identified loan has ended. The following information must be obtained from all prime and subcontractors: entity's name with point of contact; entity's mailing address, telephone number, and e-mail address; the procurement on which the entity bid or quoted, and when; and, entity's status as a DBE or non-DBE.

The Contractor agrees to provide Environmental Protection Agency Form 6100-2 DBE Subcontractor Participation and Environmental Protection Agency Form 6100-3 DBE Subcontractor Performance to all its Disadvantaged Business Enterprise subcontractors.

The Contractor shall require Disadvantaged Business Enterprise provisions are contained in all contracts with any subcontractors for work or services related to the declared SCOPE OF WORK.

The Contractor shall comply with the provisions of RCW 43.155.060 regarding competitive bidding requirements for projects assisted in whole or in part with money from the Drinking Water State Revolving Fund program.

#### **1.18. ELIGIBLE PROJECT COSTS**

The Contractor assures compliance with Attachment V: DWSRF Eligible Project Costs, which identifies eligible costs for projects funded by Drinking Water State Revolving Fund loans.

#### **1.19. PREVAILING WAGE**

These terms supersede the terms in Section 2.33. Prevailing Wage Laws in General Terms and Conditions.

All contractors and subcontractors performing work on a construction project funded through this Contract shall comply with prevailing wage laws by paying the higher of state or federal prevailing wages according to:



State Prevailing Wages on Public Works, Chapter 39.12 RCW, as applicable to the Project funded by this contract, including but not limited to the filing of the "Statement of Intent to Pay Prevailing Wages" and "Affidavit of Wages Paid" as required by RCW 39.12.040. The Contractor shall maintain records sufficient to evidence compliance with Chapter 39.12 RCW, and shall make such records available for Board's review upon request; or,

The Davis Bacon Act, 40 USC 276a-276a-5 and related federal acts provide that all laborers and mechanics employed by contractors or subcontractors in the performance shall be paid wages at rates not less than those prevailing on similar construction in the locality as determined by the Secretary of Labor.

The Contractor agrees that the Contractor is legally and financially responsible for compliance with the prevailing wage requirements. Contractor is advised to consult the United States Department of Labor and Washington State Department of Labor and Industries websites to determine the federal and State prevailing wages that must be paid.

The Contractor shall ensure that all contractors, subcontractors, engineers, vendors, and any other entity for work or services listed in the declared SCOPE OF WORK shall insert in full, in any contract, the labor standards provisions listed in Attachment VI: Labor Standard Provisions for Subrecipients That Are Governmental Entities. Contractor shall report to the Board and/or the Department of Health that this requirement has been met as stated in this Contract.

#### **1.20. FEDERAL EXCLUSION**

These Terms add to the terms in Section 2.11. Certification Regarding Debarment, Suspension or Ineligibility and Voluntary Exclusion – Primary and Lower Tier Covered Transactions in General Terms and Conditions. The Contractor also agrees to access the Federal Exclusion List at [www.sam.gov](http://www.sam.gov) and provide Federal Exclusion documentation to the Board and to keep a copy on file with the Contractor's project records.

#### **1.21. REGISTRATION WITH CENTRAL CONTRACTOR REGISTRATION (CCR)**

By signing this Contract, the Contractor accepts the requirements stated in 48 CFR 52.204-7 to register with the Central Contractor Registration (CCR) database at the System for Awards Management (SAM) website. To register in SAM, a valid Data Universal Numbering System (DUNS) Number is required. The Contractor is responsible for the accuracy and completeness of the data within the SAM database and for any liability resulting from the Government's reliance on inaccurate or incomplete data. The Contractor must remain registered in the SAM database after the initial registration. The Contractor is required to review and update on an annual basis from the date of initial registration or subsequent updates its information in SAM to ensure it is current, accurate and complete. The Contractor shall provide evidence documenting registration and renewal of SAM registration to the Board.

In the event of the Contractor's noncompliance or refusal to comply with the requirement stated above, the Board reserves the right to suspend payment until the Contractor cures this noncompliance.

#### **1.22. RECORDKEEPING AND ACCESS TO RECORDS**

These terms supersede the terms in Section 2.38. Records Maintenance in General Terms and Conditions.

The Board, the Board's agents, and duly authorized officials of the state and federal governments shall have full access and the right to examine, copy, excerpt, or transcribe any pertinent documents, papers, records, and books of the Contractor and of persons, firms, or organizations with which the Contractor may contract, involving transactions related to this project and this Contract.

The Contractor agrees to retain these records for a period of six (6) years from the date that the debt is retired. This includes but is not limited to financial reports. 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.

#### **1.23. REPORTS**

The Contractor, at such times and on such forms as the Board may require, shall furnish the Board with such periodic reports as it may request pertaining to the activities undertaken pursuant to this Contract including, but not limited to:

- A. Prevailing Wage decisions and/or changes
- B. Disadvantaged Business Enterprises utilization
- C. Project Status Reports with each Invoice Voucher
- D. Certified Project Completion Report at project completion (as described in Section 1.11)
- E. Other reports as the Board may require

In the event of the Contractor's noncompliance or refusal to comply with the requirement stated above, the Board reserves the right to suspend payment until the Contractor cures this noncompliance.

#### **1.24. AMENDMENTS, MODIFICATIONS, ASSIGNMENTS, AND WAIVERS**

Amendments, modifications, assignments, and waivers to any of the terms of this contract supersede those terms as found in the original contract.

The Contractor may request an amendment of this Contract for the purpose of modifying the declared SCOPE OF WORK or for extending the time of performance as provided for in Section 1.10. Any revision to the SCOPE OF WORK or location of the project must be approved by the Department of Health. No modification or amendment resulting in an extension of time shall take effect until a request has been received and approved by the Board in accordance with Section 1.10.

***During the term of this loan, any change in ownership of the water system(s) improved with funds received by the Contractor under this Contract must be approved in writing by the Board. As a condition of approval, the Board reserves the right to demand payment in full of the outstanding principal balance of the loan.***

No conditions or provisions of this Contract may be waived unless approved by the Board in writing. No waiver of any default or breach by any party shall be implied from any failure to take action upon such default or breach if the default of breach persists or repeats.

#### **1.25. TERMINATION FOR CAUSE**

These terms supersede the terms in Section 2.46. Termination for Cause/Suspension in General Terms and Conditions.

If the Board concludes that the Contractor has failed to comply with the terms and conditions of this Contract, or has failed to use the loan proceeds only for those activities identified in the declared SCOPE OF WORK, or has otherwise materially breached one or more of the covenants in this Contract, the Board may at any time, at its discretion, upon notice to the Contractor, terminate the Contract and/or its attached agreements in whole or in part and declare the entire remaining balance of the loan, together with any interest accrued, immediately due and payable in full. Such Notice of Termination for Cause shall be in writing, shall state the reason(s) for such termination, and shall specify the effective date of the termination. The effective date of the termination will be determined by the Board. Such notice shall inform the Contractor of the breach of the relevant covenant and shall allow the Contractor at least thirty (30) business days to cure such breach, if curable. The notice shall instruct the Contractor that, if the breach is not cured or cannot be cured within thirty (30) business days, the outstanding balance of the loan shall be due and payable. If this Contract is so terminated, the Board shall be liable only for payment required under the terms of this Contract for services rendered or goods delivered prior to the effective date of termination. Nothing in this section shall affect the Contractor's obligations to immediately repay the unpaid balance of the loan as prescribed in the Washington Administrative Code (WAC) 246-296-150.

#### **1.26. TERMINATION FOR CONVENIENCE**

These terms supersede the terms in Section 2.47. Termination for Convenience in General Terms and Conditions.

The Board may terminate this Contract in the event that federal or state funds are no longer available to the Board, or are not appropriated for the purpose of meeting the Board's obligations under this Contract. The Board shall notify the Contractor in writing of its determination to terminate and the reason for such termination. The effective date of the termination will be determined by the Board. If this Contract is so terminated, the Board shall be liable only for payment required under the terms of this Contract for services rendered or goods delivered prior to the effective date of termination. Nothing in this section shall affect Contractor's obligations to repay the unpaid balance of the loan.

#### **1.27. AUDIT**

These terms supersede the terms in Section 2.10. Audit in General Terms and Conditions.

The Board reserves the right to require an audit of this project. The Contractor is responsible for correcting any audit findings. The Contractor agrees to refund to the Board all disallowed costs resulting from the audit. Audit costs are allowable expenses within this Contract.

##### Municipal and Not-For-Profit entities:

Audits of the Contractor's project activities may be conducted by the State Auditor Office (SAO). Audit costs are eligible project costs. The Contractor shall maintain its records and accounts so as to facilitate the audit

requirements of the Board or its successor. The Contractor is responsible for any audit findings incurred by its own organization. The Board reserves the right to recover from the Contractor all disallowed costs resulting from the audit.

For audits of fiscal years beginning after December 26, 2014, Contractors expending \$750,000 or more in any fiscal year in federal funds from all sources, direct and indirect, are required to have an audit conducted in accordance with 2 CFR §200.501 – Audit Requirements."

For audits of fiscal years beginning prior to December 26, 2014, Contractors expending \$500,000 or more in any fiscal year in federal funds from all sources, direct and indirect, are required to have an audit conducted in accordance with existing Federal audit requirements.

For-Profit entities:

Audits must include a report on the internal control related to the federal program, which should describe the scope of testing of the internal control and the results of the tests.

The audit also must include a report on compliance, which includes an opinion (or disclaimer of opinion) on whether the auditee complied with laws, regulations and the provisions of the award agreement that could have a direct and material effect on the federal program.

The Contractor must send a copy of any required audit Reporting Package as described in existing Federal audit requirements for audits of fiscal years beginning prior to December 26, 2014, or 2 CFR §200.512 – Report Submission, for audits of fiscal years beginning after December 26, 2014, no later than nine (9) months after the end of the Contractor's fiscal year(s) to:

Department of Commerce  
ATTN: Public Works Board  
P.O. Box 42525  
1011 Plum Street SE  
Olympia WA 98504-2525

In addition to sending a copy of the audit, when applicable, the Contractor must include:

- Corrective action plan for audit findings within three (3) months of the audit being received by the Board.
- Copy of the Management Letter.

**1.28. PROJECT SIGNS**

If the Contractor displays, during the period covered by this Contract, any signs or markers identifying those entities participating financially in the approved project, the sign or marker must identify the Washington State Public Works Board Drinking Water State Revolving Fund and the Washington State Department of Health as participants in the project.

**1.29. DISADVANTAGED BUSINESS ENTERPRISE REQUIREMENTS**

As mandated by the Environmental Protection Agency, the Contractor agrees to comply with the requirements of the Environmental Protection Agency's Program for Utilization of Small, Minority, and Women's Business Enterprises in procurement under this Contract. The Contractor is required to follow the requirements identified in Attachment III: Disadvantaged Business Enterprise Requirements.

By signing this Contract, the Contractor accepts the applicable MBE/WBE fair share objectives/goals negotiated with Environmental Protection Agency by the Washington State Office of Minority and Women's Business Enterprises. The Contractor attests to the fact that it is purchasing the same or similar construction, supplies, services and equipment, in the same or similar relevant geographic buying market as Washington State Office of Minority and Women's Business Enterprises. The goals for the utilization of disadvantaged businesses are stated in Attachment III: Disadvantaged Business Enterprise Requirements.

The Contractor is required to furnish the Board and the Department of Health with such periodic reports as the Department may request pertaining to the utilization of disadvantaged businesses.

**1.30. NONDISCRIMINATION PROVISION**

During the performance of this contract, the Contractor shall comply with all federal and state nondiscrimination laws, including, but not limited to Chapter 49.60 RCW, Washington's Law Against Discrimination, and 42 USC 12101 et seq, the Americans with Disabilities Act (ADA).

In the event of the Contractor's noncompliance or refusal to comply with any applicable nondiscrimination law, regulation, or policy, this contract may be rescinded, canceled, or terminated in whole or in part, and the Contractor may be declared ineligible for further contracts with the Board. The Contractor shall, however, be given a reasonable time in which to cure this noncompliance.

The Contractor must also include the following terms and conditions in contracts with all contractors, subcontractors, engineers, vendors, and any other entity for work or services listed in the declared SCOPE OF WORK:

"The Contractor shall not discriminate on the basis of race, color, national origin or sex in the performance of this Contract. The Contractor shall carry out applicable requirements of 40 CFR Part 33 in the award and administration of contracts awarded under Environmental Protection Agency financial agreements. Failure by the Contractor to carry out these requirements is a material breach of this Contract which may result in termination of this Contract."

### **1.31. PROHIBITION STATEMENT**

Pursuant to Section 106 of the Trafficking Victims Protection Act of 2000, as amended, the Contractor's contractors, subcontractors, engineers, vendors, and any other entity shall comply with and include the following terms and conditions in all contracts for work or services listed in the declared SCOPE OF WORK:

"All forms of trafficking in persons, illegal sex trade, or forced labor practices are prohibited in the performance of this award or subawards under the award, or in any manner during the period of time that the award is in effect. This prohibition applies to you as the recipient, your employees, subrecipients under this award, and subrecipients' employees."

If any term of this section is violated, this contract may be terminated.

### **1.32. FALSE, INCORRECT, OR INCOMPLETE INFORMATION OR CLAIM**

The Contractor warrants that the Contractor neither has submitted nor shall submit any information that is materially false, incorrect, or incomplete to the Board.

The Contractor is advised that providing false, fictitious, or misleading information with respect to the receipt and disbursements of Environmental Protection Agency funds is basis for criminal, civil, or administrative fines and/or penalties.

### **1.33. LITIGATION**

The Contractor warrants that there is no threatened or pending litigation, investigation, or legal action before any court, arbitrator, or administrative agency that, if adversely determined, would have a materially adverse effect on the Contractor's ability to repay the loan.

### **1.34. ESTABLISHMENT OF ADEQUATE RATES AND RESERVES**

The Contractor agrees to provide a resolution adopting rate increases, capital assessments, or both, for the services of the system that shall be sufficient to provide funds which, along with other revenues of the system, will pay all operating expenses and debt repayments during the term of the loan. In addition, the Contractor shall create, fund, and maintain reserves at least as required by the Water System Plan or Small Water System Management Plan. The Board reserves the right, at anytime, to request proof of compliance of these requirements from the Contractor.

### **1.35. SPECIAL CONDITIONS**

If SPECIAL CONDITIONS are listed on the Contract Declarations Page then these conditions are herein incorporated as part of the terms and requirements of this contract.

### **1.36. INVESTMENT GRADE AUDIT**

For projects involving repair, replacement, or improvement of a wastewater treatment plant, or other public works facility for which energy efficiency is obtainable, Contractor must undertake an investment grade audit per ESHB 1497.

Costs incurred as part of the investment grade audit are eligible project costs.

### **1.37. BUY AMERICAN**

None of the funds made available to the Contractor shall be used for a project for the construction, alteration, maintenance, or repair of a public water system or treatment works unless all of the iron and steel products used in

the project are produced in the United States. This requirement applies to the entire project receiving a loan agreement executed after January 17, 2014. Buy American does not apply to a project if the Department of Health approves the engineering plans and specifications for the project, in that agency's capacity to approve such plans and specifications prior to a project requesting bids, prior to January 17, 2014.

Waiver of the Buy American requirement may be considered if: 1) compliance would be inconsistent with the public interest; or 2) the particular iron and steel products are not produced in the United States in sufficient and reasonably available quantities and/or the particular iron and steel products are not of a satisfactory quality; or 3) inclusion of iron and steel products produced in the United States will increase the cost of the overall project by more than 25 percent. For consideration, a request for a waiver must be submitted to the Environmental Protection Agency (EPA). Contractors shall submit the waiver request to Commerce, which will then submit the request to EPA. EPA will post the waiver request and any other information available to EPA concerning the waiver request, on EPA's public Internet website and allow for informal public input on the request for at least 15 days prior to making a finding based on the request. The full text of the Buy American requirements appear at H.R. 3547, Consolidated Appropriations Act, 2014.

## Part 2. GENERAL TERMS AND CONDITIONS

### 2.1. DEFINITIONS

As used throughout this Contract, the following terms shall have the meaning set forth below:

- A. "Authorized Representative" shall mean the Public Works Board Chair and/or the designee authorized in writing to act on the Chair's behalf.
- B. "Board" shall mean the Washington State Public Works Board created in Revised Code of Washington (RCW) 43.155.030, and which is a Party to the Contract
- C. "Contractor" shall mean the entity identified on the face sheet performing service(s) under this Contract, and shall include all employees and agents of the Contractor.
- D. "Modified Total Direct Costs (MTDC)" shall mean all direct salaries and wages, applicable fringe benefits, materials and supplies, services, travel, and up to the first \$25,000 of each subaward (regardless of the period of performance of the subawards under the award). MTDC excludes equipment, capital expenditures, charges for patient care, rental costs, tuition remission, scholarships and fellowships, participant support costs and the portion of each subaward in excess of \$25,000.
- E. "Personal Information" shall mean information identifiable to any person, including, but not limited to, information that relates to a person's name, health, finances, education, business, use or receipt of governmental services or other activities, addresses, telephone numbers, social security numbers, driver license numbers, other identifying numbers, and any financial identifiers.
- F. "State" shall mean the state of Washington.
- G. "Subcontractor" shall mean one not in the employment of the Contractor, who is performing all or part of those services under this Contract under a separate contract with the Contractor. The terms "subcontractor" and "subcontractors" mean subcontractor(s) in any tier.

### 2.2. ADMINISTRATIVE COST ALLOCATION

Administrative costs that may be allowed are set forth in the Specific Terms and Conditions. Administrative services shared by other programs shall be assigned to this Contract based on an allocation plan that reflects allowable administrative costs that support services provided under each Contract administered by the Contractor. An approved current federal indirect cost rate may be applied up to the maximum administrative budget allowed.

### 2.3. ALLOWABLE COSTS

Costs allowable under this Contract are actual expenditures according to an approved budget up to the maximum amount stated on the Contract Award or Amendment Face Sheet.

### 2.4. ALL WRITINGS CONTAINED HEREIN

This Contract contains all the terms and conditions agreed upon by the parties. No other understandings, oral or otherwise, regarding the subject matter of this Contract shall be deemed to exist or to bind any of the parties hereto.

### 2.5. AMENDMENTS

This Contract may be amended by mutual agreement of the parties. Such amendments shall not be binding unless they are in writing and signed by personnel authorized to bind each of the parties.

### 2.6. AMERICANS WITH DISABILITIES ACT (ADA) OF 1990, PUBLIC LAW 101-336, ALSO REFERRED TO AS THE "ADA" 28 CFR PART 35

The Contractor must comply with the ADA, which provides comprehensive civil rights protection to individuals with disabilities in the areas of employment, public accommodations, state and local government services, and telecommunications.

### 2.7. APPROVAL

This contract shall be subject to the written approval of the Board's Authorized Representative and shall not be binding until so approved. The contract may be altered, amended, or waived only by a written amendment executed by both parties.

## **2.8. ASSIGNMENT**

Neither this Contract, nor any claim arising under this Contract, shall be transferred or assigned by the Contractor without prior written consent of the Board.

## **2.9. ATTORNEYS' FEES**

Unless expressly permitted under another provision of the Contract, in the event of litigation or other action brought to enforce Contract terms, each party agrees to bear its own attorneys fees and costs.

## **2.10. AUDIT**

### **A. General Requirements**

Contractors are to procure audit services based on the following guidelines.

The Contractor shall maintain its records and accounts so as to facilitate the audit requirement and shall ensure that Subcontractors also maintain auditable records.

The Contractor is responsible for any audit exceptions incurred by its own organization or that of its Subcontractors.

The Board reserves the right to recover from the Contractor all disallowed costs resulting from the audit.

As applicable, Contractors required to have an audit must ensure the audits are performed in accordance with Generally Accepted Auditing Standards (GAAS); Government Auditing Standards (the Revised Yellow Book) developed by the Comptroller General.

Responses to any unresolved management findings and disallowed or questioned costs shall be included with the audit report. The Contractor must respond to the Board requests for information or corrective action concerning audit issues within thirty (30) days of the date of request.

### **B. Federal Funds Requirements - OMB Circular A-133 Audits of States, Local Governments and Non-Profit Organizations**

Grantees expending \$750,000 or more in a fiscal year (that begins after December 26, 2014) in federal funds from all sources, direct and indirect, are required to have an audit conducted in accordance with 2 CFR Part 200. For fiscal years beginning prior to December 26, 2014, Grantees are required to have an audit conducted in accordance with Federal audit requirements. When state funds are also to be paid under this Agreement a Schedule of State Financial Assistance as well as the required schedule of Federal Expenditure must be included. Both schedules include:

- Grantor agency name
- Federal agency
- Federal program name
- Other identifying contract numbers
- Catalog of Federal Domestic Assistance (CFDA) number (if applicable)
- Grantor contract number
- Total award amount including amendments (total grant award)
- Current year expenditures

If the Contractor is a state or local government entity, the Office of the State Auditor shall conduct the audit. Audits of non-profit organizations are to be conducted by a certified public accountant selected by the Contractor in accordance with OMB Circular A-110 "Uniform Administrative Requirements for Grants and Agreements with Institutions of Higher Education, Hospitals, and Other Non-Profit Organizations."

The Contractor shall include the above audit requirements in any subcontracts.

In any case, the Contractor's financial records must be available for review by the Board.

### **C. Documentation Requirements**

The Contractor must send a copy of any required audit Reporting Package as described in OMB Circular A-133, Part C, Section 320(c) no later than nine (9) months after the end of the Contractor's fiscal year(s) by sending a scanned copy to [auditreview@commerce.wa.gov](mailto:auditreview@commerce.wa.gov) or by sending a hard copy to:

Department of Commerce  
ATTN: Audit Review and Resolution Office  
1011 Plum Street  
PO Box 42525

In addition to sending a copy of the audit, when applicable, the Contractor must include:

- Corrective action plan for audit findings within three (3) months of the audit being received by the Board.
- Copy of the Management Letter.

**2.11. CERTIFICATION REGARDING DEBARMENT, SUSPENSION OR INELIGIBILITY AND VOLUNTARY EXCLUSION—PRIMARY AND LOWER TIER COVERED TRANSACTIONS**

- A.** Contractor, defined as the primary participant and its principals, certifies by signing these General Terms and Conditions that to the best of its knowledge and belief that they:
1. Are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions by any Federal department or agency.
  2. Have not within a three-year period preceding this contract, been convicted of or had a civil judgment rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public or private agreement or transaction, violation of Federal or State antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, tax evasion, receiving stolen property, making false claims, or obstruction of justice;
  3. Are not presently indicted for or otherwise criminally or civilly charged by a governmental entity (federal, state, or local) with commission of any of the offenses enumerated in paragraph (1)(b) of this section; and,
  4. Have not within a three-year period preceding the signing of this contract had one or more public transactions (federal, state, or local) terminated for cause of default.
- B.** Where the Contractor is unable to certify to any of the statements in this contract, the Contractor shall attach an explanation to this contract.
- C.** The Contractor agrees by signing this contract that it shall not knowingly enter into any lower tier covered transaction with a person who is debarred, suspended, declared ineligible, or voluntarily excluded from participation in this covered transaction, unless authorized by the Board.
- D.** The Contractor further agrees by signing this contract that it will include the clause titled "Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion-Lower Tier Covered Transaction," as follows, without modification, in all lower tier covered transactions and in all solicitations for lower tier covered transactions:

**LOWER TIER COVERED TRANSACTIONS**

- a) The lower tier contractor certifies, by signing this contract that neither it nor its principals is presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by any Federal department or agency.
  - b) Where the lower tier contractor is unable to certify to any of the statements in this contract, such contractor shall attach an explanation to this contract.
- E.** The terms covered transaction, debarred, suspended, ineligible, lower tier covered transaction, person, primary covered transaction, principal, and voluntarily excluded, as used in this section, have the meanings set out in the Definitions and Coverage sections of the rules implementing Executive Order 12549. You may contact the Board for assistance in obtaining a copy of these regulations.

**2.12. CODE REQUIREMENTS**

All construction and rehabilitation projects must satisfy the requirements of applicable local, state, and federal building, mechanical, plumbing, fire, energy and barrier-free codes. Compliance with the Americans with Disabilities Act of 1990, 28 C.F.R. Part 35 will be required, as specified by the local building Department.

**2.13. CONFIDENTIALITY/SAFEGUARDING OF INFORMATION**

- A.** "Confidential Information" as used in this section includes:
1. All material provided to the Contractor by the Board that is designated as "confidential" by the Board;
  2. All material produced by the Contractor that is designated as "confidential" by the Board; and



3. All personal information in the possession of the Contractor that may not be disclosed under state or federal law. "Personal information" includes but is not limited to information related to a person's name, health, finances, education, business, use of government services, addresses, telephone numbers, social security number, driver's license number and other identifying numbers, and "Protected Health Information" under the federal Health Insurance Portability and Accountability Act of 1996 (HIPAA).
- B. The Contractor shall comply with all state and federal laws related to the use, sharing, transfer, sale, or disclosure of Confidential Information. The Contractor shall use Confidential Information solely for the purposes of this Contract and shall not use, share, transfer, sell or disclose any Confidential Information to any third party except with the prior written consent of the Board or as may be required by law. The Contractor shall take all necessary steps to assure that Confidential Information is safeguarded to prevent unauthorized use, sharing, transfer, sale or disclosure of Confidential Information or violation of any state or federal laws related thereto. Upon request, the Contractor shall provide the Board with its policies and procedures on confidentiality. The Board may require changes to such policies and procedures as they apply to this Contract whenever the Board reasonably determines that changes are necessary to prevent unauthorized disclosures. The Contractor shall make the changes within the time period specified by the Board. Upon request, the Contractor shall immediately return to the Board any Confidential Information that the Board reasonably determines has not been adequately protected by the Contractor against unauthorized disclosure.
- C. Unauthorized Use or Disclosure. The Contractor shall notify the Board within five (5) working days of any unauthorized use or disclosure of any confidential information, and shall take necessary steps to mitigate the harmful effects of such use or disclosure.

#### **2.14. CONFLICT OF INTEREST**

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

Specific restrictions apply to contracting with current or former state employees pursuant to chapter 42.52 of the Revised Code of Washington. The Contractor and their subcontractor(s) must identify and state of Washington employees for former state employees employed or on the firm's governing board during the past 24 months. Identify the individual by name, the agency previously or currently employed by, job title or position held, and separation date. If it is determined by COMMERCE that a conflict of interest exists, the Contractor may be disqualified from further consideration for the award of a contract.

In the event this contract is terminated as provided above, COMMERCE shall be entitled to pursue the same remedies against the Contractor as it could pursue in the event of a breach of the contract by the Contractor. The rights and remedies of COMMERCE provided for in this clause shall not be exclusive and are in addition to any other rights and remedies provided by law. The existence of facts upon which COMMERCE makes any determination under this clause shall be an issue and may be reviewed as provided in the "Disputes" clause of this contract.

#### **2.15. CONFORMANCE**

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

#### **2.16. COPYRIGHT PROVISIONS**

Unless otherwise provided, all Materials produced under this Contract shall be considered "works for hire" as defined by the U.S. Copyright Act and shall be owned by the Board. The Board shall be considered the author of such Materials. In the event the Materials are not considered "works for hire" under the U.S. Copyright laws, the Contractor hereby irrevocably assigns all right, title, and interest in all Materials, including all intellectual property rights, moral rights, and rights of publicity to the Board effective from the moment of creation of such Materials.

"Materials" means all items in any format and includes, but is not limited to, data, reports, documents, pamphlets, advertisements, books, magazines, surveys, studies, computer programs, films, tapes, and/or sound reproductions. "Ownership" includes the right to copyright, patent, register and the ability to transfer these rights.

For Materials that are delivered under the Contract, but that incorporate pre-existing materials not produced under the Contract, the Contractor hereby grants to the Board a nonexclusive, royalty-free, irrevocable license (with rights

to sublicense to others) in such Materials to translate, reproduce, distribute, prepare derivative works, publicly perform, and publicly display. The Contractor warrants and represents that the Contractor has all rights and permissions, including intellectual property rights, moral rights and rights of publicity, necessary to grant such a license to the Board.

The Contractor shall exert all reasonable effort to advise the Board, at the time of delivery of Materials furnished under this Contract, of all known or potential invasions of privacy contained therein and of any portion of such document which was not produced in the performance of this Contract. The Contractor shall provide the Board with prompt written notice of each notice or claim of infringement received by the Contractor with respect to any Materials delivered under this Contract. The Board shall have the right to modify or remove any restrictive markings placed upon the Materials by the Contractor.

#### **2.17. DISALLOWED COSTS**

The Contractor is responsible for any audit exceptions or disallowed costs incurred by its own organization or that of its Subcontractors.

#### **2.18. DISPUTES**

Except as otherwise provided in this Contract, when a dispute arises between the parties and it cannot be resolved by direct negotiation, either party may request a dispute hearing with the Director of the Board, who may designate a neutral person to decide the dispute.

The request for a dispute hearing must:

- be in writing;
- state the disputed issues;
- state the relative positions of the parties;
- state the Contractor's name, address, and Contract number; and,
- be mailed to the Director and the other party's (respondent's) Contract Representative within three (3) working days after the parties agree that they cannot resolve the dispute.

The respondent shall send a written answer to the requestor's statement to both the Director or the Director's designee and the requestor within five (5) working days.

The Director or designee shall review the written statements and reply in writing to both parties within ten (10) working days. The Director or designee may extend this period if necessary by notifying the parties.

The decision shall not be admissible in any succeeding judicial or quasi-judicial proceeding.

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

Nothing in this Contract shall be construed to limit the parties' choice of a mutually acceptable alternate dispute resolution (ADR) method in addition to the dispute hearing procedure outlined above.

#### **2.19. DUPLICATE PAYMENT**

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

#### **2.20. ETHICS/CONFLICTS OF INTEREST**

In performing under this Contract, the Contractor shall assure compliance with the Ethics in Public Service Act (Chapter 42.52 RCW) and any other applicable state or federal law related to ethics or conflicts of interest.

#### **2.21. GOVERNING LAW AND VENUE**

This Contract shall be construed and interpreted in accordance with the laws of the state of Washington, and the venue of any action brought hereunder shall be in the Superior Court for Thurston County.

#### **2.22. INDEMNIFICATION**

To the fullest extent permitted by law, the Contractor shall indemnify, defend, and hold harmless the state of Washington, the Board, all other agencies of the state and all officers, agents and employees of the state, from and against all claims or damages for injuries to persons or property or death arising out of or incident to the Contractor's performance or failure to perform the Contract. The Contractor's obligation to indemnify, defend, and hold harmless includes any claim by the Contractor's agents, employees, representatives, or any Subcontractor or its agents, employees, or representatives.

The Contractor's obligation to indemnify, defend, and hold harmless shall not be eliminated by any actual or alleged concurrent negligence of the state or its agents, agencies, employees and officers.

Subcontracts shall include a comprehensive indemnification clause holding harmless the Contractor, the Board, the state of Washington, its officers, employees and authorized agents.

The Contractor waives its immunity under Title 51 RCW to the extent it is required to indemnify, defend and hold harmless the state and its agencies, officers, agents or employees.

### **2.23. INDEPENDENT CAPACITY OF THE CONTRACTOR**

The parties intend that an independent contractor relationship will be created by this Contract. The Contractor and its employees or agents performing under this Contract are not employees or agents of the State of Washington or the Board. The Contractor will not hold itself out as or claim to be an officer or employee of the Board or of the State of Washington by reason hereof, nor will the Contractor make any claim of right, privilege or benefit which would accrue to such officer or employee under law. Conduct and control of the work will be solely with the Contractor.

### **2.24. INDIRECT COSTS**

If statutorily allowed and if the Contractor chooses to charge Indirect under this grant, the Contractor shall provide their indirect cost rate that has been negotiated between their entity and the Federal Government. If no such rate exists a de minimis indirect cost rate of 10% of modified total direct costs (MTDC) will be used.

### **2.25. INDUSTRIAL INSURANCE COVERAGE**

The Contractor shall comply with all applicable provisions of Title 51 RCW, Industrial Insurance. If the Contractor fails to provide industrial insurance coverage or fails to pay premiums or penalties on behalf of its employees as may be required by law, The Board may collect from the Contractor the full amount payable to the Industrial Insurance Accident Fund. The Board may deduct the amount owed by the Contractor to the accident fund from the amount payable to the Contractor by the Board under this Contract, and transmit the deducted amount to the Department of Labor and Industries, (L&I) Division of Insurance Services. This provision does not waive any of L&I's rights to collect from the Contractor.

### **2.26. LAWS**

The Contractor shall comply with all applicable laws, ordinances, codes, regulations, and policies of local, state, and federal governments, as now or hereafter amended, including, but not limited to:

#### **United States Laws, Regulations and Circulars (Federal)**

##### **A. Audits**

Office of Management and Budget (OMB) Revised Circular A-133 "Audits of States, Local Governments, and Non-Profit Organizations."

##### **B. Environmental Protection and Review**

Coastal Zone Management Act of 1972, 16 USC §§1451-1464 HUD's implementing regulations at 24 CFR parts 50 or 58, as appropriate.

Lead Based Paint Poisoning Prevention Act, 42 USC 4821-4846 also 24 CFR 982.401(j).

National Environmental Policy Act of 1969, 42 USC 4321 et seq. and the Implementing Regulations of 24 CFR 58 (HUD) and 40 CFR 1500-1508 (Council on Environmental Quality) Residential Lead-Based Paint Hazard Reduction Act of 1992, 42 USC 4851-4856.

##### **C. Flood Plains**

Flood Disaster Protection Act of 1973, 42 USC 4001-4128.

##### **D. Labor and Safety Standards**

All Rental Units Assisted with Federal Funds Must Meet the Section 8 Housing Quality Standards (HQS) and Local Housing Code Requirements for the duration of the Affordability Period.

Convict Labor, 18 USC 751, 752, 4081, 4082.

Davis Bacon Act, 40 USC 276a-276a-5.

Drug-Free Workplace Act of 1988, 41 USC 701 et seq.

Federal Fair Labor Standards Act, 29 USC 201 et seq.

Work Hours and Safety Act of 1962, 40 USC 327-330 and Department of Labor Regulations, 29 CFR Part 5.

Title IV of the Lead Based Paint Poisoning Prevention Act, 42 USC 4831, 24 CFR Part 35.

E. Laws against Discrimination

Age Discrimination Act of 1975, Public Law 94-135, 42 USC 6101-07, 45 CFR Part 90 Nondiscrimination in Federally Assisted Programs.

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

Equal Employment Opportunity, Executive Order 11246, as amended by Executive Order 11375 and supplemented in U.S. Department of Labor Regulations, 41 CFR Chapter 60.

Executive Order 11246, as amended by EO 11375, 11478, 12086 and 12102.

Fair Housing Act (42 USC 3601-19) and implementing regulations at 24 CFR part 100. Section 504 of the Rehabilitation Act of 1973 and implementing regulations at 24 CFR part 8.

Fair Housing, Title VIII of the Civil Rights Act of 1968, Public Law 90-284, 42 USC 3601-19.

Handicapped Employees of Government Contractors, Rehabilitation Act of 1973, Section 503, 29 USC 793.

Handicapped Recipients of Federal Financial Assistance, Rehabilitation Act of 1973, Section 504, 29 USC 794.

Minority Business Enterprises, Executive Order 11625, 15 USC 631.

Minority Business Enterprise Development, Executive Order 12432, 48 FR 32551.

Nondiscrimination and Equal Opportunity, 24 CFR 5.105(a).

Nondiscrimination in Benefits, Title VI of the Civil Rights Act of 1964, Public Law 88-352, 42 USC 2002d et seq, 24 CFR Part 1.

Nondiscrimination in Employment, Title VII of the Civil Rights Act of 1964, Public Law 88-352.

Nondiscrimination in Federally Assisted Programs.

Nondiscrimination in Federally Assisted Construction Contracts, Executive Order 11246, 42 USC 2000e, as amended by Executive Order 11375, 41 CFR Chapter 60.

Section 3, Housing and Urban Development Act of 1968, 12 USC 1701u (See 24 CFR 570.607(b)).

F. Office of Management and Budget Circulars

Cost Principles for State, Local and Indian Tribal Governments, OMB Circular A-87, 2 CFR, Part 225.

Cost Principles for Nonprofit Organizations, OMB Circular A-122, (if the Contractor is a nonprofit organization).

Grants and Cooperative Agreements with State and Local Governments, OMB Circular A-102, (if the Contractor is a local government or federally recognized Indian tribal government).

Uniform Administrative Requirements for Grants and Other Agreements with Institutions of Higher Education, Hospitals and Other Nonprofit Organizations, OMB Circular A-110.

G. Other

Anti-Kickback Act, 18 USC 874; 40 USC 276b, 276c; 41 USC 51-54.

H.R. 3547, Consolidated Appropriations Act, 2014.

Governmental Guidance for New Restrictions on Lobbying; Interim Final Guidance, Federal Register 1, Vol. 54, No. 243\Wednesday, December 20, 1989.

Hatch Political Activity Act, 5 USC 1501-8.

Lobbying and Disclosure, 42 USC 3537a and 3545 and 31 USC 1352 (Byrd Anti-Lobbying Amendment). 31 USC 1352 provides that Contractors who apply or bid for an award of \$100,000 or more 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 other award covered by 31

USC 1352. Each tier must 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 recipient.

Non-Supplanting Federal Funds.

Section 8 Housing Assistance Payments Program.

H. Privacy

Privacy Act of 1974, 5 USC 522a.

I. Relocation

Uniform Relocation Assistance and Real Property Acquisition Policy Act of 1970 and implementing regulations at 49 CFR part 24.

Section 104(d) of the Housing and Community Development Act of 1974 and the implementing regulations at 24 CFR part 570.

**Washington State Laws and Regulations**

- A. Affirmative Action, RCW 41.06.020 .
- B. Boards of Directors or Officers of Non-Profit Corporations – Liability - Limitations, RCW 4.24.264.
- C. Disclosure-Campaign Finances-Lobbying, Chapter 42.17 RCW.
- D. Discrimination-Human Rights Commission, Chapter 49.60 RCW.
- E. Ethics in Public Service, Chapter 42.52 RCW.
- F. Affordable Housing Program, Chapter 43.185 RCW
- G. Interlocal Cooperation Act, Chapter 39.34 RCW.
- H. Noise Control, Chapter 70.107 RCW.
- I. Office of Minority and Women's Business Enterprises, Chapter 39.19 RCW and Chapter 326-02 WAC.
- J. Open Public Meetings act, Chapter 42.30 RCW.
- K. Prevailing Wages on Public Works, Chapter 39.12 RCW.
- L. Public Records Act, Chapter 42.56 RCW.
- M. Relocation Assistance - Real Property Acquisition Policy, Chapter 8.26 RCW.
- N. Shoreline Management Act of 1971, Chapter 90.58 RCW.
- O. State Budgeting, Accounting, and Reporting System, Chapter 43.88 RCW.
- P. State Building Code, Chapter 19.27 RCW and Energy-Related Building Standards, Chapter 19.27A RCW, and Provisions in Buildings for Aged and Handicapped Persons, Chapter 70.92 RCW.
- Q. State Coastal Zone Management Program Section 309 Assessment and Strategy (Publication 01-06-003), Shorelands and Environmental Assistance Program, Washington State Department of Ecology.
- R. State Environmental Policy, Chapter 43.21C RCW.
- S. State Executive Order 05-05, Archeological and Cultural Resources.

**2.27. LICENSING, ACCREDITATION AND REGISTRATION**

The Contractor shall comply with all applicable local, state, and federal licensing, accreditation and registration requirements or standards necessary for the performance of this Contract.

**2.28. LIMITATION OF AUTHORITY**

Only the Authorized Representative or Authorized Representative's designee by writing (designation to be made prior to action) shall have the express, implied, or apparent authority to alter, amend, modify, or waive any clause or condition of this Contract.

**2.29. LOCAL PUBLIC TRANSPORTATION COORDINATION**

Where applicable, Contractor shall participate in local public transportation forums and implement strategies designed to ensure access to services.

**2.30. NONCOMPLIANCE WITH NONDISCRIMINATION LAWS**

During the performance of this Contract, the Contractor shall comply with all federal, state, and local nondiscrimination laws, regulations and policies. In the event of the Contractor's non-compliance or refusal to comply with any nondiscrimination law, regulation or policy, this contract may be rescinded, canceled or terminated

in whole or in part, and the Contractor may be declared ineligible for further contracts with the Board. The Contractor shall, however, be given a reasonable time in which to cure this noncompliance. Any dispute may be resolved in accordance with the "Disputes" procedure set forth herein.

### **2.31. NOTIFICATION OF TENANT RIGHTS/RESPONSIBILITIES**

The Contractor shall provide all tenants, if any, with information outlining tenant rights and responsibilities under the Washington State Landlord Tenant laws, Title 59, Revised Code of Washington.

The Contractor shall also provide all occupants of property acquired with U.S. Department of Housing and Urban Development (HUD) funds notice regarding their eligibility for relocation assistance. Such notices will be provided as required by the Uniform Relocation Assistance and Real Property Acquisition Act of 1970, as amended and referenced in 49 CFR part 24 and Section 104(d) of the Housing and Community Development Act of 1974, as amended and referenced in 24 CFR 570 and noted in HUD's Handbook No. 1378. Notifications will include but not be limited to:

- General Information Notice
- Notice of Displacement/Non-Displacement

### **2.32. POLITICAL ACTIVITIES**

Political activity of Contractor employees and officers are limited by the State Campaign Finances and Lobbying provisions of Chapter 42.17 RCW and the Federal Hatch Act, 5 USC 1501 - 1508.

No funds may be used for working for or against ballot measures or for or against the candidacy of any person for public office.

### **2.33. PREVAILING WAGE LAWS**

All contractors and subcontractors performing work on a construction project funded through this agreement shall comply with prevailing wage laws by paying the higher of state or federal prevailing wages according to:

State Prevailing Wages on Public Works, Chapter 39.12 RCW, as applicable to the Project funded by this contract, including but not limited to the filing of the "Statement of Intent to Pay Prevailing Wages" and "Affidavit of Wages Paid" as required by RCW 39.12.040. The Contractor shall maintain records sufficient to evidence compliance with Chapter 39.12 RCW, and shall make such records available for the Board's review upon request; or

The Davis Bacon Act, 40 USC. 276a-276a-5 and related federal acts provide that all laborers and mechanics employed by contractors or subcontractors in the performance shall be paid wages at rates not less than those prevailing on similar construction in the locality as determined by the Secretary of Labor.

### **2.34. PROCUREMENT STANDARDS FOR FEDERALLY FUNDED PROGRAMS**

A Contractor which is a local government or Indian Tribal government must establish procurement policies and procedures in accordance with OMB Circulars A-102, Uniform Administrative Requirements for Grants in Aid for State and Local Governments, for all purchases funded by this Contract.

A Contractor which is a nonprofit organization shall establish procurement policies in accordance with OMB Circular A-110, Uniform Administrative Requirements for Grants and Agreements with Nonprofit Agencies, for all purchases funded by this Contract.

The Contractor's procurement system should include at least the following:

1. A code or standard of conduct that shall govern the performance of its officers, employees, or agents engaged in the awarding of contracts using federal funds.
2. Procedures that ensure all procurement transactions shall be conducted in a manner to provide, to the maximum extent practical, open and free competition.
3. Minimum procedural requirements, as follows:
  - a. Follow a procedure to assure the avoidance of purchasing unnecessary or duplicative items.
  - b. Solicitations shall be based upon a clear and accurate description of the technical requirements of the procured items.
  - c. Positive efforts shall be made to use small and minority-owned businesses.

- d. The type of procuring instrument (fixed price, cost reimbursement) shall be determined by the Contractor, but must be appropriate for the particular procurement and for promoting the best interest of the program involved.
  - e. Contracts shall be made only with reasonable subcontractors who possess the potential ability to perform successfully under the terms and conditions of the proposed procurement.
  - f. Some form of price or cost analysis should be performed in connection with every procurement action.
  - g. Procurement records and files for purchases shall include all of the following:
    - 1) Contractor selection or rejection.
    - 2) The basis for the cost or price.
    - 3) Justification for lack of competitive bids if offers are not obtained.
  - h. A system for contract administration to ensure Contractor conformance with terms, conditions and specifications of this Contract, and to ensure adequate and timely follow-up of all purchases.
4. Contractor and Subcontractor must receive prior approval from the Board for using funds from this Contract to enter into a sole source contract or a contract where only one bid or proposal is received when value of this contract is expected to exceed \$5,000.
- Prior approval requests shall include a copy of proposed contracts and any related procurement documents and justification for non-competitive procurement, if applicable.

### **2.35. PROHIBITION AGAINST PAYMENT OF BONUS OR COMMISSION**

The funds provided under this Contract shall not be used in payment of any bonus or commission for the purpose of obtaining approval of the application for such funds or any other approval or concurrence under this Contract provided, however, that reasonable fees or bona fide technical consultant, managerial, or other such services, other than actual solicitation, are not hereby prohibited if otherwise eligible as project costs.

### **2.36. PUBLICITY**

The Contractor agrees not to publish or use any advertising or publicity materials in which the state of Washington or the Board's name is mentioned, or language used from which the connection with the state of Washington's or the Board's name may reasonably be inferred or implied, without the prior written consent of the Board .

### **2.37. RECAPTURE**

In the event that the Contractor fails to perform this contract in accordance with state laws, federal laws, and/or the provisions of this contract, The Board reserves the right to recapture funds in an amount to compensate the Board for the noncompliance in addition to any other remedies available at law or in equity.

Repayment by the Contractor of funds under this recapture provision shall occur within the time period specified by the Board. In the alternative, The Board may recapture such funds from payments due under this contract.

### **2.38. RECORDS MAINTENANCE**

The Contractor shall maintain all books, records, documents, data and other evidence relating to this Contract 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 Contract. Contractor shall retain such records for a period of six years following the date of final payment.

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 finally resolved.

### **2.39. REGISTRATION WITH DEPARTMENT OF REVENUE**

If required by law, the Contractor shall complete registration with the Washington State Department of Revenue.

### **2.40. RIGHT OF INSPECTION**

At no additional cost all records relating to the Contractor's performance under this Contract shall be subject at all reasonable times to inspection, review, and audit by the Board, the Office of the State Auditor, and federal and state officials so authorized by law, in order to monitor and evaluate performance, compliance, and quality assurance under this Contract. The Contractor shall provide access to its facilities for this purpose.

#### **2.41. SAVINGS**

In the event funding from state, federal, or other sources is withdrawn, reduced, or limited in any way after the effective date of this Contract and prior to normal completion, The Board may terminate the Contract under the "Termination for Convenience" clause, without the ten business day notice requirement. In lieu of termination, the Contract may be amended to reflect the new funding limitations and conditions.

#### **2.42. SEVERABILITY**

If any provision of this Contract or any provision of any document incorporated by reference shall be held invalid, such invalidity shall not affect the other provisions of this Contract that can be given effect without the invalid provision, if such remainder conforms to the requirements of law and the fundamental purpose of this Contract and to this end the provisions of this Contract are declared to be severable.

#### **2.43. SUBCONTRACTING**

The Contractor may only subcontract work contemplated under this Contract if it obtains the prior written approval of the Board.

If the Board approves subcontracting, the Contractor shall maintain written procedures related to subcontracting, as well as copies of all subcontracts and records related to subcontracts. For cause, the Board in writing may: (a) require the Contractor to amend its subcontracting procedures as they relate to this Contract; (b) prohibit the Contractor from subcontracting with a particular person or entity; or (c) require the Contractor to rescind or amend a subcontract.

Every subcontract shall bind the Subcontractor to follow all applicable terms of this Contract. The Contractor is responsible to the Board if the Subcontractor fails to comply with any applicable term or condition of this Contract. The Contractor shall appropriately monitor the activities of the Subcontractor to assure fiscal conditions of this Contract. In no event shall the existence of a subcontract operate to release or reduce the liability of the Contractor to the Board for any breach in the performance of the Contractor's duties.

Every subcontract shall include a term that the Board and the State of Washington are not liable for claims or damages arising from a Subcontractor's performance of the subcontract.

#### **2.44. SURVIVAL**

The terms, conditions, and warranties contained in this Contract that by their sense and context are intended to survive the completion of the performance, cancellation or termination of this Contract shall so survive.

#### **2.45. TAXES**

All payments accrued on account of payroll taxes, unemployment contributions, the Contractor's income or gross receipts, any other taxes, insurance or expenses for the Contractor or its staff shall be the sole responsibility of the Contractor.

#### **2.46. TERMINATION FOR CAUSE/SUSPENSION**

In event the Board determines that the Contractor failed to comply with any term or condition of this Contract, the Board may terminate the Contract in whole or in part upon written notice to the Contractor. Such termination shall be deemed "for cause." Termination shall take effect on the date specified in the notice.

In the alternative, the Board upon written notice may allow the Contractor a specific period of time in which to correct the non-compliance. During the corrective-action time period, the Board may suspend further payment to the Contractor in whole or in part, or may restrict the Contractor's right to perform duties under this Contract. Failure by the Contractor to take timely corrective action shall allow the Board to terminate the Contract upon written notice to the Contractor.

"Termination for Cause" shall be deemed a "Termination for Convenience" when the Board determines that the Contractor did not fail to comply with the terms of the Contract or when the Board determines the failure was not caused by the Contractor's actions or negligence.

If the Contract is terminated for cause, the Contractor shall be liable for damages as authorized by law, including, but not limited to, any cost difference between the original contract and the replacement contract, as well as all costs associated with entering into the replacement contract (i.e., competitive bidding, mailing, advertising, and staff time).



**2.47. TERMINATION FOR CONVENIENCE**

Except as otherwise provided in this Contract, the Board may, by ten (10) business days written notice, beginning on the second day after the mailing, terminate this Contract, in whole or in part. If this Contract is so terminated, the Board shall be liable only for payment required under the terms of this Contract for services rendered or goods delivered prior to the effective date of termination.

**2.48. TERMINATION PROCEDURES**

After receipt of a notice of termination, except as otherwise directed by the Board, the Contractor shall:

- A. Stop work under the Contract on the date, and to the extent specified, in the notice;
- B. Place no further orders or subcontracts for materials, services, or facilities related to the Contract;
- C. Assign to the Board all of the rights, title, and interest of the Contractor under the orders and subcontracts so terminated, in which case the Board has the right, at its discretion, to settle or pay any or all claims arising out of the termination of such orders and subcontracts. Any attempt by the Contractor to settle such claims must have the prior written approval of the Board; and
- D. Preserve and transfer any materials, contract deliverables and/or the Board property in the Contractor's possession as directed by the Board.

Upon termination of the Contract, the Board shall pay the Contractor for any service provided by the Contractor under the Contract prior to the date of termination. The Board may withhold any amount due as the Board reasonably determines is necessary to protect the Board against potential loss or liability resulting from the termination. The Board shall pay any withheld amount to the Contractor if the Board later determines that loss or liability will not occur.

The rights and remedies of the Board under this section are in addition to any other rights and remedies provided under this Contract or otherwise provided under law.

**2.49. WAIVER**

Waiver of any default or breach shall not be deemed to be a waiver of any subsequent default or breach. Any waiver shall not be construed to be a modification of the terms of this Contract unless stated to be such in writing and signed by Authorized Representative of the Board.

**2.50. WORK HOURS AND SAFETY STANDARDS**

The Contract Work Hours and Safety Standards Act (40 USC 327-333)-Where applicable, all contracts awarded by recipients in excess of \$100,000 for construction and other purposes that involve the employment of mechanics or laborers must include a provision for compliance with Section 102 and 107 of the Contract Work Hours Safety Standards Act (40 USC 327-333), as supplemented by Department of Labor regulations (29 CFR part 5). Under Section 102 of the Act, each subcontractor is 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 1 ½ times the basic rate of pay for all hours worked in excess of 40 hours in the work week. Section 107 of the Act is applicable to construction work and provides that no laborer or mechanic is 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.

# ATTACHMENT I: ATTORNEY'S CERTIFICATION

## DRINKING WATER STATE REVOLVING FUND (MUNICIPAL)

Olympia  
DM16-952-045

I, Annaliese Harksen, hereby certify:

I am an attorney at law admitted to practice in the State of Washington and the duly appointed attorney of the Contractor identified on the Declarations Page of the Contract identified above; and

I have also examined any and all documents and records, which are pertinent to the Contract, including the application requesting this financial assistance.

Based on the foregoing, it is my opinion that:

1. The Contractor is a public body, properly constituted and operating under the laws of the State of Washington, empowered to receive and expend federal, state and local funds, to contract with the State of Washington, and to receive and expend the funds involved to accomplish the objectives set forth in their application.
2. The Contractor is empowered to accept the Drinking Water State Revolving Fund financial assistance and to provide for repayment of the loan as set forth in the loan agreement.
3. There is currently no litigation in existence seeking to enjoin the commencement or completion of the above-described public facilities project or to enjoin the Contractor from repaying the Drinking Water State Revolving Fund loan extended by the Public Works Board with respect to such project. The Contractor is not a party to litigation, which will materially affect its ability to repay such loan on the terms contained in the loan agreement.
4. Assumption of this obligation would not exceed statutory and administrative rule debt limitations applicable to the Contractor.

Annaliese Harksen  
Signature of Attorney

6/2/2016  
Date

Annaliese Harksen  
Name

601 4th Ave. E., Olympia, WA  
Address



# ATTACHMENT II: FEDERAL AND STATE REQUIREMENTS

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## 1) Environmental Authorities

- a) Archeological and Historic Preservation Act of 1974, Public Law 86-523 as amended
- b) Clean Air Act, Public Law 84-159 as amended
- c) Coastal Zone Management Act, Public Law 92-583 as amended
- d) Endangered Species Act, Public Law 93-205 as amended
- e) Environmental Justice, Executive Order 12898
- f) Floodplain Management, Executive Order 11988 as amended by Executive Order 12148
- g) Protection of Wetlands, Executive Order 11990
- h) Farmland Protection Policy Act, Public Law 97-98
- i) Fish and Wildlife Coordination Act, Public Law 85-624 as amended
- j) National Historic Preservation Act of 1966, Public Law 89-665 as amended
- k) Safe Drinking Water Act, Public Law 93-523 as amended
- l) Wild and Scenic Rivers Act, Public Law 90-542 as amended

## 2) Economic and Miscellaneous Authorities

- a) Demonstration Cities and Metropolitan Development Act of 1996, Public Law 89-754 as amended, Executive Order 12372
- b) Procurement Prohibitions under Section 306 of the Clean air Act and Section 508 of the Clean Water Act, including Executive Order 11738, Administration of the Clean Air Act and the Federal Water Pollution Control Act with Respect to Federal Contracts, Grants, or Loans
- c) Uniform Relocation and Real Property Policies Act, Public Law 91-646 as amended
- d) Debarment and Suspension, Executive Order 12549
- e) H.R. 3547, Consolidated Appropriations Act, 2014.

## 3) Social Policy Authorities

- a) Age Discrimination Act of 1975, Public Law 94-135
- b) Title VI of the Civil Rights Act of 1964, Public Law 88-352
- c) Section 13 of the Federal Water Pollution Control Act Amendments of 1972, Public Law 92-500 (the Clean Water Act)
- d) Section 504 of the Rehabilitation Act of 1973, Public Law 93-112 (including Executive Orders 11914 and 11250)
- e) Equal Employment Opportunity, Executive Order 11246
- f) Disadvantaged Business Enterprise, Public Law 101-549 (the Clean Air Act), and Public Law 102-389 (the Clean Water Act)
- g) Section 129 of the Small Business Administration Reauthorization and Amendment Act of 1988, Public Law 100-590

## 4) State Laws

- a) Chapter 36.70A RCW, Growth Management Act
- b) Chapter 39.80 RCW, Contracts for Architectural and Engineering Services
- c) Chapter 39.12 RCW, Washington State Public Works Act
- d) Chapter 43.20 RCW, State Board of Health
- e) Chapter 43.70 RCW, Department of Health
- f) Chapter 43.155 RCW, Public Works Project
- g) Chapter 70.116 RCW, Public Water Systems Coordination Act of 1977
- h) Chapter 70.119 RCW, Public Water Supply Systems Certification and Regulation of Operations
- i) Chapter 70.119A RCW, Public Water Systems, Penalties & Compliances
- j) Chapter 246-290 WAC, Group A Public Water Systems
- k) Chapter 246-291 WAC, Group B Public Water Systems
- l) Chapter 246-292 WAC, Waterworks Operator Certification Regulations
- m) Chapter 246-293 WAC, Water Systems Coordination Act
- n) Chapter 246-294 WAC, Drinking Water Operating Permits
- o) Chapter 246-295 WAC, Satellite System Management Agencies
- p) Chapter 246-296 WAC Drinking Water State Revolving Fund Loan Program
- q) Chapter 173-160 WAC, Minimum Standards for Construction & Maintenance of Wells
- r) Title 173 WAC, Department of Ecology Rules
- s) Title 40 Part 141 Code of Federal Regulations, Federal National Primary Drinking Water Regulations (Section Adopted by Reference)



# ATTACHMENT III: DISADVANTAGED BUSINESS ENTERPRISE REQUIREMENTS

## GENERAL COMPLIANCE, 40 CFR, Part 33

The Contractor agrees to comply with the requirements of Environmental Protection Agency's Program for Utilization of Small, Minority and Women's Business Enterprises (MBE/WBE) in procurement under this Contract, contained in 40 CFR, Part 33.

## FAIR SHARE OBJECTIVES, 40 CFR, Part 33, Subpart D

The following are exemptions from the fair share objective Requirements:

- Grant and loan recipients receiving a total of \$250K or less in EPA financial assistance in a given fiscal year.
- Tribal recipients of Performance Partnership Eligible grants under 40 CFR Part 35, Subpart B.
  - There is a 3-year phase in period for the requirement to negotiate fair share goals for Tribal and Insular Area recipients.
- Recipients of Technical Assistance Grants.

The Fair Share Objectives or goals for the utilization of disadvantaged businesses negotiated with EPA by the WA Office of Minority Women Business are stated below.

Construction	10% MBE	6% WBE
Supplies	8% MBE	4% WBE
Equipment	8% MBE	4% WBE
Purchased Services	10% MBE	4% WBE

By signing this Contract, the Contractor is accepting the fair share objectives/goals stated above and attests to the fact that it is purchasing the same or similar construction, supplies, services and equipment, in the same or similar relevant geographic buying market as WA Office of Minority Women Business goal is being adopted.

## SIX GOOD FAITH EFFORTS, 40 CFR, Part 33, Subpart C

Pursuant to 40 CFR, Section 33.301, the Contractor agrees to make the following good faith efforts whenever procuring construction, equipment, services and supplies under an EPA financial assistance agreement, and to ensure that sub-recipients, loan recipients, and prime contractors also comply.

Records documenting compliance with the six good faith efforts shall be retained. The six good faith efforts shall include:

- A. Ensure Disadvantaged Business Enterprises are made aware of contracting opportunities to the fullest extent practicable through outreach and recruitment activities. For Indian Tribal, State and Local Government recipients, this will include placing the Disadvantaged Business Enterprises on solicitation lists and soliciting them whenever they are potential sources.
- B. Make information on forthcoming opportunities available to Disadvantaged Business Enterprises and arrange time frames for contracts and establish delivery schedules, where the requirements permit, in a way that encourages and facilitates participation by Disadvantaged Business Enterprises in the competitive process. This includes, whenever possible, posting solicitations for bids or proposals for a minimum of thirty (30) calendar days before the bid or proposal closing date.
- C. Consider in the contracting process whether firms competing for large contracts could subcontract with Disadvantaged Business Enterprises. For Indian Tribal, State and Local Government recipients, this will include dividing total requirements, when economically feasible, into smaller tasks or quantities to permit maximum participation by Disadvantaged Business Enterprises in the competitive process.
- D. Encourage contracting with a consortium of Disadvantaged Business Enterprises when a contract is too large for one of these firms to handle individually.
- E. Use the services and assistance of the Small Business Administration and the Minority Business Development Agency of the Department of Commerce.
- F. If the prime contractor awards subcontracts, also require the prime contractor to take the five good faith efforts in paragraphs A through E above.

**MBE/WBE REPORTING, 40 CFR, Part 33, Sections 33.502 and 33.503**

Contractor is required to submit MBE/WBE participation reports to the Board and/or the Department of Health, on a quarterly basis, beginning with the Federal fiscal year reporting period the Contractor receives the award and continuing until the project is completed.

**CONTRACT ADMINISTRATION PROVISIONS, 40 CFR, Section 33.302**

The Contractor agrees to comply with the contract administration provisions of 40 CFR, Section 33.302.

The Contractor agrees to require all general contractors to provide forms: EPA Form 6100-2 DBE Subcontractor Participation Form and EPA Form 6100-3 DBE Subcontractor Performance Form to all its Disadvantaged Business Enterprise subcontractors, engineers, vendors, and any other entity for work or services listed in the declared SCOPE OF WORK. These two (2) forms may be obtained from the EPA Office of Small Business Program's website on the internet at <http://www.epa.gov/osbp/grants.htm>.

The Contractor agrees to require all general contractors to complete and submit to the Contractor and Environmental Protection Agency EPA Form 6100-4 DBE Subcontractor Utilization Form beginning with the Federal fiscal year reporting period the Contractor receives the award and continuing until the project is completed. Only procurements with certified MBE/WBEs are counted toward a Contractor's MBE/WBE accomplishments.

**BIDDERS LIST, 40 CFR, Section 33.501(b) and (c)**

The Contractor is also required to create and maintain a bidders list if the Contractor of the loan is subject to, or chooses to follow, competitive bidding requirements. Please see 40 CFR, Section 33.501 (b) and (c) for specific requirements and exemptions.

Section 33.501(b) of the rule is as follows:

A recipient of a Continuing Environmental Program Grant or other annual grant must create and maintain a bidders list. In addition, a recipient of an EPA financial assistance agreement to capitalize a revolving loan fund also must require entities receiving identified loans to create and maintain a bidders list if the recipient of the loan is subject to, or chooses to follow, competitive bidding requirements. The purpose of a bidders list is to provide the recipient and entities receiving identified loans who conduct competitive bidding with as accurate a database as possible about the universe of MBE/WBE and non-MBE/WBE prime and subcontractors. The list must include all firms that bid or quote on prime contracts or bid or quote on subcontracts under EPA assisted projects, including both MBE/WBEs.

The bidders list must be kept until the grant project period has expired and the recipient is no longer receiving EPA funding under the grant. For entities receiving identified loans, the bidders list must be kept until the project period for the identified loan has ended. The following information must be obtained from all prime and subcontractors:

- (1) Entity's name with point of contact;
- (2) Entity's mailing address, telephone number, and e-mail address;
- (3) The procurement on which the entity bid or quoted, and when; and
- (4) Entity's status as a MBE/WBE<sup>1</sup> or non-MBE/WBE.

The exemption found at § 33.501(c) is as follows:

A recipient of an EPA financial assistance agreement in the amount of \$250,000 or less for any single assistance agreement, or of more than one financial assistance agreement with a combined total of \$250,000 or less in any one fiscal year, is exempt from the paragraph (b) of this section requirement to create and maintain a bidders list. Also, a recipient under the CWSRF, DWSRF, or BCRLF Program is not required to apply the paragraph (b) of this section bidders list requirement of this subpart to an entity receiving an identified loan in an amount of \$250,000 or less, or to an entity receiving more than one identified loan with a combined total of \$250,000 or less in any one fiscal year. This exemption is limited to the paragraph (b) of this section bidders list requirements of this subpart.

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<sup>1</sup> Qualified Women and Minority business enterprises may be found on the Internet at [www.omwbe.wa.gov](http://www.omwbe.wa.gov) or by contacting the Washington State Office of Minority and Women's Enterprises at 360-704-1181.

# ATTACHMENT IV: CERTIFICATION REGARDING DEBARMENT, SUSPENSION, AND OTHER RESPONSIBILITY MATTERS



United States Environmental Protection Agency  
Washington, DC 20460

EPA Project Control Number

The prospective participant certifies to the best of its knowledge and belief that it and the principals:

- (a) Are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions by any Federal department or agency;
- (b) Have not within a three year period preceding this proposal been convicted of or had a civil judgment rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (Federal, State, or local) transaction or contract under a public transaction: violation of Federal or State antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property;
- (c) Are not presently indicted for otherwise criminally or civilly charged by a government entity (Federal, State, or local) with commission of any of the offenses enumerated in paragraph (1)(b) of this certification; and
- (d) Have not within a three-year period preceding this application/proposal had one or more public transactions (Federal, State, or local) terminated for cause or default.

I understand that a false statement on this certification may be ground for rejection of this proposal or termination of the award. In addition, under 18 USC Sec. 1001, a false statement may result in a fine of up to \$10,000 or imprisonment for up to 5 years, or both.

Robin Atchison, Project Accountant  
Typed Name & Title of Authorized Representative

Robin Atchison                      5/23/16  
Signature of Authorized Representative                      Date

I am unable to certify to the above statements. My explanation is attached.

EPA Form 5700-49 (11-88)



# ATTACHMENT V: DWSRF ELIGIBLE PROJECT COSTS

Must be directly attributable to the project.

1. The costs for complying with the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970.
2. DWSRF loan fees.
3. The purchase of a portion of another system's capacity, if it is the most cost effective solution (limited to publicly owned (municipal) systems).
4. Construction of reservoirs (clear wells) that are part of the treatment process and are collocated with the treatment facility.
5. Construction of distribution reservoirs (finished water).
6. Cost associated with restructuring or consolidation of existing water systems by publicly owned water systems.
7. Main extensions to connect to safe and reliable sources of drinking water.
8. Cost associated with collecting and preparing environmental assessment documents to obtain local permits.
9. Direct labor including related employee benefits:
  - a. Salaries and wages (at actual or average rates) covering productive labor hours of employees of the borrower (excluding the administrative organization of the operating unit involved) for periods of time actively or incidentally engaged in pre-design engineering, design engineering, construction engineering, acquisition of rights of way, and the cleaning, sterilization or bacteriological testing of water system components prior to public use. The costs of services rendered by employees generally classified as administration/project management of the loan are considered a direct cost only when such employees are assigned the types of services described above and shall be limited to 3% or less of the project loan amount.
  - b. Employee benefits relating to labor are considered a direct cost of construction projects. The following items may be included as employee benefits:
    - F.I.C.A. (Social Security) –employer's share.
    - Retirement benefits.
    - Hospital, health, dental, and other welfare insurance.
    - Life insurance.
    - Industrial and medical insurance.
    - Vacation.
    - Holiday.
    - Sick leave.
    - Military leave and jury duty.

Employee benefits must be calculated as a percentage of direct labor dollars. The computation of predetermined percentage rates to be applied to current labor costs must be based on the average of total employee benefits and total labor costs for the prior fiscal year and adjusted by known current year variations.

- c. Other than work identified in Number 9.a, no costs associated with labor performed by the borrower's employees, including force account work, are eligible for financing assistance.
10. Contract engineering, planning, design, legal, and financial planning services. The Board reserves the right to declare ineligible legal costs that are unreasonable and disproportionate to the project.
11. Contract construction work.
12. Direct vehicle and equipment charges at the actual rental cost paid for the equipment or, in the case of city or county-owned equipment, at the rental rates established by the local government's "equipment rental and revolving fund" following the methods prescribed by the division of municipal corporations. However, such costs must be charged on a uniform basis to equipment used for all projects regardless of the source of funding. Cities with a population of eight thousand or less not using this type of fund are allowed the same rates as used by the State Department of Transportation.
13. Direct materials and supplies.
14. Other direct costs incurred for materials or services acquired for a specific project are eligible costs and may include, but are not limited to such items as:
  - a. Telephone charges.
  - b. Reproduction and photogrammetry costs.
  - c. Video and photography for project documentation.
  - d. Computer usage.
  - e. Printing and advertising.
15. Other project related costs include:
  - Competitive Bidding.
  - Audit.
  - Insurance.
  - Prevailing wages.
  - Attorney fees.
  - Environmental Review.
  - Archaeological Survey.

Water system plan costs are not eligible for reimbursement. Small water system management program and plan amendments costs are eligible for reimbursement.

Projects may be designed to accommodate reasonable growth. This is generally the 20-year projection included in the system's water system plan or small water system management program.



# ATTACHMENT VI: LABOR STANDARD PROVISIONS FOR SUBRECIPIENTS THAT ARE GOVERNMENTAL ENTITIES

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## Wage Rate Requirements Under The Consolidated and Further Continuing Appropriations Act, 2013 (P.L. 113-6)

### Preamble

With respect to the Clean Water and Safe Drinking Water State Revolving Funds, EPA provides capitalization grants to each State which in turn provides subgrants or loans to eligible entities within the State. Typically, the subrecipients are municipal or other local governmental entities that manage the funds. For these types of recipients, the provisions set forth under Roman Numeral I, below, shall apply. Although EPA and the State remain responsible for ensuring subrecipients' compliance with the wage rate requirements set forth herein, those subrecipients shall have the primary responsibility to maintain payroll records as described in Section 3(ii)(A), below and for compliance as described in Section I-5.

Occasionally, the subrecipient may be a private for profit or not for profit entity. For these types of recipients, the provisions set forth in Roman Numeral II, below, shall apply. Although EPA and the State remain responsible for ensuring subrecipients' compliance with the wage rate requirements set forth herein, those subrecipients shall have the primary responsibility to maintain payroll records as described in Section II-3(ii)(A), below and for compliance as described in Section II-5.

### I. Requirements Under The Consolidated and Further Continuing Appropriations Act, 2013 (P.L. 113-6)

#### For Subrecipients That Are Governmental Entities:

The following terms and conditions specify how recipients will assist EPA in meeting its Davis-Bacon (DB) responsibilities when DB applies to EPA awards of financial assistance under the FY 2013 Continuing Resolution with respect to State recipients and subrecipients that are governmental entities. If a subrecipient has questions regarding when DB applies, obtaining the correct DB wage determinations, DB provisions, or compliance monitoring, it may contact Department of Commerce. If a State recipient needs guidance, they may obtain additional guidance from DOL's web site at <http://www.dol.gov/whd/>.

#### **1. Applicability of the Davis- Bacon (DB) prevailing wage requirements.**

Under the FY 2013 Continuing Resolution, DB prevailing wage requirements apply to the construction, alteration, and repair of treatment works carried out in whole or in part with assistance made available by a State water pollution control revolving fund and to any construction project carried out in whole or in part by assistance made available by a drinking water treatment revolving loan fund. If a subrecipient encounters a unique situation at a site that presents uncertainties regarding DB applicability, the subrecipient must discuss the situation with the recipient State before authorizing work on that site.

#### **2. Obtaining Wage Determinations.**

(a) Subrecipients shall obtain the wage determination for the locality in which a covered activity subject to DB will take place prior to issuing requests for bids, proposals, quotes or other methods for soliciting contracts (solicitation) for activities subject to DB. These wage determinations shall be incorporated into solicitations and any subsequent contracts. Prime contracts must contain a provision requiring that subcontractors follow the wage determination incorporated into the prime contract.

- (i) While the solicitation remains open, the subrecipient shall monitor [www.wdol.gov](http://www.wdol.gov) weekly to ensure that the wage determination contained in the solicitation remains current. The subrecipients shall amend the solicitation if DOL issues a modification more than 10 days prior to the closing date (i.e. bid opening) for the solicitation. If DOL modifies or supersedes the applicable wage determination less than 10 days prior to the closing date, the subrecipients may request a finding from the State recipient that there is not a reasonable time to notify interested contractors of the modification of the wage determination. The State recipient will provide a report of its findings to the subrecipient.
- (ii) If the subrecipient does not award the contract within 90 days of the closure of the solicitation, any modifications or supersedes DOL makes to the wage determination contained in the solicitation shall be effective unless the State recipient, at the request of the subrecipient, obtains an extension of the 90 day period from DOL pursuant to 29 CFR 1.6(c)(3)(iv). The subrecipient shall monitor [www.wdol.gov](http://www.wdol.gov) on a weekly basis if it does not award the contract within 90 days of closure of the solicitation to ensure that wage determinations contained in the solicitation remain current.

(b) If the subrecipient carries out activity subject to DB by issuing a task order, work assignment or similar instrument to an existing contractor (ordering instrument) rather than by publishing a solicitation, the subrecipient shall insert the appropriate DOL wage determination from [www.wdol.gov](http://www.wdol.gov) into the ordering instrument.

(c) Subrecipients shall review all subcontracts subject to DB entered into by prime contractors to verify that the prime contractor has required its subcontractors to include the applicable wage determinations.

(d) As provided in 29 CFR 1.6(f), DOL may issue a revised wage determination applicable to a subrecipient's contract after the award of a contract or the issuance of an ordering instrument if DOL determines that the subrecipient has failed to incorporate a wage determination or has used a wage determination that clearly does not apply to the contract or ordering instrument. If this occurs, the subrecipient shall either terminate the contract or ordering instrument and issue a revised solicitation or ordering instrument or incorporate DOL's wage determination retroactive to the beginning of the contract or ordering instrument by change order. The subrecipient's contractor must be compensated for any increases in wages resulting from the use of DOL's revised wage determination.

### **3. Contract and Subcontract provisions.**

(a) The Recipient shall insure that the subrecipient(s) shall insert in full in any contract in excess of \$2,000 which is entered into for the actual construction, alteration and/or repair, including painting and decorating, of a treatment work under the CWSRF or a construction project under the DWSRF financed in whole or in part from Federal funds or in accordance with guarantees of a Federal agency or financed from funds obtained by pledge of any contract of a Federal agency to make a loan, grant or annual contribution (except where a different meaning is expressly indicated), and which is subject to the labor standards provisions of any of the acts listed in § 5.1 or the FY 2013 Continuing Resolution, the following clauses:

(1) Minimum wages.

(i) All laborers and mechanics employed or working upon the site of the work will be paid unconditionally and not less often than once a week, and without subsequent deduction or rebate on any account (except such payroll deductions as are permitted by regulations issued by the Secretary of Labor under the Copeland Act (29 CFR part 3)), the full amount of wages and bona fide fringe benefits (or cash equivalents thereof) due at time of payment computed at rates not less than those contained in the wage determination of the Secretary of Labor which is attached hereto and made a part hereof, regardless of any contractual relationship which may be alleged to exist between the contractor and such laborers and mechanics.

Contributions made or costs reasonably anticipated for bona fide fringe benefits under section 1(b)(2) of the Davis-Bacon Act on behalf of laborers or mechanics are considered wages paid to such laborers or mechanics, subject to the provisions of paragraph (a)(1)(iv) of this section; also, regular contributions made or costs incurred for more than a weekly period (but not less often than quarterly) under plans, funds, or programs which cover the particular weekly period, are deemed to be constructively made or incurred during such weekly period. Such laborers and mechanics shall be paid the appropriate wage rate and fringe benefits on the wage determination for the classification of work actually performed, without regard to skill, except as provided in § 5.5(a)(4). Laborers or mechanics performing work in more than one classification may be compensated at the rate specified for each classification for the time actually worked therein: Provided, that the employer's payroll records accurately set forth the time spent in each classification in which work is performed. The wage determination (including any additional classification and wage rates conformed under paragraph (a)(1)(ii) of this section) and the Davis-Bacon poster (WH-1321) shall be posted at all times by the contractor and its subcontractors at the site of the work in a prominent and accessible place where it can be easily seen by the workers.

Subrecipients may obtain wage determinations from the U.S. Department of Labor's web site, [www.dol.gov](http://www.dol.gov).

(ii)(A) The subrecipient(s), on behalf of EPA, shall require that any class of laborers or mechanics, including helpers, which is not listed in the wage determination and which is to be employed under the contract shall be classified in conformance with the wage determination. The State award official shall approve a request for an additional classification and wage rate and fringe benefits therefore only when the following criteria have been met:

(1) The work to be performed by the classification requested is not performed by a classification in the wage determination; and

(2) The classification is utilized in the area by the construction industry; and

(3) The proposed wage rate, including any bona fide fringe benefits, bears a reasonable relationship to the wage rates contained in the wage determination.

(B) If the contractor and the laborers and mechanics to be employed in the classification (if known), or their representatives, and the subrecipient(s) agree on the classification and wage rate (including the amount designated for fringe benefits where appropriate), documentation of the action taken and the request, including the local wage determination shall be sent by the subrecipient (s) to the State award official. The State award official will transmit the request, to the Administrator of the Wage and Hour Division, Employment Standards Administration, U.S. Department of Labor, Washington, DC 20210 and to the EPA DB Regional Coordinator concurrently. The Administrator, or an authorized representative, will approve, modify, or disapprove every additional classification request within 30 days of receipt and so advise the State award official or will notify the State award official within the 30-day period that additional time is necessary.

(C) In the event the contractor, the laborers or mechanics to be employed in the classification or their representatives, and the subrecipient(s) do not agree on the proposed classification and wage rate (including the amount designated for fringe benefits, where appropriate), the award official shall refer the request and the local wage determination, including the views of all interested parties and the recommendation of the State award official, to the Administrator for

determination. The request shall be sent to the EPA DB Regional Coordinator concurrently. The Administrator, or an authorized representative, will issue a determination within 30 days of receipt of the request and so advise the contracting officer or will notify the contracting officer within the 30-day period that additional time is necessary.

(D) The wage rate (including fringe benefits where appropriate) determined pursuant to paragraphs (a)(1)(ii)(B) or (C) of this section, shall be paid to all workers performing work in the classification under this contract from the first day on which work is performed in the classification.

(iii) Whenever the minimum wage rate prescribed in the contract for a class of laborers or mechanics includes a fringe benefit which is not expressed as an hourly rate, the contractor shall either pay the benefit as stated in the wage determination or shall pay another bona fide fringe benefit or an hourly cash equivalent thereof.

(iv) If the contractor does not make payments to a trustee or other third person, the contractor may consider as part of the wages of any laborer or mechanic the amount of any costs reasonably anticipated in providing bona fide fringe benefits under a plan or program, provided, that the Secretary of Labor has found, upon the written request of the contractor, that the applicable standards of the Davis-Bacon Act have been met. The Secretary of Labor may require the contractor to set aside in a separate account assets for the meeting of obligations under the plan or program.

(2) Withholding. The subrecipient(s), shall upon written request of the EPA Award Official or an authorized representative of the Department of Labor, withhold or cause to be withheld from the contractor under this contract or any other Federal contract with the same prime contractor, or any other federally-assisted contract subject to Davis-Bacon prevailing wage requirements, which is held by the same prime contractor, so much of the accrued payments or advances as may be considered necessary to pay laborers and mechanics, including apprentices, trainees, and helpers, employed by the contractor or any subcontractor the full amount of wages required by the contract. In the event of failure to pay any laborer or mechanic, including any apprentice, trainee, or helper, employed or working on the site of the work, all or part of the wages required by the contract, the (Agency) may, after written notice to the contractor, sponsor, applicant, or owner, take such action as may be necessary to cause the suspension of any further payment, advance, or guarantee of funds until such violations have ceased.

(3) Payrolls and basic records.

(i) Payrolls and basic records relating thereto shall be maintained by the contractor during the course of the work and preserved for a period of three years thereafter for all laborers and mechanics working at the site of the work. Such records shall contain the name, address, and social security number of each such worker, his or her correct classification, hourly rates of wages paid (including rates of contributions or costs anticipated for bona fide fringe benefits or cash equivalents thereof of the types described in section 1(b)(2)(B) of the Davis-Bacon Act), daily and weekly number of hours worked, deductions made and actual wages paid. Whenever the Secretary of Labor has found under 29 CFR 5.5(a)(1)(iv) that the wages of any laborer or mechanic include the amount of any costs reasonably anticipated in providing benefits under a plan or program described in section 1(b)(2)(B) of the Davis-Bacon Act, the contractor shall maintain records which show that the commitment to provide such benefits is enforceable, that the plan or program is financially responsible, and that the plan or program has been communicated in writing to the laborers or mechanics affected, and records which show the costs anticipated or the actual cost incurred in providing such benefits. Contractors employing apprentices or trainees under approved programs shall maintain written evidence of the registration of apprenticeship programs and certification of trainee programs, the registration of the apprentices and trainees, and the ratios and wage rates prescribed in the applicable programs.

(ii)(A) The contractor shall submit weekly, for each week in which any contract work is performed, a copy of all payrolls to the subrecipient, that is, the entity that receives the sub-grant or loan from the State capitalization grant recipient. Such documentation shall be available on request of the State recipient or EPA. As to each payroll copy received, the subrecipient shall provide written confirmation in a form satisfactory to the State indicating whether or not the project is in compliance with the requirements of 29 CFR 5.5(a)(1) based on the most recent payroll copies for the specified week. The payrolls shall set out accurately and completely all of the information required to be maintained under 29 CFR 5.5(a)(3)(i), except that full social security numbers and home addresses shall not be included on the weekly payrolls. Instead the payrolls shall only need to include an individually identifying number for each employee (e.g., the last four digits of the employee's social security number). The required weekly payroll information may be submitted in any form desired. Optional Form WH-347 is available for this purpose from the Wage and Hour Division Web site at <http://www.dol.gov/whd/forms/wh347instr.htm> or its successor site. The prime contractor is responsible for the submission of copies of payrolls by all subcontractors. Contractors and subcontractors shall maintain the full social security number and current address of each covered worker, and shall provide them upon request to the subrecipient(s) for transmission to the State or EPA if requested by EPA, the State, the contractor, or the Wage and Hour Division of the Department of Labor for purposes of an investigation or audit of compliance with prevailing wage requirements. It is not a violation of this section for a prime contractor to require a subcontractor to provide addresses and social security numbers to the prime contractor for its own records, without weekly submission to the subrecipient(s).

(B) Each payroll submitted shall be accompanied by a "Statement of Compliance," signed by the contractor or subcontractor or his or her agent who pays or supervises the payment of the persons employed under the contract and shall certify the following:

(1) That the payroll for the payroll period contains the information required to be provided under § 5.5 (a)(3)(ii) of Regulations, 29 CFR part 5, the appropriate information is being maintained under § 5.5 (a)(3)(i) of Regulations, 29 CFR part 5, and that such information is correct and complete;

(2) That each laborer or mechanic (including each helper, apprentice, and trainee) employed on the contract during the payroll period has been paid the full weekly wages earned, without rebate, either directly or indirectly, and that no deductions have been made either directly or indirectly from the full wages earned, other than permissible deductions as set forth in Regulations, 29 CFR part 3;

(3) That each laborer or mechanic has been paid not less than the applicable wage rates and fringe benefits or cash equivalents for the classification of work performed, as specified in the applicable wage determination incorporated into the contract.

(C) The weekly submission of a properly executed certification set forth on the reverse side of Optional Form WH-347 shall satisfy the requirement for submission of the "Statement of Compliance" required by paragraph (a)(3)(ii)(B) of this section.

(D) The falsification of any of the above certifications may subject the contractor or subcontractor to civil or criminal prosecution under section 1001 of title 18 and section 231 of title 31 of the United States Code.

(iii) The contractor or subcontractor shall make the records required under paragraph (a)(3)(i) of this section available for inspection, copying, or transcription by authorized representatives of the State, EPA or the Department of Labor, and shall permit such representatives to interview employees during working hours on the job. If the contractor or subcontractor fails to submit the required records or to make them available, the Federal agency or State may, after written notice to the contractor, sponsor, applicant, or owner, take such action as may be necessary to cause the suspension of any further payment, advance, or guarantee of funds. Furthermore, failure to submit the required records upon request or to make such records available may be grounds for debarment action pursuant to 29 CFR 5.12.

(4) Apprentices and trainees--

(i) Apprentices. Apprentices will be permitted to work at less than the predetermined rate for the work they performed when they are employed pursuant to and individually registered in a bona fide apprenticeship program registered with the U.S. Department of Labor, Employment and Training Administration, Office of Apprenticeship Training, Employer and Labor Services, or with a State Apprenticeship Agency recognized by the Office, or if a person is employed in his or her first 90 days of probationary employment as an apprentice in such an apprenticeship program, who is not individually registered in the program, but who has been certified by the Office of Apprenticeship Training, Employer and Labor Services or a State Apprenticeship Agency (where appropriate) to be eligible for probationary employment as an apprentice. The allowable ratio of apprentices to journeymen on the job site in any craft classification shall not be greater than the ratio permitted to the contractor as to the entire work force under the registered program. Any worker listed on a payroll at an apprentice wage rate, who is not registered or otherwise employed as stated above, shall be paid not less than the applicable wage rate on the wage determination for the classification of work actually performed. In addition, any apprentice performing work on the job site in excess of the ratio permitted under the registered program shall be paid not less than the applicable wage rate on the wage determination for the work actually performed. Where a contractor is performing construction on a project in a locality other than that in which its program is registered, the ratios and wage rates (expressed in percentages of the journeyman's hourly rate) specified in the contractor's or subcontractor's registered program shall be observed. Every apprentice must be paid at not less than the rate specified in the registered program for the apprentice's level of progress, expressed as a percentage of the journeymen hourly rate specified in the applicable wage determination. Apprentices shall be paid fringe benefits in accordance with the provisions of the apprenticeship program. If the apprenticeship program does not specify fringe benefits, apprentices must be paid the full amount of fringe benefits listed on the wage determination for the applicable classification. If the Administrator determines that a different practice prevails for the applicable apprentice classification, fringes shall be paid in accordance with that determination. In the event the Office of Apprenticeship Training, Employer and Labor Services, or a State Apprenticeship Agency recognized by the Office, withdraws approval of an apprenticeship program, the contractor will no longer be permitted to utilize apprentices at less than the applicable predetermined rate for the work performed until an acceptable program is approved.

(ii) Trainees. Except as provided in 29 CFR 5.16, trainees will not be permitted to work at less than the predetermined rate for the work performed unless they are employed pursuant to and individually registered in a program which has received prior approval, evidenced by formal certification by the U.S. Department of Labor, Employment and Training Administration. The ratio of trainees to journeymen on the job site shall not be greater than permitted under the plan approved by the Employment and Training Administration. Every trainee must be paid at not less than the rate specified in the approved program for the trainee's level of progress, expressed as a percentage of the journeyman hourly rate specified in the applicable wage determination. Trainees shall be paid fringe benefits in accordance with the provisions of the trainee program. If the trainee program does not mention fringe benefits, trainees shall be paid the full amount of fringe benefits listed on the wage determination unless the Administrator of the Wage and Hour Division determines that there is an apprenticeship program associated with the corresponding journeyman wage rate on the wage determination which provides for less than full fringe benefits for apprentices. Any employee listed on the payroll at a trainee rate who is

not registered and participating in a training plan approved by the Employment and Training Administration shall be paid not less than the applicable wage rate on the wage determination for the classification of work actually performed. In addition, any trainee performing work on the job site in excess of the ratio permitted under the registered program shall be paid not less than the applicable wage rate on the wage determination for the work actually performed. In the event the Employment and Training Administration withdraws approval of a training program, the contractor will no longer be permitted to utilize trainees at less than the applicable predetermined rate for the work performed until an acceptable program is approved.

(iii) Equal employment opportunity. The utilization of apprentices, trainees and journeymen under this part shall be in conformity with the equal employment opportunity requirements of Executive Order 11246, as amended, and 29 CFR part 30.

(5) Compliance with Copeland Act requirements. The contractor shall comply with the requirements of 29 CFR part 3, which are incorporated by reference in this contract.

(6) Subcontracts. The contractor or subcontractor shall insert in any subcontracts the clauses contained in 29 CFR 5.5(a)(1) through (10) and such other clauses as the EPA determines may be appropriate, and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The prime contractor shall be responsible for the compliance by any subcontractor or lower tier subcontractor with all the contract clauses in 29 CFR 5.5.

(7) Contract termination; debarment. A breach of the contract clauses in 29 CFR 5.5 may be grounds for termination of the contract, and for debarment as a contractor and a subcontractor as provided in 29 CFR 5.12.

(8) Compliance with Davis-Bacon and Related Act requirements. All rulings and interpretations of the Davis-Bacon and Related Acts contained in 29 CFR parts 1, 3, and 5 are herein incorporated by reference in this contract.

(9) Disputes concerning labor standards. Disputes arising out of the labor standards provisions of this contract shall not be subject to the general disputes clause of this contract. Such disputes shall be resolved in accordance with the procedures of the Department of Labor set forth in 29 CFR parts 5, 6, and 7. Disputes within the meaning of this clause include disputes between the contractor (or any of its subcontractors) and Subrecipient(s), State, EPA, the U.S. Department of Labor, or the employees or their representatives.

(10) Certification of eligibility.

(i) By entering into this contract, the contractor certifies that neither it (nor he or she) nor any person or firm who has an interest in the contractor's firm is a person or firm ineligible to be awarded Government contracts by virtue of section 3(a) of the Davis-Bacon Act or 29 CFR 5.12(a)(1).

(ii) No part of this contract shall be subcontracted to any person or firm ineligible for award of a Government contract by virtue of section 3(a) of the Davis-Bacon Act or 29 CFR 5.12(a)(1).

(iii) The penalty for making false statements is prescribed in the U.S. Criminal Code, 18 USC 1001.

#### **4. Contract Provision for Contracts in Excess of \$100,000.**

(a) Contract Work Hours and Safety Standards Act. The subrecipient shall insert the following clauses set forth in paragraphs (a)(1), (2), (3), and (4) of this section in full in any contract in an amount in excess of \$100,000 and subject to the overtime provisions of the Contract Work Hours and Safety Standards Act. These clauses shall be inserted in addition to the clauses required by Item 3, above or 29 CFR 4.6. As used in this paragraph, the terms laborers and mechanics include watchmen and guards.

(1) Overtime requirements. No contractor or subcontractor contracting for any part of the contract work which may require or involve the employment of laborers or mechanics shall require or permit any such laborer or mechanic in any workweek in which he or she is employed on such work to work in excess of forty hours in such workweek unless such laborer or mechanic receives compensation at a rate not less than one and one-half times the basic rate of pay for all hours worked in excess of forty hours in such workweek.

(2) Violation; liability for unpaid wages; liquidated damages. In the event of any violation of the clause set forth in paragraph (a)(1) of this section the contractor and any subcontractor responsible therefore shall be liable for the unpaid wages. In addition, such contractor and subcontractor shall be liable to the United States (in the case of work done under contract for the District of Columbia or a territory, to such District or to such territory), for liquidated damages. Such liquidated damages shall be computed with respect to each individual laborer or mechanic, including watchmen and guards, employed in violation of the clause set forth in paragraph (a)(1) of this section, in the sum of \$10 for each calendar day on which such individual was required or permitted to work in excess of the standard workweek of forty hours without payment of the overtime wages required by the clause set forth in paragraph (a)(1) of this section.

(3) Withholding for unpaid wages and liquidated damages. The subrecipient, upon written request of the EPA Award Official or an authorized representative of the Department of Labor, shall withhold or cause to be withheld, from any moneys payable on account of work performed by the contractor or subcontractor under any such contract or any other Federal contract with the same prime contractor, or any other federally-assisted contract subject to the Contract Work Hours and Safety Standards Act, which is held by the same prime contractor, such sums as may be determined to be

necessary to satisfy any liabilities of such contractor or subcontractor for unpaid wages and liquidated damages as provided in the clause set forth in paragraph (b)(2) of this section.

(4) Subcontracts. The contractor or subcontractor shall insert in any subcontracts the clauses set forth in paragraph (a)(1) through (4) of this section and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The prime contractor shall be responsible for compliance by any subcontractor or lower tier subcontractor with the clauses set forth in paragraphs (a)(1) through (4) of this section.

(b) In addition to the clauses contained in Item 3, above, in any contract subject only to the Contract Work Hours and Safety Standards Act and not to any of the other statutes cited in 29 CFR 5.1, the Subrecipient shall insert a clause requiring that the contractor or subcontractor shall maintain payrolls and basic payroll records during the course of the work and shall preserve them for a period of three years from the completion of the contract for all laborers and mechanics, including guards and watchmen, working on the contract. Such records shall contain the name and address of each such employee, social security number, correct classifications, hourly rates of wages paid, daily and weekly number of hours worked, deductions made, and actual wages paid. Further, the Subrecipient shall insert in any such contract a clause providing that the records to be maintained under this paragraph shall be made available by the contractor or subcontractor for inspection, copying, or transcription by authorized representatives of the (write the name of agency) and the Department of Labor, and the contractor or subcontractor will permit such representatives to interview employees during working hours on the job.

## **5. Compliance Verification**

(a) The subrecipient shall periodically interview a sufficient number of employees entitled to DB prevailing wages (covered employees) to verify that contractors or subcontractors are paying the appropriate wage rates. As provided in 29 CFR 5.6(a)(6), all interviews must be conducted in confidence. The subrecipient must use Standard Form 1445 (SF 1445) or equivalent documentation to memorialize the interviews. Copies of the SF 1445 are available from EPA on request.

(b) The subrecipient shall establish and follow an interview schedule based on its assessment of the risks of noncompliance with DB posed by contractors or subcontractors and the duration of the contract or subcontract. Subrecipients must conduct more frequent interviews if the initial interviews or other information indicated that there is a risk that the contractor or subcontractor is not complying with DB.

Subrecipients shall immediately conduct interviews in response to an alleged violation of the prevailing wage requirements. All interviews shall be conducted in confidence."

(c) The subrecipient shall periodically conduct spot checks of a representative sample of weekly payroll data to verify that contractors or subcontractors are paying the appropriate wage rates. The subrecipient shall establish and follow a spot check schedule based on its assessment of the risks of noncompliance with DB posed by contractors or subcontractors and the duration of the contract or subcontract. At a minimum, if practicable, the subrecipient should spot check payroll data within two weeks of each contractor or subcontractor's submission of its initial payroll data and two weeks prior to the completion date the contract or subcontract. Subrecipients must conduct more frequent spot checks if the initial spot check or other information indicates that there is a risk that the contractor or subcontractor is not complying with DB. In addition, during the examinations the subrecipient shall verify evidence of fringe benefit plans and payments thereunder by contractors and subcontractors who claim credit for fringe benefit contributions.

(d) The subrecipient shall periodically review contractors and subcontractors use of apprentices and trainees to verify registration and certification with respect to apprenticeship and training programs approved by either the U.S Department of Labor or a state, as appropriate, and that contractors and subcontractors are not using disproportionate numbers of, laborers, trainees and apprentices. These reviews shall be conducted in accordance with the schedules for spot checks and interviews described in Item 5(b) and (c) above.

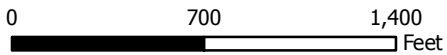
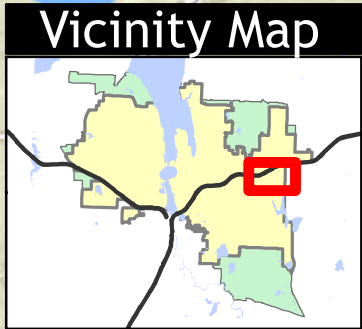
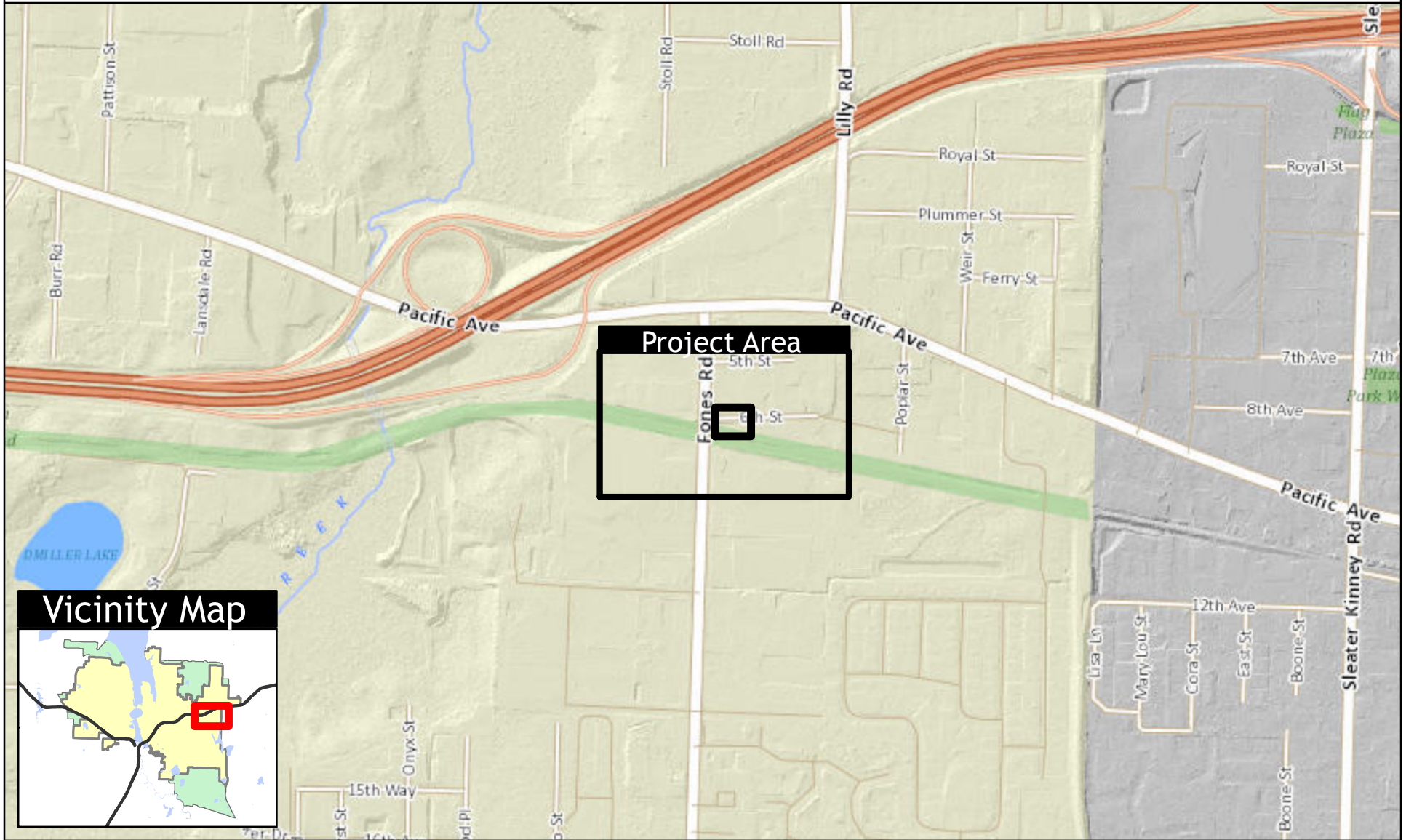
(e) Subrecipients must immediately report potential violations of the DB prevailing wage requirements to the Department of Commerce and to the appropriate DOL Wage and Hour District Office listed at <http://www.dol.gov/contacts/whd/america2.htm>.





# Fones Road Booster Pump Station

Project #1426P



1 inch = 700 feet

Map printed 5/17/2016

For more information, please contact:

Tim Richardson, Project Manager

Email [trichard@ci.olympia.wa.us](mailto:trichard@ci.olympia.wa.us)

(360) 753-8749

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## City Council

### Approval of the Drinking Water State Revolving Fund (DWSRF) Loan for the McAllister Wellfield Corrosion Control Facility

**Agenda Date:** 6/14/2016  
**Agenda Item Number:** 4.D  
**File Number:** 16-0662

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**Type:** contract   **Version:** 1   **Status:** Consent Calendar

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#### **Title**

Approval of the Drinking Water State Revolving Fund (DWSRF) Loan for the McAllister Wellfield Corrosion Control Facility

#### **Recommended Action**

##### **Committee Recommendation:**

Not referred to a committee

##### **City Manager Recommendation:**

Move to approve the Drinking Water State Revolving Fund Loan for the McAllister Wellfield Corrosion Control Facility and authorize the City Manager to sign the loan contract in the amount of \$4,058,632.

#### **Report**

##### **Issue:**

Whether to confirm staff's recommendation to approve the Drinking Water State Revolving Fund Loan for the McAllister Wellfield Corrosion Control Facility.

##### **Staff Contact:**

Tim Richardson, P.E., Project Manager, Public Works Engineering, 360.753.8749

##### **Presenter(s):**

None - Consent Calendar Item.

#### **Background and Analysis:**

The Drinking Water State Revolving Fund is a program that provides low interest loans to water utilities to upgrade their water system. The Washington State Department of Health, Public Works Board, and Department of Commerce administer the loans

The loans fund improvements that protect public health and help meet State drinking water regulations. The federal Safe Drinking Water Act requires the City to raise water system pH to a level that prevents pipe corrosion.

This loan will provide funding to construct a Corrosion Control Facility to raise the pH of McAllister

Wellfield water. This will reduce the chance of lead and copper leaching from household plumbing. The Corrosion Control Facility will use aeration towers (blown air, non-chemical) to raise the pH of McAllister well water.

The project is the last of a series of McAllister projects. It completes improvements to the City's main water source until well into the future.

Once Council has approved the loan, Staff will bid the project. Construction will start later in the summer or early fall. Construction is expected to be complete by the summer of 2017.

**Neighborhood/Community Interests (if known):**

Construction activity is off the road and typically won't impact traffic flow. Occasionally, equipment will need access to and from the site. The location for the Corrosion Control Facility is at the Meridian Reservoir site, about six miles east of Olympia. The project team will inform the overall City of project construction via social media such as Twitter.

**Options:**

1. Approve the DWSRF Loan for the McAllister Wellfield Corrosion control Facility and authorize the City Manager to sign the loan contract in the amount of \$4,058,632.
  - Project proceeds as planned.
  - Accepting the loan and constructing the Corrosion Control Facility will allow the City to meet Department of Health (DOH) requirements for raising the pH of McAllister Wellfield water.
  - Constructing the facility this year will allow us to meet DOH's timeline to begin use of the Corrosion Control Facility.
  
2. Reject the Loan contract and direct staff to investigate other potential funding sources for the project.
  - Investigating other potential funding sources will delay construction and cause the City to fail at meeting DOH's required timeline to begin use of the facility.

**Financial Impact:**

Total cost for this project is approximately \$4.5 million dollars as detailed below. Funding for this project is through the Drinking Water Utility, largely with a low-interest loan from the Washington Drinking Water State Revolving Fund. With the loan, there are sufficient funds in the budget to complete this project.

Funding Sources:

DWSRF Loan	\$ 4,058,632
Drinking Water Utility	\$ 441,368

<b>Total Project Costs</b>	<b>\$ 4,500,000</b>
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**Attachments:**

DWSRF Loan Contract  
Project Map





**Washington State  
Public Works Board**

1011 Plum Street SE  
Post Office Box 42525  
Olympia, Washington 98504-2525

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**Capital Agreement between:**

**Olympia  
and**

**Public Works Board**

**For:**

**Project Name: McAllister Wellfield Corrosion Control Facility**

**Loan Number: DM16-952-042**

**Loan Type: DWSRF NT**

**Contract Start Date:** \_\_\_\_\_ **Contract Execution Date** \_\_\_\_\_



**Department of Commerce**

**Innovation is in our nature.**

Washington State Department of Commerce  
[www.commerce.wa.gov](http://www.commerce.wa.gov)

# DECLARATIONS

## CLIENT INFORMATION

Legal Name: Olympia  
Loan Number: DM16-952-042  
Award Year: 2016  
State Wide Vendor Number: SWV0008653-00

## PROJECT INFORMATION

Project Title: McAllister Wellfield Corrosion Control Facility  
Project City: Olympia  
Project State: Washington  
Project Zip Code: 98507-1967

## LOAN INFORMATION

Loan Amount: \$4,058,632  
Loan Fee (Included in loan amount if applicable) \$40,184  
Loan Forgiveness %: 0%  
Loan Term: 20 Years  
Interest Rate: 1.5%  
Payment Month: October 1st  
Earliest Date for Construction Reimbursement: 7/1/2015  
Time of Performance: 48 months from Contract execution date to Project Completion date.

## FUNDING INFORMATION

Total Amount of Federal Award (as applicable) [To be determined]  
Federal Award Date [To be determined]  
Federal Award ID # (FAIN) [To be determined]  
Amount of Federal Funds Obligated by this action [To be determined]  
Awarding Official [To be determined]

## SPECIAL TERMS AND CONDITIONS GOVERNING THIS LOAN AGREEMENT

The following sections of this contract are hereby deleted:  
Section 2.2 - ADMINISTRATIVE COST ALLOCATION (final sentence): "An approved current federal indirect cost rate may be applied up to the maximum administrative budget allowed".  
Section 2.24. - INDIRECT COSTS (entire section).

## LOAN SECURITY CONDITION GOVERNING THIS LOAN AGREEMENT

This loan is a revenue obligation of the Contractor payable solely from the net revenue of the Water system. Payments shall be made from the net revenue of the utility after the payment of the principal and interest on any revenue bonds, notes, warrants or other obligations of the utility having a lien on that net revenue. As used here, "net revenue" means gross revenue minus expenses of maintenance and operations. The Board grants the Contractor the right to issue future bonds and notes that constitute a lien and charge on net revenue superior to the lien and charge of this loan Contract. This option may be used only if the entire project is a domestic water, sanitary sewer, storm sewer, or solid waste utility project.

## **DECLARATIONS (continued)**

Loan Number:

**DM16-952-042**

Project Title:

**McAllister Wellfield Corrosion Control Facility**

Scope of Work:

**Project work consists of design and construction of corrosion control facility, with all appurtenances for a fully functioning system at the site of the Meridian Reservoirs. Packed tower aeration will be used to treat chlorinated water from the McAllister Wellfield. Three aeration towers will be installed with this project. Each tower will be approximately 14 feet in diameter and 41 feet in height with a packing depth of 15 feet. Each tower will be provided with a dedicated blower, a distribution header or array of nozzles, and plastic aeration packing. A sump or clearwell will be installed below the aeration tower. In addition the towers will contain packing supports, inspection ports, manways and a demister.**

**CONTRACT FACE SHEET**  
**Contract Number: DM16-952-042**  
**Drinking Water State Revolving Fund (DWSRF)**  
**2016**

<b>1. Contractor</b> City of Olympia P.O. Box 1967 Olympia, WA 98507-1967		<b>2. Contractor Doing Business As (optional)</b> N/A	
<b>3. Contractor Representative</b> N/A		<b>4. Public Works Board Representative</b> N/A	
<b>5. Contract Amount</b> \$4,058,632	<b>6. Funding Source</b> Federal: <input checked="" type="checkbox"/> State: <input checked="" type="checkbox"/> Other: <input type="checkbox"/> N/A: <input type="checkbox"/>	<b>7. Contract Start Date</b> Contract Execution Date	<b>8. Contract End Date</b> October 1, 2036
<b>9. Federal Funds (as applicable)</b> N/A	<b>Federal Agency</b> EPA	<b>CFDA Number</b> 66.468	
<b>10. Tax ID #</b> N/A	<b>11. SWV #</b> SWV0008653-00	<b>12. UBI #</b>	<b>13. DUNS #</b> 75732198
<b>14. Contract Purpose</b> The purpose of this Contract is to provide funding for a project of a local government that furthers the goals and objectives of the Drinking Water State Revolving Fund Loan Program. The project will be undertaken by the Contractor and will include the activities described in the Declared Scope of Work.			
The Board, defined as the Washington State Public Works Board, and Contractor acknowledge and accept the terms of this Contract and attachments and have executed this Contract on the date below to start as of the date and year last written below. The rights and obligations of both parties to this Contract are governed by this Contract and the following other documents incorporated by reference: Contractor Terms and Conditions including Declarations Page; Attachment I: Attorney's Certification; Attachment II: Federal and State Requirements; Attachment III: Disadvantaged Business Enterprise Requirements; Attachment IV: Certification Regarding Debarment, Suspension, and Other Responsibility Matters; Attachment V: DWSRF Eligible Project Costs; and Attachment VI: Labor Standard Provisions for Subrecipients that are Governmental Entities.			
<b>FOR THE CONTRACTOR</b>  _____ Signature  _____ Print Name  _____ Title  _____ Date		<b>FOR PUBLIC WORKS BOARD</b>  _____ Stan Finkelstein, Public Works Board Chair  _____ Date  <b>APPROVED AS TO FORM ONLY</b>  This 30th Day of November, 2015 _____ Bob Ferguson Attorney General  <i>Signature on file</i> _____ Kathryn Wyatt Assistant Attorney General	





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# CONTRACT TERMS AND CONDITIONS

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## DRINKING WATER STATE REVOLVING FUND NEW TRADITIONAL (MUNICIPAL)

### Part 1. SPECIAL TERMS AND CONDITIONS

#### 1.1. DEFINITIONS

As used throughout this Drinking Water State Revolving Fund Loan Contract, the following terms shall have the meaning set forth below:

- A. AWARD YEAR shall mean the calendar year in which the funds were awarded to the Board for use in making loans under this program.
- B. "Board" shall mean the Washington State Public Works Board created in Revised Code of Washington (RCW) 43.155.030, and who is a Party to the Contract.
- C. "Contract" shall mean this Drinking Water State Revolving Fund Loan.
- D. "Contractor" shall mean the Local Government identified on the Contract Face Sheet performing service(s) under this Contract and who is a Party to the Contract, and shall include all employees and agents of the Contractor.
- E. The "Contract End Date" shall mean the date the contract expires. This date shall occur in the final year of the LOAN TERM unless otherwise amended, as counted from the AWARD YEAR. The actual date of contract execution shall have no effect on the Contract End Date.
- F. "Deferral Period" shall be from the date of contract execution until the date of project completion. The Deferral Period shall not exceed 4 years in length.
- G. "Department of Commerce" and "Commerce" shall mean the Washington State Department of Commerce.
- H. "Department of Health" shall mean the Washington State Department of Health, Office of Drinking Water, who is the recipient of the Drinking Water State Revolving Fund grant and regulates drinking water systems in the State of Washington.
- I. "Iron and steel products" are the following products made primarily of iron or steel: lined or unlined pipes and fittings, manhole covers and other municipal castings, hydrants, tanks, flanges, pipe clamps and restraints, valves, structural steel, reinforced precast concrete, and construction materials.
- J. PAYMENT MONTH shall mean the day and month of the year in which payments are due.

#### 1.2. AUTHORITY

Acting under the authority of RCW 70.119A.170 and RCW 43.155.040, the Board has awarded the Contractor a Drinking Water State Revolving Fund loan for an approved project. The Contractor will be a sub-recipient of funds provided by the United States Environmental Protection Agency, CFDA Number 66.468, Title: Safe Drinking Water State Revolving Fund, award year of this contract.

#### 1.3. PURPOSE

The Board and the Contractor have entered into this Contract to undertake a local project that furthers the goals and objectives of the Drinking Water State Revolving Fund Loan Program. The project will be undertaken by the Contractor and will include the activities described in the SCOPE OF WORK shown on the Declarations page. The project must be undertaken in accordance with the loan Program Special Terms and Conditions and all applicable federal, state and local laws and ordinances, including but not limited to those specifically enumerated in Attachment II: Federal and State Requirements, which by this reference are incorporated into this Contract as though set forth fully herein.

#### 1.4. ORDER OF PRECEDENCE

In the event of an inconsistency in this Contract, the inconsistency shall be resolved by giving precedence in the following order:

- A. Applicable federal and State of Washington statutes and regulations.

- B. Special Terms and Conditions including attachments.
- C. General Terms and Conditions.

**1.5. AMOUNT OF LOAN**

The Board, using funds appropriated from the Drinking Water Assistance Account, shall loan the Contractor a sum not to exceed the amount shown as LOAN AMOUNT on the attached Declarations Page. This loan amount includes a loan fee, if applicable, which is shown on the Declarations Page as LOAN FEE.

**1.6. LOAN FEE**

If the loan fee applies, it will be assessed at loan execution.

The amount of the loan fee (if applicable) represents one percent (1%) of the loan request and shall not be reduced, regardless of the actual final loan amount at project completion. If the loan fee applies and the total loan amount is increased by amendment, an additional loan fee equal to one percent (1%) of the additional loan amount will be assessed at amendment execution. The amount of any loan fee will be displayed on the Declarations Page as LOAN FEE.

**1.7. TERM OF LOAN**

Unless otherwise amended, the term of the loan shall not exceed the period shown on the Declarations Page as LOAN TERM. The term shall start in the AWARD YEAR.

Except as herein provided, under no circumstances shall the loan repayment period exceed 20 years from the contract execution date.

The loan term may be extended for a disadvantaged community up to 30 years, provided that a recipient completes loan repayment no later than 30 years after project completion and the term of the loan does not exceed the expected design life of the project.

**1.8. RATE AND LOAN FORGIVENESS**

The interest rate shall be the declared INTEREST RATE per annum on the outstanding principal balance, based on a three hundred and sixty (360) day year composed of twelve (12) thirty (30) day months. The amount of loan forgiveness (if applicable) shall be as stated on the attached Declarations Page, and identified therein as LOAN FORGIVENESS %.

If project is completed within 24 months of contract execution and includes the basic interest rate, the interest rate will be decreased to one percent (1.0%) at project completion. The calculation of interest rate will apply to the remaining payments beginning from the date the Project Completion report is certified.

This loan forgiveness shall be applied at project completion and shall apply to the lesser of the loan amount or the actual eligible costs and that declared percent on any accrued interest. The percent of loan forgiveness and interest rate shall not be changed, regardless of the actual cost of the project and the Affordability Index at project completion.

**1.9. DISBURSEMENT OF LOAN PROCEEDS AND REQUIRED DOCUMENTATION**

If funding or appropriation is not available at the time the Contractor submits a request for a loan disbursement, the issuance of a warrant will be delayed or suspended until such time funds become available. Therefore, subject to availability of funds, warrants shall be issued to the Contractor for payment of allowable expenses incurred by the Contractor while undertaking and administering approved project activities in accordance with the declared SCOPE OF WORK.

The loan funds will be disbursed to the Contractor as follows:

Ten percent (10%) of loan proceeds will be held until project completion. The total Drinking Water State Revolving Fund Loan shall not exceed one hundred percent (100%) of the actual eligible project costs.

When requesting reimbursement for costs incurred, the Contractor shall submit a signed and completed Invoice Voucher (Form A19), referencing the declared SCOPE OF WORK project activity performed, and any appropriate documentation such as bills, invoices, and receipts. The purchase of any land necessary and integral to the project must be included in the declared SCOPE OF WORK and be documented with an appraisal or other market valuation and a valid purchase and sale agreement. The Invoice Voucher must be certified by an official of the Contractor with authority to bind the Contractor.

Each A19 Reimbursement Voucher must be accompanied by a Project Status Report, which describes, in narrative form, the progress made on the project since the last invoice was submitted, as well as a report of project status to date. The Department of Commerce (Commerce) will not release payment for any reimbursement request received until the Project Status Report is received. After approving the Voucher and the Project Status Report, Commerce shall promptly release funds to the Contractor.

Construction expenses incurred after the date shown as EARLIEST DATE FOR CONSTRUCTION REIMBURSEMENT on the Declarations Page are eligible for reimbursement. Requests for reimbursements for costs related to construction activities will not be accepted until the Contractor has met the following conditions:

- A. Issued a Notice to Proceed which follows the formal award of a construction contract;
- B. Completed the State Environmental Review Process;
- C. Complied with all provisions of Section 106 of the National Historic Preservation Act of 1966;
- D. Complied with Section 1.19: Prevailing Wage;
- E. Obtained approval from the Department of Health of the project report and related construction documents for all applicable activities described in the declared SCOPE OF WORK; and
- F. Complied with any other loan conditions required by Department of Health or The Board.

An electronic copy (emailed PDF or a FAX) of a signed A19 Reimbursement Voucher and other required documentation is the preferred method for requesting reimbursement. Submit the electronic requests to your Federal Programs Unit (FPU) representative or fax to 360-586-8440. This electronic submittal may be 25 pages or less. If you choose to send your vouchers and backup documentation electronically, please DO NOT mail in the original. You will receive email notification from your FPU representative that the electronic request has been received.

Commerce will pay the Contractor upon acceptance of the work performed and receipt of properly completed invoices. Invoices may be submitted to Commerce not more often than monthly.

Payment shall be considered timely if made by Commerce within thirty (30) calendar days after receipt of properly completed invoices. Payment shall be sent to the address designated by the Contractor.

The Board may, at its sole discretion, withhold payments claimed by the Contractor for services rendered if the Contractor fails to satisfactorily comply with any term or condition of this contract.

No payments in advance or in anticipation of services or supplies to be provided under this contract shall be made by the Board.

In the event that the Contractor receives reimbursement for costs that are later determined by the Board to be ineligible, these funds shall be repaid to the Drinking Water Assistance Account by payment to the Department of Commerce, or its successor, together with the submission of the Project Completion Amendment.

At the time of project completion, the Contractor shall submit to the Board a Certified Project Completion Request certifying the total actual project costs, and a final voucher for the remaining eligible funds. The Certified Project Completion Request shall include a copy of the Construction Completion Report as submitted to Department of Health.

#### **1.10. TIME OF PERFORMANCE**

The Contractor shall begin the activities identified within the declared SCOPE OF WORK no later than thirty (30) days after Contract execution. No later than eighteen (18) months after Contract execution, the Contractor shall issue a 'Notice to Proceed', which follows the formal award of a construction contract.

The Contractor must reach project completion within the period specified on the Declarations Page as TIME OF PERFORMANCE.

Failure to meet Time of Performance within the time frame described in this section shall constitute default under this Contract, and as a result, this Contract may be terminated. In the event of extenuating circumstances, the Contractor may request, in writing, at least 90 days prior to the expiration of project completion date that the Board extend the deadline for project completion. The Board may extend the time of project completion.

#### **1.11. PROJECT COMPLETION AMENDMENT AND THE CERTIFIED PROJECT COMPLETION REPORT**

The Contractor shall initiate a Project Completion Amendment by submitting a Certified Project Completion Report when activities identified in the declared SCOPE OF WORK are complete and the Contractor agrees that no additional eligible costs will be reimbursed.

In the Project Completion Amendment, the Contractor will provide the following information to the Board:



- A. A certified statement of the actual dollar amounts spent, from all fund sources, in completing the project as described in the declared SCOPE OF WORK.
- B. Certification that all costs associated with the project have been incurred. Costs are incurred when goods and services are received and/or contract work is performed.
- C. A copy of the Department of Health Construction Completion Report as submitted to Department of Health.
- D. Evidence documenting compliance with audit requirements as referenced in Section 1.27.
- E. A final voucher for the remaining eligible funds.

The Project Completion Amendment shall serve as an amendment to this Contract determining the final loan amount and term of the loan.

**1.12. REPAYMENT**

An assistance recipient begins annual repayment of the loan no later than one year after contract execution. The first repayment installment is due on the first day of the month shown as PAYMENT MONTH on the Declarations Page. Interest only will be charged for this first payment if a draw is made prior to this date. All subsequent payments shall consist of principal and accrued interest due that month of each year during the remaining term of the loan.

Repayment of the loan under this Contract shall include the declared INTEREST RATE per annum. Interest will begin to accrue from the date each payment is issued to the Contractor. The final payment shall be on or before the completion of the declared LOAN TERM, payable on or before the declared PAYMENT MONTH of an amount sufficient to bring the loan balance to zero.

The Contractor has the right to repay the unpaid balance of the loan in full at any time or make accelerated payments without penalty.

The Contractor will repay the loan in accordance with the preceding conditions through the use of a check, money order, or equivalent means made payable to the Washington State Department of Commerce, or its successor.

**1.13. DEFAULT IN REPAYMENT**

Loan repayments shall be made in accordance with Section 1.12 of this Contract. A payment not received within thirty (30) days of the due date shall be declared delinquent. Delinquent payments shall be assessed a monthly penalty beginning on the first (1<sup>st</sup>) day past the due date. The penalty will be one percent (1%) per month or twelve percent (12%) per annum of the delinquent payment amount. These same penalty terms shall apply if the repayment of loan funds determined to be ineligible costs are not repaid within thirty (30) days as provided for in Section 1.9.

The Contractor acknowledges and agrees to the Board's right, upon delinquency in the payment of any annual installment, to notify any other entity, creditors, or potential creditors of the Contractor of such delinquency. Contractor shall be responsible for all legal fees incurred by the Board in any action undertaken to enforce its rights under this section.

**1.14. LOAN SECURITY**

Loan Security may be required as a performance condition of this contract. If such performance condition is required it shall be indicated on the attached Declarations Page and identified therein as LOAN SECURITY CONDITION.

The Board grants the Contractor the right to issue future bonds and notes that constitute a lien and charge on the revenue source superior to the lien and charge of this Loan Contract. Nothing in this section shall absolve the Contractor of its obligation to make loan repayments when due, and to adjust rates, fees, or surcharges, if necessary, to meet its obligations under this Contract.

**1.15. HISTORICAL AND CULTURAL ARTIFACTS**

The Contractor acknowledges that the project funded by this Contract is subject to Section 106 of the National Historic Preservation Act of 1966.

Contractor agrees that Contractor is legally and financially responsible for compliance with all laws, regulations, and agreements related to the preservation of historical or cultural artifacts and agrees to hold harmless the State of Washington in relation to any claim related to such historical or cultural artifacts discovered, disturbed, or damaged as a result of Contractor's public works project funded under this Contract.

The Contractor agrees that, in no case shall construction activities, ground disturbance, or excavation of any sort, begin until the Contractor has complied with all provisions of Section 106 of the National Historic Preservation Act of 1966, as amended.

In addition, the Contractor shall not conduct or authorize destructive project planning activities before completing compliance with Section 106 of the National Historic Preservation Act of 1966, as amended.

If historical or cultural artifacts are discovered during construction, the Contractor shall immediately stop construction and implement reasonable measures to protect the discovery site from further disturbance, take reasonable steps to ensure confidentiality of the discovery site, restrict access to the site, and notify the concerned tribe's cultural staff or committee, Tribal Historical Preservation Officer (THPO), Cultural Resources Program Manager at Washington State Department of Health, and the State's Historical Preservation Officer (SHPO) at the Washington State Department of Archaeology and Historic Preservation (DAHP). If human remains are uncovered, the Contractor shall report the presence and location of the remains to the coroner and local enforcement immediately, then contact the concerned tribe's cultural staff or committee and DAHP.

The Contractor shall require the above provisions to be contained in all contracts for work or services related to the declared SCOPE OF WORK. In no case shall construction activities begin until the Contractor has complied with all provisions of Section 106 of the National Historic Preservation Act of 1966.

In addition to the requirements set forth in this Contract, the Contractor agrees to comply with Native American Graves Protection and Repatriation Act, Archaeological Resources Protection Act, Revised Code of Washington (RCW) 27.44 regarding Indian Graves and Records; RCW 27.53 regarding Archaeological Sites and Resources; RCW 68.60 regarding Abandoned and Historic Cemeteries and Historic Graves; and Washington Administrative Code (WAC) 25-48 regarding Archaeological Excavation and Removal Permits.

#### **1.16. FEDERAL AND STATE REQUIREMENTS**

The Contractor assures compliance with all applicable federal, state and local laws, requirements, and ordinances as they pertain to the design, implementation, and administration of the approved project, including but not limited to those listed in Attachments II, III, and IV.

#### **1.17. COMPETITIVE BIDDING REQUIREMENTS**

Pursuant to 40 CFR, Section 33.501(b) and (c), the Contractor also agrees to create and maintain a bidders list for both Disadvantaged Business Enterprises (DBE) and Non-Disadvantaged Business Enterprises (non-DBE). The purpose of a bidders list is to provide the recipient and entities receiving identified loans who conduct competitive bidding with as accurate a database as possible about the universe of DBE and non-DBE prime and subcontractors. The list must include all firms that bid or quote on prime contracts or bid or quote subcontracts on Environmental Protection Agency assisted projects, including both DBE and non-DBE. The bidders list must be kept at least until the grant project period has expired and the recipient is no longer receiving Environmental Protection Agency funding under the grant. For entities receiving identified loans, the bidders list must only be kept until the project period for the identified loan has ended. The following information must be obtained from all prime and subcontractors: entity's name with point of contact; entity's mailing address, telephone number, and e-mail address; the procurement on which the entity bid or quoted, and when; and, entity's status as a DBE or non-DBE.

The Contractor agrees to provide Environmental Protection Agency Form 6100-2 DBE Subcontractor Participation and Environmental Protection Agency Form 6100-3 DBE Subcontractor Performance to all its Disadvantaged Business Enterprise subcontractors.

The Contractor shall require Disadvantaged Business Enterprise provisions are contained in all contracts with any subcontractors for work or services related to the declared SCOPE OF WORK.

The Contractor shall comply with the provisions of RCW 43.155.060 regarding competitive bidding requirements for projects assisted in whole or in part with money from the Drinking Water State Revolving Fund program.

#### **1.18. ELIGIBLE PROJECT COSTS**

The Contractor assures compliance with Attachment V: DWSRF Eligible Project Costs, which identifies eligible costs for projects funded by Drinking Water State Revolving Fund loans.

#### **1.19. PREVAILING WAGE**

These terms supersede the terms in Section 2.33. Prevailing Wage Laws in General Terms and Conditions.

All contractors and subcontractors performing work on a construction project funded through this Contract shall comply with prevailing wage laws by paying the higher of state or federal prevailing wages according to:

State Prevailing Wages on Public Works, Chapter 39.12 RCW, as applicable to the Project funded by this contract, including but not limited to the filing of the "Statement of Intent to Pay Prevailing Wages" and "Affidavit of Wages Paid" as required by RCW 39.12.040. The Contractor shall maintain records sufficient to evidence compliance with Chapter 39.12 RCW, and shall make such records available for Board's review upon request; or,

The Davis Bacon Act, 40 USC 276a-276a-5 and related federal acts provide that all laborers and mechanics employed by contractors or subcontractors in the performance shall be paid wages at rates not less than those prevailing on similar construction in the locality as determined by the Secretary of Labor.

The Contractor agrees that the Contractor is legally and financially responsible for compliance with the prevailing wage requirements. Contractor is advised to consult the United States Department of Labor and Washington State Department of Labor and Industries websites to determine the federal and State prevailing wages that must be paid.

The Contractor shall ensure that all contractors, subcontractors, engineers, vendors, and any other entity for work or services listed in the declared SCOPE OF WORK shall insert in full, in any contract, the labor standards provisions listed in Attachment VI: Labor Standard Provisions for Subrecipients That Are Governmental Entities. Contractor shall report to the Board and/or the Department of Health that this requirement has been met as stated in this Contract.

#### **1.20. FEDERAL EXCLUSION**

These Terms add to the terms in Section 2.11. Certification Regarding Debarment, Suspension or Ineligibility and Voluntary Exclusion – Primary and Lower Tier Covered Transactions in General Terms and Conditions. The Contractor also agrees to access the Federal Exclusion List at [www.sam.gov](http://www.sam.gov) and provide Federal Exclusion documentation to the Board and to keep a copy on file with the Contractor's project records.

#### **1.21. REGISTRATION WITH CENTRAL CONTRACTOR REGISTRATION (CCR)**

By signing this Contract, the Contractor accepts the requirements stated in 48 CFR 52.204-7 to register with the Central Contractor Registration (CCR) database at the System for Awards Management (SAM) website. To register in SAM, a valid Data Universal Numbering System (DUNS) Number is required. The Contractor is responsible for the accuracy and completeness of the data within the SAM database and for any liability resulting from the Government's reliance on inaccurate or incomplete data. The Contractor must remain registered in the SAM database after the initial registration. The Contractor is required to review and update on an annual basis from the date of initial registration or subsequent updates its information in SAM to ensure it is current, accurate and complete. The Contractor shall provide evidence documenting registration and renewal of SAM registration to the Board.

In the event of the Contractor's noncompliance or refusal to comply with the requirement stated above, the Board reserves the right to suspend payment until the Contractor cures this noncompliance.

#### **1.22. RECORDKEEPING AND ACCESS TO RECORDS**

These terms supersede the terms in Section 2.38. Records Maintenance in General Terms and Conditions.

The Board, the Board's agents, and duly authorized officials of the state and federal governments shall have full access and the right to examine, copy, excerpt, or transcribe any pertinent documents, papers, records, and books of the Contractor and of persons, firms, or organizations with which the Contractor may contract, involving transactions related to this project and this Contract.

The Contractor agrees to retain these records for a period of six (6) years from the date that the debt is retired. This includes but is not limited to financial reports. 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.

#### **1.23. REPORTS**

The Contractor, at such times and on such forms as the Board may require, shall furnish the Board with such periodic reports as it may request pertaining to the activities undertaken pursuant to this Contract including, but not limited to:

- A. Prevailing Wage decisions and/or changes
- B. Disadvantaged Business Enterprises utilization
- C. Project Status Reports with each Invoice Voucher
- D. Certified Project Completion Report at project completion (as described in Section 1.11)
- E. Other reports as the Board may require

In the event of the Contractor's noncompliance or refusal to comply with the requirement stated above, the Board reserves the right to suspend payment until the Contractor cures this noncompliance.

#### **1.24. AMENDMENTS, MODIFICATIONS, ASSIGNMENTS, AND WAIVERS**

Amendments, modifications, assignments, and waivers to any of the terms of this contract supersede those terms as found in the original contract.

The Contractor may request an amendment of this Contract for the purpose of modifying the declared SCOPE OF WORK or for extending the time of performance as provided for in Section 1.10. Any revision to the SCOPE OF WORK or location of the project must be approved by the Department of Health. No modification or amendment resulting in an extension of time shall take effect until a request has been received and approved by the Board in accordance with Section 1.10.

***During the term of this loan, any change in ownership of the water system(s) improved with funds received by the Contractor under this Contract must be approved in writing by the Board. As a condition of approval, the Board reserves the right to demand payment in full of the outstanding principal balance of the loan.***

No conditions or provisions of this Contract may be waived unless approved by the Board in writing. No waiver of any default or breach by any party shall be implied from any failure to take action upon such default or breach if the default of breach persists or repeats.

#### **1.25. TERMINATION FOR CAUSE**

These terms supersede the terms in Section 2.46. Termination for Cause/Suspension in General Terms and Conditions.

If the Board concludes that the Contractor has failed to comply with the terms and conditions of this Contract, or has failed to use the loan proceeds only for those activities identified in the declared SCOPE OF WORK, or has otherwise materially breached one or more of the covenants in this Contract, the Board may at any time, at its discretion, upon notice to the Contractor, terminate the Contract and/or its attached agreements in whole or in part and declare the entire remaining balance of the loan, together with any interest accrued, immediately due and payable in full. Such Notice of Termination for Cause shall be in writing, shall state the reason(s) for such termination, and shall specify the effective date of the termination. The effective date of the termination will be determined by the Board. Such notice shall inform the Contractor of the breach of the relevant covenant and shall allow the Contractor at least thirty (30) business days to cure such breach, if curable. The notice shall instruct the Contractor that, if the breach is not cured or cannot be cured within thirty (30) business days, the outstanding balance of the loan shall be due and payable. If this Contract is so terminated, the Board shall be liable only for payment required under the terms of this Contract for services rendered or goods delivered prior to the effective date of termination. Nothing in this section shall affect the Contractor's obligations to immediately repay the unpaid balance of the loan as prescribed in the Washington Administrative Code (WAC) 246-296-150.

#### **1.26. TERMINATION FOR CONVENIENCE**

These terms supersede the terms in Section 2.47. Termination for Convenience in General Terms and Conditions.

The Board may terminate this Contract in the event that federal or state funds are no longer available to the Board, or are not appropriated for the purpose of meeting the Board's obligations under this Contract. The Board shall notify the Contractor in writing of its determination to terminate and the reason for such termination. The effective date of the termination will be determined by the Board. If this Contract is so terminated, the Board shall be liable only for payment required under the terms of this Contract for services rendered or goods delivered prior to the effective date of termination. Nothing in this section shall affect Contractor's obligations to repay the unpaid balance of the loan.

#### **1.27. AUDIT**

These terms supersede the terms in Section 2.10. Audit in General Terms and Conditions.

The Board reserves the right to require an audit of this project. The Contractor is responsible for correcting any audit findings. The Contractor agrees to refund to the Board all disallowed costs resulting from the audit. Audit costs are allowable expenses within this Contract.

##### Municipal and Not-For-Profit entities:

Audits of the Contractor's project activities may be conducted by the State Auditor Office (SAO). Audit costs are eligible project costs. The Contractor shall maintain its records and accounts so as to facilitate the audit

requirements of the Board or its successor. The Contractor is responsible for any audit findings incurred by its own organization. The Board reserves the right to recover from the Contractor all disallowed costs resulting from the audit.

For audits of fiscal years beginning after December 26, 2014, Contractors expending \$750,000 or more in any fiscal year in federal funds from all sources, direct and indirect, are required to have an audit conducted in accordance with 2 CFR §200.501 – Audit Requirements."

For audits of fiscal years beginning prior to December 26, 2014, Contractors expending \$500,000 or more in any fiscal year in federal funds from all sources, direct and indirect, are required to have an audit conducted in accordance with existing Federal audit requirements.

For-Profit entities:

Audits must include a report on the internal control related to the federal program, which should describe the scope of testing of the internal control and the results of the tests.

The audit also must include a report on compliance, which includes an opinion (or disclaimer of opinion) on whether the auditee complied with laws, regulations and the provisions of the award agreement that could have a direct and material effect on the federal program.

The Contractor must send a copy of any required audit Reporting Package as described in existing Federal audit requirements for audits of fiscal years beginning prior to December 26, 2014, or 2 CFR §200.512 – Report Submission, for audits of fiscal years beginning after December 26, 2014, no later than nine (9) months after the end of the Contractor's fiscal year(s) to:

Department of Commerce  
ATTN: Public Works Board  
P.O. Box 42525  
1011 Plum Street SE  
Olympia WA 98504-2525

In addition to sending a copy of the audit, when applicable, the Contractor must include:

- Corrective action plan for audit findings within three (3) months of the audit being received by the Board.
- Copy of the Management Letter.

**1.28. PROJECT SIGNS**

If the Contractor displays, during the period covered by this Contract, any signs or markers identifying those entities participating financially in the approved project, the sign or marker must identify the Washington State Public Works Board Drinking Water State Revolving Fund and the Washington State Department of Health as participants in the project.

**1.29. DISADVANTAGED BUSINESS ENTERPRISE REQUIREMENTS**

As mandated by the Environmental Protection Agency, the Contractor agrees to comply with the requirements of the Environmental Protection Agency's Program for Utilization of Small, Minority, and Women's Business Enterprises in procurement under this Contract. The Contractor is required to follow the requirements identified in Attachment III: Disadvantaged Business Enterprise Requirements.

By signing this Contract, the Contractor accepts the applicable MBE/WBE fair share objectives/goals negotiated with Environmental Protection Agency by the Washington State Office of Minority and Women's Business Enterprises. The Contractor attests to the fact that it is purchasing the same or similar construction, supplies, services and equipment, in the same or similar relevant geographic buying market as Washington State Office of Minority and Women's Business Enterprises. The goals for the utilization of disadvantaged businesses are stated in Attachment III: Disadvantaged Business Enterprise Requirements.

The Contractor is required to furnish the Board and the Department of Health with such periodic reports as the Department may request pertaining to the utilization of disadvantaged businesses.

**1.30. NONDISCRIMINATION PROVISION**

During the performance of this contract, the Contractor shall comply with all federal and state nondiscrimination laws, including, but not limited to Chapter 49.60 RCW, Washington's Law Against Discrimination, and 42 USC 12101 et seq, the Americans with Disabilities Act (ADA).

In the event of the Contractor's noncompliance or refusal to comply with any applicable nondiscrimination law, regulation, or policy, this contract may be rescinded, canceled, or terminated in whole or in part, and the Contractor may be declared ineligible for further contracts with the Board. The Contractor shall, however, be given a reasonable time in which to cure this noncompliance.

The Contractor must also include the following terms and conditions in contracts with all contractors, subcontractors, engineers, vendors, and any other entity for work or services listed in the declared SCOPE OF WORK:

"The Contractor shall not discriminate on the basis of race, color, national origin or sex in the performance of this Contract. The Contractor shall carry out applicable requirements of 40 CFR Part 33 in the award and administration of contracts awarded under Environmental Protection Agency financial agreements. Failure by the Contractor to carry out these requirements is a material breach of this Contract which may result in termination of this Contract."

**1.31. PROHIBITION STATEMENT**

Pursuant to Section 106 of the Trafficking Victims Protection Act of 2000, as amended, the Contractor's contractors, subcontractors, engineers, vendors, and any other entity shall comply with and include the following terms and conditions in all contracts for work or services listed in the declared SCOPE OF WORK:

"All forms of trafficking in persons, illegal sex trade, or forced labor practices are prohibited in the performance of this award or subawards under the award, or in any manner during the period of time that the award is in effect. This prohibition applies to you as the recipient, your employees, subrecipients under this award, and subrecipients' employees."

If any term of this section is violated, this contract may be terminated.

**1.32. FALSE, INCORRECT, OR INCOMPLETE INFORMATION OR CLAIM**

The Contractor warrants that the Contractor neither has submitted nor shall submit any information that is materially false, incorrect, or incomplete to the Board.

The Contractor is advised that providing false, fictitious, or misleading information with respect to the receipt and disbursements of Environmental Protection Agency funds is basis for criminal, civil, or administrative fines and/or penalties.

**1.33. LITIGATION**

The Contractor warrants that there is no threatened or pending litigation, investigation, or legal action before any court, arbitrator, or administrative agency that, if adversely determined, would have a materially adverse effect on the Contractor's ability to repay the loan.

**1.34. ESTABLISHMENT OF ADEQUATE RATES AND RESERVES**

The Contractor agrees to provide a resolution adopting rate increases, capital assessments, or both, for the services of the system that shall be sufficient to provide funds which, along with other revenues of the system, will pay all operating expenses and debt repayments during the term of the loan. In addition, the Contractor shall create, fund, and maintain reserves at least as required by the Water System Plan or Small Water System Management Plan. The Board reserves the right, at anytime, to request proof of compliance of these requirements from the Contractor.

**1.35. SPECIAL CONDITIONS**

If SPECIAL CONDITIONS are listed on the Contract Declarations Page then these conditions are herein incorporated as part of the terms and requirements of this contract.

**1.36. INVESTMENT GRADE AUDIT**

For projects involving repair, replacement, or improvement of a wastewater treatment plant, or other public works facility for which energy efficiency is obtainable, Contractor must undertake an investment grade audit per ESHB 1497.

Costs incurred as part of the investment grade audit are eligible project costs.

**1.37. BUY AMERICAN**

None of the funds made available to the Contractor shall be used for a project for the construction, alteration, maintenance, or repair of a public water system or treatment works unless all of the iron and steel products used in

the project are produced in the United States. This requirement applies to the entire project receiving a loan agreement executed after January 17, 2014. Buy American does not apply to a project if the Department of Health approves the engineering plans and specifications for the project, in that agency's capacity to approve such plans and specifications prior to a project requesting bids, prior to January 17, 2014.

Waiver of the Buy American requirement may be considered if: 1) compliance would be inconsistent with the public interest; or 2) the particular iron and steel products are not produced in the United States in sufficient and reasonably available quantities and/or the particular iron and steel products are not of a satisfactory quality; or 3) inclusion of iron and steel products produced in the United States will increase the cost of the overall project by more than 25 percent. For consideration, a request for a waiver must be submitted to the Environmental Protection Agency (EPA). Contractors shall submit the waiver request to Commerce, which will then submit the request to EPA. EPA will post the waiver request and any other information available to EPA concerning the waiver request, on EPA's public Internet website and allow for informal public input on the request for at least 15 days prior to making a finding based on the request. The full text of the Buy American requirements appear at H.R. 3547, Consolidated Appropriations Act, 2014.

## Part 2. GENERAL TERMS AND CONDITIONS

### 2.1. DEFINITIONS

As used throughout this Contract, the following terms shall have the meaning set forth below:

- A. "Authorized Representative" shall mean the Public Works Board Chair and/or the designee authorized in writing to act on the Chair's behalf.
- B. "'Board" shall mean the Washington State Public Works Board created in Revised Code of Washington (RCW) 43.155.030, and which is a Party to the Contract
- C. "Contractor" shall mean the entity identified on the face sheet performing service(s) under this Contract, and shall include all employees and agents of the Contractor.
- D. "Modified Total Direct Costs (MTDC)" shall mean all direct salaries and wages, applicable fringe benefits, materials and supplies, services, travel, and up to the first \$25,000 of each subaward (regardless of the period of performance of the subawards under the award). MTDC excludes equipment, capital expenditures, charges for patient care, rental costs, tuition remission, scholarships and fellowships, participant support costs and the portion of each subaward in excess of \$25,000.
- E. "Personal Information" shall mean information identifiable to any person, including, but not limited to, information that relates to a person's name, health, finances, education, business, use or receipt of governmental services or other activities, addresses, telephone numbers, social security numbers, driver license numbers, other identifying numbers, and any financial identifiers.
- F. "State" shall mean the state of Washington.
- G. "Subcontractor" shall mean one not in the employment of the Contractor, who is performing all or part of those services under this Contract under a separate contract with the Contractor. The terms "subcontractor" and "subcontractors" mean subcontractor(s) in any tier.

### 2.2. ADMINISTRATIVE COST ALLOCATION

Administrative costs that may be allowed are set forth in the Specific Terms and Conditions. Administrative services shared by other programs shall be assigned to this Contract based on an allocation plan that reflects allowable administrative costs that support services provided under each Contract administered by the Contractor. An approved current federal indirect cost rate may be applied up to the maximum administrative budget allowed.

### 2.3. ALLOWABLE COSTS

Costs allowable under this Contract are actual expenditures according to an approved budget up to the maximum amount stated on the Contract Award or Amendment Face Sheet.

### 2.4. ALL WRITINGS CONTAINED HEREIN

This Contract contains all the terms and conditions agreed upon by the parties. No other understandings, oral or otherwise, regarding the subject matter of this Contract shall be deemed to exist or to bind any of the parties hereto.

### 2.5. AMENDMENTS

This Contract may be amended by mutual agreement of the parties. Such amendments shall not be binding unless they are in writing and signed by personnel authorized to bind each of the parties.

### 2.6. AMERICANS WITH DISABILITIES ACT (ADA) OF 1990, PUBLIC LAW 101-336, ALSO REFERRED TO AS THE "ADA" 28 CFR PART 35

The Contractor must comply with the ADA, which provides comprehensive civil rights protection to individuals with disabilities in the areas of employment, public accommodations, state and local government services, and telecommunications.

### 2.7. APPROVAL

This contract shall be subject to the written approval of the Board's Authorized Representative and shall not be binding until so approved. The contract may be altered, amended, or waived only by a written amendment executed by both parties.



## 2.8. **ASSIGNMENT**

Neither this Contract, nor any claim arising under this Contract, shall be transferred or assigned by the Contractor without prior written consent of the Board.

## 2.9. **ATTORNEYS' FEES**

Unless expressly permitted under another provision of the Contract, in the event of litigation or other action brought to enforce Contract terms, each party agrees to bear its own attorneys fees and costs.

## 2.10. **AUDIT**

### **A. General Requirements**

Contractors are to procure audit services based on the following guidelines.

The Contractor shall maintain its records and accounts so as to facilitate the audit requirement and shall ensure that Subcontractors also maintain auditable records.

The Contractor is responsible for any audit exceptions incurred by its own organization or that of its Subcontractors.

The Board reserves the right to recover from the Contractor all disallowed costs resulting from the audit.

As applicable, Contractors required to have an audit must ensure the audits are performed in accordance with Generally Accepted Auditing Standards (GAAS); Government Auditing Standards (the Revised Yellow Book) developed by the Comptroller General.

Responses to any unresolved management findings and disallowed or questioned costs shall be included with the audit report. The Contractor must respond to the Board requests for information or corrective action concerning audit issues within thirty (30) days of the date of request.

### **B. Federal Funds Requirements - OMB Circular A-133 Audits of States, Local Governments and Non-Profit Organizations**

Grantees expending \$750,000 or more in a fiscal year (that begins after December 26, 2014) in federal funds from all sources, direct and indirect, are required to have an audit conducted in accordance with 2 CFR Part 200. For fiscal years beginning prior to December 26, 2014, Grantees are required to have an audit conducted in accordance with Federal audit requirements. When state funds are also to be paid under this Agreement a Schedule of State Financial Assistance as well as the required schedule of Federal Expenditure must be included. Both schedules include:

- Grantor agency name
- Federal agency
- Federal program name
- Other identifying contract numbers
- Catalog of Federal Domestic Assistance (CFDA) number (if applicable)
- Grantor contract number
- Total award amount including amendments (total grant award)
- Current year expenditures

If the Contractor is a state or local government entity, the Office of the State Auditor shall conduct the audit. Audits of non-profit organizations are to be conducted by a certified public accountant selected by the Contractor in accordance with OMB Circular A-110 "Uniform Administrative Requirements for Grants and Agreements with Institutions of Higher Education, Hospitals, and Other Non-Profit Organizations."

The Contractor shall include the above audit requirements in any subcontracts.

In any case, the Contractor's financial records must be available for review by the Board.

### **C. Documentation Requirements**

The Contractor must send a copy of any required audit Reporting Package as described in OMB Circular A-133, Part C, Section 320(c) no later than nine (9) months after the end of the Contractor's fiscal year(s) by sending a scanned copy to [auditreview@commerce.wa.gov](mailto:auditreview@commerce.wa.gov) or by sending a hard copy to:

Department of Commerce  
ATTN: Audit Review and Resolution Office  
1011 Plum Street  
PO Box 42525

In addition to sending a copy of the audit, when applicable, the Contractor must include:

- Corrective action plan for audit findings within three (3) months of the audit being received by the Board.
- Copy of the Management Letter.

**2.11. CERTIFICATION REGARDING DEBARMENT, SUSPENSION OR INELIGIBILITY AND VOLUNTARY EXCLUSION—PRIMARY AND LOWER TIER COVERED TRANSACTIONS**

- A. Contractor, defined as the primary participant and its principals, certifies by signing these General Terms and Conditions that to the best of its knowledge and belief that they:
1. Are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions by any Federal department or agency.
  2. Have not within a three-year period preceding this contract, been convicted of or had a civil judgment rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public or private agreement or transaction, violation of Federal or State antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, tax evasion, receiving stolen property, making false claims, or obstruction of justice;
  3. Are not presently indicted for or otherwise criminally or civilly charged by a governmental entity (federal, state, or local) with commission of any of the offenses enumerated in paragraph (1)(b) of this section; and,
  4. Have not within a three-year period preceding the signing of this contract had one or more public transactions (federal, state, or local) terminated for cause of default.
- B. Where the Contractor is unable to certify to any of the statements in this contract, the Contractor shall attach an explanation to this contract.
- C. The Contractor agrees by signing this contract that it shall not knowingly enter into any lower tier covered transaction with a person who is debarred, suspended, declared ineligible, or voluntarily excluded from participation in this covered transaction, unless authorized by the Board.
- D. The Contractor further agrees by signing this contract that it will include the clause titled "Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion-Lower Tier Covered Transaction," as follows, without modification, in all lower tier covered transactions and in all solicitations for lower tier covered transactions:

**LOWER TIER COVERED TRANSACTIONS**

- a) The lower tier contractor certifies, by signing this contract that neither it nor its principals is presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by any Federal department or agency.
  - b) Where the lower tier contractor is unable to certify to any of the statements in this contract, such contractor shall attach an explanation to this contract.
- E. The terms covered transaction, debarred, suspended, ineligible, lower tier covered transaction, person, primary covered transaction, principal, and voluntarily excluded, as used in this section, have the meanings set out in the Definitions and Coverage sections of the rules implementing Executive Order 12549. You may contact the Board for assistance in obtaining a copy of these regulations.

**2.12. CODE REQUIREMENTS**

All construction and rehabilitation projects must satisfy the requirements of applicable local, state, and federal building, mechanical, plumbing, fire, energy and barrier-free codes. Compliance with the Americans with Disabilities Act of 1990, 28 C.F.R. Part 35 will be required, as specified by the local building Department.

**2.13. CONFIDENTIALITY/SAFEGUARDING OF INFORMATION**

- A. "Confidential Information" as used in this section includes:
1. All material provided to the Contractor by the Board that is designated as "confidential" by the Board;
  2. All material produced by the Contractor that is designated as "confidential" by the Board; and

3. All personal information in the possession of the Contractor that may not be disclosed under state or federal law. "Personal information" includes but is not limited to information related to a person's name, health, finances, education, business, use of government services, addresses, telephone numbers, social security number, driver's license number and other identifying numbers, and "Protected Health Information" under the federal Health Insurance Portability and Accountability Act of 1996 (HIPAA).
- B. The Contractor shall comply with all state and federal laws related to the use, sharing, transfer, sale, or disclosure of Confidential Information. The Contractor shall use Confidential Information solely for the purposes of this Contract and shall not use, share, transfer, sell or disclose any Confidential Information to any third party except with the prior written consent of the Board or as may be required by law. The Contractor shall take all necessary steps to assure that Confidential Information is safeguarded to prevent unauthorized use, sharing, transfer, sale or disclosure of Confidential Information or violation of any state or federal laws related thereto. Upon request, the Contractor shall provide the Board with its policies and procedures on confidentiality. The Board may require changes to such policies and procedures as they apply to this Contract whenever the Board reasonably determines that changes are necessary to prevent unauthorized disclosures. The Contractor shall make the changes within the time period specified by the Board. Upon request, the Contractor shall immediately return to the Board any Confidential Information that the Board reasonably determines has not been adequately protected by the Contractor against unauthorized disclosure.
- C. Unauthorized Use or Disclosure. The Contractor shall notify the Board within five (5) working days of any unauthorized use or disclosure of any confidential information, and shall take necessary steps to mitigate the harmful effects of such use or disclosure.

#### **2.14. CONFLICT OF INTEREST**

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

Specific restrictions apply to contracting with current or former state employees pursuant to chapter 42.52 of the Revised Code of Washington. The Contractor and their subcontractor(s) must identify and state of Washington employees for former state employees employed or on the firm's governing board during the past 24 months. Identify the individual by name, the agency previously or currently employed by, job title or position held, and separation date. If it is determined by COMMERCE that a conflict of interest exists, the Contractor may be disqualified from further consideration for the award of a contract.

In the event this contract is terminated as provided above, COMMERCE shall be entitled to pursue the same remedies against the Contractor as it could pursue in the event of a breach of the contract by the Contractor. The rights and remedies of COMMERCE provided for in this clause shall not be exclusive and are in addition to any other rights and remedies provided by law. The existence of facts upon which COMMERCE makes any determination under this clause shall be an issue and may be reviewed as provided in the "Disputes" clause of this contract.

#### **2.15. CONFORMANCE**

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

#### **2.16. COPYRIGHT PROVISIONS**

Unless otherwise provided, all Materials produced under this Contract shall be considered "works for hire" as defined by the U.S. Copyright Act and shall be owned by the Board. The Board shall be considered the author of such Materials. In the event the Materials are not considered "works for hire" under the U.S. Copyright laws, the Contractor hereby irrevocably assigns all right, title, and interest in all Materials, including all intellectual property rights, moral rights, and rights of publicity to the Board effective from the moment of creation of such Materials.

"Materials" means all items in any format and includes, but is not limited to, data, reports, documents, pamphlets, advertisements, books, magazines, surveys, studies, computer programs, films, tapes, and/or sound reproductions. "Ownership" includes the right to copyright, patent, register and the ability to transfer these rights.

For Materials that are delivered under the Contract, but that incorporate pre-existing materials not produced under the Contract, the Contractor hereby grants to the Board a nonexclusive, royalty-free, irrevocable license (with rights

to sublicense to others) in such Materials to translate, reproduce, distribute, prepare derivative works, publicly perform, and publicly display. The Contractor warrants and represents that the Contractor has all rights and permissions, including intellectual property rights, moral rights and rights of publicity, necessary to grant such a license to the Board.

The Contractor shall exert all reasonable effort to advise the Board, at the time of delivery of Materials furnished under this Contract, of all known or potential invasions of privacy contained therein and of any portion of such document which was not produced in the performance of this Contract. The Contractor shall provide the Board with prompt written notice of each notice or claim of infringement received by the Contractor with respect to any Materials delivered under this Contract. The Board shall have the right to modify or remove any restrictive markings placed upon the Materials by the Contractor.

## **2.17. DISALLOWED COSTS**

The Contractor is responsible for any audit exceptions or disallowed costs incurred by its own organization or that of its Subcontractors.

## **2.18. DISPUTES**

Except as otherwise provided in this Contract, when a dispute arises between the parties and it cannot be resolved by direct negotiation, either party may request a dispute hearing with the Director of the Board, who may designate a neutral person to decide the dispute.

The request for a dispute hearing must:

- be in writing;
- state the disputed issues;
- state the relative positions of the parties;
- state the Contractor's name, address, and Contract number; and,
- be mailed to the Director and the other party's (respondent's) Contract Representative within three (3) working days after the parties agree that they cannot resolve the dispute.

The respondent shall send a written answer to the requestor's statement to both the Director or the Director's designee and the requestor within five (5) working days.

The Director or designee shall review the written statements and reply in writing to both parties within ten (10) working days. The Director or designee may extend this period if necessary by notifying the parties.

The decision shall not be admissible in any succeeding judicial or quasi-judicial proceeding.

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

Nothing in this Contract shall be construed to limit the parties' choice of a mutually acceptable alternate dispute resolution (ADR) method in addition to the dispute hearing procedure outlined above.

## **2.19. DUPLICATE PAYMENT**

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

## **2.20. ETHICS/CONFLICTS OF INTEREST**

In performing under this Contract, the Contractor shall assure compliance with the Ethics in Public Service Act (Chapter 42.52 RCW) and any other applicable state or federal law related to ethics or conflicts of interest.

## **2.21. GOVERNING LAW AND VENUE**

This Contract shall be construed and interpreted in accordance with the laws of the state of Washington, and the venue of any action brought hereunder shall be in the Superior Court for Thurston County.

## **2.22. INDEMNIFICATION**

To the fullest extent permitted by law, the Contractor shall indemnify, defend, and hold harmless the state of Washington, the Board, all other agencies of the state and all officers, agents and employees of the state, from and against all claims or damages for injuries to persons or property or death arising out of or incident to the Contractor's performance or failure to perform the Contract. The Contractor's obligation to indemnify, defend, and hold harmless includes any claim by the Contractor's agents, employees, representatives, or any Subcontractor or its agents, employees, or representatives.

The Contractor's obligation to indemnify, defend, and hold harmless shall not be eliminated by any actual or alleged concurrent negligence of the state or its agents, agencies, employees and officers.

Subcontracts shall include a comprehensive indemnification clause holding harmless the Contractor, the Board, the state of Washington, its officers, employees and authorized agents.

The Contractor waives its immunity under Title 51 RCW to the extent it is required to indemnify, defend and hold harmless the state and its agencies, officers, agents or employees.

## **2.23. INDEPENDENT CAPACITY OF THE CONTRACTOR**

The parties intend that an independent contractor relationship will be created by this Contract. The Contractor and its employees or agents performing under this Contract are not employees or agents of the State of Washington or the Board. The Contractor will not hold itself out as or claim to be an officer or employee of the Board or of the State of Washington by reason hereof, nor will the Contractor make any claim of right, privilege or benefit which would accrue to such officer or employee under law. Conduct and control of the work will be solely with the Contractor.

## **2.24. INDIRECT COSTS**

If statutorily allowed and if the Contractor chooses to charge Indirect under this grant, the Contractor shall provide their indirect cost rate that has been negotiated between their entity and the Federal Government. If no such rate exists a de minimis indirect cost rate of 10% of modified total direct costs (MTDC) will be used.

## **2.25. INDUSTRIAL INSURANCE COVERAGE**

The Contractor shall comply with all applicable provisions of Title 51 RCW, Industrial Insurance. If the Contractor fails to provide industrial insurance coverage or fails to pay premiums or penalties on behalf of its employees as may be required by law, The Board may collect from the Contractor the full amount payable to the Industrial Insurance Accident Fund. The Board may deduct the amount owed by the Contractor to the accident fund from the amount payable to the Contractor by the Board under this Contract, and transmit the deducted amount to the Department of Labor and Industries, (L&I) Division of Insurance Services. This provision does not waive any of L&I's rights to collect from the Contractor.

## **2.26. LAWS**

The Contractor shall comply with all applicable laws, ordinances, codes, regulations, and policies of local, state, and federal governments, as now or hereafter amended, including, but not limited to:

### **United States Laws, Regulations and Circulars (Federal)**

#### **A. Audits**

Office of Management and Budget (OMB) Revised Circular A-133 "Audits of States, Local Governments, and Non-Profit Organizations."

#### **B. Environmental Protection and Review**

Coastal Zone Management Act of 1972, 16 USC §§1451-1464 HUD's implementing regulations at 24 CFR parts 50 or 58, as appropriate.

Lead Based Paint Poisoning Prevention Act, 42 USC 4821-4846 also 24 CFR 982.401(j).

National Environmental Policy Act of 1969, 42 USC 4321 et seq. and the Implementing Regulations of 24 CFR 58 (HUD) and 40 CFR 1500-1508 (Council on Environmental Quality) Residential Lead-Based Paint Hazard Reduction Act of 1992, 42 USC 4851-4856.

#### **C. Flood Plains**

Flood Disaster Protection Act of 1973, 42 USC 4001-4128.

#### **D. Labor and Safety Standards**

All Rental Units Assisted with Federal Funds Must Meet the Section 8 Housing Quality Standards (HQS) and Local Housing Code Requirements for the duration of the Affordability Period.

Convict Labor, 18 USC 751, 752, 4081, 4082.

Davis Bacon Act, 40 USC 276a-276a-5.

Drug-Free Workplace Act of 1988, 41 USC 701 et seq.

Federal Fair Labor Standards Act, 29 USC 201 et seq.

Work Hours and Safety Act of 1962, 40 USC 327-330 and Department of Labor Regulations, 29 CFR Part 5.

Title IV of the Lead Based Paint Poisoning Prevention Act, 42 USC 4831, 24 CFR Part 35.

E. Laws against Discrimination

Age Discrimination Act of 1975, Public Law 94-135, 42 USC 6101-07, 45 CFR Part 90 Nondiscrimination in Federally Assisted Programs.

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

Equal Employment Opportunity, Executive Order 11246, as amended by Executive Order 11375 and supplemented in U.S. Department of Labor Regulations, 41 CFR Chapter 60.

Executive Order 11246, as amended by EO 11375, 11478, 12086 and 12102.

Fair Housing Act (42 USC 3601-19) and implementing regulations at 24 CFR part 100. Section 504 of the Rehabilitation Act of 1973 and implementing regulations at 24 CFR part 8.

Fair Housing, Title VIII of the Civil Rights Act of 1968, Public Law 90-284, 42 USC 3601-19.

Handicapped Employees of Government Contractors, Rehabilitation Act of 1973, Section 503, 29 USC 793.

Handicapped Recipients of Federal Financial Assistance, Rehabilitation Act of 1973, Section 504, 29 USC 794.

Minority Business Enterprises, Executive Order 11625, 15 USC 631.

Minority Business Enterprise Development, Executive Order 12432, 48 FR 32551.

Nondiscrimination and Equal Opportunity, 24 CFR 5.105(a).

Nondiscrimination in Benefits, Title VI of the Civil Rights Act of 1964, Public Law 88-352, 42 USC 2002d et seq, 24 CFR Part 1.

Nondiscrimination in Employment, Title VII of the Civil Rights Act of 1964, Public Law 88-352.

Nondiscrimination in Federally Assisted Programs.

Nondiscrimination in Federally Assisted Construction Contracts, Executive Order 11246, 42 USC 2000e, as amended by Executive Order 11375, 41 CFR Chapter 60.

Section 3, Housing and Urban Development Act of 1968, 12 USC 1701u (See 24 CFR 570.607(b)).

F. Office of Management and Budget Circulars

Cost Principles for State, Local and Indian Tribal Governments, OMB Circular A-87, 2 CFR, Part 225.

Cost Principles for Nonprofit Organizations, OMB Circular A-122, (if the Contractor is a nonprofit organization).

Grants and Cooperative Agreements with State and Local Governments, OMB Circular A-102, (if the Contractor is a local government or federally recognized Indian tribal government).

Uniform Administrative Requirements for Grants and Other Agreements with Institutions of Higher Education, Hospitals and Other Nonprofit Organizations, OMB Circular A-110.

G. Other

Anti-Kickback Act, 18 USC 874; 40 USC 276b, 276c; 41 USC 51-54.

H.R. 3547, Consolidated Appropriations Act, 2014.

Governmental Guidance for New Restrictions on Lobbying; Interim Final Guidance, Federal Register 1, Vol. 54, No. 243\Wednesday, December 20, 1989.

Hatch Political Activity Act, 5 USC 1501-8.

Lobbying and Disclosure, 42 USC 3537a and 3545 and 31 USC 1352 (Byrd Anti-Lobbying Amendment). 31 USC 1352 provides that Contractors who apply or bid for an award of \$100,000 or more 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 other award covered by 31

USC 1352. Each tier must 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 recipient.

Non-Supplanting Federal Funds.

Section 8 Housing Assistance Payments Program.

H. Privacy

Privacy Act of 1974, 5 USC 522a.

I. Relocation

Uniform Relocation Assistance and Real Property Acquisition Policy Act of 1970 and implementing regulations at 49 CFR part 24.

Section 104(d) of the Housing and Community Development Act of 1974 and the implementing regulations at 24 CFR part 570.

**Washington State Laws and Regulations**

- A. Affirmative Action, RCW 41.06.020 .
- B. Boards of Directors or Officers of Non-Profit Corporations – Liability - Limitations, RCW 4.24.264.
- C. Disclosure-Campaign Finances-Lobbying, Chapter 42.17 RCW.
- D. Discrimination-Human Rights Commission, Chapter 49.60 RCW.
- E. Ethics in Public Service, Chapter 42.52 RCW.
- F. Affordable Housing Program, Chapter 43.185 RCW
- G. Interlocal Cooperation Act, Chapter 39.34 RCW.
- H. Noise Control, Chapter 70.107 RCW.
- I. Office of Minority and Women’s Business Enterprises, Chapter 39.19 RCW and Chapter 326-02 WAC.
- J. Open Public Meetings act, Chapter 42.30 RCW.
- K. Prevailing Wages on Public Works, Chapter 39.12 RCW.
- L. Public Records Act, Chapter 42.56 RCW.
- M. Relocation Assistance - Real Property Acquisition Policy, Chapter 8.26 RCW.
- N. Shoreline Management Act of 1971, Chapter 90.58 RCW.
- O. State Budgeting, Accounting, and Reporting System, Chapter 43.88 RCW.
- P. State Building Code, Chapter 19.27 RCW and Energy-Related Building Standards, Chapter 19.27A RCW, and Provisions in Buildings for Aged and Handicapped Persons, Chapter 70.92 RCW.
- Q. State Coastal Zone Management Program Section 309 Assessment and Strategy (Publication 01-06-003), Shorelands and Environmental Assistance Program, Washington State Department of Ecology.
- R. State Environmental Policy, Chapter 43.21C RCW.
- S. State Executive Order 05-05, Archeological and Cultural Resources.

**2.27. LICENSING, ACCREDITATION AND REGISTRATION**

The Contractor shall comply with all applicable local, state, and federal licensing, accreditation and registration requirements or standards necessary for the performance of this Contract.

**2.28. LIMITATION OF AUTHORITY**

Only the Authorized Representative or Authorized Representative’s designee by writing (designation to be made prior to action) shall have the express, implied, or apparent authority to alter, amend, modify, or waive any clause or condition of this Contract.

**2.29. LOCAL PUBLIC TRANSPORTATION COORDINATION**

Where applicable, Contractor shall participate in local public transportation forums and implement strategies designed to ensure access to services.

**2.30. NONCOMPLIANCE WITH NONDISCRIMINATION LAWS**

During the performance of this Contract, the Contractor shall comply with all federal, state, and local nondiscrimination laws, regulations and policies. In the event of the Contractor’s non-compliance or refusal to comply with any nondiscrimination law, regulation or policy, this contract may be rescinded, canceled or terminated

in whole or in part, and the Contractor may be declared ineligible for further contracts with the Board. The Contractor shall, however, be given a reasonable time in which to cure this noncompliance. Any dispute may be resolved in accordance with the "Disputes" procedure set forth herein.

**2.31. NOTIFICATION OF TENANT RIGHTS/RESPONSIBILITIES**

The Contractor shall provide all tenants, if any, with information outlining tenant rights and responsibilities under the Washington State Landlord Tenant laws, Title 59, Revised Code of Washington.

The Contractor shall also provide all occupants of property acquired with U.S. Department of Housing and Urban Development (HUD) funds notice regarding their eligibility for relocation assistance. Such notices will be provided as required by the Uniform Relocation Assistance and Real Property Acquisition Act of 1970, as amended and referenced in 49 CFR part 24 and Section 104(d) of the Housing and Community Development Act of 1974, as amended and referenced in 24 CFR 570 and noted in HUD's Handbook No. 1378. Notifications will include but not be limited to:

- General Information Notice
- Notice of Displacement/Non-Displacement

**2.32. POLITICAL ACTIVITIES**

Political activity of Contractor employees and officers are limited by the State Campaign Finances and Lobbying provisions of Chapter 42.17 RCW and the Federal Hatch Act, 5 USC 1501 - 1508.

No funds may be used for working for or against ballot measures or for or against the candidacy of any person for public office.

**2.33. PREVAILING WAGE LAWS**

All contractors and subcontractors performing work on a construction project funded through this agreement shall comply with prevailing wage laws by paying the higher of state or federal prevailing wages according to:

State Prevailing Wages on Public Works, Chapter 39.12 RCW, as applicable to the Project funded by this contract, including but not limited to the filing of the "Statement of Intent to Pay Prevailing Wages" and "Affidavit of Wages Paid" as required by RCW 39.12.040. The Contractor shall maintain records sufficient to evidence compliance with Chapter 39.12 RCW, and shall make such records available for the Board's review upon request; or

The Davis Bacon Act, 40 USC. 276a-276a-5 and related federal acts provide that all laborers and mechanics employed by contractors or subcontractors in the performance shall be paid wages at rates not less than those prevailing on similar construction in the locality as determined by the Secretary of Labor.

**2.34. PROCUREMENT STANDARDS FOR FEDERALLY FUNDED PROGRAMS**

A Contractor which is a local government or Indian Tribal government must establish procurement policies and procedures in accordance with OMB Circulars A-102, Uniform Administrative Requirements for Grants in Aid for State and Local Governments, for all purchases funded by this Contract.

A Contractor which is a nonprofit organization shall establish procurement policies in accordance with OMB Circular A-110, Uniform Administrative Requirements for Grants and Agreements with Nonprofit Agencies, for all purchases funded by this Contract.

The Contractor's procurement system should include at least the following:

1. A code or standard of conduct that shall govern the performance of its officers, employees, or agents engaged in the awarding of contracts using federal funds.
2. Procedures that ensure all procurement transactions shall be conducted in a manner to provide, to the maximum extent practical, open and free competition.
3. Minimum procedural requirements, as follows:
  - a. Follow a procedure to assure the avoidance of purchasing unnecessary or duplicative items.
  - b. Solicitations shall be based upon a clear and accurate description of the technical requirements of the procured items.
  - c. Positive efforts shall be made to use small and minority-owned businesses.



- d. The type of procuring instrument (fixed price, cost reimbursement) shall be determined by the Contractor, but must be appropriate for the particular procurement and for promoting the best interest of the program involved.
  - e. Contracts shall be made only with reasonable subcontractors who possess the potential ability to perform successfully under the terms and conditions of the proposed procurement.
  - f. Some form of price or cost analysis should be performed in connection with every procurement action.
  - g. Procurement records and files for purchases shall include all of the following:
    - 1) Contractor selection or rejection.
    - 2) The basis for the cost or price.
    - 3) Justification for lack of competitive bids if offers are not obtained.
  - h. A system for contract administration to ensure Contractor conformance with terms, conditions and specifications of this Contract, and to ensure adequate and timely follow-up of all purchases.
4. Contractor and Subcontractor must receive prior approval from the Board for using funds from this Contract to enter into a sole source contract or a contract where only one bid or proposal is received when value of this contract is expected to exceed \$5,000.
- Prior approval requests shall include a copy of proposed contracts and any related procurement documents and justification for non-competitive procurement, if applicable.

#### **2.35. PROHIBITION AGAINST PAYMENT OF BONUS OR COMMISSION**

The funds provided under this Contract shall not be used in payment of any bonus or commission for the purpose of obtaining approval of the application for such funds or any other approval or concurrence under this Contract provided, however, that reasonable fees or bona fide technical consultant, managerial, or other such services, other than actual solicitation, are not hereby prohibited if otherwise eligible as project costs.

#### **2.36. PUBLICITY**

The Contractor agrees not to publish or use any advertising or publicity materials in which the state of Washington or the Board's name is mentioned, or language used from which the connection with the state of Washington's or the Board's name may reasonably be inferred or implied, without the prior written consent of the Board .

#### **2.37. RECAPTURE**

In the event that the Contractor fails to perform this contract in accordance with state laws, federal laws, and/or the provisions of this contract, The Board reserves the right to recapture funds in an amount to compensate the Board for the noncompliance in addition to any other remedies available at law or in equity.

Repayment by the Contractor of funds under this recapture provision shall occur within the time period specified by the Board. In the alternative, The Board may recapture such funds from payments due under this contract.

#### **2.38. RECORDS MAINTENANCE**

The Contractor shall maintain all books, records, documents, data and other evidence relating to this Contract 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 Contract. Contractor shall retain such records for a period of six years following the date of final payment.

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 finally resolved.

#### **2.39. REGISTRATION WITH DEPARTMENT OF REVENUE**

If required by law, the Contractor shall complete registration with the Washington State Department of Revenue.

#### **2.40. RIGHT OF INSPECTION**

At no additional cost all records relating to the Contractor's performance under this Contract shall be subject at all reasonable times to inspection, review, and audit by the Board, the Office of the State Auditor, and federal and state officials so authorized by law, in order to monitor and evaluate performance, compliance, and quality assurance under this Contract. The Contractor shall provide access to its facilities for this purpose.

#### **2.41. SAVINGS**

If the event funding from state, federal, or other sources is withdrawn, reduced, or limited in any way after the effective date of this Contract and prior to normal completion, The Board may terminate the Contract under the "Termination for Convenience" clause, without the ten business day notice requirement. In lieu of termination, the Contract may be amended to reflect the new funding limitations and conditions.

#### **2.42. SEVERABILITY**

If any provision of this Contract or any provision of any document incorporated by reference shall be held invalid, such invalidity shall not affect the other provisions of this Contract that can be given effect without the invalid provision, if such remainder conforms to the requirements of law and the fundamental purpose of this Contract and to this end the provisions of this Contract are declared to be severable.

#### **2.43. SUBCONTRACTING**

The Contractor may only subcontract work contemplated under this Contract if it obtains the prior written approval of the Board.

If the Board approves subcontracting, the Contractor shall maintain written procedures related to subcontracting, as well as copies of all subcontracts and records related to subcontracts. For cause, the Board in writing may: (a) require the Contractor to amend its subcontracting procedures as they relate to this Contract; (b) prohibit the Contractor from subcontracting with a particular person or entity; or (c) require the Contractor to rescind or amend a subcontract.

Every subcontract shall bind the Subcontractor to follow all applicable terms of this Contract. The Contractor is responsible to the Board if the Subcontractor fails to comply with any applicable term or condition of this Contract. The Contractor shall appropriately monitor the activities of the Subcontractor to assure fiscal conditions of this Contract. In no event shall the existence of a subcontract operate to release or reduce the liability of the Contractor to the Board for any breach in the performance of the Contractor's duties.

Every subcontract shall include a term that the Board and the State of Washington are not liable for claims or damages arising from a Subcontractor's performance of the subcontract.

#### **2.44. SURVIVAL**

The terms, conditions, and warranties contained in this Contract that by their sense and context are intended to survive the completion of the performance, cancellation or termination of this Contract shall so survive.

#### **2.45. TAXES**

All payments accrued on account of payroll taxes, unemployment contributions, the Contractor's income or gross receipts, any other taxes, insurance or expenses for the Contractor or its staff shall be the sole responsibility of the Contractor.

#### **2.46. TERMINATION FOR CAUSE/SUSPENSION**

In event the Board determines that the Contractor failed to comply with any term or condition of this Contract, the Board may terminate the Contract in whole or in part upon written notice to the Contractor. Such termination shall be deemed "for cause." Termination shall take effect on the date specified in the notice.

In the alternative, the Board upon written notice may allow the Contractor a specific period of time in which to correct the non-compliance. During the corrective-action time period, the Board may suspend further payment to the Contractor in whole or in part, or may restrict the Contractor's right to perform duties under this Contract. Failure by the Contractor to take timely corrective action shall allow the Board to terminate the Contract upon written notice to the Contractor.

"Termination for Cause" shall be deemed a "Termination for Convenience" when the Board determines that the Contractor did not fail to comply with the terms of the Contract or when the Board determines the failure was not caused by the Contractor's actions or negligence.

If the Contract is terminated for cause, the Contractor shall be liable for damages as authorized by law, including, but not limited to, any cost difference between the original contract and the replacement contract, as well as all costs associated with entering into the replacement contract (i.e., competitive bidding, mailing, advertising, and staff time).

#### **2.47. TERMINATION FOR CONVENIENCE**

Except as otherwise provided in this Contract, the Board may, by ten (10) business days written notice, beginning on the second day after the mailing, terminate this Contract, in whole or in part. If this Contract is so terminated, the Board shall be liable only for payment required under the terms of this Contract for services rendered or goods delivered prior to the effective date of termination.

#### **2.48. TERMINATION PROCEDURES**

After receipt of a notice of termination, except as otherwise directed by the Board, the Contractor shall:

- A. Stop work under the Contract on the date, and to the extent specified, in the notice;
- B. Place no further orders or subcontracts for materials, services, or facilities related to the Contract;
- C. Assign to the Board all of the rights, title, and interest of the Contractor under the orders and subcontracts so terminated, in which case the Board has the right, at its discretion, to settle or pay any or all claims arising out of the termination of such orders and subcontracts. Any attempt by the Contractor to settle such claims must have the prior written approval of the Board; and
- D. Preserve and transfer any materials, contract deliverables and/or the Board property in the Contractor's possession as directed by the Board.

Upon termination of the Contract, the Board shall pay the Contractor for any service provided by the Contractor under the Contract prior to the date of termination. The Board may withhold any amount due as the Board reasonably determines is necessary to protect the Board against potential loss or liability resulting from the termination. The Board shall pay any withheld amount to the Contractor if the Board later determines that loss or liability will not occur.

The rights and remedies of the Board under this section are in addition to any other rights and remedies provided under this Contract or otherwise provided under law.

#### **2.49. WAIVER**

Waiver of any default or breach shall not be deemed to be a waiver of any subsequent default or breach. Any waiver shall not be construed to be a modification of the terms of this Contract unless stated to be such in writing and signed by Authorized Representative of the Board.

#### **2.50. WORK HOURS AND SAFETY STANDARDS**

The Contract Work Hours and Safety Standards Act (40 USC 327-333)-Where applicable, all contracts awarded by recipients in excess of \$100,000 for construction and other purposes that involve the employment of mechanics or laborers must include a provision for compliance with Section 102 and 107 of the Contract Work Hours Safety Standards Act (40 USC 327-333), as supplemented by Department of Labor regulations (29 CFR part 5). Under Section 102 of the Act, each subcontractor is 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 1 ½ times the basic rate of pay for all hours worked in excess of 40 hours in the work week. Section 107 of the Act is applicable to construction work and provides that no laborer or mechanic is 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.

# ATTACHMENT I: ATTORNEY'S CERTIFICATION

## DRINKING WATER STATE REVOLVING FUND (MUNICIPAL)

Olympia  
DM16-952-042

I, Annaliese Harksen, hereby certify:

I am an attorney at law admitted to practice in the State of Washington and the duly appointed attorney of the Contractor identified on the Declarations Page of the Contract identified above; and

I have also examined any and all documents and records, which are pertinent to the Contract, including the application requesting this financial assistance.

Based on the foregoing, it is my opinion that:

1. The Contractor is a public body, properly constituted and operating under the laws of the State of Washington, empowered to receive and expend federal, state and local funds, to contract with the State of Washington, and to receive and expend the funds involved to accomplish the objectives set forth in their application.
2. The Contractor is empowered to accept the Drinking Water State Revolving Fund financial assistance and to provide for repayment of the loan as set forth in the loan agreement.
3. There is currently no litigation in existence seeking to enjoin the commencement or completion of the above-described public facilities project or to enjoin the Contractor from repaying the Drinking Water State Revolving Fund loan extended by the Public Works Board with respect to such project. The Contractor is not a party to litigation, which will materially affect its ability to repay such loan on the terms contained in the loan agreement.
4. Assumption of this obligation would not exceed statutory and administrative rule debt limitations applicable to the Contractor.

Annaliese Harksen  
Signature of Attorney

6/2/2016  
Date

Annaliese Harksen  
Name

601 4th Ave E., Olympia, WA  
Address



# ATTACHMENT II: FEDERAL AND STATE REQUIREMENTS

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## 1) Environmental Authorities

- a) Archeological and Historic Preservation Act of 1974, Public Law 86-523 as amended
- b) Clean Air Act, Public Law 84-159 as amended
- c) Coastal Zone Management Act, Public Law 92-583 as amended
- d) Endangered Species Act, Public Law 93-205 as amended
- e) Environmental Justice, Executive Order 12898
- f) Floodplain Management, Executive Order 11988 as amended by Executive Order 12148
- g) Protection of Wetlands, Executive Order 11990
- h) Farmland Protection Policy Act, Public Law 97-98
- i) Fish and Wildlife Coordination Act, Public Law 85-624 as amended
- j) National Historic Preservation Act of 1966, Public Law 89-665 as amended
- k) Safe Drinking Water Act, Public Law 93-523 as amended
- l) Wild and Scenic Rivers Act, Public Law 90-542 as amended

## 2) Economic and Miscellaneous Authorities

- a) Demonstration Cities and Metropolitan Development Act of 1996, Public Law 89-754 as amended, Executive Order 12372
- b) Procurement Prohibitions under Section 306 of the Clean air Act and Section 508 of the Clean Water Act, including Executive Order 11738, Administration of the Clean Air Act and the Federal Water Pollution Control Act with Respect to Federal Contracts, Grants, or Loans
- c) Uniform Relocation and Real Property Policies Act, Public Law 91-646 as amended
- d) Debarment and Suspension, Executive Order 12549
- e) H.R. 3547, Consolidated Appropriations Act, 2014.

## 3) Social Policy Authorities

- a) Age Discrimination Act of 1975, Public Law 94-135
- b) Title VI of the Civil Rights Act of 1964, Public Law 88-352
- c) Section 13 of the Federal Water Pollution Control Act Amendments of 1972, Public Law 92-500 (the Clean Water Act)
- d) Section 504 of the Rehabilitation Act of 1973, Public Law 93-112 (including Executive Orders 11914 and 11250)
- e) Equal Employment Opportunity, Executive Order 11246
- f) Disadvantaged Business Enterprise, Public Law 101-549 (the Clean Air Act), and Public Law 102-389 (the Clean Water Act)
- g) Section 129 of the Small Business Administration Reauthorization and Amendment Act of 1988, Public Law 100-590

## 4) State Laws

- a) Chapter 36.70A RCW, Growth Management Act
- b) Chapter 39.80 RCW, Contracts for Architectural and Engineering Services
- c) Chapter 39.12 RCW, Washington State Public Works Act
- d) Chapter 43.20 RCW, State Board of Health
- e) Chapter 43.70 RCW, Department of Health
- f) Chapter 43.155 RCW, Public Works Project
- g) Chapter 70.116 RCW, Public Water Systems Coordination Act of 1977
- h) Chapter 70.119 RCW, Public Water Supply Systems Certification and Regulation of Operations
- i) Chapter 70.119A RCW, Public Water Systems, Penalties & Compliances
- j) Chapter 246-290 WAC, Group A Public Water Systems
- k) Chapter 246-291 WAC, Group B Public Water Systems
- l) Chapter 246-292 WAC, Waterworks Operator Certification Regulations
- m) Chapter 246-293 WAC, Water Systems Coordination Act
- n) Chapter 246-294 WAC, Drinking Water Operating Permits
- o) Chapter 246-295 WAC, Satellite System Management Agencies
- p) Chapter 246-296 WAC Drinking Water State Revolving Fund Loan Program
- q) Chapter 173-160 WAC, Minimum Standards for Construction & Maintenance of Wells
- r) Title 173 WAC, Department of Ecology Rules
- s) Title 40 Part 141 Code of Federal Regulations, Federal National Primary Drinking Water Regulations (Section Adopted by Reference)



# ATTACHMENT III: DISADVANTAGED BUSINESS ENTERPRISE REQUIREMENTS

## GENERAL COMPLIANCE, 40 CFR, Part 33

The Contractor agrees to comply with the requirements of Environmental Protection Agency's Program for Utilization of Small, Minority and Women's Business Enterprises (MBE/WBE) in procurement under this Contract, contained in 40 CFR, Part 33.

## FAIR SHARE OBJECTIVES, 40 CFR, Part 33, Subpart D

The following are exemptions from the fair share objective Requirements:

- Grant and loan recipients receiving a total of \$250K or less in EPA financial assistance in a given fiscal year.
- Tribal recipients of Performance Partnership Eligible grants under 40 CFR Part 35, Subpart B.
  - There is a 3-year phase in period for the requirement to negotiate fair share goals for Tribal and Insular Area recipients.
- Recipients of Technical Assistance Grants.

The Fair Share Objectives or goals for the utilization of disadvantaged businesses negotiated with EPA by the WA Office of Minority Women Business are stated below.

Construction	10% MBE	6% WBE
Supplies	8% MBE	4% WBE
Equipment	8% MBE	4% WBE
Purchased Services	10% MBE	4% WBE

By signing this Contract, the Contractor is accepting the fair share objectives/goals stated above and attests to the fact that it is purchasing the same or similar construction, supplies, services and equipment, in the same or similar relevant geographic buying market as WA Office of Minority Women Business goal is being adopted.

## SIX GOOD FAITH EFFORTS, 40 CFR, Part 33, Subpart C

Pursuant to 40 CFR, Section 33.301, the Contractor agrees to make the following good faith efforts whenever procuring construction, equipment, services and supplies under an EPA financial assistance agreement, and to ensure that sub-recipients, loan recipients, and prime contractors also comply.

Records documenting compliance with the six good faith efforts shall be retained. The six good faith efforts shall include:

- A. Ensure Disadvantaged Business Enterprises are made aware of contracting opportunities to the fullest extent practicable through outreach and recruitment activities. For Indian Tribal, State and Local Government recipients, this will include placing the Disadvantaged Business Enterprises on solicitation lists and soliciting them whenever they are potential sources.
- B. Make information on forthcoming opportunities available to Disadvantaged Business Enterprises and arrange time frames for contracts and establish delivery schedules, where the requirements permit, in a way that encourages and facilitates participation by Disadvantaged Business Enterprises in the competitive process. This includes, whenever possible, posting solicitations for bids or proposals for a minimum of thirty (30) calendar days before the bid or proposal closing date.
- C. Consider in the contracting process whether firms competing for large contracts could subcontract with Disadvantaged Business Enterprises. For Indian Tribal, State and Local Government recipients, this will include dividing total requirements, when economically feasible, into smaller tasks or quantities to permit maximum participation by Disadvantaged Business Enterprises in the competitive process.
- D. Encourage contracting with a consortium of Disadvantaged Business Enterprises when a contract is too large for one of these firms to handle individually.
- E. Use the services and assistance of the Small Business Administration and the Minority Business Development Agency of the Department of Commerce.
- F. If the prime contractor awards subcontracts, also require the prime contractor to take the five good faith efforts in paragraphs A through E above.



### **MBE/WBE REPORTING, 40 CFR, Part 33, Sections 33.502 and 33.503**

Contractor is required to submit MBE/WBE participation reports to the Board and/or the Department of Health, on a quarterly basis, beginning with the Federal fiscal year reporting period the Contractor receives the award and continuing until the project is completed.

### **CONTRACT ADMINISTRATION PROVISIONS, 40 CFR, Section 33.302**

The Contractor agrees to comply with the contract administration provisions of 40 CFR, Section 33.302.

The Contractor agrees to require all general contractors to provide forms: EPA Form 6100-2 DBE Subcontractor Participation Form and EPA Form 6100-3 DBE Subcontractor Performance Form to all its Disadvantaged Business Enterprise subcontractors, engineers, vendors, and any other entity for work or services listed in the declared SCOPE OF WORK. These two (2) forms may be obtained from the EPA Office of Small Business Program's website on the internet at <http://www.epa.gov/osbp/grants.htm>.

The Contractor agrees to require all general contractors to complete and submit to the Contractor and Environmental Protection Agency EPA Form 6100-4 DBE Subcontractor Utilization Form beginning with the Federal fiscal year reporting period the Contractor receives the award and continuing until the project is completed. Only procurements with certified MBE/WBEs are counted toward a Contractor's MBE/WBE accomplishments.

### **BIDDERS LIST, 40 CFR, Section 33.501(b) and (c)**

The Contractor is also required to create and maintain a bidders list if the Contractor of the loan is subject to, or chooses to follow, competitive bidding requirements. Please see 40 CFR, Section 33.501 (b) and (c) for specific requirements and exemptions.

Section 33.501(b) of the rule is as follows:

A recipient of a Continuing Environmental Program Grant or other annual grant must create and maintain a bidders list. In addition, a recipient of an EPA financial assistance agreement to capitalize a revolving loan fund also must require entities receiving identified loans to create and maintain a bidders list if the recipient of the loan is subject to, or chooses to follow, competitive bidding requirements. The purpose of a bidders list is to provide the recipient and entities receiving identified loans who conduct competitive bidding with as accurate a database as possible about the universe of MBE/WBE and non-MBE/WBE prime and subcontractors. The list must include all firms that bid or quote on prime contracts or bid or quote on subcontracts under EPA assisted projects, including both MBE/WBEs.

The bidders list must be kept until the grant project period has expired and the recipient is no longer receiving EPA funding under the grant. For entities receiving identified loans, the bidders list must be kept until the project period for the identified loan has ended. The following information must be obtained from all prime and subcontractors:

- (1) Entity's name with point of contact;
- (2) Entity's mailing address, telephone number, and e-mail address;
- (3) The procurement on which the entity bid or quoted, and when; and
- (4) Entity's status as a MBE/WBE<sup>1</sup> or non-MBE/WBE.

The exemption found at § 33.501(c) is as follows:

A recipient of an EPA financial assistance agreement in the amount of \$250,000 or less for any single assistance agreement, or of more than one financial assistance agreement with a combined total of \$250,000 or less in any one fiscal year, is exempt from the paragraph (b) of this section requirement to create and maintain a bidders list. Also, a recipient under the CWSRF, DWSRF, or BCRLF Program is not required to apply the paragraph (b) of this section bidders list requirement of this subpart to an entity receiving an identified loan in an amount of \$250,000 or less, or to an entity receiving more than one identified loan with a combined total of \$250,000 or less in any one fiscal year. This exemption is limited to the paragraph (b) of this section bidders list requirements of this subpart.

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<sup>1</sup> Qualified Women and Minority business enterprises may be found on the Internet at [www.omwbe.wa.gov](http://www.omwbe.wa.gov) or by contacting the Washington State Office of Minority and Women's Enterprises at 360-704-1181.

# ATTACHMENT IV: CERTIFICATION REGARDING DEBARMENT, SUSPENSION, AND OTHER RESPONSIBILITY MATTERS

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United States Environmental Protection Agency  
Washington, DC 20460

EPA Project Control Number

The prospective participant certifies to the best of its knowledge and belief that it and the principals:

- (a) Are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions by any Federal department or agency;
- (b) Have not within a three year period preceding this proposal been convicted of or had a civil judgment rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (Federal, State, or local) transaction or contract under a public transaction: violation of Federal or State antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property;
- (c) Are not presently indicted for otherwise criminally or civilly charged by a government entity (Federal, State, or local) with commission of any of the offenses enumerated in paragraph (1)(b) of this certification; and
- (d) Have not within a three-year period preceding this application/proposal had one or more public transactions (Federal, State, or local) terminated for cause or default.

I understand that a false statement on this certification may be ground for rejection of this proposal or termination of the award. In addition, under 18 USC Sec. 1001, a false statement may result in a fine of up to \$10,000 or imprisonment for up to 5 years, or both.

Robin Atchison, Project Accountant  
Typed Name & Title of Authorized Representative

Robin Atchison    5/23/16  
Signature of Authorized Representative    Date

I am unable to certify to the above statements. My explanation is attached.

**EPA Form 5700-49 (11-88)**



# ATTACHMENT V: DWSRF ELIGIBLE PROJECT COSTS

Must be directly attributable to the project.

1. The costs for complying with the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970.
2. DWSRF loan fees.
3. The purchase of a portion of another system's capacity, if it is the most cost effective solution (limited to publicly owned (municipal) systems).
4. Construction of reservoirs (clear wells) that are part of the treatment process and are collocated with the treatment facility.
5. Construction of distribution reservoirs (finished water).
6. Cost associated with restructuring or consolidation of existing water systems by publicly owned water systems.
7. Main extensions to connect to safe and reliable sources of drinking water.
8. Cost associated with collecting and preparing environmental assessment documents to obtain local permits.
9. Direct labor including related employee benefits:
  - a. Salaries and wages (at actual or average rates) covering productive labor hours of employees of the borrower (excluding the administrative organization of the operating unit involved) for periods of time actively or incidentally engaged in pre-design engineering, design engineering, construction engineering, acquisition of rights of way, and the cleaning, sterilization or bacteriological testing of water system components prior to public use. The costs of services rendered by employees generally classified as administration/project management of the loan are considered a direct cost only when such employees are assigned the types of services described above and shall be limited to 3% or less of the project loan amount.
  - b. Employee benefits relating to labor are considered a direct cost of construction projects. The following items may be included as employee benefits:
    - F.I.C.A. (Social Security) –employer's share.
    - Retirement benefits.
    - Hospital, health, dental, and other welfare insurance.
    - Life insurance.
    - Industrial and medical insurance.
    - Vacation.
    - Holiday.
    - Sick leave.
    - Military leave and jury duty.

Employee benefits must be calculated as a percentage of direct labor dollars. The computation of predetermined percentage rates to be applied to current labor costs must be based on the average of total employee benefits and total labor costs for the prior fiscal year and adjusted by known current year variations.

- c. Other than work identified in Number 9.a, no costs associated with labor performed by the borrower's employees, including force account work, are eligible for financing assistance.
10. Contract engineering, planning, design, legal, and financial planning services. The Board reserves the right to declare ineligible legal costs that are unreasonable and disproportionate to the project.
11. Contract construction work.
12. Direct vehicle and equipment charges at the actual rental cost paid for the equipment or, in the case of city or county-owned equipment, at the rental rates established by the local government's "equipment rental and revolving fund" following the methods prescribed by the division of municipal corporations. However, such costs must be charged on a uniform basis to equipment used for all projects regardless of the source of funding. Cities with a population of eight thousand or less not using this type of fund are allowed the same rates as used by the State Department of Transportation.
13. Direct materials and supplies.
14. Other direct costs incurred for materials or services acquired for a specific project are eligible costs and may include, but are not limited to such items as:
  - a. Telephone charges.
  - b. Reproduction and photogrammetry costs.
  - c. Video and photography for project documentation.
  - d. Computer usage.
  - e. Printing and advertising.
15. Other project related costs include:
  - Competitive Bidding.
  - Audit.
  - Insurance.
  - Prevailing wages.
  - Attorney fees.
  - Environmental Review.
  - Archaeological Survey.

Water system plan costs are not eligible for reimbursement. Small water system management program and plan amendments costs are eligible for reimbursement.

Projects may be designed to accommodate reasonable growth. This is generally the 20-year projection included in the system's water system plan or small water system management program.



# ATTACHMENT VI: LABOR STANDARD PROVISIONS FOR SUBRECIPIENTS THAT ARE GOVERNMENTAL ENTITIES

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## Wage Rate Requirements Under The Consolidated and Further Continuing Appropriations Act, 2013 (P.L. 113-6)

### Preamble

With respect to the Clean Water and Safe Drinking Water State Revolving Funds, EPA provides capitalization grants to each State which in turn provides subgrants or loans to eligible entities within the State. Typically, the subrecipients are municipal or other local governmental entities that manage the funds. For these types of recipients, the provisions set forth under Roman Numeral I, below, shall apply. Although EPA and the State remain responsible for ensuring subrecipients' compliance with the wage rate requirements set forth herein, those subrecipients shall have the primary responsibility to maintain payroll records as described in Section 3(ii)(A), below and for compliance as described in Section I-5.

Occasionally, the subrecipient may be a private for profit or not for profit entity. For these types of recipients, the provisions set forth in Roman Numeral II, below, shall apply. Although EPA and the State remain responsible for ensuring subrecipients' compliance with the wage rate requirements set forth herein, those subrecipients shall have the primary responsibility to maintain payroll records as described in Section II-3(ii)(A), below and for compliance as described in Section II-5.

### I. Requirements Under The Consolidated and Further Continuing Appropriations Act, 2013 (P.L. 113-6)

#### For Subrecipients That Are Governmental Entities:

The following terms and conditions specify how recipients will assist EPA in meeting its Davis-Bacon (DB) responsibilities when DB applies to EPA awards of financial assistance under the FY 2013 Continuing Resolution with respect to State recipients and subrecipients that are governmental entities. If a subrecipient has questions regarding when DB applies, obtaining the correct DB wage determinations, DB provisions, or compliance monitoring, it may contact Department of Commerce. If a State recipient needs guidance, they may obtain additional guidance from DOL's web site at <http://www.dol.gov/whd/>.

#### **1. Applicability of the Davis- Bacon (DB) prevailing wage requirements.**

Under the FY 2013 Continuing Resolution, DB prevailing wage requirements apply to the construction, alteration, and repair of treatment works carried out in whole or in part with assistance made available by a State water pollution control revolving fund and to any construction project carried out in whole or in part by assistance made available by a drinking water treatment revolving loan fund. If a subrecipient encounters a unique situation at a site that presents uncertainties regarding DB applicability, the subrecipient must discuss the situation with the recipient State before authorizing work on that site.

#### **2. Obtaining Wage Determinations.**

(a) Subrecipients shall obtain the wage determination for the locality in which a covered activity subject to DB will take place prior to issuing requests for bids, proposals, quotes or other methods for soliciting contracts (solicitation) for activities subject to DB. These wage determinations shall be incorporated into solicitations and any subsequent contracts. Prime contracts must contain a provision requiring that subcontractors follow the wage determination incorporated into the prime contract.

- (i) While the solicitation remains open, the subrecipient shall monitor [www.wdol.gov](http://www.wdol.gov) weekly to ensure that the wage determination contained in the solicitation remains current. The subrecipients shall amend the solicitation if DOL issues a modification more than 10 days prior to the closing date (i.e. bid opening) for the solicitation. If DOL modifies or supersedes the applicable wage determination less than 10 days prior to the closing date, the subrecipients may request a finding from the State recipient that there is not a reasonable time to notify interested contractors of the modification of the wage determination. The State recipient will provide a report of its findings to the subrecipient.
- (ii) If the subrecipient does not award the contract within 90 days of the closure of the solicitation, any modifications or supersedes DOL makes to the wage determination contained in the solicitation shall be effective unless the State recipient, at the request of the subrecipient, obtains an extension of the 90 day period from DOL pursuant to 29 CFR 1.6(c)(3)(iv). The subrecipient shall monitor [www.wdol.gov](http://www.wdol.gov) on a weekly basis if it does not award the contract within 90 days of closure of the solicitation to ensure that wage determinations contained in the solicitation remain current.

(b) If the subrecipient carries out activity subject to DB by issuing a task order, work assignment or similar instrument to an existing contractor (ordering instrument) rather than by publishing a solicitation, the subrecipient shall insert the appropriate DOL wage determination from [www.wdol.gov](http://www.wdol.gov) into the ordering instrument.

(c) Subrecipients shall review all subcontracts subject to DB entered into by prime contractors to verify that the prime contractor has required its subcontractors to include the applicable wage determinations.

(d) As provided in 29 CFR 1.6(f), DOL may issue a revised wage determination applicable to a subrecipient's contract after the award of a contract or the issuance of an ordering instrument if DOL determines that the subrecipient has failed to incorporate a wage determination or has used a wage determination that clearly does not apply to the contract or ordering instrument. If this occurs, the subrecipient shall either terminate the contract or ordering instrument and issue a revised solicitation or ordering instrument or incorporate DOL's wage determination retroactive to the beginning of the contract or ordering instrument by change order. The subrecipient's contractor must be compensated for any increases in wages resulting from the use of DOL's revised wage determination.

### **3. Contract and Subcontract provisions.**

(a) The Recipient shall insure that the subrecipient(s) shall insert in full in any contract in excess of \$2,000 which is entered into for the actual construction, alteration and/or repair, including painting and decorating, of a treatment work under the CWSRF or a construction project under the DWSRF financed in whole or in part from Federal funds or in accordance with guarantees of a Federal agency or financed from funds obtained by pledge of any contract of a Federal agency to make a loan, grant or annual contribution (except where a different meaning is expressly indicated), and which is subject to the labor standards provisions of any of the acts listed in § 5.1 or the FY 2013 Continuing Resolution, the following clauses:

(1) Minimum wages.

(i) All laborers and mechanics employed or working upon the site of the work will be paid unconditionally and not less often than once a week, and without subsequent deduction or rebate on any account (except such payroll deductions as are permitted by regulations issued by the Secretary of Labor under the Copeland Act (29 CFR part 3)), the full amount of wages and bona fide fringe benefits (or cash equivalents thereof) due at time of payment computed at rates not less than those contained in the wage determination of the Secretary of Labor which is attached hereto and made a part hereof, regardless of any contractual relationship which may be alleged to exist between the contractor and such laborers and mechanics.

Contributions made or costs reasonably anticipated for bona fide fringe benefits under section 1(b)(2) of the Davis-Bacon Act on behalf of laborers or mechanics are considered wages paid to such laborers or mechanics, subject to the provisions of paragraph (a)(1)(iv) of this section; also, regular contributions made or costs incurred for more than a weekly period (but not less often than quarterly) under plans, funds, or programs which cover the particular weekly period, are deemed to be constructively made or incurred during such weekly period. Such laborers and mechanics shall be paid the appropriate wage rate and fringe benefits on the wage determination for the classification of work actually performed, without regard to skill, except as provided in § 5.5(a)(4). Laborers or mechanics performing work in more than one classification may be compensated at the rate specified for each classification for the time actually worked therein: Provided, that the employer's payroll records accurately set forth the time spent in each classification in which work is performed. The wage determination (including any additional classification and wage rates conformed under paragraph (a)(1)(ii) of this section) and the Davis-Bacon poster (WH-1321) shall be posted at all times by the contractor and its subcontractors at the site of the work in a prominent and accessible place where it can be easily seen by the workers.

Subrecipients may obtain wage determinations from the U.S. Department of Labor's web site, [www.dol.gov](http://www.dol.gov).

(ii)(A) The subrecipient(s), on behalf of EPA, shall require that any class of laborers or mechanics, including helpers, which is not listed in the wage determination and which is to be employed under the contract shall be classified in conformance with the wage determination. The State award official shall approve a request for an additional classification and wage rate and fringe benefits therefore only when the following criteria have been met:

(1) The work to be performed by the classification requested is not performed by a classification in the wage determination; and

(2) The classification is utilized in the area by the construction industry; and

(3) The proposed wage rate, including any bona fide fringe benefits, bears a reasonable relationship to the wage rates contained in the wage determination.

(B) If the contractor and the laborers and mechanics to be employed in the classification (if known), or their representatives, and the subrecipient(s) agree on the classification and wage rate (including the amount designated for fringe benefits where appropriate), documentation of the action taken and the request, including the local wage determination shall be sent by the subrecipient (s) to the State award official. The State award official will transmit the request, to the Administrator of the Wage and Hour Division, Employment Standards Administration, U.S. Department of Labor, Washington, DC 20210 and to the EPA DB Regional Coordinator concurrently. The Administrator, or an authorized representative, will approve, modify, or disapprove every additional classification request within 30 days of receipt and so advise the State award official or will notify the State award official within the 30-day period that additional time is necessary.

(C) In the event the contractor, the laborers or mechanics to be employed in the classification or their representatives, and the subrecipient(s) do not agree on the proposed classification and wage rate (including the amount designated for fringe benefits, where appropriate), the award official shall refer the request and the local wage determination, including the views of all interested parties and the recommendation of the State award official, to the Administrator for

determination. The request shall be sent to the EPA DB Regional Coordinator concurrently. The Administrator, or an authorized representative, will issue a determination within 30 days of receipt of the request and so advise the contracting officer or will notify the contracting officer within the 30-day period that additional time is necessary.

(D) The wage rate (including fringe benefits where appropriate) determined pursuant to paragraphs (a)(1)(ii)(B) or (C) of this section, shall be paid to all workers performing work in the classification under this contract from the first day on which work is performed in the classification.

(iii) Whenever the minimum wage rate prescribed in the contract for a class of laborers or mechanics includes a fringe benefit which is not expressed as an hourly rate, the contractor shall either pay the benefit as stated in the wage determination or shall pay another bona fide fringe benefit or an hourly cash equivalent thereof.

(iv) If the contractor does not make payments to a trustee or other third person, the contractor may consider as part of the wages of any laborer or mechanic the amount of any costs reasonably anticipated in providing bona fide fringe benefits under a plan or program, provided, that the Secretary of Labor has found, upon the written request of the contractor, that the applicable standards of the Davis-Bacon Act have been met. The Secretary of Labor may require the contractor to set aside in a separate account assets for the meeting of obligations under the plan or program.

(2) Withholding. The subrecipient(s), shall upon written request of the EPA Award Official or an authorized representative of the Department of Labor, withhold or cause to be withheld from the contractor under this contract or any other Federal contract with the same prime contractor, or any other federally-assisted contract subject to Davis-Bacon prevailing wage requirements, which is held by the same prime contractor, so much of the accrued payments or advances as may be considered necessary to pay laborers and mechanics, including apprentices, trainees, and helpers, employed by the contractor or any subcontractor the full amount of wages required by the contract. In the event of failure to pay any laborer or mechanic, including any apprentice, trainee, or helper, employed or working on the site of the work, all or part of the wages required by the contract, the (Agency) may, after written notice to the contractor, sponsor, applicant, or owner, take such action as may be necessary to cause the suspension of any further payment, advance, or guarantee of funds until such violations have ceased.

(3) Payrolls and basic records.

(i) Payrolls and basic records relating thereto shall be maintained by the contractor during the course of the work and preserved for a period of three years thereafter for all laborers and mechanics working at the site of the work. Such records shall contain the name, address, and social security number of each such worker, his or her correct classification, hourly rates of wages paid (including rates of contributions or costs anticipated for bona fide fringe benefits or cash equivalents thereof of the types described in section 1(b)(2)(B) of the Davis-Bacon Act), daily and weekly number of hours worked, deductions made and actual wages paid. Whenever the Secretary of Labor has found under 29 CFR 5.5(a)(1)(iv) that the wages of any laborer or mechanic include the amount of any costs reasonably anticipated in providing benefits under a plan or program described in section 1(b)(2)(B) of the Davis-Bacon Act, the contractor shall maintain records which show that the commitment to provide such benefits is enforceable, that the plan or program is financially responsible, and that the plan or program has been communicated in writing to the laborers or mechanics affected, and records which show the costs anticipated or the actual cost incurred in providing such benefits. Contractors employing apprentices or trainees under approved programs shall maintain written evidence of the registration of apprenticeship programs and certification of trainee programs, the registration of the apprentices and trainees, and the ratios and wage rates prescribed in the applicable programs.

(ii)(A) The contractor shall submit weekly, for each week in which any contract work is performed, a copy of all payrolls to the subrecipient, that is, the entity that receives the sub-grant or loan from the State capitalization grant recipient. Such documentation shall be available on request of the State recipient or EPA. As to each payroll copy received, the subrecipient shall provide written confirmation in a form satisfactory to the State indicating whether or not the project is in compliance with the requirements of 29 CFR 5.5(a)(1) based on the most recent payroll copies for the specified week. The payrolls shall set out accurately and completely all of the information required to be maintained under 29 CFR 5.5(a)(3)(i), except that full social security numbers and home addresses shall not be included on the weekly payrolls. Instead the payrolls shall only need to include an individually identifying number for each employee (e.g., the last four digits of the employee's social security number). The required weekly payroll information may be submitted in any form desired. Optional Form WH-347 is available for this purpose from the Wage and Hour Division Web site at <http://www.dol.gov/whd/forms/wh347instr.htm> or its successor site. The prime contractor is responsible for the submission of copies of payrolls by all subcontractors. Contractors and subcontractors shall maintain the full social security number and current address of each covered worker, and shall provide them upon request to the subrecipient(s) for transmission to the State or EPA if requested by EPA, the State, the contractor, or the Wage and Hour Division of the Department of Labor for purposes of an investigation or audit of compliance with prevailing wage requirements. It is not a violation of this section for a prime contractor to require a subcontractor to provide addresses and social security numbers to the prime contractor for its own records, without weekly submission to the subrecipient(s).

(B) Each payroll submitted shall be accompanied by a "Statement of Compliance," signed by the contractor or subcontractor or his or her agent who pays or supervises the payment of the persons employed under the contract and shall certify the following:



(1) That the payroll for the payroll period contains the information required to be provided under § 5.5 (a)(3)(ii) of Regulations, 29 CFR part 5, the appropriate information is being maintained under § 5.5 (a)(3)(i) of Regulations, 29 CFR part 5, and that such information is correct and complete;

(2) That each laborer or mechanic (including each helper, apprentice, and trainee) employed on the contract during the payroll period has been paid the full weekly wages earned, without rebate, either directly or indirectly, and that no deductions have been made either directly or indirectly from the full wages earned, other than permissible deductions as set forth in Regulations, 29 CFR part 3;

(3) That each laborer or mechanic has been paid not less than the applicable wage rates and fringe benefits or cash equivalents for the classification of work performed, as specified in the applicable wage determination incorporated into the contract.

(C) The weekly submission of a properly executed certification set forth on the reverse side of Optional Form WH-347 shall satisfy the requirement for submission of the "Statement of Compliance" required by paragraph (a)(3)(ii)(B) of this section.

(D) The falsification of any of the above certifications may subject the contractor or subcontractor to civil or criminal prosecution under section 1001 of title 18 and section 231 of title 31 of the United States Code.

(iii) The contractor or subcontractor shall make the records required under paragraph (a)(3)(i) of this section available for inspection, copying, or transcription by authorized representatives of the State, EPA or the Department of Labor, and shall permit such representatives to interview employees during working hours on the job. If the contractor or subcontractor fails to submit the required records or to make them available, the Federal agency or State may, after written notice to the contractor, sponsor, applicant, or owner, take such action as may be necessary to cause the suspension of any further payment, advance, or guarantee of funds. Furthermore, failure to submit the required records upon request or to make such records available may be grounds for debarment action pursuant to 29 CFR 5.12.

(4) Apprentices and trainees--

(i) Apprentices. Apprentices will be permitted to work at less than the predetermined rate for the work they performed when they are employed pursuant to and individually registered in a bona fide apprenticeship program registered with the U.S. Department of Labor, Employment and Training Administration, Office of Apprenticeship Training, Employer and Labor Services, or with a State Apprenticeship Agency recognized by the Office, or if a person is employed in his or her first 90 days of probationary employment as an apprentice in such an apprenticeship program, who is not individually registered in the program, but who has been certified by the Office of Apprenticeship Training, Employer and Labor Services or a State Apprenticeship Agency (where appropriate) to be eligible for probationary employment as an apprentice. The allowable ratio of apprentices to journeymen on the job site in any craft classification shall not be greater than the ratio permitted to the contractor as to the entire work force under the registered program. Any worker listed on a payroll at an apprentice wage rate, who is not registered or otherwise employed as stated above, shall be paid not less than the applicable wage rate on the wage determination for the classification of work actually performed. In addition, any apprentice performing work on the job site in excess of the ratio permitted under the registered program shall be paid not less than the applicable wage rate on the wage determination for the work actually performed. Where a contractor is performing construction on a project in a locality other than that in which its program is registered, the ratios and wage rates (expressed in percentages of the journeyman's hourly rate) specified in the contractor's or subcontractor's registered program shall be observed. Every apprentice must be paid at not less than the rate specified in the registered program for the apprentice's level of progress, expressed as a percentage of the journeymen hourly rate specified in the applicable wage determination. Apprentices shall be paid fringe benefits in accordance with the provisions of the apprenticeship program. If the apprenticeship program does not specify fringe benefits, apprentices must be paid the full amount of fringe benefits listed on the wage determination for the applicable classification. If the Administrator determines that a different practice prevails for the applicable apprentice classification, fringes shall be paid in accordance with that determination. In the event the Office of Apprenticeship Training, Employer and Labor Services, or a State Apprenticeship Agency recognized by the Office, withdraws approval of an apprenticeship program, the contractor will no longer be permitted to utilize apprentices at less than the applicable predetermined rate for the work performed until an acceptable program is approved.

(ii) Trainees. Except as provided in 29 CFR 5.16, trainees will not be permitted to work at less than the predetermined rate for the work performed unless they are employed pursuant to and individually registered in a program which has received prior approval, evidenced by formal certification by the U.S. Department of Labor, Employment and Training Administration. The ratio of trainees to journeymen on the job site shall not be greater than permitted under the plan approved by the Employment and Training Administration. Every trainee must be paid at not less than the rate specified in the approved program for the trainee's level of progress, expressed as a percentage of the journeyman hourly rate specified in the applicable wage determination. Trainees shall be paid fringe benefits in accordance with the provisions of the trainee program. If the trainee program does not mention fringe benefits, trainees shall be paid the full amount of fringe benefits listed on the wage determination unless the Administrator of the Wage and Hour Division determines that there is an apprenticeship program associated with the corresponding journeyman wage rate on the wage determination which provides for less than full fringe benefits for apprentices. Any employee listed on the payroll at a trainee rate who is

not registered and participating in a training plan approved by the Employment and Training Administration shall be paid not less than the applicable wage rate on the wage determination for the classification of work actually performed. In addition, any trainee performing work on the job site in excess of the ratio permitted under the registered program shall be paid not less than the applicable wage rate on the wage determination for the work actually performed. In the event the Employment and Training Administration withdraws approval of a training program, the contractor will no longer be permitted to utilize trainees at less than the applicable predetermined rate for the work performed until an acceptable program is approved.

(iii) Equal employment opportunity. The utilization of apprentices, trainees and journeymen under this part shall be in conformity with the equal employment opportunity requirements of Executive Order 11246, as amended, and 29 CFR part 30.

(5) Compliance with Copeland Act requirements. The contractor shall comply with the requirements of 29 CFR part 3, which are incorporated by reference in this contract.

(6) Subcontracts. The contractor or subcontractor shall insert in any subcontracts the clauses contained in 29 CFR 5.5(a)(1) through (10) and such other clauses as the EPA determines may be appropriate, and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The prime contractor shall be responsible for the compliance by any subcontractor or lower tier subcontractor with all the contract clauses in 29 CFR 5.5.

(7) Contract termination; debarment. A breach of the contract clauses in 29 CFR 5.5 may be grounds for termination of the contract, and for debarment as a contractor and a subcontractor as provided in 29 CFR 5.12.

(8) Compliance with Davis-Bacon and Related Act requirements. All rulings and interpretations of the Davis-Bacon and Related Acts contained in 29 CFR parts 1, 3, and 5 are herein incorporated by reference in this contract.

(9) Disputes concerning labor standards. Disputes arising out of the labor standards provisions of this contract shall not be subject to the general disputes clause of this contract. Such disputes shall be resolved in accordance with the procedures of the Department of Labor set forth in 29 CFR parts 5, 6, and 7. Disputes within the meaning of this clause include disputes between the contractor (or any of its subcontractors) and Subrecipient(s), State, EPA, the U.S. Department of Labor, or the employees or their representatives.

(10) Certification of eligibility.

(i) By entering into this contract, the contractor certifies that neither it (nor he or she) nor any person or firm who has an interest in the contractor's firm is a person or firm ineligible to be awarded Government contracts by virtue of section 3(a) of the Davis-Bacon Act or 29 CFR 5.12(a)(1).

(ii) No part of this contract shall be subcontracted to any person or firm ineligible for award of a Government contract by virtue of section 3(a) of the Davis-Bacon Act or 29 CFR 5.12(a)(1).

(iii) The penalty for making false statements is prescribed in the U.S. Criminal Code, 18 USC 1001.

#### **4. Contract Provision for Contracts in Excess of \$100,000.**

(a) Contract Work Hours and Safety Standards Act. The subrecipient shall insert the following clauses set forth in paragraphs (a)(1), (2), (3), and (4) of this section in full in any contract in an amount in excess of \$100,000 and subject to the overtime provisions of the Contract Work Hours and Safety Standards Act. These clauses shall be inserted in addition to the clauses required by Item 3, above or 29 CFR 4.6. As used in this paragraph, the terms laborers and mechanics include watchmen and guards.

(1) Overtime requirements. No contractor or subcontractor contracting for any part of the contract work which may require or involve the employment of laborers or mechanics shall require or permit any such laborer or mechanic in any workweek in which he or she is employed on such work to work in excess of forty hours in such workweek unless such laborer or mechanic receives compensation at a rate not less than one and one-half times the basic rate of pay for all hours worked in excess of forty hours in such workweek.

(2) Violation; liability for unpaid wages; liquidated damages. In the event of any violation of the clause set forth in paragraph (a)(1) of this section the contractor and any subcontractor responsible therefore shall be liable for the unpaid wages. In addition, such contractor and subcontractor shall be liable to the United States (in the case of work done under contract for the District of Columbia or a territory, to such District or to such territory), for liquidated damages. Such liquidated damages shall be computed with respect to each individual laborer or mechanic, including watchmen and guards, employed in violation of the clause set forth in paragraph (a)(1) of this section, in the sum of \$10 for each calendar day on which such individual was required or permitted to work in excess of the standard workweek of forty hours without payment of the overtime wages required by the clause set forth in paragraph (a)(1) of this section.

(3) Withholding for unpaid wages and liquidated damages. The subrecipient, upon written request of the EPA Award Official or an authorized representative of the Department of Labor, shall withhold or cause to be withheld, from any moneys payable on account of work performed by the contractor or subcontractor under any such contract or any other Federal contract with the same prime contractor, or any other federally-assisted contract subject to the Contract Work Hours and Safety Standards Act, which is held by the same prime contractor, such sums as may be determined to be

necessary to satisfy any liabilities of such contractor or subcontractor for unpaid wages and liquidated damages as provided in the clause set forth in paragraph (b)(2) of this section.

(4) Subcontracts. The contractor or subcontractor shall insert in any subcontracts the clauses set forth in paragraph (a)(1) through (4) of this section and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The prime contractor shall be responsible for compliance by any subcontractor or lower tier subcontractor with the clauses set forth in paragraphs (a)(1) through (4) of this section.

(b) In addition to the clauses contained in Item 3, above, in any contract subject only to the Contract Work Hours and Safety Standards Act and not to any of the other statutes cited in 29 CFR 5.1, the Subrecipient shall insert a clause requiring that the contractor or subcontractor shall maintain payrolls and basic payroll records during the course of the work and shall preserve them for a period of three years from the completion of the contract for all laborers and mechanics, including guards and watchmen, working on the contract. Such records shall contain the name and address of each such employee, social security number, correct classifications, hourly rates of wages paid, daily and weekly number of hours worked, deductions made, and actual wages paid. Further, the Subrecipient shall insert in any such contract a clause providing that the records to be maintained under this paragraph shall be made available by the contractor or subcontractor for inspection, copying, or transcription by authorized representatives of the (write the name of agency) and the Department of Labor, and the contractor or subcontractor will permit such representatives to interview employees during working hours on the job.

##### **5. Compliance Verification**

(a) The subrecipient shall periodically interview a sufficient number of employees entitled to DB prevailing wages (covered employees) to verify that contractors or subcontractors are paying the appropriate wage rates. As provided in 29 CFR 5.6(a)(6), all interviews must be conducted in confidence. The subrecipient must use Standard Form 1445 (SF 1445) or equivalent documentation to memorialize the interviews. Copies of the SF 1445 are available from EPA on request.

(b) The subrecipient shall establish and follow an interview schedule based on its assessment of the risks of noncompliance with DB posed by contractors or subcontractors and the duration of the contract or subcontract. Subrecipients must conduct more frequent interviews if the initial interviews or other information indicated that there is a risk that the contractor or subcontractor is not complying with DB.

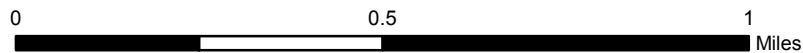
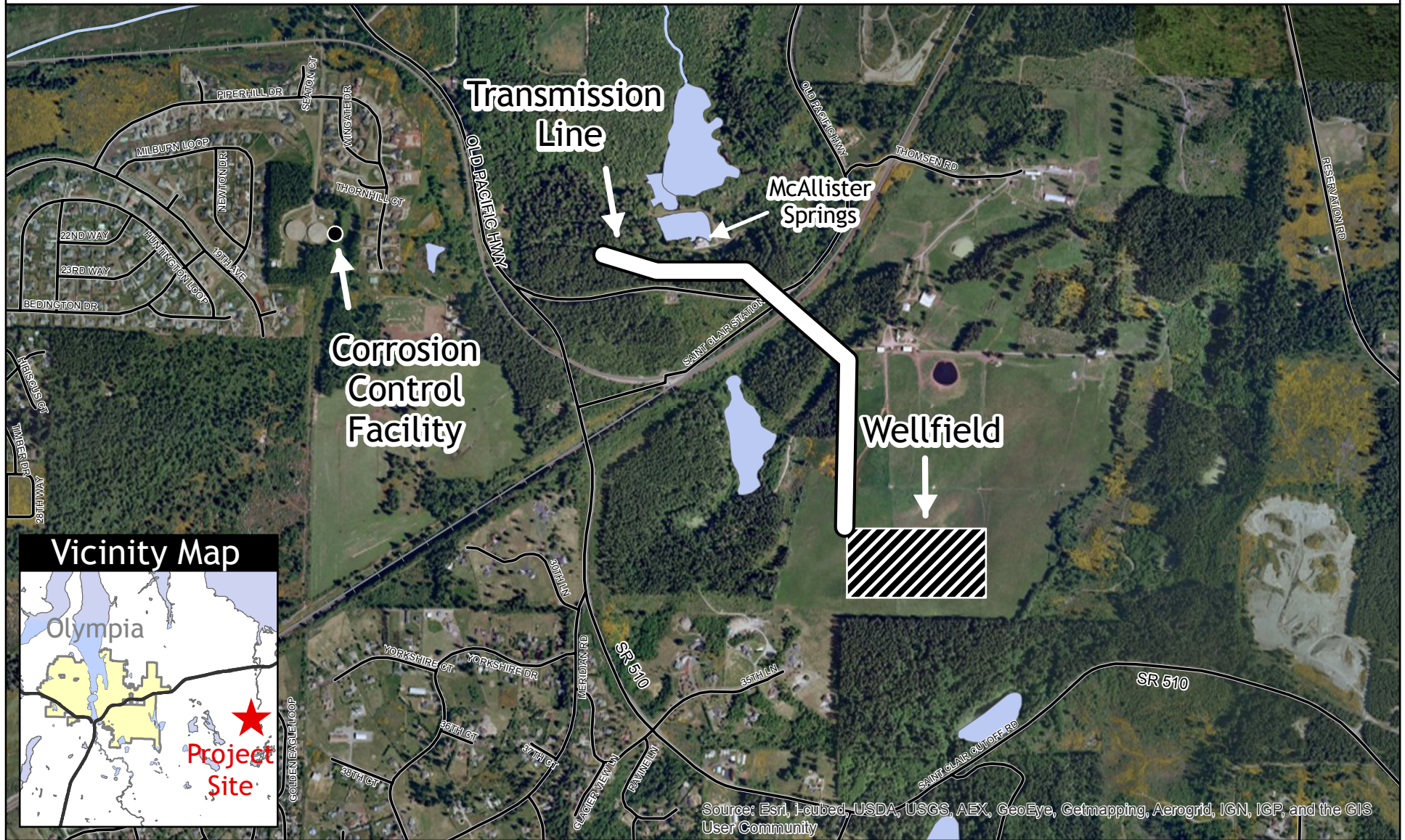
Subrecipients shall immediately conduct interviews in response to an alleged violation of the prevailing wage requirements. All interviews shall be conducted in confidence."

(c) The subrecipient shall periodically conduct spot checks of a representative sample of weekly payroll data to verify that contractors or subcontractors are paying the appropriate wage rates. The subrecipient shall establish and follow a spot check schedule based on its assessment of the risks of noncompliance with DB posed by contractors or subcontractors and the duration of the contract or subcontract. At a minimum, if practicable, the subrecipient should spot check payroll data within two weeks of each contractor or subcontractor's submission of its initial payroll data and two weeks prior to the completion date the contract or subcontract. Subrecipients must conduct more frequent spot checks if the initial spot check or other information indicates that there is a risk that the contractor or subcontractor is not complying with DB. In addition, during the examinations the subrecipient shall verify evidence of fringe benefit plans and payments thereunder by contractors and subcontractors who claim credit for fringe benefit contributions.

(d) The subrecipient shall periodically review contractors and subcontractors use of apprentices and trainees to verify registration and certification with respect to apprenticeship and training programs approved by either the U.S Department of Labor or a state, as appropriate, and that contractors and subcontractors are not using disproportionate numbers of, laborers, trainees and apprentices. These reviews shall be conducted in accordance with the schedules for spot checks and interviews described in Item 5(b) and (c) above.

(e) Subrecipients must immediately report potential violations of the DB prevailing wage requirements to the Department of Commerce and to the appropriate DOL Wage and Hour District Office listed at <http://www.dol.gov/contacts/whd/america2.htm>.

# McAllister Projects



Map revised: March 14, 2013

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## City Council

### Adoption of the 2015 State-Mandated Building Code Revisions

**Agenda Date:** 6/14/2016  
**Agenda Item Number:** 4.E  
**File Number:** 16-0690

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**Type:** ordinance **Version:** 1 **Status:** 1st Reading-Consent

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**Title**

Adoption of the 2015 State-Mandated Building Code Revisions

**Recommended Action**

**Committee Recommendation:**

The Land Use and Environment Committee recommends the City Council approve adoption of the 2015 State Building Codes.

**City Manager Recommendation:**

Move to approve the adoption of the 2015 State Building Codes.

**Report**

**Issue:**

Whether to approve the adoption of the 2015 State Building Codes.

**Staff Contact:**

Todd Cunningham, Building Official, Community Planning & Development,  
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**Presenter(s):**

None - Consent Calendar Item.

**Background and Analysis:**

Every three years, the construction code writing organizations update their respective technical and administrative codes. Revised Code of Washington (RCW) Section 19.27 requires that jurisdictions within the State of Washington adopt certain Building, Plumbing, Mechanical, Fire, Energy and Electrical Codes as required by the Washington State Building Codes Council (SBCC). These Codes have been published and adopted by the State Building Codes Council and are scheduled for implementation on July 1, 2016.

On May 19, 2016 the item was presented to the City of Olympia Land Use and Environment Committee for review. The Committee approved the item as presented and moved the item forward to City Council for consent.

**Neighborhood/Community Interests (if known):**

As part of the of code adoption process; various construction community groups such as the Olympia Master Builders and the Building Industry Association Washington which include a number of local contracting members have expressed interest in the upcoming code adoption and training. Staff is working with these organizations and design professionals to ensure there is an understanding of the upcoming revisions to the codes as they are adopted. Staff has addressed these interests by ensuring the City of Olympia engages in outreach and invitation to these groups to attend training; we have in turn attended their training programs. Additionally, the City's website is being updated to ensure there is information available pertaining to these newly adopted codes.

**Options:**

1. Approve the adoption of the 2015 State Building Codes.

2. Do not approve the adoption of the 2015 State Building Codes.

The Codes are mandated by the State on July 1, 2016 as written. If the City does not adopt the codes, they will be implemented as written

**Financial Impact:**

The associated fiscal impact is included in department budget for 2016

**Attachments:**

None

Ordinance No. \_\_\_\_\_

**AN ORDINANCE OF THE CITY OF OLYMPIA, WASHINGTON, AMENDING CERTAIN SECTIONS OF OLYMPIA MUNICIPAL CODE TITLE 16, BUILDING CODE REGULATIONS, BY REPEALING EXISTING INTERNATIONAL CODES AND ADOPTING NEW INTERNATIONAL CODES AS ADOPTED AND AMENDED BY THE STATE OF WASHINGTON AND THE CITY OF OLYMPIA**

WHEREAS, the State of Washington requires cities to enact building codes and regulations and to provide for their administration, enforcement, and amendment; and

WHEREAS, the regulation of building and building construction by the City of Olympia (the "City") is necessary to protect the public health, safety, and welfare; and

WHEREAS, the Olympia City Council desires to protect the safety and welfare of the citizens of the City through regulation of construction activities and maintenance of buildings in the City; and

WHEREAS, the City has previously adopted multiple international codes; and

WHEREAS, more recent international codes have been adopted by the State of Washington; and

WHEREAS, the City is required by Revised Code of Washington (RCW), Section 19.27 to adopt these State of Washington Building Codes; and

WHEREAS, City Staff has undertaken a review of the newly adopted international codes as compared to the City's existing codes; and

WHEREAS, City Staff recommends adopting the international codes provided for herein along with certain State and local amendments; and

WHEREAS, City Staff presented the international codes provided for herein along with their amendments to the City of Olympia Land Use and Environmental Committee; and

WHEREAS, the Land Use and Environmental Committee voted to recommend approval of the provisions regulating construction through use of these State adopted codes set forth herein at the Land Use and Environmental Land Committee meeting on May 19, 2016;

WHEREAS, this Ordinance is supported by the staff report and materials associated with this Ordinance, along with other documents on file with the City of Olympia; and

WHEREAS, this Ordinance is also supported by the professional judgment and experience of the City staff who have worked on this proposal; and

WHEREAS, City Staff are known to the City Council, and staff's curriculum vitae shall be part of the record in support of this Ordinance;

**NOW, THEREFORE, THE OLYMPIA CITY COUNCIL ORDAINS AS FOLLOWS:**

**Section 1. Amendment of OMC 16.04. Olympia Municipal Code Chapter 16.04 is hereby amended to read as follows:**

## Chapter 16.04 BUILDING CODES

### 16.04.000 Chapter Contents

#### Sections:

#### Article I. BUILDING CODES

- 16.04.010 The "Building Code."
- 16.04.020 Adoption of Referenced Codes -- Purpose.
- 16.04.030 General Requirements for all Referenced Codes.
- 16.04.040 Amendments to the Referenced Codes.
- 16.04.050 Duties and Powers of Building Official -- General.
- 16.04.060 Building Codes, Appeals.
- 16.04.070 Violations, Penalties and Nuisance.

#### Article II. FIRE DISTRICT

- 16.04.110 Ordinance Creating and Establishing a Fire District.

#### Article IV. FLOATING BOAT MOORAGE

- 16.04.160 Purpose of regulations.
- 16.04.170 Applicability.
- 16.04.180 Content generally.
- 16.04.190 Definitions.
- 16.04.200 Permit required for construction.
- 16.04.220 Construction materials.
- 16.04.230 Size, spacing and fire protection requirements.
- 16.04.240 Fueling facility requirements.

#### Article VI. MOBILE/MANUFACTURED HOUSING

- 16.04.390 Definitions.
- 16.04.400 Incorporation of certain WAC provisions -- Nonconforming housing.
- 16.04.410 Installation permit required -- Smoke detectors required when.
- ~~16.04.420 Permit fees.~~
- 16.04.430 Electrical connection permit.
- 16.04.440 Plumbing permit.
- 16.04.450 Permit expiration -- Extension.
- 16.04.460 Use of mobile housing for nonresidential purposes.



## Article VII. FLOODPLAIN DEVELOPMENT

### 16.04.500 Floodplain Development.

#### **Article I. BUILDING CODES**

##### **16.04.010 The "Building Code"**

This Chapter shall be known as the "Building Code," may be cited as such, and will be referred to herein as "this code." The codes adopted in this Chapter shall be collectively the "Building Code."

##### **16.04.020 Adoption of Referenced Codes – Purpose**

A. Pursuant to RCW 19.27.031, the City of Olympia hereby adopts the following codes, as amended by the Washington State Building Code Council, and as thereafter amended by the City of Olympia, for the purpose of establishing rules and regulations for the construction, alteration, removal, demolition, use and occupancy, location and maintenance of buildings and structures, as well as the installation, repair, replacement or alteration of electrical, mechanical, and plumbing systems along with their associated equipment, appliances, fixtures, fittings and appurtenances thereto, and providing for the issuance of permits and collection of fees, providing penalties for the violation of such codes and each and all of the regulations, provisions, conditions and terms of these code standards, rules and regulations and appendices as noted. One copy of each code shall be on file with the City Clerk and can also be accessed electronically by the following hyperlinks provided within this section.

##### 1. International Building Code Adopted.

The ~~2012~~ 2015 Edition of the International Building Code, hereafter IBC, as adopted by the State Building Code Council in Chapter 51-50 WAC (excluding Chapter 1, Section 101.4.3 "Plumbing"; excluding Chapter 1, Section 105.2 "work exempt from permit", item 3, "Oil Derricks"; excluding Chapter 1, Section 110.3.5 "Exception"; excluding Chapter 1, Section 113, Board of Appeals), as published by the International Code Council, Inc. (ICC), including ICC A117.1-2009 "Accessible and usable buildings and facilities", and the following Appendices are hereby adopted:

Appendix D, Fire Districts

Appendix E, ~~Sections 101 through 106~~

Appendix G, Flood resistant construction

~~Appendix H, Signs.~~

Appendix J, Grading.

##### 2. International Residential Code Adopted.

The ~~2012 Edition~~ 2015 Edition of the International Residential Code, hereafter IRC, as published by the International Code Council, Inc. (ICC), as adopted by the State Building Code Council in Chapter 51-

51 WAC (excluding Chapter 1, Section R112, Board of Appeals, Chapter 11, and Chapters 25 through 42 43), except that Chapter 25, Section P2904 is adopted and the following Appendices are hereby adopted:

~~Appendix A (IFGC), Sizing and Capacities of Gas Piping~~

~~Appendix B (IFGC), Sizing of Venting Systems Serving Appliances Equipped with Draft Hoods, Category-I Appliances and Appliances Listed for Use and Type B Vents~~

~~Appendix C, (IFGC) Exit Terminals of Mechanical Draft and Direct Vent Venting Systems~~

~~Appendix F Radon Control Methods Passive Radon Gas Controls~~

~~Appendix G, Swimming pools, spas, and hot tubs~~

~~Appendix K, Sound transmission~~

~~Appendix Q, Dwelling Unit Fire Sprinkler Systems~~

~~Appendix R, Dwelling Unit Fire Sprinkler Systems~~

~~Appendix S,~~

3. International Mechanical Code Adopted.

The ~~2012 Edition~~ 2015 Edition of the International Mechanical Code, hereafter IMC, as published by the International Code Council, Inc. (ICC), as adopted by the State Building Code Council in Chapter 51-52 WAC (excluding Chapter 1, Section 109, Means of Appeals), is hereby adopted, and includes adoption of the ~~2012 International Fuel Gas Code,~~ the 2015 Edition of the ANSI Z223.1/NFPA 54 National Fuel Gas Code (NFPA 54) and the 2011 2014 Liquefied Gas Code (NFPA 58) except as otherwise specified by the adoption of referenced Codes.

4. Uniform Plumbing Code Adopted.

The ~~2012 Edition~~ 2015 Edition of the Uniform Plumbing Code, hereafter UPC, as published by the International Association of Plumbing and Mechanical Officials (IAPMO), as adopted by the State Building Code Council in Chapters 51-56 and 51-57 WAC (excluding Chapter 1, Section 1.2.4, Appeals, Chapter 12 and Chapter ~~15~~ 14), and the following Appendices are hereby adopted:

Appendix A, Pipe sizing

Appendix B, Notes on combination waste/venting

Appendix I, Installation Standards

5. International Energy Conservation Code/Washington Residential and Commercial Energy Codes Adopted.

Washington State Residential Energy Code, Chapter 51-11R WAC

The 2015 Edition of the Washington State Residential Energy Code including referenced appendix chapters. STATE BUILDING CODE ADOPTION AND AMENDMENT OF THE 2012 EDITION OF THE INTERNATIONAL ENERGY CONSERVATION CODE, RESIDENTIAL PROVISIONS.

Washington State Commercial Energy Code, Chapter 51-11C WAC

The 2015 Edition of the Washington State Commercial Energy Code including referenced appendix chapters. STATE BUILDING CODE ADOPTION AND AMENDMENT OF THE 2012 EDITION OF THE INTERNATIONAL ENERGY CONSERVATION CODE, COMMERCIAL PROVISIONS.

6. Manufactured Home Standards adopted.

The Manufactured Home Standards established by the State of Washington governing the installation of manufactured homes (as set forth in WAC Chapter 296-150M ), are hereby adopted.

7. International Fire Code Adopted.

The ~~2012 Edition~~ 2015 Edition of the International Fire Code, herein IFC, as published by the International Code Council (ICC), as adopted by the State Building Code Council in Chapter 51-54 WAC (excluding Chapter 1, Section 108, Board of Appeals), ~~and as published by the International Code Council, Inc. (ICC)~~, and the following Appendices are hereby adopted:

Appendix B, Fire-Flow requirements for Buildings

~~Appendix D, Fire Apparatus Roads~~

Appendix E, Hazard Categories

Appendix F, Hazard Rankings

Appendix G, Cryogenic Fluids-Weight and Volume Equivalents

Appendix H, Hazardous Materials Management Plan (HMMP) and Hazardous Materials Inventory Statement (HMIS) Instructions

Appendix I, Fire Protection Systems-Noncompliant Conditions

8. International Existing Building Code Adopted.

The ~~2012-2015~~ 2015 Edition of the International Existing Building Code, as published by the International Code Council (excluding Chapter 1, Section 112, Board of Appeals), is hereby adopted as the Existing Building Code of the City of Olympia for regulating and governing the repair, alteration, change of occupancy, addition and relocation of existing buildings, including historic buildings, as herein provided; providing for the issuance of permits and collection of fees therefor; and each and all of the regulations, provisions, conditions and term of said Existing Building Code.

## 9. The International Swimming Pool and Spa Code Adopted

The 2015 International Swimming Pool and Spa Code, as published by the International Code Council, is hereby adopted regulating the installation of pools and spas including ANSI/APSP/ICC-7 Standards for Suction Entrapment Avoidance.

### 16.04.030 General Requirements for all Referenced Codes

#### A. Conflict between Codes

1. Whenever there is a conflict between an adopted code in Section 16.04.020 and the requirements contained throughout the remainder of Chapter 16.04 of the Olympia Municipal Code (OMC), the OMC shall govern.
2. With respect to codes adopted by reference, the hierarchy of codes established in RCW 19.27.031 shall govern, except where, in any specific case, different sections of this code specify different materials, methods of construction or other requirements, the most restrictive shall govern. Where there is a conflict between a general requirement and a specific requirement, the specific requirement shall be applicable.
3. The provisions of this code shall not be deemed to nullify any provisions of local, state or federal law.

#### B. Permits and Referenced Code Information

1. Ownership. The ownership of a permit inures to the property owner. The Permit Applicant shall be the property owner or his or her authorized agent.
2. Permit expiration -- Extension.
  - a. Every permit issued by the building official under the provisions of this code shall expire and become null and void if the building or work authorized by such permit is not commenced within one hundred eighty days from the date such permit is issued, or if the building or work authorized by such permit is suspended or abandoned for a period of at least one hundred eighty days at any time after the work is commenced. The time period will be measured by the length of time between required inspections. ~~Before such work can be recommenced. Should a permit expire as determined by the building official,~~ a new permit shall first be obtained ~~to do so~~ and the fee therefor paid based on the work left to complete the project for which the permit is issued ~~shall be one-half the amount required for a new permit for such work,~~ provided no substantial changes have been made or will be made in the original plans and specifications for such work. Any new permit shall comply with the provisions of the codes currently adopted at the time of permit issuance. ~~If the suspension or abandonment exceeds one year, a new permit is required.~~
  - b. Any permittee holding an unexpired permit may apply for an extension of time when he or she is unable to commence work within the time required by this section. The building official may extend the time for action by the permittee for a period not exceeding one hundred eighty days

upon a showing by the permittee that circumstances beyond the control of the permittee have prevented action from being taken.

c. A renewal permit fee shall be based on the percentage of incomplete work. All permits expire after eighteen months from the date of issue if the work is not ongoing, yet completed or a permit extension granted.

3. Permit Fees - See OMC Section 4.36.010, building code review and permit fees.

C. Definitions.

1. Definition for Single Room Occupancies to read:

A single room occupancy sleeping unit must be at least 120 square feet and have unencumbered access to both sanitary facilities and a full common kitchen facility.

Sanitary Facilities:

- a. At least one flush toilet, lavatory basin, and bathtub or shower must be supplied for each eight sleeping units.
- b. Each sleeping unit must have access to a flush toilet.
- c. Each sleeping unit must have access to a lavatory basin and bathtub or shower supplied at all times with an adequate quantity of hot and cold running water.
- d. All sanitary facilities must be in proper operating condition and be adequate for personal cleanliness and the disposal of human waste. The facilities must utilize an approvable public or private disposal system.

Space and security:

- a. Each sleeping unit must have 120 square feet of floor space and at least four square feet of closet space.
- b. Exterior doors and windows accessible from the outside must be lockable.

Access:

- a. Residents must be able to access their sleeping unit without passing through another sleeping unit.
- b. Residents must be able to access sanitary and kitchen facilities with no encumbrances that could prevent access. Access to these facilities cannot be through another sleeping unit but may be located in a detached community building located on the same site.

16.04.040 Amendments to the Referenced Codes

A. International Building Code Amendments. The following sections of the International Building Code (IBC), as adopted by this Ordinance, are amended to read as follows:

1. Amend Section 105.2 Work Exempt from Permit, item 1 to read: One-story detached accessory structures used as tool and storage sheds, playhouses and similar uses, provided the floor area is not greater than 200 square feet (18.58 m<sup>2</sup>).

2. Amend Section 105.2 Work Exempt from Permit, item 2 to read: Fences not over 6 feet (1828.8mm) high.

~~1- 3.~~ Amend Section 110.3.10 Final inspection. The final inspection is to be made after all conditions of SEPA, Hearings Examiner, Design Review, Development Engineering, Stormwater Ordinance and the Tree Ordinance are either complied with or bonded for at a rate of 125% in addition to finish grading; and the building is completed and ready for occupancy.

~~2- 4.~~ Amend Section 111.2 Certificate issued. After the Building Official inspects the building or structure and finds no violations of the provisions of this code or other laws and regulations, which are enforced, by the Community Planning and Development Department, the Building Official shall issue a Certificate of Occupancy, which shall contain the following:

- a. The building permit number.
- b. The address of the structure.
- c. The name and address of the owner or the owner's authorized agent.
- d. A description of that portion of the building structure for which the certificate is issued.
- e. A statement that the described portion of the building structure has been inspected for compliance with the requirements of this code for the occupancy and division of occupancy and the use for which the proposed occupancy is classified.
- f. The name of the Building Official.
- g. The edition of the code under which the permit was issued.
- h. The name of the tenant, use and occupancy, in accordance with the provisions of Chapter 3.
- i. The type of construction as defined in Chapter 6.
- j. The design occupant load.
- k. If an automatic sprinkler system is provided, whether the sprinkler system is required.
- l. Any special stipulations or conditions of the building permit.

~~3. 5.~~ Add Subsection ~~903.2.01~~ 903.2 Additional Sprinkler Requirements. There are additional sprinkler requirements in all structures or buildings where the gross square footage, basements included, exceeds 5,000 square feet, or in all structures or buildings more than three stories in height (unless other sections are more restrictive). The area and height increases specified in IBC Sections 504, 506, and 507 shall be permitted. For the purposes of this section, portions of buildings separated by a fire wall may be considered as separate buildings, except that the entire gross floor area of all floors will be used to determine fire sprinkler requirements.

In addition, in all buildings, including single family residences, where the fire perimeter access (as required under OMC 16.32.050) or access roadways for fire apparatus cannot be provided due to design and/or location, fire sprinkler systems may be required.

~~4. 6.~~ Amend Section ~~R110.3~~ 111.2 Certificate issued. After Once the Building Official inspects the building or structure and finds no violations of the provisions of this code or other laws and regulations; ~~which that are enforced;~~ by the Community Planning and Development Department; the Building Official shall issue a Certificate of Occupancy, ~~which that shall contain~~ the following:

- a. The building permit number.
- b. The address of the structure.
- c. The name and address of the owner or the owner's agent.
- d. A description of that portion of the building for which the certificate is issued.
- e. A statement that the described portion of the ~~building~~ structure has been inspected for compliance with the requirements of this code for the occupancy and division of occupancy and the use for which the proposed occupancy is classified.
- f. The name of the Building Official.
- g. The edition of the code under which the permit was issued.
- h. The use and occupancy, in accordance with the provisions of Chapter 3.
- i. The type of construction as defined in Chapter 6.
- j. The design occupant load.
- k. If an automatic sprinkler system is provided, whether the sprinkler system is required.
- l. Any special stipulations or conditions of the building permit.

~~5. Amend Table R301.2(a), Climatic and Geographic Design Criteria, as follows:~~

Climatic and Geographic Design Criteria

IRC Table R301.2(1)

SUBJECT TO DAMAGE FROM											
ROOF SNOW LOAD	WIND SPEED (mph)	SEISMIC DESIGN CATEGORY	Weathering	Front Line Depth	Termite	Decay	WINTER DESIGN TEMP (Degrees)	ICE SHIELD UNDER- LAYMENT REQUIRE D	FLOOD HAZARD S	AIR FREEZING INDEX (degrees)	MEAN ANNUAL TEMP (degrees)
25	85	D1	Moderate	12"	Slight to Moderate	Slight to Moderate	22	No	Feb. 17, 1982 plus revised Budd Bay Study		

~~6. Add Section R315.5 Automatic Sprinkler System Requirements. A fully automatic residential fire sprinkler system shall be designed, installed, tested and maintained per N.F.P.A. (National Fire Protection Association) 13, current edition, RCW 18.160 and the approval of the Fire Chief, in all structures subject to this code pursuant to Section R101.2 (including additions and alterations to structures with existing sprinkler systems).~~

B. International Residential Code Amendments. The following sections of the International Residential Code (IRC), as adopted by this Ordinance, are amended to read as follows:

1. Amend Section R105.2 Work Exempt from Permit, item 2 to read: Fences not over 6 feet (1828.8mm) high.

~~2. Amend Section R110.3 Certificate issued. After the Building Official inspects the building or structure and finds no violations of the provisions of this code or other laws and regulations, which are enforced, by the Community Planning and Development Department, the Building Official shall issue a Certificate of Occupancy, which shall contain the following:~~

- a. The building permit number.
- b. The address of the structure.
- c. The name and address of the owner or the owners authorized agent.



- d. A description of that portion of the building structure for which the certificate is issued.
- e. A statement that the described portion of the building structure has been inspected for compliance with the requirements of this code for the occupancy and division of occupancy and the use for which the proposed occupancy is classified.
- f. The name of the Building Official.
- g. The edition of the code under which the permit was issued.
- h. The use and occupancy. ~~in accordance with the provisions of Chapter 3.~~
- i. The type of construction as defined in Chapter 6 of the International Building Code.
- j. The design occupant load.
- k. If an automatic sprinkler system is provided, whether the sprinkler system is required.
- l. Any special stipulations or conditions of the building permit.

~~2.3.~~ Amend Table R301.2 (a), Climatic and Geographic Design Criteria, as follows:

Climatic and Geographic Design Criteria

IRC Table R301.2(1)

SUBJECT TO DAMAGE FROM											
ROOF SNOW LOAD	WIND SPEED (mph)	SEISMIC DESIGN CATEGORY	Weathering	Front Line Depth	Termite	Decay	WINTER DESIGN TEMP (Degrees)	ICE SHIELD UNDER-LAYMENT REQUIRED	FLOOD HAZARDS	AIR FREEZING INDEX (degrees)	MEAN ANNUAL TEMP (degrees)
25	85 <u>110</u>	D1	Moderate	12"	Slight to Moderate	Slight to Moderate	22 <u>17</u>	No	<u>Sept. 1, 2016</u> plus revised Budd Bay Study	170	51

~~3.4.~~ Add Section ~~R315.5~~ R313.2 Automatic Sprinkler System Requirements. A fully automatic residential fire sprinkler system shall be designed, installed, tested and maintained per N.F.P.A. (National

Fire Protection Association) 13, current edition, RCW 18.160 and the approval of the Fire Chief, in all structures subject to this code pursuant to Section R101.2 (including additions and alterations to structures with existing sprinkler systems).

#### **16.04.050 Duties and Powers of Building Official -- General**

The Building official is hereby authorized and directed to enforce the provisions of this code.

The building official shall have the authority to render interpretations of this code and to adopt policies and procedures in order to clarify the application of its provisions. Such interpretations, policies and procedures shall be in compliance with the intent and purpose of this code. Such policies and procedures shall not have the effect of waiving requirements specifically provided for in this code.

#### **16.04.060 Building Codes, Appeals**

Appeals under this chapter may be made pursuant to OMC 18.75.

#### **16.04.070 Violations, Penalties and Nuisance**

A. It shall be unlawful for any person, firm, or corporation to knowingly erect, construct, enlarge, alter, repair, move, improve, remove, convert or demolish, equip, use, change the occupancy, occupy or maintain any building or structure in the City of Olympia, or cause or permit the same to be done, in violation of any of the provisions of this Code. Such a violation shall be a misdemeanor punishable by a fine not to exceed One Thousand Dollars (\$1,000) and/or imprisonment not to exceed ninety (90) days or both such fine and imprisonment. Each day shall constitute a separate offense. In the event of continuing violation or failure to comply, the second and subsequent days shall constitute a gross misdemeanor, punishable by a fine not to exceed Five Thousand Dollars (\$5,000) and/or imprisonment for not more than three hundred and sixty-five (365) days or both such fine and imprisonment.

B. As an additional and concurrent remedy, it shall be a civil infraction for any person, firm, or corporation to erect, construct, enlarge, alter, repair, move, improve, remove, convert or demolish, equip, use, occupy or maintain any building or structure in the City of Olympia, or cause or permit the same to be done in violation of any provision of this code. Each day shall constitute a separate civil infraction. Any person, firm, or corporation found to have committed a civil infraction shall be assessed a monetary penalty as follows:

1. First offense: Class 3 (\$50), not including statutory assessments.
2. Second offense arising out of the same facts as the first offense: Class 2 (\$125), not including statutory assessments.
3. Third offense arising out of the same facts as the first offense: Class 1 (\$250), not including statutory assessments.

C. As an additional and concurrent remedy, it shall be a public nuisance subject to injunction and abatement, for any person, firm, or corporation to erect, construct, enlarge, alter, repair, move, improve, remove, convert, or demolish, equip, use, occupy, or maintain any building or structure in the City of Olympia, or cause or permit the same to be done in violation of any provision of this Code.

See also OMC Chapter 4.44, Uniform Civil Enforcement.

## **Article II. FIRE DISTRICT**

### **16.04.110 Ordinance Creating and Establishing a Fire District**

The area within the city comprising a Fire District for purposes of this section shall be that area now or hereafter designated on the official zoning map of the city as zoned as bounded by downtown business and as described in the city zoning ordinance.

## **Article IV. FLOATING BOAT MOORAGE**

### **16.04.160 Purpose of regulations**

The purpose of the following sections is to safeguard life, limb, property and the public welfare by regulating floating boat moorage.

### **16.04.170 Applicability**

The provisions of this article shall apply to the construction, alteration, repair and use of a boat marina providing floating boat moorage within the city. There shall be no habitable space or use of any space for living purposes on any portion of a floating boat moorage constructed under the provisions of this chapter. This chapter shall apply only to floating construction located over water. All construction on piling shall conform to the appropriate section of the Building Code.

### **16.04.180 Content generally**

This article sets forth rules and regulations to control floating boat moorage; establishes an administrative procedure for issuance of permits; and provides for approval of plans and inspection of construction.

### **16.04.190 Definitions**

For the purpose of this article:

- A. "Finger float" means a float defining the length of moorage stall, adjoining a single boat stall, and connected to a main float.
- B. "Float system" means a combination of a main float with finger floats connected, either open or covered.
- C. "Main float" means a center or side float connected by a ramp to the shore, being fixed laterally by a system of piling to one side or the other at regular intervals.
- D. "Marina" means a basin or safe anchorage providing moorage for small vessels, especially one at which provisions, supplies and fuel may be obtained.

### **16.04.200 Permit required for construction**

No person shall do any construction without first having obtained a building permit from the building official.

#### **16.04.220 Construction materials**

- A. Covered moorage roof covering shall be noncombustible material.
- B. Floating structures and floats shall be of material type allowed by the building code.

#### **16.04.230 Size, spacing and fire protection requirements**

- A. Maximum length of a roof covering over any float system shall be four hundred feet as measured along a main float; provided, that not less than seventy-five percent of the exterior walls are open. Maximum area of any covered moorage shall not exceed twelve thousand square feet.
- B. The minimum separation of float systems with covered moorage shall be not less than the nominal length of two mooring slips or twenty feet, whichever is larger.
- C. Approved fire extinguishers and water for firefighting purposes as required by section 16.32.080 shall be installed.

#### **16.04.240 Fueling facility requirements**

- A. Fueling floats shall be constructed of gas-resistant flotation material and shall be isolated from float systems.
- B. All fuel lines shall be provided with flexible connections from the shore to floating facilities.
- C. Approved fire extinguishers shall be provided near fuel dispensers.
- D. Gangplank access from shore to fuel floats shall be within one hundred seventy-five feet of fuel dispensers.

Exception: Where fire protection systems approved by the Fire Chief are provided, distance limitations in this section may be modified.

- E. Fresh water taps shall be available on fuel floats.
- F. Water for firefighting purposes shall be as required by the International Fire Code.

### **Article VI. MOBILE/MANUFACTURED HOUSING**

#### **16.04.390 Definitions**

The following words shall be defined as follows:

- A. "Facia" "Skirting" means a type of wainscoting which encloses the lower part of the mobile home, covering wheels and undercarriage.
- B. "Footing" means that portion of the support system that transmits loads directly to the soil.

C. "Ground set" means the installation of mobile homes with crawl space elevation three inches or more below elevation of exterior finished grade.

D. "Main frame" means the structural component on which is mounted the body of the mobile home.

E. "Mobile/manufactured housing" means a residential unit on one or more chassis for towing to the point of use and designed to be used with a foundation as a dwelling unit on a year-round basis, and which bears an insignia issued by a state or federal regulatory agency indicating that the mobile/manufactured home complies with all applicable construction standards of the U.S. Department of Housing and Urban Development definition of manufactured home. A commercial coach, recreational vehicle and motor home are not a mobile/manufactured home.

F. "Pier" means that portion of the support system between the footing and the mobile home, exclusive of caps and shims.

G. "Recreational vehicle" is a structure

1. built on a single chassis,
2. four hundred square feet or less when measured at the largest exterior horizontal projections,
3. self-propelled or permanently towable by a light-duty truck and
4. designed primarily not for use as a permanent dwelling but as temporary living quarters for recreational, camping, travel or seasonal use.

H. "Support system" means a combination of footings, piers, caps and shims that will, when properly installed, support the mobile/manufactured home.

#### **16.04.400 Incorporation of certain WAC provisions -- Nonconforming housing**

A. The following sections of Chapter 296-150B, Washington Administrative Code (WAC), as now or hereafter amended, are incorporated by reference herein:

296-150C Commercial coaches.

296-150F Factory-built housing and commercial structures.

296-150I Manufactured home installer training and certification program.

296-150M Manufactured homes.

296-150T Factory-built temporary worker housing structures.

B. All mobile/manufactured housing installed in the city before June 1, 1983, which does not comply with the requirements set forth in this article are deemed to be nonconforming.

Nonconforming mobile/manufactured homes will be allowed to remain at their existing locations without complying with the provisions of this chapter. Each person proposing to move a mobile/manufactured home, including nonconforming mobile/manufactured homes, to another location, including a location on the same site if footing locations will be different than the original location, must first obtain a permit from the Department of Public Works as required by this chapter. All such mobile/manufactured homes shall be made to comply with all requirements of this chapter prior to their establishment or use on the new site.

**16.04.410 Installation permit required -- Smoke detectors required when**

A. The owner or the installer of the mobile/manufactured home(s) must obtain an installation permit from the City Community Planning and Development Department before installing mobile homes that will be used as a residence in a mobile home park.

1. A dealer may not deliver a mobile/manufactured home until the owner or installer has obtained an installation permit for the mobile home. An application form for an installation permit shall be obtained from the Community Planning and Development Department.
2. The applicant shall pay at the time of application a permit fee prescribed by the approved fee schedule.

B. Smoke Detectors. All mobile/manufactured homes not constructed to HUD standards shall have or be provided with an approved smoke detector, conforming to the Building Code Standard No. 43-6. The detector shall be mounted on or near the ceiling at a point centrally located in the corridor or area giving access to rooms used for sleeping purposes. Detectors not factory installed may be either self-contained or plug in types so that no alteration of the mobile housing is required for their installation.

**16.04.420 Permit fees**

Permit fees shall be paid in accordance with the following fee schedule:

Temporary use (single wide)	\$ 50.00
Temporary use (double wide)	\$ 75.00
Permanent use (single wide)	\$ 100.00
Permanent use (double wide)	\$ 125.00
Permanent use (triple wide)	\$ 150.00
Add-a-room (premanufactured addition)	\$ 50.00
Temporary commercial use (single)	\$ 100.00
Permanent commercial use (double)	\$ 125.00
Permanent commercial use (triple)	\$ 150.00

~~Plan check fee of sixty-five percent of permit fee will be required for commercial use only.~~

**16.04.430 Electrical connection permit**

The electrical connection permit to the mobile/manufactured housing shall be per the ordinance adopting the National Electrical Code as codified in Chapter 16.04.

#### 16.04.440 Plumbing permit

The plumbing permit shall be secured for the hookup to the city sewer or septic tank and the installation inspected as provided in the Plumbing Code.

#### 16.04.450 Permit expiration – Extension

~~A. — Every permit issued by the building official under the provisions of this code shall expire and become null and void if the building or work authorized by such permit is not commenced within one hundred eighty days from the date such permit is issued, or if the building or work authorized by such permit is suspended or abandoned for a period of at least one hundred eighty days at any time after the work is commenced. Before such work can be recommenced, a new permit shall first be obtained to do so and the fee therefor shall be one-half the amount required for a new permit for such work, provided no substantial changes have been made or will be made in the original plans and specifications for such work. If the suspension or abandonment exceeds one year, a new permit is required.~~

A. Every permit issued by the building official under the provisions of this code shall expire and become null and void if the building or work authorized by such permit is not commenced within one hundred eighty days from the date such permit is issued, or if the building or work authorized by such permit is suspended or abandoned for a period of at least one hundred eighty days at any time after the work is commenced. The time period will be measured by the length of time between required inspections. Should a permit expire as determined by the building official, a new permit shall first be obtained and the fee therefor paid based on the work left to complete the project for which the permit is issued, provided no substantial changes have been made or will be made in the original plans and specifications for such work. Any new permit shall comply with the provisions of the codes currently adopted at the time of permit issuance.

~~B. — Any permittee holding an unexpired permit may apply for an extension of time when he is unable to commence work within the time required by this section for good and satisfactory reasons. The building official may extend the time for action by the permittee for a period not exceeding one hundred eighty days upon a showing by the permittee that circumstances beyond the control of the permittee have prevented action from being taken. All permits expire after eighteen months from the date of issue if the work is not yet completed. The renewal permit fee will be based on the percentage of incomplete work.~~

B. Any permittee holding an unexpired permit may apply for an extension of time when he or she is unable to commence work within the time required by this section. The building official may extend the time for action by the permittee for a period not exceeding one hundred eighty days upon a showing by the permittee that circumstances beyond the control of the permittee have prevented action from being taken.

#### 16.04.460 Use of mobile housing for nonresidential purposes

A. Mobile/manufactured housing shall not be used for nonresidential purposes. All nonresidential structures shall meet the factory built commercial structure standards prescribed in RCW 43.22.490, as now or hereafter amended.

B. The placement of factory built commercial structures for temporary or permanent use may be for nonresidential purposes when approved by the Director and permitted by the building official.

C. The use must comply with the use district in which it is placed.

## Article VII. FLOODPLAIN DEVELOPMENT

### 16.04.500 Floodplain Development

All development within a designated floodplain located in the City of Olympia shall comply with OMC Chapter 16.70 and the construction specifications detailed in IBC Appendix G, Flood resistant construction, and the amended IRC Section R322 Flood-Resistant Construction.

**Section 2. Amendment of OMC 16.06. Olympia Municipal Code ## is hereby amended to read as follows:**

## Chapter 16.06 PROPERTY MAINTENANCE CODE

16.06.000 Chapter Contents

Sections:

- 16.06.010 International Property Maintenance Code adopted -- Purpose & Administration.
- 16.06.020 Definitions
- 16.06.030 General Requirements
- 16.06.040 Light, Ventilation and ~~Occupancy~~ Occupancy Limitations
- 16.06.050 Plumbing Facilities and Fixture Requirements
- 16.06.060 Mechanical and Electrical Requirements
- 16.06.070 Fire Safety Requirements
- 16.06.080 Referenced Standards

16.06.010 International Property Maintenance Code adopted –Purpose & Administration

### A. PURPOSE

The International Property Maintenance Code, 2006 2015 edition, as published by the International Code Council, and herein amended by the City of Olympia, is hereby adopted as the Property Maintenance Code of the City of Olympia for the following purposes: (1) regulating and governing the conditions and maintenance of all property, buildings, and structures; (2) providing the standards for supplied utilities and facilities and other physical things and conditions essential to ensure that structures are safe, sanitary and fit for occupation and use; (3) authorizing the condemnation of buildings and structures unfit for human occupancy and use, and the demolition of such existing structures as herein provided; and (4) providing for the issuance of permits and collection of fees therefore, and each and all of the regulations, provisions, penalties, conditions and terms referred to, adopted, and made a part hereof, as fully set out in this Ordinance.

### B. ADMINISTRATION - GENERAL

101.1 Title. These regulations shall be known as the Property Maintenance Code of the City of Olympia, hereinafter referred to as "this code."

101.2 Scope. The provisions of this code shall apply to all existing residential and nonresidential structures and all existing premises and shall constitute minimum requirements and standards for premises, structures, equipment and facilities for light, ventilation, space, heating, sanitation, protection from the elements, life



safety, a reasonable level of safety from fire and other hazards, and for safe and a reasonable level of sanitary maintenance; the responsibility of owners, an owner's authorized agent, operators and occupants; the occupancy of existing structures and premises, and for administration, enforcement and penalties.

101.3 Intent. This code shall be construed to secure its expressed intent, which is to ensure public health, safety and welfare ~~in so far~~ insofar as they are affected by the continued occupancy and maintenance of structures and premises. Existing structures and premises that do not comply with these provisions shall be altered or repaired to provide a minimum level of health and safety as required herein.

101.4 Severability. If a section, subsection, sentence, clause or phrase of this code is, for any reason, held to be unconstitutional, such decision shall not affect the validity of the remaining portions of this code.

### C. APPLICABILITY

102.1 General. The provisions of this code shall apply to all matters affecting or relating to structures and premises, as set forth in Section 101 . Where, in a specific case, different sections of this code specify different requirements, the most restrictive shall govern. Where there is a conflict between general requirements and specific requirements, the specific requirements shall govern. Where differences occur between provisions of this code and the referenced standards, the provisions of this code shall apply. Where, in a specific case, different sections of this code specify different requirements, the most restrictive shall govern.

102.2 Maintenance. Equipment, systems, devices and safeguards required by this code, or a previous regulation or code under which the structure or premises was constructed, altered or repaired, shall be maintained in good working order. No owner, owner's authorized agent, operator or occupant shall cause any service, facility, equipment or utility ~~which that~~ is required under this section to be removed from, or shut off from or discontinued for any occupied dwelling, except for such temporary interruption as necessary while repairs or alterations are in progress. The requirements of this code are not intended to provide the basis for removal or abrogation of fire protection and safety systems and devices in existing structures. Except as otherwise specified herein, the owner or the owner's designated authorized agent shall be responsible for the maintenance of buildings, structures and premises.

102.3 Application of other codes. Repairs, additions or alterations to a structure, or changes of occupancy, shall be done in accordance with the procedures and provisions of the International Building Code, ~~International Fuel Gas Code, International Existing Building Code, International Energy Conservation Code, International Fire Code, International Fuel Gas Code, International Mechanical Code, International Residential Code, Uniform Plumbing Code, and NFPA 70 (the currently adopted edition of the National Electrical Code)~~ the ICC Electrical Code. Nothing in this code shall be construed to cancel, modify or set aside any provision of the City of Olympia ~~Unified Development code~~ Municipal Code.

Except as otherwise specifically stated, where conflicts occur within this Property Maintenance Code, or between the provisions of this Property Maintenance Code and the Building Code Codes, Fire Code Codes, Existing Building Code, Energy Code, Residential Code, Electrical Code, Zoning Code, or other regulations of the City, the more restrictive shall apply.

102.4 Existing remedies. The provisions in this code shall not be construed to abolish or impair existing remedies of the jurisdiction or its officers or agencies relating to the removal or demolition of any structure which is dangerous, unsafe and unsanitary.

102.5 Workmanship. Repairs, maintenance work, alterations or installations ~~which that~~ are caused directly or indirectly by the enforcement of this code shall be executed and installed in a workmanlike manner and installed in accordance with the manufacturer's installation instructions.

102.6 Historic buildings. The provisions of this code shall not be mandatory for existing buildings or structures designated as historic buildings when such buildings or structures are judged by the code official to be safe and in the public interest of health, safety and welfare.

102.7 Referenced codes and standards. The codes and standards referenced in this code shall be those that are listed in Section 16.06.080 and considered part of the requirements of this code to the prescribed extent of each such reference. ~~Where differences occur between provisions of this code and the referenced standards, the provisions of this code shall apply.~~

102.7.1 Conflicts. ~~Where differences occur between provisions of this code and the referenced standards, the provisions of this code shall apply.~~

102.8 Requirements not covered by code. Requirements necessary for the strength, stability or proper operation of an existing fixture, structure or equipment, or for the public safety, health and general welfare, not specifically covered by this code, shall be determined by the code official.

102.9 Application of references. ~~References to chapter or section numbers, or to provisions not specifically identified by number, shall be construed to refer to such chapter, section or provision of this code.~~

102.10 Other Laws. ~~The provisions of this code shall not be deemed to nullify any provisions of local, state or federal law.~~

#### D. PROPERTY MAINTENANCE INSPECTION

103.1 General. The Community Planning and Development Department is responsible for property maintenance inspection.

103.2 Appointment. ~~The Code Official shall be appointed by the appointing authority.~~ The Director of the Community Planning and Development Department shall be the chief appointing authority for the Department.

103.3 Code Official. In accordance with the prescribed procedures of this jurisdiction, the Director ~~Code Official~~ shall ~~have the authority to appoint a code official,~~ other related technical officers, inspectors and other employees as delegated by the appointing authority.

103.5 Fees. The fees for activities and services performed by the department in carrying out its responsibilities under this code shall be as set forth in Olympia Municipal Code Section 4.36.010 (Building Code review and permit fees) ~~as it may be amended from time to time currently enacted or as amended.~~

#### E. DUTIES AND POWERS OF THE CODE OFFICIAL

104.1 General. The code official shall enforce the provisions of this code. The code official shall have authority to render interpretations of this code and to adopt policies and procedures in order to clarify the application of its provisions. Such interpretations, policies and procedures shall be in compliance with the intent and purpose

of this code. Such policies and procedures shall not have the effect of waiving requirements specifically provided for in this code.

~~104.2~~ Rule-making authority. The code official shall have authority as necessary in the interest of public health, safety and general welfare, to adopt and promulgate rules and procedures; to interpret and implement the provisions of this code; to secure the intent thereof; and to designate requirements applicable because of local climatic or other conditions. Such rules shall not have the effect of waiving structural or fire performance requirements specifically provided for in this code, or of violating accepted engineering methods involving public safety.

~~104.3~~ 104.2 Inspections. The code official shall make all of the required inspections, or shall accept reports of inspection by approved agencies or individuals. ~~All reports~~ Reports of such inspections shall be in writing and be certified by a responsible officer of such approved agency or by the responsible individual. The code official is authorized to engage such expert opinion as deemed necessary to report upon unusual technical issues that arise, subject to the approval of the appointing authority.

~~104.3.1~~ 104.2.1 Initial Inspection and Enforcement. An initial enforcement inspection shall be undertaken against buildings or properties whenever the code official has reason to believe that a violation of this code exists; or a complaint is filed with the department by any person.

~~104.4~~ 104.3 Right of entry. The code official is authorized to enter the structure or premises at reasonable times to inspect subject to constitutional restrictions on unreasonable searches and seizures. If entry is refused or not obtained, the code official is authorized to pursue recourse as provided by law.

~~104.5~~ 104.4 Identification. The code official shall carry proper identification when inspecting structures or premises in the performance of duties under this code.

~~104.6~~ 104.5 Notices and orders. The code official shall issue all necessary notices or orders to ensure compliance with this code.

~~104.7~~ 104.6 Department records. The code official shall keep official records of all business and activities of the department specified in the provisions of this code. Such records shall be retained in the official records for the period required for retention of public records, as long as the building or structure to which such records relate remains in existence, unless otherwise provided for by other regulations.

## F. APPROVAL

105.1 Modifications. Whenever there are practical difficulties involved in carrying out the provisions of this code, the code official shall have the authority to grant modifications for individual cases upon application of the owner or owner's authorized agent, provided the code official shall first find that special individual reason makes the strict letter of this code impractical, and the modification is in compliance with the intent and purpose of this code and that such modification does not lesson health, life and fire safety requirements. The details of action granting modifications shall be recorded and entered in the department files.

105.2 Alternative materials, methods and equipment. The provisions of this code are not intended to prevent the installation of any material or to prohibit any method of construction not specifically prescribed by this code, provided that any such alternative material or method of construction has been approved and complies

with all other codes adopted by the City of Olympia. An alternative material or method of construction shall be approved where the code official finds that the proposed design is satisfactory and complies with all other codes adopted by the City of Olympia and the intent of the provisions of this code, and that the material, method or work offered is, for the purpose intended, at least the equivalent of that prescribed in this code in quality, strength, effectiveness, fire resistance, durability and safety. Where the alternative material, design or method of construction is not approved, the code official shall respond in writing, stating the reasons the alternate was not approved.

105.3 Required testing. Whenever there is insufficient evidence of compliance with the provisions of this code, or evidence that a material or method does not conform to the requirements of this code, or in order to substantiate claims for alternative materials or methods, the code official shall have the authority to require tests to be made as evidence of compliance at no expense to the jurisdiction.

105.3.1 Test methods. Test methods shall be as specified in this code or by other recognized test standards. In the absence of recognized and accepted test methods, the code official shall be permitted to approve appropriate testing procedures performed by an approved agency.

105.3.2 Test reports. Reports of tests shall be retained by the code official for the period required for retention of public records.

105.4 Material and equipment reuse. The use of used materials that meet the requirements of this code for new materials is permitted. Materials, equipment and devices shall not be reused unless such elements are in good repair or have been reconditioned and tested when necessary, placed in good and proper working condition and approved by the code official.

105.5 Approved materials and equipment. Materials, equipment and devices approved by the code official shall be constructed and installed in accordance with such approval.

105.6 Research reports. Supporting data, where necessary to assist in the approval of materials or assemblies not specifically provided for in this code, shall consist of valid research reports from approved sources.

## G. VIOLATIONS

106.1 Unlawful acts. It shall be unlawful for a person, firm or corporation to be in conflict with or in violation of any of the provisions of this code.

106.2 Notice of violation. The code official shall serve a notice of violation or order in accordance with Section 107.

106.3 Prosecution of violation. Any person failing to comply with a notice of violation or order served in accordance with Section 107 shall be subject to the following:

- a. On first offense, the violation shall constitute a misdemeanor punishable by a fine not to exceed One Thousand Dollars (\$1,000), and/or imprisonment not to exceed ninety (90) days or to both such fine and imprisonment. In the event of a continuing violation or failure to comply, the second and subsequent days shall constitute a gross misdemeanor punishable by a fine not to exceed Five

Thousand Dollars (\$5,000) and/or imprisonment not to exceed three hundred and sixty-five (365) days or both such time and imprisonment.

b. As an additional concurrent penalty, it shall be a civil infraction for a person, firm, or corporation to violate or fail to comply with any term or provision of this title or the terms or provisions of a Notice of Violation issued under OMC Chapter 16.06. A person, firm, or corporation found to have committed a civil infraction shall be assessed a monetary penalty as follows:

- i. First offense: Class 3 (\$50), not including statutory assessments.
- ii. Second offense arising out of the same facts as the first offense: Class 2 (\$125), not including statutory assessments.
- iii. Third offense arising out of the same facts as the first offense: Class 1 (\$250), not including statutory assessments.

See also OMC Chapter 4.44, Uniform Civil Enforcement.

c. If the notice of violation is not complied with, the code official shall institute the appropriate proceeding at law or in equity to restrain, correct or abate such violation, or to require the removal or termination of the unlawful occupancy of the structure in violation of the provisions of this code or of the order or direction made pursuant thereto. The costs of any action taken by the City of Olympia on such premises, including but not limited to attorney's fees, contractors, engineers and all other costs of any kind, shall be charged against the real property upon which the structure is located and shall be a lien on such real property in accordance with the procedures set forth in Section 110.3 of this code.

106.4 Violation penalties. Any person, who shall violate a provision of this code, or fail to comply therewith, or with any of the requirements thereof, shall be prosecuted within the limits provided by state or local laws. Each day that a violation continues after due notice has been served shall be deemed a separate offense. Continuing violation shall mean the same type of violation which is committed within a year of the initial violation.

106.5 Abatement of violation. The imposition of the penalties herein prescribed shall not preclude the legal officer of the jurisdiction from instituting appropriate action to restrain, correct or abate a violation or to prevent illegal occupancy of a building, structure or premises, or to stop an illegal act, conduct, business or utilization of the building, structure or premises.

#### H. NOTICES AND ORDERS

107.1 Notice to person responsible. Whenever the code official determines that there has been a violation of this code or has grounds to believe that a violation has occurred, notice shall be given in the manner prescribed in Sections 107.2 and 107.3 to the person responsible for the violation as specified in this code. Notices for condemnation procedures shall also comply with Section 108.3.

107.2 Form. Such notice prescribed in Section 107.1 shall be in accordance with all of the following:

1. Be in writing.

2. Include a description of the real estate sufficient for identification.
3. Include a statement of the violation or violations and why the notice is being issued.
4. Include a correction order allowing a reasonable time to make the repairs and improvements required to bring the dwelling unit or structure into compliance with the provisions of this code.
5. Inform the property owner or owner's authorized agent of the right to appeal.
6. Include a statement of the right to file a lien in accordance with Section 106.3.

107.3 Method of service. Such notice shall be deemed to be properly served if a copy thereof is:

1. Delivered personally;
2. Sent by certified or first-class mail addressed to the last known address; or
3. If the notice is returned showing that the letter was not delivered, a copy thereof shall be posted in a conspicuous place in or about the structure affected by such notice.

If the whereabouts of any of such person is unknown and the same cannot be ascertained by the code official in the exercise of reasonable diligence, and the code official makes an affidavit to that effect, then the serving of such complaint or order upon such persons may be made either by personal service or by mailing a copy of the complaint and order by certified mail, postage prepaid, return receipt requested, to each such person at the address of the building involved in the proceedings, and mailing a copy of the complaint and order by first class mail to any address of each such person in the records of the county assessor or the county auditor for the county where the property is located.

107.4 Penalties. Penalties for noncompliance with orders and notices shall be as set forth in Section 106.

107.5 Unauthorized tampering. Signs, tags or seals posted or affixed by the code official shall not be mutilated, destroyed or tampered with, or removed without authorization from the code official.

107.6 Penalties. Penalties for noncompliance with orders and notices shall be as set forth in Section 106.

107.7 Transfer of ownership. It shall be unlawful for the owner of any dwelling unit or structure who has received a compliance order or upon whom a notice of violation has been served to sell, transfer, mortgage, lease or otherwise dispose of such dwelling unit or structure to another until the provisions of the compliance order or notice of violation have been complied with, or until such owner or the owner's authorized agent shall first furnish the grantee, transferee, mortgagee or lessee a true copy of any compliance order or notice of violation issued by the code official and shall furnish to the code official a signed and notarized statement from the grantee, transferee, mortgagee or lessee, acknowledging the receipt of such compliance order or notice of violation and fully accepting the responsibility without condition for making the corrections or repairs required by such compliance order or notice of violation.

## I. UNSAFE STRUCTURES AND EQUIPMENT

108.1 General. When a structure or equipment is found by the code official to be unsafe, or when a structure is found unfit for human occupancy, or is found unlawful, such structure shall be condemned pursuant to the provisions of this code.

108.1.1 Unsafe structures. An unsafe structure is one that is found to be dangerous to the life, healthy, property or safety of the public or the occupants of the structure by not providing minimum safeguards to protect or warn occupants in the event of fire, or because such structure contains unsafe equipment or is so damaged, decayed, dilapidated, structurally unsafe or of such faulty construction or unstable foundation, that partial or complete collapse is possible.

108.1.2 Unsafe equipment. Unsafe equipment includes any boiler, heating equipment, elevator, moving stairway, electrical wiring or device, flammable liquid containers or other equipment on the premises or within the structure which is in such disrepair or condition that such equipment is a hazard to life, health, property or safety of the public or occupants of the premises or structure.

108.1.3 Structure unfit for human occupancy. A structure is unfit for human occupancy whenever the code official finds that such structure is unsafe, unlawful or, because of the degree to which the structure is in disrepair or lacks maintenance, is unsanitary, vermin or rat infested, contains filth and contamination, or lacks ventilation, illumination, sanitary or heating facilities or other essential equipment required by this code, or because the location of the structure constitutes a hazard to the occupants of the structure or to the public.

108.1.4 Unlawful structure. An unlawful structure is one found in whole or in part to be occupied by more persons than permitted under this code, or was erected, altered or occupied contrary to law.

108.1.5 Dangerous structure or premises. For the purpose of this code, any structure or premises that have any or all of the conditions or defects described below shall be considered dangerous:

1. Any door, aisle, passageway, stairway, exit or other means of egress that does not conform to the approved building or fire code of the jurisdiction as related to the requirements for existing buildings.
2. The walking surface of any aisle, passageway, stairway, exit or other means of egress is so warped, worn loose, torn or otherwise unsafe as to not provide safe and adequate means of egress.
3. Any portion of a building, structure or appurtenance that has been damaged by fire, earthquake, wind, flood, deterioration, neglect, abandonment, vandalism or by any other cause to such an extent that it is likely to partially or completely collapse, or to become detached or dislodged.
4. Any portion of a building, or any member, appurtenance or ornamentation on the exterior thereof that is not of sufficient strength or stability, or is not so anchored, attached or fastened in place so as to be capable of resisting natural or artificial loads of one-half the original design value.
5. The building or structure, or part of the building or structure, because of dilapidation, deterioration, decay, faulty construction, the removal or movement of some portion of the ground necessary for the

support, or for any other reason, is likely to partially or completely collapse, or some portion of the foundation or underpinning of the building or structure is likely to fail or give way.

6. The building or structure, or any portion thereof, is clearly unsafe for its intended use and occupancy.

7. The building or structure is neglected, damaged dilapidated, unsecured or abandoned so as to become an attractive nuisance to children who might play in the building or structure to their danger, becomes a harbor for vagrants, criminals or immoral persons, or enables persons to enter the building or structure for committing a nuisance or an unlawful act.

8. Any building or structure has been constructed, exists or is maintained in violation of any specific requirement or prohibition applicable to such building or structure provided by the approved building or fire code of the jurisdiction, or of any law or ordinance to such an extent as to present either a substantial risk of fire, building collapse or any other threat to life and safety.

9. A building or structure, used or intended to be used for dwelling purposes, because of inadequate maintenance, dilapidation, decay, damage, faulty construction or arrangement, inadequate light, ventilation, mechanical or plumbing systems, or otherwise is determined by the code official to be unsanitary, unfit for human habitation or in such a condition that is likely to cause sickness or disease.

10. Any building or structure, because of a lack of sufficient or proper fire-resistance-rated construction, fire protection systems, electrical system, fuel connections, mechanical systems, plumbing system or other cause, is determined by the code official to be a threat to life or health.

11. Any portion of a building remains on site after the demolition or destruction of the building or structure or whenever the building of any structure is abandoned so as to constitute such building or portion thereof as an attractive nuisance or hazard to the public.

108.2 Closing of vacant structures. If the structure is vacant and unfit for human habitation and occupancy, and is not in danger of structural collapse, the code official is authorized to post a placard of condemnation on the premises and order the structure closed up so as not to be an attractive nuisance. Upon failure of the owner or owner's authorized agent to close up the premises within the time specified in the order, the code official shall cause the premises to be closed and secured through any available public agency or by contract or arrangement by private persons and the cost thereof shall be charged against the real estate upon which the structure is located to and shall be a lien against the upon such real estate property upon which the structure is located and such costs will be recoverable pursuant to the provisions of this code.

~~108.2.1 Standards for securing buildings. To secure a building, all doors, window openings, or other openings on floors accessible from grade shall be closed and locked, or shuttered to prevent third party entry.~~

~~If openings are damaged so they cannot be secured using normal building amenities, they shall be secured by covering with 7/16 inch minimum thickness structural panel cut to fit over the building opening and secured with #10 wood screws with fender washers.~~

~~The screws shall penetrate the wood framing by a minimum of 1-1/4 inches and the screws shall be spaced around the perimeter of the opening at a distance of no more than 12 inches on center.~~



108.2.1 Authority to disconnect service utilities. The code official shall have the authority to authorize disconnections of utility service to the building, structure or system regulated by this code and the referenced codes and standards set forth in section 102.3 in case of emergency where necessary to eliminate an immediate hazard to life or property or where such utility connection has been made without approval. The code official shall notify the serving utility and, whenever possible, the owner or owner's authorized agent and occupant of the building, structure or service system of the decision to disconnect prior to taking such action. If not notified prior to disconnection, the owner, owner's authorized agent or occupant of the building or structure or service system shall be notified in writing as soon as practical thereafter.

108.3 Notice. Whenever the code official has condemned a structure or equipment under the provisions of this section, notice shall be posted in a conspicuous place in or about the structure affected by such notice and served on the owner, owner's authorized agent or the person or persons responsible for the structure or equipment in accordance with Sections 107.1, 107.2 and 107.3. If the notice pertains to equipment, it shall also be placed on the condemned equipment. The notice shall be in the form prescribed in Section 107.2.

108.4 Placarding. Upon failure of the owner, owner's authorized agent or person responsible to comply with the notice provisions within the time given, the code official shall post on the premises or on defective equipment a placard bearing the word "Condemned" and a statement of the penalties provided for occupying the premises, operating the equipment or removing the placard.

108.4.1 Placard removal. The code official shall remove the condemnation placard whenever the defect or defects upon which the condemnation and placarding action were based have been eliminated. Any person who defaces or removes a condemnation placard without the approval of the code official shall be subject to the penalties provided by this code.

108.5 Prohibited occupancy. Any occupied structure condemned and placarded by the code official shall be vacated as ordered by the code official. Any person who shall occupy placarded premises or shall operate placarded equipment, and any owner, owner's authorized agent or any person responsible for the premises who shall let anyone occupy placarded premises or operate placarded equipment shall be liable for the penalties provided by this code.

108.6 Abatement methods. The owner, owner's authorized agent, operator or occupant of a building, premises or equipment deemed unsafe by the code official shall abate or cause to be abated or corrected such unsafe conditions either by repair, rehabilitation, demolition or other approved corrective action.

108.7 Record. The code official shall file a report of investigation of unsafe conditions stating the occupancy of the structure and the unsafe condition.

## J. EMERGENCY MEASURES

109.1 Imminent danger. When, in the opinion of the code official, there is imminent danger of failure or collapse of a building or structure which endangers life, or when any structure or part of a structure has fallen and life is endangered by the occupation of the structure, or when there is actual or potential danger to the building occupants or those in the proximity of any structure because of explosives, explosive fumes or vapors or the presence of toxic fumes, gases or materials, or operation of defective or dangerous equipment, the code official is hereby authorized and empowered to order and require the occupants to vacate the premises forthwith. The code official shall cause to be posted at each entrance to such structure a notice reading as

follows: "This Structure Is Unsafe and Its Occupancy Has Been Prohibited by the Code Official." It shall be unlawful for any person to enter such structure except for the purpose of securing the structure, making the required repairs, removing the hazardous condition or of demolishing the same.

109.2 Temporary safeguards. Notwithstanding other provisions of this code, whenever, in the opinion of the code official, there is imminent danger due to an unsafe condition, the code official shall order the necessary work to be done, including the boarding up of openings, to render such structure temporarily safe whether or not the legal procedure herein described has been instituted; and shall cause such other action to be taken as the code official deems necessary to meet such emergency.

109.3 Closing streets. When necessary for public safety, the code official shall temporarily close structures and close, or order the authority having jurisdiction to close, sidewalks, streets, public ways and places adjacent to unsafe structures, and prohibit the same from being utilized.

109.4 Emergency repairs. For the purposes of this section, the code official shall employ the necessary labor and materials to perform the required work as expeditiously as possible.

109.5 Costs of emergency repairs. Costs incurred in the performance of emergency work shall be paid by the jurisdiction. The legal counsel of the jurisdiction shall institute appropriate action against the owner of the premises where the unsafe structure is or was located for the recovery of such costs.

109.6 Hearing. Any person ordered to take emergency measures shall comply with such order forthwith. Any affected person shall thereafter, upon petition directed to the appeals board, be afforded a hearing as described in this code.

## K. DEMOLITION

110.1 General. The code official shall order the owner or the owner's authorized agent of any premises upon which is located any structure, which in the code official's or owner's authorized agent judgment after review is so ~~old~~, deteriorated or dilapidated or has become so out of repair as to be dangerous, unsafe, ~~insanitary~~ unsanitary or otherwise unfit for human habitation or occupancy, and such that it is unreasonable to repair the structure, to demolish and remove such structure; and such that it is unreasonable to repair the structure, to demolish and remove such structure; or if such structure is capable of being made safe by repairs, to repair and make safe and sanitary, or to board up and hold for future repair or demolish and remove at the owner's option; or where there has been a cessation of normal construction of any structure for a period of more than two years that the building or structure has become dangerous as defined in this code, the code official shall order the owner or owner's authorized agent to demolish and remove such structure, or board up until future repair. Boarding the building up for future repair shall not extend beyond one year, unless approved by the code official.

110.2 Notices and orders. All notices and orders shall comply with Section 107.

110.3 Failure to comply. If the owner of a premises or owner's authorized agent fails to comply with a demolition order within the time prescribed, the code official shall cause the structure to be demolished and removed, either through an available public agency or by contract or arrangement with private persons, and the cost of such demolition and removal shall be charged against the real estate upon which the structure is located and shall be a lien upon such real estate.

If the party responsible under Section 102.2, or other sections of this Code, fails to comply with the final order to repair, alter, improve, vacate, close, remove, or demolish the dwelling, building structure or premises, the building code official may direct or cause such dwelling, building, structure, or premises to be repaired, altered, improved, vacated, and closed, removed, or demolished.

The amount of the cost of such repairs, alterations or improvements; or vacating and closing; or removal or demolition by the building code official, shall be assessed against the real property upon which such cost was incurred unless such amount is previously paid. Upon certification by the Clerk of the City of the assessment amount being due and owing, the county treasurer shall enter the amount of such assessment upon the tax rolls against the property for the current year and the same shall become a part of the general taxes for that year to be collected at the same time and with interest at such rates and in such manner as provided for in Revised Code of Washington 84.56.020, as now or hereafter amended, for delinquent taxes, and when collected to be deposited to the credit of the Building Demolition and Nuisance Abatement revolving fund of the City. ~~If the dwelling, building, structure, or premises is removed or demolished by the code official, the code official shall, if possible, sell the materials of such dwelling, building, structure or premises, and shall credit the proceeds of such sale against the cost of the removal or demolition and if there by any balance remaining, it shall be paid to the parties entitled thereto, as determined by the code official, after deducting the costs incident thereto.~~

The assessment shall constitute a lien against the property which shall be of equal rank with state, county and municipal taxes.

110.4 Salvage materials. When any structure has been ordered demolished and removed, the governing body or other designated officer under said contract or arrangement aforesaid shall have the right to sell the salvage and valuable materials, ~~at the highest price obtainable~~. The net proceeds of such sale, after deducting the expenses of such demolition and removal, shall be promptly remitted with a report of such sale or transaction, including the items of expense and the amounts deducted, for the person who is entitled thereto, subject to any order of a court. If such a surplus does not remain to be turned over, the report shall so state.

L. MEANS OF APPEAL

111. Means of Appeal. Any person adversely affected or aggrieved by a decision of the code official or a notice or order issued under this code may appeal to the hearings examiner pursuant to the Olympia Municipal Code Chapter 18.75, provided that a written application for appeal is filed within fourteen (14) days after the day the decision, notice or order was served. An appeal shall be based on a claim that the true intent of this code or the rules legally adopted hereunder have been incorrectly interpreted, the provisions of this code do not fully apply, or the requirements of this code are adequately satisfied by other means.

16.06.020 Definitions

A. GENERAL

201.1 Scope. Unless otherwise expressly stated, the following terms shall, for the purposes of this code, have the meanings shown in this section.

201.2 Interchangeability. Words stated in the present tense include the future; words stated in the masculine gender include the feminine and neuter; the singular number includes the plural and the plural, the singular.

201.3 Terms defined in other codes. Where terms are not defined in this code and are defined in the International Building Code , International Fire Code , Olympia Zoning Code, International Plumbing Code , International Mechanical Code , State Energy Code, International Fuel Gas Code, International Existing Building Code, or the ICC Electrical Code (NFPA 70), such terms shall have the meanings ascribed to them as stated in those codes.

201.4 Terms not defined. Where terms are not defined through the methods authorized by this section, such terms shall have ordinarily accepted meanings such as the context implies.

201.5 Parts. Whenever the words "dwelling unit," "dwelling," "premises," "building," "rooming house," "rooming unit," "housekeeping unit," or "story" are stated in this code, they shall be construed as though they were followed by the words "or any part thereof."

## B. GENERAL DEFINITIONS

- ~~1.~~ 1. Anchored. Secured in a manner that provides positive connection.
- ~~1.~~ 2. Approved. Approved by the code official.
- ~~2.~~ 3. Basement. That portion of a building which is partly or completely below grade.
- ~~3.~~ 4. Bathroom. A room containing plumbing fixtures, including a bathtub or shower.
- ~~4.~~ 5. Bedroom. Any room or space used or intended to be used for sleeping purposes, in either a dwelling or sleeping unit.
- ~~5.~~ 6. Code Official. The official who is charged with the administration and enforcement of this code, or any duly authorized representative.
- ~~6.~~ 7. Condemn. To adjudge unfit for occupancy.
8. Cost of such demolition or emergency repairs. The cost of shall include the actual costs of the demolition or repair of the structure less revenues obtained if salvage was conducted prior to the demolition or repair. Costs shall include, but not be limited to, expenses incurred or necessitated related to the demolition or emergency repairs, such as asbestos survey and abatement if necessary; costs of inspectors, testing agencies or experts retained relative to the demolition or emergency repairs; costs of testing; surveys for other materials that are controlled or regulated from being dumped in a landfill; title searches; mailing(s); postings; recording; and attorney fees expended for recovering of the cost of emergency repairs or to obtain or enforce an order of demolition made by a code official, the governing body or board of appeals.
- ~~7.~~ 9. Department. The City of Olympia Community Planning and Development Department.
10. Detached. When a structure element is physically disconnected from another and that connection is necessary to provide a positive connection.

- ~~11.~~ Deterioration. To weaken, disintegrate, corrode, rust or decay and lose effectiveness.
8. ~~12.~~ Director. The Director of the City of Olympia Community Planning and Development Department.
9. ~~13.~~ Dwelling Unit. A single unit providing complete, independent living facilities for one or more persons, including permanent provisions for living, sleeping, eating, cooking and sanitation.
- ~~10.~~ ~~14.~~ Easement. That portion of land or property reserved for present or future use by a person or agency other than the legal fee owner(s) of the property. The easement shall be permitted to be for use under, on or above a said lot or lots.
- ~~11.~~ ~~15.~~ Equipment Support. Those structural members or assemblies of members or manufactured elements, including braces, frames, lugs, snuggers, hangers or saddles, that transmit gravity load, lateral load and operating load between the equipment and the structure.
- ~~16.~~ Exterior Property. The open space on the premises and on adjoining property under the control of owners or operators of such premises.
- ~~12.~~ ~~Extermination. The control and elimination of insects, rats or other pests by eliminating their harborage places; by removing or making inaccessible materials that serve as their food; by poison spraying, fumigating, and trapping or by any other approved pest elimination methods.~~
- ~~13.~~ ~~17.~~ Garbage. The animal or vegetable waste resulting from the handling, preparation, cooking and consumption of food.
- ~~14.~~ ~~18.~~ Guard. A building component or a system of building components located at or near the open sides of elevated walking surfaces that minimizes the possibility of a fall from the walking surface to a lower level.
- ~~15.~~ ~~19.~~ Habitable Space. Space in a structure for living, sleeping, eating or cooking. Bathrooms, toilet rooms, closets, halls, storage or utility spaces, and similar areas are not considered habitable spaces.
- ~~20.~~ Historic Building. Any building or structure that is one or more of the following:
1. Listed or certified as eligible for listing, by the State Historic Preservation Officer or the Keeper of the National Register of Historic Places, in National Register of Historic Places.
  2. Designated as historic under an applicable state or local law.
  3. Certified as a contributing resource within National Register or state or locally designated historic structure.

- ~~16.~~ 21. Housekeeping Unit. A room or group of rooms forming a single habitable space equipped and intended to be used for living, sleeping, cooking and eating which does not contain, within such a unit, a toilet, lavatory and bathtub or shower.
- ~~17.~~ 22. Imminent Danger. A condition which could cause serious or life-threatening injury or death at any time.
- ~~18.~~ 23. Infestation. The presence, within or contiguous to, a structure or premises of insects, rats, vermin or other pests.
- ~~19.~~ 24. Inoperable Motor Vehicle. A vehicle which cannot be driven upon the public streets for reason including, but not limited to, being unlicensed, wrecked, abandoned, in a state of disrepair, or incapable of being moved under its own power.
- ~~20.~~ 25. Labeled. ~~Devices, equipment, appliances,~~ Equipment, or materials or products to which has been affixed a label, seal, symbol or other identifying mark of a nationally recognized testing laboratory, inspection agency or other organization concerned with product evaluation that maintains periodic inspection of the production of the above-labeled items and ~~by whose label-labeling either that the equipment, material or product meets identified standards or has been tested and found suitable for a specified purpose. the manufacturer attests to compliance with applicable nationally recognized standards.~~
- ~~21.~~ 26. Let For Occupancy or Let. To permit, provide or offer possession or occupancy of a dwelling, dwelling unit, rooming unit, building, premise or structure by a person who is or is not the legal owner of record thereof, pursuant to a written or unwritten lease, agreement or license, or pursuant to a recorded or unrecorded agreement of contract for the sale of land.
27. Neglect. The lack of proper maintenance for a building or structure.
- ~~22.~~ 28. Occupancy. The purpose for which a building or portion thereof is utilized or occupied.
- ~~23.~~ 29. Occupant. Any individual living or sleeping in a building, or having possession of a space within in a building.
- ~~24.~~ 30. Openable Area. That part of window, skylight or door which is available for unobstructed ventilation and which opens directly to the outdoors.
- ~~25.~~ 31. Operator. Any person who has charge, care or control of a structure or premises which is let or offered for occupancy.
- ~~26.~~ 32. Owner. Any person, agent, operator, firm or corporation having a legal or equitable interest in the property; or recorded in the official records of the state, county or municipality as holding title to the property; or otherwise having control of the property, including the guardian of the estate of any such person, and the executor or administrator of the estate of such person if ordered to take possession of real property by a court.

- ~~27-~~ 33. Person. An individual, corporation, partnership or any other group acting as a unit.
34. Pest Elimination. The control and elimination of insects, rodents or other pests by eliminating their harborage places; by removing or making inaccessible materials that serve as their food or water; by other approved pest elimination methods.
- ~~28-~~ 35. Premises. A lot, plot or parcel of land, easement or public way, including any structures thereon.
- ~~29-~~ 36. Public Way. Any street, alley or similar parcel of land essentially unobstructed from the ground to the sky, which is deeded, dedicated or otherwise permanently appropriated to the public for public use.
- ~~30-~~ 37. Rooming House. A building arranged or occupied for lodging, with or without meals, for compensation and not occupied as a one- or two-family dwelling.
- ~~31-~~ 38. Rooming Unit. Any room or group of rooms forming a single habitable unit occupied or intended to be occupied for sleeping or living, but not for cooking purposes.
- ~~32-~~ 39. Rubbish. Combustible and noncombustible waste materials, except garbage; the term shall include the residue from the burning of wood, coal, coke and other combustible materials, paper, rags, cartons, boxes, wood, excelsior, rubber, leather, tree branches, yard trimmings, tin cans, metals, mineral matter, glass, crockery and dust and other similar materials.
- ~~33-~~ 40. Sleeping Unit. A room or space in which people sleep, which can also include permanent provisions for living, eating and either sanitation or kitchen facilities, but not both. Such rooms and spaces that are also part of a dwelling unit are not sleeping units.
- ~~34-~~ 41. Strict Liability Offense. An offense in which the prosecution in a legal proceeding is not required to prove criminal intent as a part of its case. It is enough to prove that the defendant either did an act which was prohibited, or failed to do an act which the defendant was legally required to do.
- ~~35-~~ 42. Structure. That which is built or constructed or a portion thereof.
- ~~36-~~ 43. Tenant. A person, corporation, partnership or group, whether or not the legal owner of record, occupying a building or portion thereof as a unit.
- ~~37-~~ 44. Toilet room. A room containing a water closet or urinal, but not a bathtub or shower.
45. Ultimate deformation. The deformation at which failure occurs and which shall be deemed to occur if the sustainable load reduces to 80 percent or less of the maximum strength.
- ~~38-~~ 46. Ventilation. The natural or mechanical process of supplying conditioned or unconditioned air to, or removing such air from, any space.

~~39.~~ 47. Workmanlike. Executed in a skilled manner; e.g., generally plumb, level, square, in line, undamaged and without marring adjacent work.

~~40.~~ 48. Yard. An open space on the same lot with a structure.

#### 16.06.030 General Requirements

##### A. GENERAL

301.1 Scope. The provisions of this section shall govern the minimum conditions and the responsibilities of persons for maintenance of structures, equipment and exterior property.

301.2 Responsibility. The owner of the premises shall maintain the structures and exterior property in compliance with these requirements, except as otherwise provided for in this code. A person shall not occupy as owner-occupant or permit another person to occupy premises which are not in a sanitary and safe condition and which do not comply with the requirements of this ~~section~~ chapter. Occupants of a dwelling unit, rooming unit or housekeeping unit are responsible for keeping in a clean, sanitary and safe condition that part of the dwelling unit, rooming unit, housekeeping unit or premises which they occupy and control.

301.3 Vacant structures and land. All vacant structures and premises thereof or vacant land shall be maintained in a clean, safe, secure and sanitary condition as provided herein so as not to cause a blighting problem or adversely affect the public health or safety.

##### B. EXTERIOR PROPERTY AREAS

302.1 Sanitation. ~~All exterior~~ Exterior property and premises shall be maintained in a clean, safe, and sanitary condition. The occupant shall keep that part of the exterior property which such occupant occupies or controls in a clean and sanitary condition.

302.2 Grading and Drainage. ~~All premises~~ Premises shall be graded and maintained to prevent erosion of soil and to prevent the accumulation of stagnant water thereon, or within any structure located thereon.

EXCEPTION: Approved retention areas and reservoirs.

302.3 Sidewalks and driveway. All sidewalks, walkways, stairs, driveways, parking spaces and similar areas shall be kept in a proper state of repair, and maintained free from hazardous conditions.

302.5 Rodent harborage. All structures and exterior property shall be kept free from rodent harborage and infestation. Where rodents are found, they shall be promptly exterminated by approved processes which will not be injurious to human health. After extermination, proper precautions shall be taken to eliminate rodent harborage and prevent reinfestation.

302.6 Exhaust vents. Pipes, ducts, conductors, fans or blowers shall not discharge gases, steam, vapor, hot air, grease, smoke, odors or other gaseous or particulate wastes directly upon abutting or adjacent public or private property or that of another tenant.



302.7 Accessory structures. All accessory structures, including detached garages, fences and walls, shall be maintained structurally sound and in good repair.

302.8 Motor Vehicles. Except as provided for in other regulations, no inoperative or unlicensed vehicle shall be parked, kept or stored on any premises, and no vehicle shall at any time be in a state of major disassembly, disrepair, or in the process of being stripped or dismantled. Painting of vehicles is prohibited unless conducted inside an approved spray booth. For purposes of this section "vehicle" is defined in the Revised Code of Washington Section 46.04.670.

EXCEPTION: A vehicle of any type is permitted to undergo major overhaul, including body work, provided that such work is performed inside a structure or similarly enclosed area designed and approved for such purposes.

302.9 Defacement of property. No person shall willfully or wantonly damage, mutilate, or deface any exterior surface of any structure or building on any private or public property by placing thereon any marking, carving, or graffiti.

It shall be the responsibility of the owner to restore said surface to an approved state of maintenance and repair.

302.10 Recreational vehicles or other vehicles. No recreational vehicle as defined by the Olympia Municipal Code Chapter 18.02.180 or other vehicles shall be used for the purpose of living, sleeping, cooking or any similar use while parked on publicly owned or private property.

302.11 Cargo containers and ~~semitrailers~~ semi-trailers.

302.11.1 Cargo containers, except as otherwise permitted by Olympia Municipal Code Title 18 shall not be permitted to be used as storage buildings. Cargo containers which are permitted by the land use regulatory code to be used as storage buildings shall be provided with a foundation system that provides adequate clearance from the ground to prevent deterioration and shall be provided with an anchorage system to prevent sliding or overturning by wind or seismic forces prescribed by the building code.

302.11.2 Semi trailers shall not be used as storage buildings.

303.1 Swimming pools. Swimming pools shall be maintained pursuant to the swimming pool spa and hot tub code, state building codes and other applicable federal, state and local laws. Swimming pools shall be maintained in a clean and sanitary condition, and in good repair.

## C. EXTERIOR STRUCTURE

304.1 General. The exterior of a structure shall be maintained in good repair, structurally sound and sanitary so as not to pose a threat to the public health, safety or welfare.

304.1.1 Unsafe Conditions. The following conditions shall be determined to be unsafe and shall be repaired or replaced to comply with the International Building Code or the International Existing Building Code as required for existing buildings:

1. The nominal strength of any structural member is exceeded by nominal loads, the load effects or the required strength;

2. The anchorage of the floor or roof to walls or columns, and of walls and columns to foundation is not capable of resisting all nominal loads or load effects;

3. Structures or components thereof that have reached their limit share;

4. Siding and masonry joints including joints between the building envelope and the perimeter of windows, doors and skylights are not maintained, weather resistant or water tight;

5. Structural members that have evidence of deterioration or that are not capable of supporting all nominal loads and load effects;

6. Foundations systems that are not firmly supported by footings, are not plumb and free from open cracks and breaks, are not properly anchored or are not capable of supporting all nominal loads and resisting all load effects;

7. Exterior walls that are not anchored to supporting and supported elements or are not plumb and free of holes, cracks or breaks and loose or rotting materials, are not properly anchored or are not capable of supporting all nominal loads and resisting all load effects;

8. Roofing or roofing components that have defects that admit rain, roof surfaces with inadequate drainage, or any portion of the roof framing that is not in good repair with signs of deterioration, fatigue or without proper anchorage and incapable of supporting all nominal loads and resisting all load effects;

9. Flooring and flooring components with defects that affect serviceability or flooring components that show signs of deterioration or fatigue, are not properly anchored or are incapable of supporting all nominal loads and resisting all load effects;

10. Veneer, cornices, belt courses, corbels, trim, wall facings and similar decorative features not properly anchored or that are anchored with connections not capable of supporting all nominal loads and resisting all load effects;

11. Overhang extensions or projections including, but not limited to, trash chutes, canopies, marquees, signs, awnings, fire escapes standpipes and exhaust ducts not properly anchored or that are anchored with connections not capable of supporting all nominal loads and resisting all load effects;

12. Exterior stairs, decks, porches, balconies and all similar appurtenances attached thereto, including guards and handrails, are not structurally sound, not properly anchored or that are anchored with connections not capable of supporting all nominal loads and resisting all load effects; or

13. Chimneys, cooling towers, smokestacks and similar appurtenances not structurally sound or not properly anchored, or that are anchored with connections not capable of supporting all nominal loads and resisting all load effects.

Exceptions:

1. Where substantiated otherwise by an approved method.
2. Demolition of unsafe conditions shall be permitted where approved by the code official.

304.2 Protective treatment. All exterior surfaces, including but not limited to, doors, door and window frames, cornices, porches, trim, balconies, decks and fences shall be maintained in good condition. Exterior wood surfaces, other than decay-resistant woods, shall be protected from the elements and decay by painting or other protective covering or treatment. Peeling, flaking and chipped paint shall be eliminated and surfaces repainted. ~~All siding~~ Siding and masonry joints as well as those between the building envelope and the perimeter of windows, doors, and skylights shall be maintained weather resistant and water tight. ~~All metal~~ Metal surfaces subject to rust or corrosion shall be coated to inhibit such rust and corrosion and ~~all~~ surfaces with rust or corrosion shall be stabilized and coated to inhibit future rust and corrosion. Oxidation stains shall be removed from exterior surfaces. Surfaces designed for stabilization by oxidation are exempt from this requirement.

304.3 Premises identification. Buildings shall ~~be provided with~~ have approved address identification. ~~The address numbers identification shall be legible and~~ placed in a position to be plainly legible and visible from the street or road fronting the property. ~~These numbers~~ Address identification characters shall contrast with their background. Address numbers shall be Arabic numerals or ~~alphabet~~ alphabetical letters. Numbers shall be a minimum of 4 inches (102 mm) ~~high with~~ in height with a minimum stroke width of 0.5 inches (12.7 mm).

Where required by the fire code official, address identification shall be provided in additional approved locations to facilitate emergency response. Where access is by means of private road and the building cannot be viewed from the public way, a monument pole, or other sign or means shall be used to identify the structure. Address identification shall be maintained.

304.4 Structure members. All structural members shall be maintained free from deterioration, and shall be capable of safely supporting the imposed dead and live loads.

304.5 Foundation walls. All foundation walls shall be maintained plumb and free from open cracks and breaks and shall be kept in such condition so as to prevent the entry of rodents and other pests.

304.6 Exterior walls. All exterior walls shall be free from holes, breaks, dampness, and loose or rotting ~~materials.~~ materials; and maintained weatherproof and properly surface coated where required to prevent deterioration.

304.7 Roofs and drainage. The roof and flashing shall be sound, tight and not have defects that admit rain. Roof drainage shall be adequate to prevent dampness or deterioration in the walls or interior portion of the structure. Roof drains, gutters and downspouts shall be maintained in good repair and free from obstructions. Roof water shall not be discharged in a manner that creates a public nuisance.

304.8 Decorative features. ~~All cornices,~~ Cornices, belt courses, corbels, terra cotta trim, wall facings and similar decorative features shall be maintained in good repair with proper anchorage and in a safe condition.

304.9 Overhang extensions. ~~All overhang~~ Overhang extensions including, but not limited to canopies, marquees, signs, metal awnings, fire escapes, standpipes and exhaust ducts shall be maintained in good repair and be properly anchored so as to be kept in a sound condition. When required, all exposed surfaces of metal

or wood shall be protected from the elements and against decay or rust by periodic application of weather-coating materials, such as paint or similar surface treatment.

304.10 Stairways, decks, porches and balconies. Every exterior stairway, deck, port and balcony, and all appurtenances attached thereto, shall be maintained structurally sound, in good repair, with proper anchorage and capable of supporting the imposed loads.

304.11 Chimneys and towers. ~~All chimneys,~~ Chimneys, cooling towers, smoke stacks, and similar appurtenances shall be maintained structurally safe and sound, and in good repair. ~~All exposed~~ Exposed surfaces of metal or wood shall be protected from the elements and against decay or rust by periodic application of weather-coating materials, such as paint or similar surface treatment.

304.12 Handrails and guards. Every handrail and guard shall be firmly fastened and capable of supporting normally imposed loads and shall be maintained in good condition.

304.13 Window, skylight and door frames. Every window, skylight, door and frame shall be kept in sound condition, good repair and weather tight.

304.13.1 Glazing. All glazing materials shall be maintained free from cracks and holes.

304.13.2 Openable windows. Every window, other than a fixed window, shall be easily openable and capable of being held in position by window hardware.

304.15 Doors. All exterior doors, door assemblies and hardware shall be maintained in good condition. Locks at all entrances to dwelling units, rooming units and guestrooms shall tightly secure the door. Locks on means of egress doors shall be in accordance with Section 702.3.

304.16 Basement hatchways. Every basement hatchway shall be maintained to prevent the entrance of rodents, rain and surface drainage water.

304.17 Guards for basement windows. Every basement window that is openable shall be supplied with rodent shields, storm windows or other approved protection against the entry of rodents.

304.18 Building security. Doors, windows or hatchways for dwelling units, room units or housekeeping units shall be provided with devices designed to provide security for the occupants and property within.

304.18.1 Doors. Doors providing access to a dwelling unit, rooming unit or housekeeping unit that is rented, leased or let shall be equipped with a deadbolt lock designed to be readily openable from the side from which egress is to be made without the need for keys, special ~~Special~~ knowledge or effort and shall have a lock throw of not less than 1 inch (25MM). Such deadbolt locks shall be installed according to the manufacture's specifications and maintained in good working order. For the purpose of this section, a sliding bolt shall not be considered an acceptable deadbolt lock.

304.18.2 Windows. Operable windows located in whole or in part within 6 feet (1828 mm) above ground level or a walking surface below that provide access to a dwelling unit, rooming unit or housekeeping unit that is rented, leased or let shall be equipped with a window sash locking devices.

304.18.3 Basement hatchways. Basement hatchways that provide access to a dwelling unit, rooming unit or housekeeping unit that is rented, leased or let shall be equipped with devices that secure the units from unauthorized entry.

#### D. INTERIOR STRUCTURE

305.1 General. The interior of a structure and equipment therein shall be maintained in good repair, structurally sound and in a sanitary condition. Occupants shall keep that part of the structure which they occupy or control in a clean and sanitary condition. Every owner of a structure containing a rooming house, housekeeping units, a hotel, a dormitory, two or more dwelling units or two or more nonresidential occupancies, shall maintain, in a clean and sanitary condition, the shared or public areas of the structure and exterior property.

305.1.1 The following conditions shall be determined as unsafe and shall be repaired or replaced to comply with the International Building Code or the International Existing Building Code as required for existing buildings:

1. The nominal strength of any structural member is exceeded by nominal loads, the loads effects or the required strength;
2. The anchorage of the floor or roof to walls or columns, and of walls and columns to the foundation is not capable of resisting all nominal loads or load effects;
3. Structures or components thereof that have reached their limit state;
4. Structural members are incapable of supporting nominal loads and load effects;
5. Stairs, landings, balconies and similar surfaces, including guards and handrails, are not structurally sound, not properly anchored or are anchored with connections not capable of supporting all nominal loads and resisting all load effects;
6. Foundation systems that are not firmly supported by footings are not plumb and free from open cracks and breaks, are not properly anchored or are not capable of supporting all nominal loads and resisting all load effects.

Exceptions:

1. Where substantiated otherwise by an approved method.
2. Demolition of unsafe conditions shall be permitted when approved by the code official.

305.2 Structural members. All structural members shall be maintained structurally sound, and be capable of supporting the imposed loads.

305.3 Interior surfaces. All interior surfaces, including windows and doors, shall be maintained in good, clean and sanitary condition. Peeling, chipping, flaking or abraded paint shall be repaired, removed or covered. Cracked or loose plaster, decayed wood, mold and other defective surface conditions shall be corrected.

305.4 Stairs and walking surfaces. Every stair, ramp, landing, balcony, porch, deck or other walking surface shall be maintained in sound condition and good repair.

305.5 Handrails and guards. Every handrail and guard shall be firmly fastened and capable of supporting normally imposed loads and shall be maintained in good condition.

305.6 Interior doors. Every interior door shall fit reasonably well within its frame and shall be capable of being opened and closed by being properly and securely attached to jambs, headers or tracks as intended by the manufacturer of the attachment hardware.

#### E. COMPONENT SERVICEABILITY

306.1 General. The components of a structure and equipment therein shall be maintained in good repair, structurally sound and in a sanitary condition.

306.1.1 Unsafe conditions. Where any of the following conditions cause the components or system to be beyond its limit state, the component or system shall be determined as unsafe and shall be repaired or replaced to comply with the International Building Code or the International Existing Building Code as required for existing buildings.

##### 1. Soils that have been subjected to any of the following conditions:

1.1 Collapse of footing or foundation system;

1.2 Damage to footing, foundation, concrete or other structural element due to soil expansion;

1.3 Adverse effects to the design strength of footing, foundation, concrete or other structural element due to a chemical reaction from the soil;

1.4 Inadequate soil as determined by a geotechnical investigation;

1.5 Where the allowable bearing capacity of the soil is in doubt; or

1.6 Adverse effects to the footing, foundation, concrete or other structural element due to the ground water table.

##### 2. Concrete that has been subjected to any of the following conditions:

2.1 Deterioration;

2.2 Ultimate deformation;

2.3 Fractures;

2.4 Fissures;

2.5 Spalling

2.6 Exposed reinforcement; or

3. Aluminum that has been subjected to any of the following conditions:

3.1 Deterioration;

3.2 Corrosion;

3.3 Elastic Deformation;

3.4 Ultimate deformation;

3.5 Stress or strain cracks;

3.6 Joint fatigue; or

3.7 Detached, dislodged or failing connections.

4. Masonry that has been subjected to any of the following conditions:

4.1 Deterioration;

4.2 Ultimate Deformation;

4.3 Fractures in masonry or mortar joints;

4.4 Fissures in masonry or mortar joints;

4.5 Spalling;

4.6 Exposed reinforcement;

4.7 Detached, dislodged or failing connections.

5. Steel that has been subjected to any of the following conditions:

5.1 Deterioration;

5.2 Elastic deformation;

5.3 Ultimate deformation;

5.4 Metal fatigue; or

5.5 Detached, dislodged or failing connections.

6. Wood that has been subjected to any of the following conditions:

- 6.1 Ultimate deformation;
- 6.2 Deterioration;
- 6.3 Damage from insects, rodents, and other vermin;
- 6.4 Fire damage beyond charring;
- 6.5 Significant splits and checks;
- 6.6 Horizontal shear cracks;
- 6.7 Vertical shear cracks;
- 6.8 Inadequate support;
- 6.9 Detached, dislodged or failing connections; or
- 6.10 Excessive cutting and notching.

Exceptions:

1. Where substantiated otherwise by an approved method.
2. Demolition of unsafe conditions shall be permitted where approved by the code official.

**E F. HANDRAILS AND GUARDRAILS**

~~306.1~~ 307.1 Handrails and Guardrails- General. Every exterior and interior flight of stairs having more than four risers shall have a handrail on one side of the stair and every open portion of a stair, landing, balcony, porch, deck, ramp or other walking surface which is more than ~~thirty~~ 30 inches (762 mm) above the floor or grade below shall have guards. Handrails shall not be less than 34 inches high or more than 38 inches high measured vertically above the nosing of the tread or above the finished floor of the landing or walking surfaces. Guards shall not be less than 36 inches high above the floor of the landing, balcony, porch, deck, or ramp or other walking surface.

**EXCEPTIONS:**

1. Guards shall not be required where exempted by the adopted building code.
2. Guards may be of other heights when allowed by the adopted building code or other historical codes.

**F. G. RUBBISH AND GARBAGE**

~~307.1~~ 308.1 Accumulation of rubbish or garbage. ~~All exterior~~ Exterior property and premises, and the interior of every structure, shall be free from any accumulation of rubbish or garbage.



~~307.2~~ 308.2 Disposal of rubbish. Every occupant of a structure shall dispose of all rubbish in a clean and sanitary manner by placing such rubbish in approved containers.

~~307.2.1~~ 308.2.1 Rubbish storage facilities. The owner of every occupied premises shall supply approved covered containers for rubbish, and the owner of the premises shall be responsible for the removal of rubbish.

~~307.2.2~~ 308.2.2 Refrigerators. Refrigerators and similar equipment not in operation shall not be discarded, abandoned or stored on premises without first removing the doors.

~~307.3~~ 308.3 Disposal of garbage. Every occupant of a structure shall dispose of garbage in a clean and sanitary manner by placing such garbage in an approved garbage disposal facility or approved garbage containers.

~~307.3.1~~ 308.3.1 Garbage facilities. The owner of every dwelling shall supply ~~one~~ both of the following: an approved mechanical food waste grinder in each dwelling unit; ~~an approved incinerator unit in the structure available to the occupants in each dwelling unit;~~ or an approved leakproof, covered, outside garbage container.

~~307.3.2~~ 308.3.2 Containers. The operator of every establishment producing garbage shall provide, at all times, cause to be utilized, approved leakproof containers provided with close-fitting covers for the storage of such materials until removed from the premises for disposal.

#### G. H. EXTERMINATION

~~308.1~~ 309.1 Infestation. ~~All structures~~ Structures shall be kept free from insect and rodent infestation. ~~All structures~~ Structures in which insects or rodents are found shall be promptly exterminated by approved processes that will not be injurious to human health. After pest extermination, proper precautions shall be taken to prevent reinfestation reinfestation.

~~308.2~~ 309.2 Owner. The owner of any structure shall be responsible for pest elimination ~~extermination~~ within the structure prior to renting or leasing the structure.

~~308.3~~ 309.3 Single occupant. The occupant of a one-family dwelling or of a single-tenant nonresidential structure shall be responsible for pest elimination ~~extermination~~ on the premises.

~~308.4~~ 309.4 Multiple occupancy. The owner of a structure containing two or more dwelling units, a multiple occupancy, a rooming house or a nonresidential structure shall be responsible for pest elimination ~~extermination~~ in the public or shared areas of the structure and exterior property.

If infestation is caused by failure of an occupant to prevent such infestation in the area occupied, the occupant and owner shall be responsible for pest elimination ~~extermination~~.

~~308.5~~ 309.5 Occupant. The occupant of any structure shall be responsible for the continued rodent and pest-free condition of the structure.

EXCEPTION: Where the infestations are caused by defects in the structure, the owner shall be responsible for pest elimination ~~extermination~~.

## 16.06.040 Light, Ventilation and Occupancy Limitations

### A. GENERAL

401.1 Scope. The provisions of this section shall govern the minimum conditions and standards for light, ventilation and space for occupying a structure.

401.2 Responsibility. The owner of the structure shall provide and maintain light, ventilation and space conditions in compliance with these requirements. A person shall not occupy as owner-occupant, or permit another person to occupy, any premises that do not comply with the requirements of this section.

401.3 Alternative devices. In lieu of the means for natural light and ventilation herein prescribed, artificial light or mechanical ventilation complying with the International Building Code shall be permitted.

### B. LIGHT

402.1 Habitable spaces. Every habitable space shall have at least one window of approved size facing directly to the outdoors or to a court. The minimum total glazed area for every habitable space shall be 8 percent of the floor area of such room. Wherever walls or other portions of a structure face a window of any room and such obstructions are located less than 3 feet (914 mm) from the window and extend to a level above that of the ceiling of the room, such window shall not be deemed to face directly to the outdoors nor to a court and shall not be included as contributing to the required minimum total window area for the room.

EXCEPTION: Where natural light for rooms or spaces without exterior glazing areas is provided through an adjoining room, the unobstructed opening to the adjoining room shall be at least 8 percent of the floor area of the interior room or space, but not less than 25 square feet (2.33 m<sup>2</sup>). The exterior glazing area shall be based on the total floor area being served.

402.2 Common halls and stairways. Every common hall and stairway in residential occupancies, other than in one- and two-family dwellings, shall be lighted at all times with at least equivalent to a 60 watt standard incandescent light bulb for each 200 square feet (19 m<sup>2</sup>) of floor area or equivalent illumination, provided that the spacing between lights shall not be greater than 30 feet (9144 mm). In other than residential occupancies, means of egress, including exterior means of egress stairways shall be illuminated at all times the building space served by the means of egress is occupied with a minimum of 1 footcandle (11 lux) at floors, landings and treads.

402.3 Other spaces. All other spaces shall be provided with natural or artificial light sufficient to permit the maintenance of sanitary conditions, and the safe occupancy of the space and utilization of the appliances, equipment and fixtures.

### C. VENTILATION

403.1 Habitable spaces. Every habitable space shall have at least one operable window. The total operable area of the window in every room shall be equal to at least 45 percent of the minimum glazed area required in Section 402.1

EXCEPTION: Where rooms and spaces without openings to the outdoors are ventilated through an adjoining room, the unobstructed opening to the adjoining room shall be at least 8 percent of the floor area of the interior room or space, but not less than 25 square feet (2.33 m<sup>2</sup>). The ventilation openings to the outdoors shall be based on a total floor area being ventilated.

403.2 Bathrooms and toilet rooms. Every bathroom and toilet room shall comply with the ventilation requirements for habitable spaces as required by Section 403.1, except that a window shall not be required in such spaces equipped with a mechanical ventilation system. Air exhausted by a mechanical ventilation system from a bathroom or toilet room shall discharge to the outdoors and shall not be recirculated.

403.3 Cooking facilities. Unless approved through the certificate of occupancy, cooking shall not be permitted in any rooming unit or dormitory unit, and a cooking facility or appliance shall not be permitted to be present in a rooming unit or dormitory unit.

EXCEPTIONS:

1. Where specifically approved in writing by the code official.
2. Devices such as coffee pots and microwave ovens shall not be considered cooking appliances.

403.4 Process ventilation. Where injurious, toxic, irritating or noxious fumes, gases, dusts or mists are generated, a local exhaust ventilation system shall be provided to remove the contaminating agent at the source. Air shall be exhausted to the exterior and not be recirculated to any space.

403.5 Clothes dryer exhaust. Clothes dryer exhaust systems shall be independent of all other systems and shall be exhausted in accordance with the manufacturer's instructions.

D. OCCUPANCY LIMITATIONS

404.1 Privacy. Dwelling units, hotel units, housekeeping units, rooming units and dormitory units shall be arranged to provide privacy and be separate from other adjoining spaces.

404.2 Minimum room widths. A habitable room, other than a kitchen, shall not be less than 7 feet (2134 mm) in any plan dimension. Kitchens shall have a clear passageway of not less than 3 feet (914 mm) between counterfronts and appliances or counterfronts and walls.

404.3 Minimum ceiling heights. Habitable spaces, hallways, corridors, laundry areas, bathrooms, toilet rooms and habitable basement areas shall have a clear ceiling height of not less than 7 feet (2134 mm)

EXCEPTIONS:

1. In one- and two-family dwellings, beams or girders spaced not less than 4 feet (1219 mm) on center and projecting not more than 6 inches (152 mm) below the required ceiling height.
2. Basement rooms in one- and two-family dwellings occupied exclusively for laundry, study or recreation purposes, having a ceiling height of not less than 6 feet 8 inches (2033 mm) with not less than 6 feet 4 inches (1932 mm) of clear height under beams, girders, ducts, and similar obstructions.

3. Rooms occupied exclusively for sleeping, study or similar purposes and having a sloped ceiling over all or part of the room, with a clear ceiling height of at least 7 feet (2134 mm) over not less than one-third of the required minimum floor area. In calculating the floor area of such rooms, only those portions of the floor area with a clear ceiling height of 5 feet (1524 mm) or more shall be included.

**404.4 Bedroom and living room requirements.** Every bedroom and living room shall comply with the requirements of Sections 404.4.1 through 404.4.5.

404.4.1 Area Room Area. Every living room shall contain at least 120 square feet (11.2. m<sup>2</sup>) and every bedroom shall contain at least 70 square feet (6.5 m<sup>2</sup>).

404.4.2 Access from bedrooms. Bedrooms shall not constitute the only means of access to other bedrooms or habitable spaces and shall not serve as the only means of egress from other habitable spaces.

EXCEPTIONS: Units that contain fewer than two bedrooms.

404.4.3 Water closet accessibility. Every bedroom shall have access to at least one water closet and one lavatory without passing through another bedroom. Every bedroom in a dwelling unit shall have access to at least one water closet and lavatory located in the same story as the bedroom or an adjacent story.

404.4.4 Prohibited occupancy. Kitchens and nonhabitable spaces shall not be used for sleeping purposes.

404.4.5 Other requirements. Bedrooms shall comply with the applicable provisions of this code including, but not limited to, the light, ventilation, room area, ceiling height and room width requirements of this section; the plumbing facilities and water-heating facilities requirements of Section 16.06.050; the heating facilities and electrical receptacle requirements of Section 16.06.060; and the smoke detector and emergency escape requirements of Section 16.06.070.

**404.5 Overcrowding.** The number of persons occupying a dwelling unit shall not create conditions that, in the opinion of the code official, endanger the life, health, safety or welfare of the occupants.

**404.6 Efficiency unit.** Nothing in this section shall prohibit an efficiency living unit from meeting the following requirements:

1. A unit occupied by not more than one occupant shall have a minimum clear floor area of 120 square feet (11.2 mm<sup>2</sup>) A unit occupied by not more than two occupants shall have a clear floor area of not less than 220 square feet (20.4 m<sup>2</sup>). A unit occupied by three occupants shall have a clear floor area of not less than 320 square feet (29.7 m<sup>2</sup>). These required areas shall be exclusive of the areas required by Items 2 and 3.

2. The unit shall be provided with a kitchen sink, cooking appliance and refrigeration facilities, each having a clear working space of not less than 30 inches (762 mm) in front. Light and ventilation conforming to this code shall be provided.

3. The unit shall be provided with a separate bathroom containing a water closet, lavatory and bathtub or shower.
4. The maximum number of occupants shall be three.

404.7 Food preparation. All spaces to be occupied for food preparation purposes shall contain suitable space and equipment to store, prepare and serve foods in a sanitary manner. There shall be adequate facilities and services for the sanitary disposal of food wastes and refuse, including facilities for temporary storage.

#### 16.06.050 Plumbing Facilities and Fixture Requirements

##### A. GENERAL

501.1 Scope. The provisions of this section shall govern the minimum plumbing systems, facilities and plumbing fixtures to be provided.

501.2 Responsibility. The owner of the structure shall provide and maintain such plumbing facilities and plumbing fixtures in compliance with these requirements. A person shall not occupy as owner-occupant or permit another person to occupy any structure or premises which does not comply with the requirements of this section.

##### B. REQUIRED FACILITIES

502.1 Dwelling units. Every dwelling unit shall contain its own bathtub or shower, lavatory, water closet and kitchen sink which shall be maintained in a sanitary, safe working condition. The lavatory shall be placed in the same room as the water closet or located in close proximity to the door leading directly into the room in which such water closet isolated. A kitchen sink shall not be used as a substitute for the required lavatory.

502.2 Rooming houses. ~~At least~~ Not less than one water closet, lavatory and bathtub or shower shall be supplied for each four rooming units.

502.3 Hotels. Where private water closets, lavatories and baths are not provided, one water closet, one lavatory and one bathtub or shower having access from a public hallway shall be provided for each ten occupants.

502.4 Employees' facilities. A minimum of one water closet, one lavatory and one drinking facility shall be available to employees.

502.4.1 Drinking facilities. Drinking facilities shall be a drinking fountain, water cooler, bottled water cooler or disposable cups next to a sink or water dispenser. Drinking facilities shall not be located in toilet rooms or bathrooms.

502.5 Public toilet facilities shall be maintained in a safe, sanitary and working condition in accordance with the Uniform Plumbing Code. Except for periodic maintenance or cleaning, public access and use shall be provided to the toilet facilities at all times during occupancy of the premises.

## C. TOILET ROOMS

503.1 Privacy. Toilet rooms and bathrooms shall provide privacy and shall not constitute the only passageway to a hall or other space, or to the exterior. A door and interior locking device shall be provided for all common or shared bathrooms and toilet rooms in a multiple dwelling.

503.2 Location. Toilet rooms and bathrooms serving hotel units, rooming units or dormitory units or housekeeping units, shall have access by traversing not more than one flight of stairs and shall have access by traversing not more than one flight of stairs and shall have access from a common hall or passageway.

503.3 Location of employee toilet facilities. Toilet facilities shall have access from within the employees' working area. The required toilet facilities shall be located not more than one story above or below the employees' working area and the path of travel to such facilities shall not exceed a distance of 500 feet (152 m). Employee facilities shall either be separate facilities or combined employee and public facilities.

EXCEPTION: Facilities that are required for employees in storage structures or kiosks, which are located in adjacent structures under the same ownership, lease or control, shall not exceed a travel distance of 500 feet (152 m) from the employees' regular working area to the facilities.

503.4 Floor surface. In other than dwelling units, every toilet room floor shall be maintained to be a smooth, hard, nonabsorbent surface to permit such floor to be easily kept in a clean and sanitary condition.

## D. PLUMBING SYSTEMS AND FIXTURES

504.1 General. All plumbing fixtures shall be properly installed and maintained in working order, and shall be kept free from obstructions, leaks and defects and be capable of performing the function for which such plumbing fixtures are designed. All plumbing fixtures shall be maintained in a safe, sanitary and functional condition.

504.2 Fixture clearances. Plumbing fixtures shall have adequate clearances for usage and cleaning.

504.3 Plumbing system hazards. Where it is found that a plumbing system in a structure constitutes a hazard to the occupants or the structure by reason of inadequate service, inadequate venting, cross connection, backsiphonage, improper installation, deterioration or damage or for similar reasons, the code official require the defects to be corrected to eliminate the hazard.

## E. WATER SYSTEM

505.1 General. Every sink, lavatory, bathtub or shower, drinking fountain, water closet or other plumbing fixture shall be properly connected to either a public water system or to an approved private water system. All kitchen sinks, lavatories, laundry facilities, bathtubs and showers shall be supplied with hot or tempered and cold running water in accordance with the International Uniform Plumbing Code.

505.2 Contamination. The water supply shall be maintained free from contamination, and all water inlets for plumbing fixtures shall be located above the flood-level rim of the fixture. Shampoo basin faucets, janitor sink faucets and other hose bibs or faucets to which hoses are attached and left in place, shall be protected by an

approved atmospheric-type vacuum breaker or an approved permanently attached hose connection vacuum breaker.

505.3 Supply. The water supply system shall be installed and maintained to provide a supply of water to plumbing fixtures, devices and appurtenances in sufficient volume and at pressures adequate to enable the fixtures to function properly, safely, and free from defects and leaks.

505.4 Water heating facilities. Water heating facilities shall be properly installed, maintained and capable of providing an adequate amount of water to be drawn at every required sink, lavatory, bathtub, shower and laundry facility at a temperature of not less than 110oF (43oC). A gas-burning water heater shall not be located in any bathroom, toilet room, bedroom or other occupied room normally kept closed, unless adequate combustion air is provided. An approved combination temperature and pressure-relief valve and relief valve discharge pipe shall be properly installed and maintained on water heaters.

#### F. SANITARY DRAINAGE SYSTEM

506.1 General. All plumbing fixtures shall be properly connected to either a public sewer system or to an approved private sewage disposal system.

506.2 Maintenance. Every plumbing stack, vent, waste and sewer line shall function properly and be kept free from obstructions, leaks and defects.

506.3 Grease interceptors. Grease interceptors and automatic grease removal devices shall be maintained in accordance with this code and the manufacture's installation instructions. Grease inceptors and automatic removal devices shall be regularly serviced and cleaned to prevent the discharge of oil, grease, and other substances harmful or hazardous to the building drainage system, the public sewer, the private sewage disposal system or the sewage treatment plant or processes. Records of maintenance, cleaning and repairs shall be available for inspection by the code official upon request.

#### G. STORM DRAINAGE

507.1 General. Drainage of roofs and paved areas, yards and courts, and other open areas on the premises shall not be discharged in a manner that creates a public nuisance.

### 16.06.060 Mechanical and Electrical Requirements

#### A. GENERAL

601.1 Scope. The provisions of this section shall govern the minimum mechanical and electrical facilities and equipment to be provided.

601.2 Responsibility. The owner of the structure shall provide and maintain mechanical and electrical facilities and equipment in compliance with these requirements. A person shall not occupy as owner-occupant or permit another person to occupy any premises which does not comply with the requirements of this section.

## B. HEATING FACILITIES

602.1 Facilities required. Heating facilities shall be provided in structures as required by this section.

602.2 Residential occupancies. Dwellings shall be provided with heating facilities capable of maintaining a room temperature of 68°F (20°C) in all habitable rooms, bathrooms and toilet rooms based on the winter outdoor design temperature for the locality indicated in Appendix D of the ~~International Plumbing Code~~ Uniform Plumbing Code. Cooking appliances shall not be used to provide space heating to meet the requirements of this section.

EXCEPTION: In areas where the average monthly temperature is above 30°F (-1°C), a minimum temperature of 65°F (18°C) shall be maintained.

602.3 Heat supply. Every owner and operator of any building who rents, leases or lets one or more dwelling units, rooming unit, dormitory or guestroom on terms, either expressed or implied, to furnish heat to the occupants thereof shall supply heat to maintain a temperature of not less than 68°F (20°C) in all habitable rooms, bathrooms, and toilet rooms.

### EXCEPTIONS:

1. When the outdoor temperature is below the winter outdoor design temperature for the locality, maintenance of the minimum room temperature shall not be required provided that the heating system is operating at its full design capacity. The winter outdoor design temperature for the locality shall be as indicated in Appendix D of the ~~International Plumbing Code~~ Uniform Plumbing Code.
2. In areas where the average monthly temperature is above 30°F (-1°C) a minimum temperature of 65°F (18°C) shall be maintained.

602.4 Occupiable work spaces. Indoor occupiable work spaces shall be supplied with heat to maintain a temperature of not less than 65°F (18°C) during the period the spaces are occupied.

### EXCEPTIONS:

1. Processing, storage and operation areas that require cooling or special temperature conditions.
2. Areas in which persons are primarily engaged in vigorous physical activity.

602.5 Room temperature measurements. The required room temperatures shall be measured 3 feet (914 mm) above the floor near the center of the room and 2 feet (610 mm) inward from the center of each exterior wall.

## C. MECHANICAL EQUIPMENT

603.1 Mechanical appliances. All mechanical appliances, fireplaces, solid fuel-burning appliances, cooking appliances and water heating appliances shall be properly installed and maintained in a safe working condition, and shall be capable of performing the intended function.



603.2 Removal of combustion products. All fuel-burning equipment and appliances shall be connected to an approved chimney or vent.

EXCEPTION: Fuel-burning equipment and appliances which are labeled for unvented operation.

603.3 Clearances. All required clearances to combustible materials shall be maintained.

603.4 Safety controls. All safety controls for fuel-burning equipment shall be maintained in effective operation.

603.5 Combustion air. A supply of air for complete combustion of the fuel and for ventilation of the space containing the fuel-burning equipment shall be provided for the fuel-burning equipment.

603.6 Energy conservation devices. Devices intended to reduce fuel consumption by attachment to a fuel-burning appliance, to fuel the supply line thereto, or to the vent outlet or vent piping there from, shall not be installed unless labeled for such purpose and the installation is specifically approved.

#### D. ELECTRICAL FACILITIES

604.1 Facilities required. Every occupied building shall be provided with an electrical system in compliance with the requirements of this section and Section 605.

604.2 Service. The size and usage of appliances and equipment shall serve as a basis for determining the need for additional facilities in accordance with the ICC Electrical Code (NFPA 70). Dwelling units shall be served by a three-wire, 120/240 volt, single-phase electrical service having a rating of not less than 60 amperes.

604.3 Electrical system hazards. Where it is found that the electrical system in a structure constitutes a hazard to the occupants or the structure by reason of inadequate service, improper fusing, insufficient receptacle and lighting outlets, improper wiring or installation, deterioration or damage, or for similar reasons, the code official shall require the defects to be corrected to eliminate the hazard.

604.3.1 Abatement of electrical hazards associated with water exposure. The provisions of this section shall govern the repair and replacement of electrical systems and equipment that have been exposed to water.

604.3.1.1 Electrical equipment. Electrical distribution equipment, motor circuits, power equipment, transformers, wire, cable, flexible cords, wiring devices, ground fault circuit interrupters, surge protectors, molded case circuit breakers, low voltage fuses, luminaries, ballasts, motor and electronic control, signaling and communication equipment that have been exposed to water shall be replaced in accordance with the provisions of the International Building Code and the National Electrical Code (NFPA 70).

#### E. ELECTRICAL EQUIPMENT

605.1 Installation. All electrical equipment, wiring and appliances shall be properly installed and maintained in a safe and approved manner.

605.2 Receptacles. Every habitable space in a dwelling shall contain at least two separate and remote receptacle outlets. Every laundry area shall contain at least one grounded-type receptacle or a receptacle with

a ground fault circuit interrupter. Every bathroom shall contain at least one receptacle. Any new bathroom receptacle outlet shall have ground fault circuit interrupter protection.

605.3 Luminaires. Every public hall, interior stairway, toilet room, kitchen, bathroom, laundry room, boiler room and furnace room shall contain at least one electric luminaire.

605.4 Wiring. Flexible cords shall not be used for permanent wiring, or for running through doors, windows, or cabinets, or concealed within walls, floors, or ceilings.

#### F. ELEVATORS, ESCALATORS AND DUMBWAITERS

606.1 General. Elevators, dumbwaiters and escalators shall be maintained in compliance with American Society of Mechanical Engineers (ASME) A17.1. The most current certification of inspection shall be on display at all times within the elevator or attached to the escalator or dumbwaiter; or the certificate shall be available for public inspection in the office of the building operator. The inspection and tests shall be performed at not less than the periodical intervals listed in ASME A 17.1, Appendix N, except where otherwise specified by the authority having jurisdiction.

606.1.1 Elevators, Escalators and Dumbwaiters shall comply with the State Department of Labor and industries inspection and operation requirements.

606.2 Elevators. In buildings equipped with passenger elevators, at least one elevator shall be maintained in operation at all times when the building is occupied.

EXCEPTION: Buildings equipped with only one elevator shall be permitted to have the elevator temporarily out of service for testing or servicing.

#### G. DUCT SYSTEMS

607.1 General. Duct systems shall be maintained free of obstructions and shall be capable of performing the required function.

#### 16.06.070 Fire Safety Requirements

##### A. GENERAL

701.1 Scope. The provisions of this section shall govern the minimum conditions and standards for fire safety relating to structures and exterior premises, including fire safety facilities and equipment to be provided.

701.2 Responsibility. The owner of the premises shall provide and maintain such fire safety facilities and equipment in compliance with these requirements. A person shall not occupy as owner-occupant or permit another person to occupy any premises that do not comply with the requirements of this section.

##### B. MEANS OF EGRESS

702.1 General. A safe, continuous and unobstructed path of travel shall be provided from any point in a building or structure to the public way. Means of egress shall comply with the International Fire Code.

702.2 Aisles. The required width of aisles in accordance with the International Fire Code shall be unobstructed.

702.3 Locked doors. All means of egress doors shall be readily openable from the side from which egress is to be made without the need for keys, special knowledge or effort, except where the door hardware conforms to that permitted by the International Building Code.

702.4 Emergency escapes openings. Required emergency escape openings shall be maintained in accordance with the code in effect at the time of construction, and the following. Required emergency escape and rescue openings shall be operational from the inside of the room without the use of keys or tools. Bars, grilles, grates or similar devices are permitted to be placed over emergency escape and rescue openings provided the minimum net clear opening size complies with the code that was in effect at the time of construction and such devices shall be releasable or removable from the inside without the use of a key, tool or force greater than that which is required for normal operation of the escape and rescue opening.

#### C. FIRE-RESISTANCE RATINGS

703.1 Fire-resistance-rated assemblies. The required fire-resistance rating of fire-resistance-rated walls, fire stops, shaft enclosures, partitions and floors shall be maintained.

703.2 Opening protectives. Required opening protectives shall be maintained in an operative condition. All fire and smokestop doors shall be maintained in operable condition. Fire doors and smoke barrier doors shall not be blocked or obstructed or otherwise made inoperable.

#### D. FIRE PROTECTION SYSTEMS

704.1 General. All systems, devices and equipment to detect a fire, actuate an alarm, or suppress or control a fire or any combination thereof shall be maintained in an operable condition at all times in accordance with the International Fire Code.

704.1.1 Automatic sprinkler system. Inspection, testing and maintenance of automatic sprinkler systems shall be in accordance with NFPA 25.

704.1.2 Fire department connection. Where the fire department connection is not visible to approaching fire apparatus, the fire department connection shall be indicated by an approved sign mounted on the street front or on the side of the building. Such sign shall have the letters "FDC" not less than 6 inches (152mm) high and words in letters not less than 2 inches (51mm) high or an arrow to indicate the location. Such signs shall be subject to the approval of the fire code official.

704.2 ~~Smoke alarms. Single and multiple-station smoke alarms.~~ Single or multiple-station smoke alarms shall be installed in existing Group I-1 and R occupancies in accordance with Sections 704.2.1 through 704.2.3, and maintained in Groups R-2, R-3, and R-4 and in dwellings not regulated in Group R occupancies, regardless of occupant load at all of the following locations:

- ~~1. On the ceiling or wall outside each separate sleeping area in the immediate vicinity of bedrooms.~~
- ~~2. In each room used for sleeping purposes.~~

~~3.— In each story within a dwelling unit, including basements and cellars but not including crawl spaces and uninhabitable attics. In dwellings or dwelling units with split levels and without an intervening door between the adjacent levels, a smoke alarm installed on the upper level shall suffice for the adjacent lower level provided that the lower level is less than one full story below the upper level.~~

~~Single or multiple-station smoke alarms shall be installed in other groups in accordance with the International Fire Code.~~

704.2.1 Where required. Existing Group I-1 and R occupancies shall be provided with single-station smoke alarms in accordance with Section 704.2.1.1 through 704.2.1.4. Interconnection and power source shall be in accordance with Sections 704.2.2 and 704.2.3.

Exceptions:

1. Where the code that was in effect at the time of construction required smoke alarms and smoke alarms complying with those requirements are already provided.
2. Where smoke alarms have been installed in occupancies and dwellings that were not required to have them at the time of construction, additional smoke alarms shall not be required provided the that existing smoke alarms comply with requirements that were in effect at the time of construction.
3. Where smoke detectors connected to a fire alarm system have been installed as a substitute for smoke alarms.

704.2.1.1 Group R-1. Single-or multiple-station smoke alarms shall be installed in all of the following locations in Group R-1:

1. In sleeping areas.

2. In every room in the path of the means of egress from sleeping area to the door leading from the sleeping unit.

3. In each story within the sleeping unit, including basements. For sleeping units with split levels and without an intervening door between the adjacent levels, a smoke alarm installed on the upper level shall suffice for the adjacent lower level provided that the lower level is less than one full story below the upper level.

704.2.1.2 Groups R-2, R-3, R-4 and I-1. Single-or multiple-station smoke alarms shall be installed and maintained in Groups R-2, R-3, R-4, and I-1 regardless of occupant load at all of the following locations:

1. On the ceiling or wall outside of each separate sleeping area in the immediate vicinity of the bedrooms.

2. In each room used for sleeping purposes.

3. In each story within a dwelling unit, including basements but not including crawl spaces and uninhabitable attics. In dwellings or dwelling units with split levels and without an intervening door between the adjacent

levels, a smoke alarm installed on the upper level shall suffice for the adjacent lower level provided that the lower level is less than one full story below the upper level.

704.2.1.3 Installation near cooking appliances. Smoke alarms shall not be installed in the following locations unless this would prevent placement of a smoke alarm in a location required by Section 704.2.1.1 or 704.2.1.2.

1. Ionization smoke alarms shall not be installed less than 20 feet (6096mm) horizontally from permanently installed cooking appliances.
2. Ionization smoke alarms with an alarm-silencing switch shall not be installed less than 10 feet (3048 mm) horizontally from a permanently installed cooking appliance.
3. Photoelectric smoke alarms shall not be installed less than 6 feet (1829mm) horizontally from a permanently installed cooking appliance.

704.2.1.4 Installation near bathrooms. Smoke alarms shall be installed not less than 3 feet (914mm) horizontally from the door or opening of a bathroom that contains a bathtub or shower unless this would prevent placement of a smoke alarm required by Section 704.2.1.1 or 704.2.1.2.

704.2.2 Interconnection. Where more than one smoke alarm is required to be installed within an individual dwelling or sleeping unit, the smoke alarms shall be interconnected in such a manner that the activation of one alarm will activate all of the alarms in the individual unit. Physical interconnections of smoke alarms shall not be required where listed wireless alarms are installed and all alarms sound upon activation of one alarm. The alarm shall be clearly audible in all bedrooms over background noise levels with all intervening doors closed.

Exceptions:

1. Interconnection is not required in buildings that are not undergoing alterations, repairs or construction of any kind.
2. Smoke alarms in existing areas are not required to be interconnected where alterations or repairs do not result in the removal of interior wall or ceiling finishes exposing the structure, unless there is an attic, crawl space or basement available that could provide access for interconnection without the removal of interior finishes.

704.2.3 Power source. Single-station smoke alarms shall receive their primary power from the building wiring provided that such wiring is served from a commercial source and shall be equipped with a battery backup. Smoke alarms with integral strobes that are not equipped with a battery backup shall be connected to an emergency electrical system. Smoke alarms shall emit a signal when the batteries are low. Wiring shall be permanent and without a disconnecting switch other than as required for overcurrent protection.

Exceptions:

1. Smoke alarms are permitted to be solely battery operated in existing buildings where no construction is taking place.
2. Smoke alarms are permitted to be solely battery operated in buildings that are not served from a commercial power source.

3. Smoke alarms are permitted to be solely battery operated in existing areas of buildings undergoing alterations or repairs that do not result in the removal of interior walls or ceiling finishes exposing the structure, unless there is an attic, crawl space or basement available that could provide access for building wiring without the removal of interior finishes.

~~704.3 Power source. In Group R occupancies and in dwellings not regulated as Group R occupancies, single-station smoke alarms shall receive their primary power from the building wiring provided that such wiring is served from a commercial source and shall be equipped with a battery backup. Smoke alarms shall emit a signal when the batteries are low. Wiring shall be permanent and without a disconnecting switch other than as required for overcurrent protection.~~

~~EXCEPTION: Smoke alarms are permitted to be solely battery operated in buildings where no construction is taking place, buildings that are not serviced from a commercial power source and in existing areas of buildings undergoing alterations or repairs that do not result in the removal of interior wall or ceiling finishes exposing the structure, unless there is an attic, crawl space or basement available which could provide access for building wiring without the removal of interior finishes.~~

704.2.4 Smoke detection system. Smoke detectors listed in accordance with UL268 and provided as part of the buildings fire alarm system shall be an acceptable alternative to single and multiple-station smoke alarms and shall comply with the following:

1. The fire alarm shall comply with all applicable requirements in Section 907 of the International Fire Code.
2. Activation of a smoke detector in a dwelling or sleeping unit shall initiate alarm notification in the dwelling or sleeping unit in accordance with Section 907.5.2 of the International Fire Code.
3. Activation of a smoke detector in a dwelling or sleeping unit shall not activate alarm notification appliances outside of the dwelling or sleeping unit, provided that a supervisory signal is generated and monitored in accordance with Section 907.6.5 of the International Fire Code.

~~704.4 Interconnection. Where more than one smoke alarm is required to be installed within an individual dwelling unit in Group R-2, R-3, R-4 and in dwellings not regulated as Group R occupancies, the smoke alarms shall be interconnected in such a manner that the activation of one alarm will activate all of the alarms in the individual unit. The alarm shall be clearly audible in all bedrooms over background noise levels with all intervening doors closed.~~

**EXCEPTIONS:**

- ~~1. Interconnection is not required in buildings which are not undergoing alterations, repairs, or construction of any kind.~~
- ~~2. Smoke alarms in existing areas are not required to be interconnected where alterations or repairs do not result in the removal of interior wall or ceiling finishes, exposing the structure, unless there is an attic, crawl space or basement available which could provide access for interconnection without the removal of interior finishes.~~

## 16.06.080 Reference Standards

This section lists the standards that are referenced in various sections of this code. The standards are listed herein by the promulgating agency of the standard, the standard identification, the effective date and title and the sections or sections of this code that reference the standard. The application of the referenced standards shall be as specified in Section 102.7.

Standard Reference Number	Title	Referenced in Code Section Number
<u>ASME A17.1/CSA B44 2013</u>	<u>Safety Code for Elevators and Escalators</u>	<u>606.1</u>
<u>ASTM F1346-91 (2010)</u>	<u>Performance Specifications for Safety Covers and Labeling Requirements for all Covers for Swimming Pools, Spas and Hot Tubs.</u>	<u>303.2</u>
<u>ICC IBC 15</u>	<u>International Building Code</u>	<u>102.3, 201.3, 401.3, 702.3</u>
<u>ICC IEBC 15</u>	<u>International Existing Building Code</u>	<u>305.1.1, 306.1.1</u>
<u>IFC 15</u>	<u>International Fire Code</u>	<u>201.3, 604.3.1.1, 604.3.2.1, 702.1, 702.2, 704.1, 704.2</u>
<u>IFGC 15</u>	<u>International Fuel Gas Code</u>	<u>102.3</u>
<u>IMC 15</u>	<u>International Mechanical Code</u>	<u>102.3, 201.3</u>
<u>UPC 15</u>	<u>International Plumbing Code</u>	<u>201.3, 505.1, 602.2, 602.3</u>
<u>IRC 15</u>	<u>International Residential Code</u>	<u>102.3, 201.3</u>
<u>NFPA 25-14</u>	<u>Standard for the Inspection, testing and maintenance of Water-based Fire Protection Systems</u>	<u>704.1.1</u>
<u>NFPA 70-14</u>	<u>National Electrical Code</u>	<u>102.4, 201.3, 604.2</u>
<u>ICC EC-03</u>	<u>ICC Electrical Code TM Administrative Provisions</u>	<u>201.3, 604.2</u>
<u>IBC-03</u>	<u>International Building Code ®</u>	<u>201.3, 401.3, 702.3</u>
<u>IEBC-03</u>	<u>International Existing Building Code™</u>	<u>101.3, 102.3, 201.3</u>
<u>IFC-03</u>	<u>International Fire Code ®</u>	<u>201.3, 702.1, 702.2, 704.1, 704.2</u>
<u>IMC-03</u>	<u>International Mechanical Code ®</u>	<u>201.3</u>
<u>IPC-03</u>	<u>International Plumbing Code ®</u>	<u>201.3, 505.1, 602.2, 602.3</u>
<u>IZC-03</u>	<u>International Zoning Code®</u>	<u>102.3, 201.3</u>

**Section 3. Amendment of OMC 16.32. Olympia Municipal Code Chapter 16.32 is hereby amended to read as follows:**

**Chapter 16.32  
FIRE CODE**

16.32.000 Chapter Contents

Sections:

- 16.32.020 Definitions.
- 16.32.045 Inspection fee -- Assessed.
- 16.32.046 Inspection fee -- Payment obligation.
- 16.32.047 Inspection fee -- Collection procedure.
- 16.32.048 Inspection fee -- Applicability.
- 16.32.050 Access roadways for fire apparatus.
- 16.32.053 Chapter 9, Section 904 amended.
- 16.32.060 Flammable liquid storage.
- 16.32.070 Liquefied petroleum gas storage.
- 16.32.080 Add Section 905.11, International Fire Code -- Standpipe Systems in Marinas.
- 16.32.090 Deletions.
- 16.32.095 Adoption of codes of National Fire Protection Association.
- 16.32.100 Enforcement.
- 16.32.110 Violations -- Misdemeanor -- Gross Misdemeanor -- Civil Infraction.
- 16.32.120 International Fire Code , Appeals.
- 16.32.130 Add Subsection 3001.3 Compressed Natural Gas to International Fire Code Section 3001.
- 16.32.140 Amendment of Section 903.2.7 of the International Fire Code .

**16.32.020 Definitions**

For the purposes of this chapter:

- A. Corporation Counsel. Whenever "corporation counsel" is used in the International Fire Code , it means the city attorney of the city of Olympia.
- B. Jurisdiction. Whenever "jurisdiction" is used in the International Fire Code , it means the city of Olympia.
- C. For the purpose of this chapter, whenever the term "bulk storage" is used in the International Fire Code , it means a single or multiple container exceeding 124 gallons (472.3L) water capacity.

**16.32.045 Inspection fee -- Assessed**

The fire chief, or his or her designee, is authorized to assess a base rate for inspections made of commercial and multifamily buildings under International Fire Code Chapter 1, Section 104 . The base rate shall be



assessed at the time the inspection is made. The initial amount of said base rate shall be based on the following formula for each building or occupancy as determined by the fire chief or his or her designee:

(Square Foot Factor)\* multiplied by (Degree of Difficulty Factor)\*\* multiplied by (Base Rate)\*\*\* = Inspection Fee

\*Square Foot Factor:

#1	=	0 - 1,000 Sq. Ft.
#2	=	1,001 - 3,000 Sq. Ft.
#3	=	3,001 - 10,000 Sq. Ft.
#4	=	10,001 - 40,000 Sq. Ft.
#5	=	40,001 - 80,000 Sq. Ft.
#6	=	80,001 Sq. Ft. or higher

\*\* Degree of Difficulty Factor:

#1 - Low. Basic fire inspection on fire extinguishers, exiting, combustible storage, minimal International Fire Code knowledge.

#2 - Medium. Basic (1) plus knowledge on hood/duct systems, fire extinguishing systems, fire alarm systems. Considerable knowledge on International Building Code , International Fire Code , and their adopting ordinances, National Fire Protection Association 13 (Installation of Sprinkler Systems), National Fire Protection Association 72 (National Fire Alarm Code), National Fire Protection Association 96 (Ventilation Control and Fire Protection of Commercial Cooking Operation).

#3 - High. Extensive knowledge of (1) and (2) plus International Building Code , International Fire Code , National Fire Protection Association, National Electrical Code, International Mechanical Code , and their adopting ordinances. Special hazards, flammable and combustible liquids, special systems (CO2-Carbon Dioxide Extinguishing System).

\*\*\* Base Rate = \$39.00 commencing January 1, 2009. Commencing January 1, 2010 and each year thereafter on January 1, the Base Rate shall be increased by the Seattle CPI-W (June) for the previous year, but no less than two percent (2%). Such Base Rate increases shall be rounded up to the nearest dollar.

This fee shall cover the initial inspection and one follow-up visit. Any additional follow-up inspections necessitated by noncompliance and inspections for which no fee is specifically indicated, shall be billed at \$85.00 per hour.

#### **16.32.046 Inspection fee -- Payment obligation**

The obligation to pay the fee assessed in Section 16.32.045 shall fall to the tenant or the owner of the building as determined pursuant to an inspection accounts process established by the Olympia Fire Department.

#### **16.32.047 Inspection fee -- Collection procedure**

The fees established in Section 16.32.045 shall be billed directly to the party responsible by the director of administrative services. For accounts delinquent for more than 30 days, the director is authorized to assess a monthly fee of \$5.00 or one percent, whichever is greater, and may revoke the business license of the party responsible after giving that party an informal hearing to show cause why the license should not be revoked; or the director may use any other lawful means to collect the obligation, including the use of collection agencies.

#### **16.32.048 Inspection fee -- Applicability**

Sections 16.32.045 through 16.32.048 shall equally apply to buildings owned or leased or otherwise used by other governmental jurisdictions and to buildings generally for which a business license has not been procured, insofar as such buildings are within the coverage of the International Fire Code . Collection of the fees from said jurisdiction shall be accomplished by any available legal means.

#### **16.32.050 Access roadways for fire apparatus**

A. Every building hereafter constructed shall be accessible to fire department apparatus by way of access roadways constructed to the standards contained in the Development Guidelines and Public Works Standards adopted by reference in this code, and capable of supporting the imposed loads of fire apparatus and having a minimum of 13' 6" of vertical clearance. All required roadways in excess of 150' that dead end shall have a turnaround area with a minimum inside radius of 30' with a minimum of 20' unobstructed roadway measured from any point on the perimeter. In addition, all required access roadway grades shall conform to the following:

1. Positive transition grades shall be no greater than ten percent in 20' measured at any point. Steeper grades in 20' behind the sidewalk may be allowed if profiles are submitted to the engineering and fire departments for approval, including a design grade that will allow clearance for fire apparatus.
2. Negative transition grades shall be no greater than eight percent for a distance of 12'. Steeper grades in 12' behind the sidewalk may be allowed if profiles are submitted to the engineering and fire departments for approval, indicating a clearance for fire apparatus.
3. Roadway and driveway surfaces shall be all weather (one layer of asphalt over approved base per City of Olympia Engineering Design Standards) prior to the commencement of vertical combustible construction.

Exception: When there are not more than two group R, Division 3 or M occupancies, as defined in the building code, the requirement of this section may be modified when, in the opinion of the chief, firefighting or rescue operations would not be impaired.

B. The required width of access roadways shall not be obstructed in any manner, including parking vehicles, NO PARKING/FIRE LANE signs and/or other appropriate notice prohibiting obstructions may be required and shall be maintained.

C. The access roadway shall be extended to within 150' of all portions of the exterior walls of the first story of any building. Where the access roadway cannot be provided, approved fire protection system or systems shall be provided as required and approved by the chief.

D. Where fire protection systems approved by the chief are provided, the clearances required in this section may be modified.

E. The chief shall have the authority to require an increase in the minimum access widths where such width is not adequate for fire or rescue operations.

F. Access width requirements:

1. Twenty (20) feet:

- a. All commercial development - no exceptions.
- b. Three or more single family.
- c. More than two duplexes.
- d. Apartment buildings.

2. Fifteen (15) feet:

- a. Two or fewer single family or two duplexes.

3. Twelve (12) feet:

- a. Under certain conditions, the Olympia Fire Department, at its discretion, will allow a reduction in access.

4. Turn-around required:

- a. When required:

- i. Three single family dwellings or more.
  - ii. Three duplex structures or more.
  - iii. Apartment buildings.
- b. Thirty-foot inside radius with 20-foot minimum width for streets/driveways in excess of 150 feet.

Where their standards cannot be met due to impracticality, the Fire Chief may allow fixed fire protective systems to substitute for required roadways and turn-arounds.

#### 16.32.053 Chapter 9, Section 904 amended

For installation of commercial type food heat processing equipment that produces grease laden vapors, NFPA 96 and the most current adopted Edition of the International Mechanical Code, 2012 Edition shall be used, to include hood and ducts, spacing from combustibles including shaft enclosures, and fire extinguishing systems.

1. All new installations, reinstallations or retrofits shall conform to the requirements of FM300 or NFPA 17A.
2. In no case shall a dry chemical suppression system be installed, reinstalled, altered or expanded.
3. Where a conflict occurs between NFPA 96 and the International Mechanical Code, the more restrictive applies.

#### **16.32.060 Flammable liquid storage**

The areas referred to in Chapter 57, Section 5704.2 of the International Fire Code where storage of flammable or combustible liquids in outside aboveground tanks is prohibited are established as follows: All use districts as defined in the zoning ordinance of the city, except UW urban waterfront districts, LI-C light industrial commercial districts and I industrial districts; provided that aboveground tanks for collection of used motor oil from the public may be permitted in any zone when in compliance with WAC 212-51 and approved by the fire department.

#### **16.32.070 Liquefied petroleum gas storage**

The areas referred to in Chapter 61 of the International Fire Code where the bulk storage (single or multiple containers greater than 500 gallons water capacity) of liquefied petroleum gas is prohibited are established as follows: All use zones as described in the zoning ordinance of the city, except UW urban waterfront districts, LI-C light industrial commercial districts and I industrial districts.

### **16.32.080 Add Section 905.11, International Fire Code -- Standpipe Systems in Marinas**

The following standards are added as supplements to the International Fire Code, ~~2012 Edition~~ 2015 Edition, Chapter 36, and shall be the standard for installation of standpipe systems in marinas:

1. All portions of floats exceeding 250 feet in distance from the point of fire apparatus access shall be provided with an approved dry standpipe system, installed in conformity with NFPA 14 and Chapter 36 of the International Fire Code, ~~2012 Edition~~ 2015 Edition.
2. Hose stations shall be provided at 150-foot intervals, with the most remote station a maximum of 75 feet from the end of the float. Each hose station shall be provided with two 2-1/2 inch standpipe valves with 2-1/2 inch to 1-1/2 inch reducers with caps. Installation of fire hose is not mandatory at standpipe locations. All hose station risers shall be galvanized steel.
3. Each standpipe system shall be provided with a minimum of two 2-1/2" Fire Department connections. The Fire Department connection shall be located on the shore end of the first floating dock.
4. Piping shall be minimum schedule 40 class and shall be sized to deliver 300 GPM at 65 psi residual pressure at the most remote station with a delivered pressure of 150 psi at the Fire Department connection.
5. Sectional valves shall be provided at the change of direction of each float and at each hose station. The valve shall be downstream of the hose station.
6. Each hose station shall be provided with a 4A 40 BC fire extinguisher.
7. An alarm system shall be provided, with manual fire alarm station at each hose station, visual and audible devices and shall be extended to an approved alarm receiving agency. All covered moorage in excess of 5,000 square feet shall be provided with automatic detection.
8. Pressure test. The system shall be pretested by the installing company prior to final test witnessed by the Olympia Fire Department. The system must withstand 200 psi for two hours. The final test will determine if rated flow can be supplied at most remote hose station.

### **16.32.090 Deletions**

The following sections are deleted from the International Fire Code, ~~2012 Edition~~ 2016 Edition, and shall not be considered part of the Olympia fire code: Appendix A; Appendix C; Appendix D, 907.3; Appendix J.

### **16.32.095 Adoption of codes of National Fire Protection Association**

In addition to other provisions of this chapter, fire alarm systems shall be governed by NFPA 72.

### **16.32.100 Enforcement**

The International Fire Code shall be enforced by the chief of the fire department or his/her authorized representatives including a fire marshal, assistant fire marshal, and fire inspectors.

### **16.32.100 Enforcement**

The International Fire Code shall be enforced by the chief of the fire department or his/her authorized representatives including a fire marshal, assistant fire marshal, and fire inspectors.

### **16.32.110 Violations -- Misdemeanor -- Gross Misdemeanor -- Civil Infraction**

A. Any person, firm, or corporation who knowingly violates or fails to comply with any term or provision of this chapter shall be deemed to have committed a misdemeanor, and if found guilty, shall be subject to a fine not to exceed One Thousand Dollars (\$1,000), and/or to imprisonment not to exceed ninety (90) days or to both such fine and imprisonment. Each day shall be a separate offense. In the event of a continuing violation or failure to comply, the second and subsequent days shall constitute a gross misdemeanor punishable by a fine not to exceed Five Thousand Dollars (\$5,000) and/or imprisonment not to exceed three hundred and sixty-five (365) days or both such time and imprisonment. Continuing violation shall mean the same type of violation which is committed within a year of the initial violation.

B. As an additional concurrent penalty, it shall be a civil infraction for a person, firm, or corporation to violate or fail to comply with any term or provision of this chapter. Each day shall be a separate infraction. A person, firm, or corporation found to have committed a civil infraction shall be assessed a monetary penalty as follows:

1. First offense: Class 3 (\$50), not including statutory assessments.
2. Second offense arising out of the same facts as the first offense: Class 2 (\$125), not including statutory assessments.
3. Third offense arising out of the same facts as the first offense: Class 1 (\$250), not including statutory assessments.

See also OMC Chapter 4.44, Uniform Civil Enforcement.

### **16.32.120 International Fire Code , Appeals**

Appeals under this chapter may be made pursuant to OMC 18.75.

**16.32.130 Add Subsection 3001.3 Compressed Natural Gas to International Fire Code Section 3001**

3001.3 Compressed Natural Gas. The areas referred to in Section 3001 of the new International Fire Code where the bulk storage of compressed natural gas is prohibited are established as follows: All zones as described in the zoning ordinance of the city, except UW urban waterfront districts, LI-C light industrial commercial districts, and I industrial districts.

**16.32.140 Amendment of Section 903.2.7 of the International Fire Code**

OMC Section 16.32.140. Amendment of Section 903.2.7 . Section 903.2.7 of the International Fire Code is hereby amended to read as follows:

903.2.7 Group R. Except as provided in Section 903.2.7.1 below, an automatic sprinkler system installed in accordance with Section 903.3 shall be provided throughout all buildings with a Group R fire area.

903.2.7.1 . Group R-3. Automatic Sprinkler System Requirements. A fully automatic residential fire sprinkler system shall be designed, installed, tested and maintained per N.F.P.A. (National Fire Protection Association) 13D, current edition, RCW 18.160 and the approval of the Fire Chief, in all Group R-3 structures (including additions and alterations to structures with existing sprinkler systems) when:

(a) the structures are constructed within subdivisions in which internal streets are required to be constructed in accordance with the provisions of Chapter 4, Standard Plan 4-2J of the Engineering Design and Development Standards, as the same were amended in December, 2006, except as provided below; and

(b) the application for subdivision approval for the subdivision in which the structure is located became vested by operation of law on or after December 1, 2006.

EXCEPTIONS:

- a. Detached carports and greenhouses
- b. Sheds and auxiliary structures under 200 square feet and not used for human habitation.

**Section 4. Amendment of OMC 16.40.080. Olympia Municipal Code Section 16.04.080 is hereby amended to read as follows:**

**16.40.080 Standpipe requirements**

In occupancies three stories or more but less than 150 feet in height, except Group R Division 3(6), including basement levels, wet standpipes may serve to supply fire sprinklers when properly sized for that service. Standpipe outlets shall be provided with 2 ½ inch to 1 ½ inch reducer caps. Caps shall be provided with a 1/8 inch drilled weep hole.

**Section 5. Amendment of OMC 16.40.090. Olympia Municipal Code Section 16.04.090 is hereby amended to read as follows:**

**16.40.090 Sprinkler System Standards**

- A. Three (3) sets of shop drawings including three (3) copies of details of the double check detector check assembly, riser diagram and sectional of structure, shall be submitted to the City of Olympia for review and approval prior to commencement of installation. The contract value shall be affixed to the plans as well as a copy of the maintenance contract.
- B. A plan check fee shall be paid to the City of Olympia at the time plans are submitted.
- C. The required fire protection systems permit must be obtained from the city prior to commencement of work. If a contractor starts work without a permit, a stop work order will be issued until such permit is secured. If a contractor continues to work without a permit, a citation will be issued with a fine of up to \$500.00 per day for every day the contractor works without a permit.
- D. When a building is required to be provided with a fire sprinkler system, said system shall cover all areas of the structure including concealed spaces, vaults and exterior combustible appurtenances.
- E. Mixed use buildings shall be designed to NFPA 13 Standards throughout.
- F. The final acceptance of any sprinkler shall be subject to performance of all required testing and inspections during installation and performance tests in conjunction with fire alarm acceptance tests. No Certificate of Occupancy shall be granted for the structure until satisfactory acceptance tests are accomplished.
- G. A double check detector check assembly is required on all sprinkler systems. The double back flow may be inside the building. If the back flow assembly is inside the building, the water main lateral for the system shall be approved by the Engineering Department, including plan submittal. The outside stem & yoke (OS&Y) valves shall be provided with electrical tamper supervision tied into the building fire alarm system. Exception: OS&Y valves in vaults may be supervised with a chain and lock.
- H. All systems, except residential systems, shall be provided with a yard or wall PI control valve which is easily accessible. The wall PI valve shall be 30" to 42" above exterior grade level.
- I. Floor control valves, with electrical tamper supervision and flow switches, are required on structures of two or more levels. Basements and/or parking areas are considered levels. All valves shall be no more than 6 feet high from finish floor height.
- J. The fire department connection (FDC) shall be located within 40 feet of the nearest fire hydrant. The FDC, if remote from the building, shall be provided with a ball drip valve below the freeze line. The FDC shall be located 30" to 42" above finished grade.
- K. All drains and test valves shall be piped to discharge to the exterior in a safe location. A remote inspector test valve shall be provided on wet and dry systems.
- L. All wet systems shall be provided with riser mounted water flow detection devices and dry systems shall be provided with pressure switches.



- M. All systems shall be installed as prescribed in NFPA 13, 13D, 13R, 2010 Editions.
- N. All electrical components shall be compatible with the fire alarm system voltage, including the water flow bell.
- O. The sprinkler system shall cause a water flow alarm indicating the floor or origin.
- P. All systems will require witness of underground flushing and hydrostatic tests for underground piping. Interior pipe inspection must be performed prior to cover. All inspections require a minimum of 48 hours' notice prior to inspection.
- Q. All hydraulic calculated systems shall have the following information on the plans at time of submittal:
1. Water supply information including graph showing availability versus system demand;
  2. Hydraulic reference points;
  3. System design criteria;
  4. Actual calculated requirements; and
  5. Hydraulic calculation sheets.
- R. All hydraulic calculated systems shall start calculations with a minimum 7 psi at the furthest remote head. A 10% minimum safety factor is required for calculated systems.
- S. Hydraulic calculation plates shall be permanently affixed to each system riser.
- T. Valves on connections to water supplies, sectional control valves, and other valves in supply pipes to sprinklers shall be supervised only by the following methods:
1. Central station, proprietary, remote station signaling service.
  2. Valves locked in the open position, when valves are accessible to the public.
- U. Systems serving R-1 and R-2 occupancies (13-R Systems) shall have protection in bathrooms ~~with combustible fixtures, (except powder rooms and water closets)~~, closets exceeding 24 square feet, and covered patios or decks.
- V. Fire sprinkler systems serving one and two family dwellings (13-D systems) in addition to NFPA 13-D Standards shall have protection in all bathrooms (except powder rooms and water closets), closets greater than 24 square feet or in which the smallest dimension is greater than 36 inches, and at least one sprinkler head in the garage (additional heads in garage may be required for extra-large or tandem garages). Townhomes protected with 13-D systems shall also have covered decks protected with a dry side wall head.

**Section 6. Amendment of OMC 16.44.080. Olympia Municipal Code Section 16.44.080 is hereby amended to read as follows:**

**16.44.080 Fire alarm center monitoring**

A. Where provisions of this chapter require extension of a fire alarm system, it shall be by one of the following methods:

1. Approved digital alarm communication systems;
2. Approved radio signal transmission.

B. All structures or buildings which are ~~7,500~~ 5000 square feet or more in total floor area, that are required to have fixed fire protection systems, shall have the fire alarm system connected to an approved fire alarm center as set forth in this section.

**Section 7. Amendment of OMC 16.44.130. Olympia Municipal Code Section 16.44.130 is hereby amended to read as follows:**

**16.44.130 Occupancy requirements**

Fire alarm systems shall be provided in all occupancies as specified in this section and as requested in Section 907 , IFC (except Section 907.3) in all structures which exceed ~~7,500~~ 5000 square feet gross floor area. Manual stations may be deleted or the required number lessened at the discretion of the fire chief or his representative.

The requirement for automatic fire detector devices may be waived, if not otherwise required by the International Building Code , when the building is fully protected by an approved automatic fire extinguishing system equipped with the water flow alarm connected to the building fire alarm system.

For the purpose of this subsection, portions of buildings separated by an area separation wall as defined in the International Building Code shall not define separate buildings.

**Section 8. Severability.** If any provision of this Ordinance or its application to any person or circumstance is held invalid, the remainder of the Ordinance or application of the provisions to other persons or circumstances shall remain unaffected.

**Section 9. Ratification.** Any act consistent with the authority and prior to the effective date of this Ordinance is hereby ratified and affirmed.

**Section 10. Effective Date.** This Ordinance shall take effect five (5) days after publication, as provided by law.

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MAYOR

**ATTEST:**

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CITY CLERK

**APPROVED AS TO FORM:**

  
DEPUTY CITY ATTORNEY

**PASSED:**

**APPROVED:**

**PUBLISHED:**



## City Council

### Growth Management Act (GMA) Periodic Review Resolution

**Agenda Date:** 6/14/2016  
**Agenda Item Number:** 4.F  
**File Number:** 16-0702

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**Type:** resolution **Version:** 1 **Status:** Consent Calendar

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#### Title

Growth Management Act (GMA) Periodic Review Resolution

#### Recommended Action

##### Committee Recommendation:

Not referred to a committee by City Council. The Land Use and Environment Committee received a briefing on this resolution at its May 19, 2016 meeting.

##### City Manager Recommendation:

Move to adopt the Resolution clarifying that the City of Olympia is in compliance with the Growth Management Act (GMA) requirements for a periodic review of its comprehensive plan and development regulations.

#### Report

##### Issue:

Whether to adopt the attached resolution clarifying that the City of Olympia is in compliance with the GMA requirements for a periodic review of its comprehensive plan and development regulations.

##### Staff Contact:

Leonard Bauer, Deputy Director, Community Planning & Development, (360) 753-8206,  
[lbauer@ci.olympia.wa.us](mailto:lbauer@ci.olympia.wa.us) <<mailto:lbauer@ci.olympia.wa.us>>

##### Presenter(s):

Leonard Bauer, Deputy Director, Community Planning & Development

#### Background and Analysis:

Section 36.70A.130 of the Revised Code of Washington (RCW) contains requirements of the GMA that cities and counties periodically review, and revise if necessary, their comprehensive plans and development regulations. Cities and counties that fail to meet the deadlines established in RCW 36.70A.130 may not be eligible for state grants and loans.

Under the schedule established in RCW 36.70A.130(5), the deadline for the City of Olympia to complete its periodic review is June 30, 2016. An additional year is granted in RCW 36.70A.130(7) for periodic review of the City's critical areas development regulations, if the City has completed the

periodic review of its comprehensive plan and all other development regulations by June 30, 2016.

The City Council updated its Comprehensive Plan by adopting Ordinance #6945 on December 16, 2014. Exhibit B of that ordinance identified specific proposed amendments to the City development regulations necessary to ensure they remain consistent with its updated comprehensive plan (items identified by an asterisk in the attached Table of Development Regulations Amendments). This attachment also demonstrates the necessary amendments have all been completed.\* By completing these amendments, the City has completed its GMA-required periodic review of its development regulations.

*[\*Note that one of the initially-identified amendments, regarding zoning of the Capitol Campus, is no longer necessary as zoning and land use authority over the Capitol Campus rests with the State of Washington by statute.]*

The attached resolution clarifies that the City of Olympia complies with the periodic review requirements of RCW 36.70A.130 because it has reviewed and updated its comprehensive plan and development regulations prior to June 30, 2016. As a result, the City automatically qualifies for a one-year extension for completing the required review and update of its critical areas ordinance. The Olympia Planning Commission held a public hearing on a draft update to the City's critical areas ordinance on June 6, 2016, and will be making a recommendation to the City Council in the near future.

Upon adoption by the City Council, the resolution will be delivered to the State Department of Commerce to confirm the City's continued eligibility for state grants and loans.

**Neighborhood/Community Interests:**

There is city-wide interest in the City's comprehensive plan and development regulations.

**Options:**

1. Adopt the Resolution clarifying that the City of Olympia is in compliance with the GMA requirements for a periodic review of its comprehensive plan and development regulations.
2. Modify the Resolution.
3. Choose not to adopt a Resolution confirming the City's compliance with GMA periodic review requirements. *[Note: This option may create uncertainty by various state agencies as to whether the City remains eligible for state grants and loans.]*

**Financial Impact:**

No direct impacts. If the Resolution is not adopted before June 30, 2016, there may be uncertainty by various state agencies as to whether the City remains eligible for state grants and loans.

**Attachments:**

Resolution  
Table of Development Regulations Amendments

**A RESOLUTION OF THE CITY OF OLYMPIA, WASHINGTON, that the City of Olympia is in compliance with the requirements of RCW 36.70A.130**

WHEREAS, the City of Olympia is required to plan under the Washington Growth Management Act under RCW 36.70A.040; and

WHEREAS, RCW 36.70A.130(1) requires the City of Olympia to take legislative action to review and, if needed, revise its comprehensive plan and development regulations, including its policies designating and protecting critical areas, to comply with the requirements in Chapter 36.70A RCW, a process known as "periodic review", and

WHEREAS, under the schedule established in RCW 36.70A.130(5), the deadline for the City of Olympia to complete its periodic review is June 30, 2016; and

WHEREAS, with the RCW 36.70A.130(7) requirement that a city that has complied with the periodic update requirements of RCW 36.70A.130 with respect to its comprehensive plan and development regulations (other than regulations to protect critical areas), the City is making reasonable progress toward completing its periodic review, and is therefore provided an additional year to take legislative action to update its development regulations with respect to protecting critical areas; and

WHEREAS, the City of Olympia completed its periodic review and update with respect to its comprehensive plan on December 16, 2014, by adopting Ordinance #6945; and

WHEREAS, in Ordinance #6945 the Olympia City Council also found that the City had completed a review of its development regulations as required in RCW 36.70A.130, and identified specific proposed amendments to its development regulations necessary to ensure the development regulations remain consistent with its updated comprehensive plan, listed in Exhibit B of Ordinance #6945; and

WHEREAS, the City of Olympia has adopted the following revisions to its development regulations as identified in Ordinance #6945:

OMC 18.59.050-060, Ord. #6952, February 24, 2015

OMC 18.40.060, Ord. # 6973, July 21, 2015

Official Zoning Map and Design Review Map, Ord. #6974, August 18, 2015

OMC 18.58, 18.59.060, 4.40.010 and 18.82.240, Ord. #7013, June 7, 2016; and

WHEREAS, the City Council finds that an additional revision to its zoning map that was listed in Exhibit B of Ordinance #6945, which would address the State Capitol Campus, is not necessary because the State Capitol Campus Committee has land use authority over the State Capitol Campus which supersedes City zoning and land use authority; and

WHEREAS, the City of Olympia has completed a review of its development regulations that protect critical areas, and a schedule to complete its update of those regulations; and

WHEREAS, under RCW 36.70A.130(7)(b) the City of Olympia is considered to be in compliance with the schedules in RCW 36.70A.130(5); and

WHEREAS, notice of all amendments to the comprehensive plan and development regulations adopted to fulfill the requirements of RCW 36.70A.130 was sent to the Washington State Department of Commerce at least sixty days before the amendments were adopted, in accordance with RCW 36.70A.106; and

WHEREAS, this Resolution meets the goals and requirements of the Growth Management Act for the City of Olympia's periodic review of its comprehensive plan and development regulations; and

WHEREAS, this Resolution is supported by documents on file with the City of Olympia, and

WHEREAS, Chapters 35A.63 and 36.70A RCW and Article 11, Section 11 of the Washington State Constitution authorize and permit the City to adopt this Resolution;

**NOW, THEREFORE, THE OLYMPIA CITY COUNCIL RESOLVES AS FOLLOWS:**

**Section 1.** Based on its review of the requirements of Chapter 36.70A RCW and of the ordinances adopted to meet the requirement of RCW 36.70A.130, the City Council hereby finds and declares that the City of Olympia's comprehensive plan and development regulations, as revised by the ordinances listed above, comply with the requirements of Chapter 36.70A RCW, and that the City of Olympia has complied with the periodic review requirements of RCW 36.70A.130.

**Section 2.** That the City of Olympia's compliance with the periodic review requirements of RCW 36.70A.130 include adoption of a revised comprehensive plan, adoption of necessary revisions to its development regulations other than those protecting critical areas, and reasonable progress toward periodic review of its development regulations protecting critical areas.

**Section 3.** That the City of Olympia's compliance with the periodic review requirements of RCW 36.70A.130 retain its full eligibility for grants and loans in accordance with RCW 36.70A.

**Section 4. Severability.** If any provision of this Resolution or its application to any person or circumstance is held invalid, the remainder of the resolution or application of the provisions to other persons or circumstances shall remain unaffected.

**Section 5. Ratification.** All recitals in support of this Resolution are also findings in support of this Resolution.

**Section 6. Effective Date.** This Resolution is effective immediately.

\_\_\_\_\_  
MAYOR

**ATTEST:**

\_\_\_\_\_  
CITY CLERK

**APPROVED AS TO FORM:**

Darren Niemaber PCA  
CITY ATTORNEY

**PASSED:  
APPROVED:  
PUBLISHED:**

# DEVELOPMENT CODE AMENDMENTS FOR NEW COMPREHENSIVE PLAN *'THE FIRST SET'*

No.	AMENDMENT	SUMMARY	CODE SECTION	IMPLEMENTS	STATUS
1*	REZONE CRITERIA	Update of criteria used to evaluate rezone requests	OMC 18.59.050-060	Land Use chapter	Approved by City Council February 2015
2*	CAPITOL CAMPUS REZONE	To reflect new Plan and special status of State's Capitol Campus	Zoning map	Future Land Use map	Recommended by OPC; legal counsel for City and State advise not necessary because land use authority for Capitol Campus granted to the State by statute
3*	LOTT REZONE	Change treatment plant site from Industrial to Urban Waterfront; plus clerical 'upkeep' of map	Zoning map	Future Land Use map	Approved by City Council August 2015
4	LONG-TERM 'CAMPUS' APPROVALS	Provision for longer (more than 4 years) approval of plans for development sites over 20 acres	To be determined	Land Use policy 15.6	Staff to present proposal to Planning Commission in 2016
5	'CITY STREET' DESIGN REVIEW	Expansion of commercial design requirements to most sites along public streets	OMC 18.100.060	Land Use policy 6.1	Planning Commission held public hearing; deliberations continuing
6*	MULTI-FAMILY 'BUFFERS'	Reduce housing-mix threshold to 5 acres (now 10) in RM-18 and RMU zones	OMC 18.40.060.N.1.a	Land Use policy 16.12	Approved by City Council July 2015
7	REZONE HEARING BODY	Determine whether various types of rezoning proposals are to be heard by Hearing Examiner or Planning Commission	Chapter 18.58	Not Plan implementing	To be considered by City Council June 7, 2016
8	REZONE REVIEW TIMING	Proposal to limit when rezoning proposals are considered by collecting into annual sets	Chapter 18.58	Result of Plan update comments	Approved by City Council July 2015
9	BUS CORRIDOR PARKING	Reduction of on-site parking requirements along some streets	Chapter 18.38	Trans. policy 17.7	In Planning Commission's 2016 work plan
10*	CRITICAL AREAS CODE	Review and update to comply with Growth Management Act (phase 1 of critical areas update)	Chapter 18.32	Natural Env. policy 1.2	Planning Commission public hearing June 6, 2016

\*Final action no later than June 30, 2016, as required by RCW 36.70A.130





## City Council

### Approval of Appropriation of Transportation Impact Fees for Right-of-Way Acquisition

**Agenda Date:** 6/14/2016  
**Agenda Item Number:** 4.G  
**File Number:** 16-0660

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**Type:** ordinance **Version:** 2 **Status:** 2d Reading-Consent

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#### **Title**

Approval of Appropriation of Transportation Impact Fees for Right-of-Way Acquisition

#### **Recommended Action**

##### **Committee Recommendation:**

Not referred to a committee.

##### **City Manager Recommendation:**

Move to approve the appropriation of transportation impact fees for acquiring right-of-way for the Log Cabin Road Extension on second reading.

#### **Report**

##### **Issue:**

Whether to appropriate transportation impact fees for acquiring right-of-way.

##### **Staff Contact:**

Mark Russell, P.E., Director of Transportation, Public Works, 360.753.8762

##### **Presenter(s):**

None - Consent Calendar Item

##### **Background and Analysis:**

Background and analysis has not changed from First to Second reading.

Projections indicate significant growth in southeast Olympia over the next 20 years. The City needs to plan for a transportation system that accommodates this growth. The Regional Transportation Plan includes a future extension of Log Cabin Road from Boulevard Road to Wiggins Road. The Log Cabin Road Extension will pass through a portion of the area known as the LBA Woods.

On April 19, 2016, Council received a briefing on the need for the Log Cabin Road Extension. Staff presented computer visualizations of different widths to show how a future road might look. The most narrow road width, 60 feet, would have the least impact to LBA Woods.

The right-of-way needed for the future Log Cabin Road is 1.91 acres and it goes through the Ashton

Woods property. The City Parks Department intends to purchase this parcel. Staff recommends using transportation impact fees in the amount of \$129,142 to purchase the portion of property needed for right-of-way.

**Neighborhood/Community Interests (if known):**

There is community interest in preserving the area known as LBA Woods as open space and for parks use. The future Log Cabin Road Extension project would build a road through a portion of this area. Community reaction was positive to a narrower roadway option.

**Options:**

1. Approve the appropriation to use transportation impact fees for acquiring right-of-way for the Log Cabin Road Extension. This preserves the right-of-way for a road when it is needed in the future using transportation impact fees.
2. Do not approve the appropriation to use transportation impact fees for acquiring right-of-way for the Log Cabin Road Extension. Purchasing it in the future will be more expensive and require a more complicated real estate transaction.

**Financial Impact:**

There is currently \$10,958 of mitigation fees in the Log Cabin Road Extension project for the purchase, resulting in an additional funding need of \$118,184. There are existing transportation impact fees available to provide \$118,184 for the purchase.

**Attachments:**

Appropriation Ordinance

Ordinance No. \_\_\_\_\_

**AN ORDINANCE OF THE CITY OF OLYMPIA, WASHINGTON, RELATING TO THE 2016 BUDGET, AND APPROPRIATING \$118,184 TO THE LOG CABIN ROAD EXTENSION PROJECT TO BE FUNDED BY TRANSPORTATION IMPACT FEES.**

WHEREAS, there is a need to acquire land for the Log Cabin Road Extension project at a cost of \$129,142 and;

WHEREAS, \$10,958 of mitigation fees exists within the Log Cabin Road Extension project fund for the purchase, resulting in an additional funding need of \$118,184, and;

WHEREAS, there are existing transportation impact fees available to provide \$118,184 to the project, and;

**NOW, THEREFORE, THE OLYMPIA CITY COUNCIL ORDAINS AS FOLLOWS:**

**Section 1.** That the following appropriations are hereby made:

**CAPITAL IMPROVEMENT FUND**

<b>Resources:</b>	Transfer in from transportation impact fee account	\$118,184
	<b>TOTAL RESOURCES</b>	<b>\$118,184</b>
<b>Appropriations:</b>	Log Cabin Road Extension Project	\$118,184
	<b>TOTAL APPROPRIATIONS</b>	<b>\$118,184</b>

**TRANSPORTATION IMPACT FEE ACCOUNT**

<b>Resources:</b>	Fund Balance	\$118,184
	<b>TOTAL RESOURCES</b>	<b>\$118,184</b>
<b>Appropriations:</b>	Transfer to Capital Improvement Fund	\$118,184
	<b>TOTAL APPROPRIATIONS</b>	<b>\$118,184</b>

**Section 2. Severability.** If any provision of this Ordinance or its application to any person or circumstance is held invalid, the remainder of the Ordinance or application of the provisions to other persons or circumstances shall remain unaffected.

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


**Section 4. Effective Date.** This Ordinance shall take effect five (5) days after publication, as provided by law.

\_\_\_\_\_  
MAYOR

**ATTEST:**

\_\_\_\_\_  
CITY CLERK

**APPROVED AS TO FORM:**

  
\_\_\_\_\_  
CITY ATTORNEY  
(scs)

**PASSED:**

**APPROVED:**

**PUBLISHED:**



## City Council

### Approval of Ordinance Regarding Transportation Network Companies

**Agenda Date:** 6/14/2016  
**Agenda Item Number:** 4.H  
**File Number:** 16-0688

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**Type:** ordinance   **Version:** 2   **Status:** 2d Reading-Consent

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**Title**

Approval of Ordinance Regarding Transportation Network Companies

**Recommended Action**

**Committee Recommendation:**

Not referred to a committee.

**City Manager Recommendation:**

Move to approve ordinance regulating Transportation Network Companies in Olympia on second reading.

**Report**

**Issue:**

Whether to adopt an ordinance and approve an Interlocal Agreement to allow Transportation Network Companies to operate in Olympia.

**Staff Contact:**

Jay Burney, Assistant City Manager, Executive Department, 360.753.8740

**Presenter(s):**

Jay Burney, Assistant City Manager

**Background and Analysis:**

Background and analysis has not changed from First to Second reading.

Uber, Lyft and Sidecar are what are called Transportation Network Companies (TNCs) who utilize a smart phone application to access an online marketplace where drivers and riders are connected. The marketplace then manages the scheduling, rates, fare calculation and pricing, payment, customer communication, rider and driver ratings, and the actual connecting drivers with riders.

Uber has requested approval to operate in Thurston County, specifically in Olympia, Lacey, Tumwater and Yelm. Local organizations and businesses, particularly those related to tourism have

supported TNC expansion into the area. When Uber arrives, other TNCs typically follow.

Olympia, Lacey, Tumwater, and Yelm have been working cooperatively over the past year to craft a new ordinance to regulate TNCs in our communities. While TNCs could operate under the existing taxi regulations, Uber has stated they need a faster review process for drivers and want to do their own background checks. They estimate that 40-50 drivers would operate in north County with 10-15 new ones per week. Uber drivers are frequently college students and retirees whose hours fluctuate considerably. Drivers set their own times ranging from full-time to part-time. As a result, there is a high turnover of drivers and high frequency of new drivers entering the system. Staff from the four cities decided to write a new ordinance to regulate TNCs that allows TNCs to operate and protects the health and safety of our citizens, rather than update the existing Occupational Permit process. A re-write of the Occupational Permit ordinance would impact existing taxi cab companies already operating in our community, posing new regulations on them. Rather than impact those companies, the new TNC ordinance would allow for TNCs to operate in our communities without impacting the existing rules for taxi cab companies.

Staff performed a comprehensive review of other cities in Washington and throughout the United States that have adopted new ordinances for allowing TNCs to operate in their communities. The ordinance before Council for consideration includes “best of” language from several cities, and closely mirrors ordinances already passed in the State of Washington. Key components of the new ordinance (attached) include:

- 1) All TNC Companies must be licensed to operate in Olympia and pay a fee of \$1,000 to cover the costs of administering the license.
- 2) The TNC and all TNC drivers will be required to obtain a business license in each jurisdiction they operate in.
- 3) TNCs must administer 3<sup>rd</sup> Party background checks on all TNC drivers.
- 4) TNCs must implement a zero tolerance policy for drug and alcohol use.
- 5) TNCs must ensure that all drivers meet the requirements outlined in the ordinance before granting them access to their digital network to accept rides.
- 6) TNCs must sign an Affidavit of Compliance and submit to twice yearly audit of TNC and TNC driver records.
- 7) TNC drivers must pass a background check.
- 8) TNC drivers must be 21 years of age and possess a valid Driver’s License.
- 9) TNC drivers must carry insurance as required by State law to operate as a TNC and must not have committed three or more moving violations in the last three years.

- 10) Must pass TNC required vehicle inspections
- 11) TNC drivers must pay the appropriate B&O Tax
- 12) TNC drivers cannot accept street hails.

The audit process built into the ordinance will ensure compliance with the ordinance requirements. TNCs or TNC drivers who fail to follow the requirements set forth in the ordinance are subject to penalties.

Staff from the four cities held a Public Meeting on March 9<sup>th</sup>, 2016 at which time they outlined the proposed requirements of the new ordinance. Staff incorporated input from this meeting into the final draft. A list of attendees from the public meeting along with meeting minutes and written comments received is attached. The General Government Committee was also briefed on Transportation Network Companies and the need for licensing at its November 18<sup>th</sup>, 2015 meeting.

Staff from the four cities is also proposing an Interlocal Agreement (attached) that will allow for one city to administer the TNC licensing on behalf of the others. Olympia staff has capacity to administer the licensing and have been asked by the other jurisdictions to take the lead. The \$1,000 TNC license fee will cover our costs to do so.

Council approval of the attached TNC Ordinance will allow TNCs to operate in Olympia. Approval of the Attached Interlocal Agreement allows Olympia to administer TNC licensing and auditing on behalf of all four jurisdictions.

**Neighborhood/Community Interests (if known):**

Allowing TNCs to operate in Olympia will provide more transportation options for our residents. They will also create competition for traditional taxi companies that does not currently exist.

**Options:**

1. Move to approve ordinance regulating Transportation Network Companies in Olympia on first reading and forward to second reading and approve the Interlocal Agreement allowing Olympia to administer TNC licensing on behalf of Lacey, Tumwater, and Yelm.
2. Provide direction to staff to amend the ordinance and/or Interlocal Agreement and move to adopt as amended.
3. Do not adopt the ordinance or Interlocal Agreement regarding Transportation Network Companies and provide direction to staff on next steps.

**Financial Impact:**

The cost to administer the licensing and auditing of TNC's through the proposed regional approach is \$1,000, which will be recovered through the TNC licensing fee.

**Attachments:**

- 1) TNC Ordinance
- 2) TNC March 9<sup>th</sup> Public Meeting Materials
- 3) TNC Interlocal Agreement

Ordinance No. \_\_\_\_\_

**AN ORDINANCE OF THE CITY OF OLYMPIA, WASHINGTON, REGARDING TRANSPORTATION NETWORK COMPANIES, AMENDING OLYMPIA MUNICIPAL CODE SECTION 5.10.020, AND ADOPTING A NEW CHAPTER 5.11 OF THE OLYMPIA MUNICIPAL CODE**

WHEREAS, Olympia Municipal Code Chapter 5.10 regulates for-hire vehicle driver/operator services in the City of Olympia; and

WHEREAS, new technology-based companies, known as transportation network companies, offer a new model of commercial transportation service using online-enabled digital platforms to connect passengers with drivers using personal vehicles; and

WHEREAS, transportation network company services are sufficiently distinct from taxicabs and for-hire vehicle services as to warrant separate regulation; and

WHEREAS, the Olympia City Council desires to amend Olympia Municipal Code Section 5.10.020, regarding Occupational Permits for taxicabs and for-hire vehicles, and adopt a new Olympia Municipal Code Chapter 5.11 in order to regulate the operations of transportation network companies in the City of Olympia for the purpose of promoting the safety and welfare of the general public;

NOW, THEREFORE, THE OLYMPIA CITY COUNCIL ORDAINS AS FOLLOWS:

**Section 1. Amendment of OMC 5.10.020. Olympia Municipal Code Section 5.10.020 is hereby amended to read as follows:**

**5.10.020 Definitions.**

For the purpose of this chapter, the following definitions apply:

- A. "Chief of Police" means the City of Olympia Chief of Police.
- B. "City" means the City of Olympia.
- C. "Department" or "Police Department" means the Olympia Police Department.
- D. "Driver" or "Operator" means the person physically engaged in driving a for-hire vehicle, whether or not said person is the owner of or has any financial interest in said vehicle.
- E. "For-hire vehicle" includes all vehicles used for the transportation of passengers for compensation, except chartered and scheduled buses, vehicles not for hire by the general public (such as vans operated by hotels, employers, churches, schools and retirement facilities) and ride share vehicles, and transportation network company vehicles as defined and regulated in OMC Chapter 5.11. The term refers primarily to taxicabs and limousines.
- F. "Limousine" means a chauffeur-driven, unmetered, unmarked luxury motor vehicle pre-arranged for transportation meeting the definition in RCW 46.04.274. Limousines differ from "taxis" in that they are for the exclusive use of the person(s) paying the pre-arranged fare, are unmetered, unmarked, and are not available for spontaneous hire.



G. "Locksmith" means any person who, for hire, is engaged in the installation, removal, adjustment or repair of any locking or security device of any type used for doors, safes, windows or other similar purpose, and performs such service on a customer's premises.

H. "New application" means an application submitted by a person who did not possess a permit for the same occupation issued by the City in the immediate prior year.

I. "Person" means any natural person of either sex, firms, corporations, partnerships and associations either acting by themselves or by servant, agent or employee. The singular shall include the plural and the masculine pronoun shall include the feminine and neuter.

J. "Renewal application" means an application submitted by a person who possessed a permit for the same occupation issued by the City in the immediate prior year.

K. "Solicitor" within the meaning of this chapter, is any person who, either as a principal or agent, goes from door to door, or from place to place and enters upon any private property within the City and thereon engages in any of the following activities:

- a. Sells, takes orders for, or offers to sell or take orders for, any goods, wares or merchandise whether or not collecting in advance for such goods, wares or merchandise; and/or
- b. Sells, takes orders for, or offers to sell or take orders for services, whether or not collecting in advance for the performance of such services; and/or
- c. Sells, takes orders for, or offers to sell or take orders for the making, manufacturing, or repairing of any article or thing whatsoever, whether or not collecting in advance for the performance of such services; and/or
- d. Seeks contributions or donations.

L. "Taxicab," "Taxi" or "Cab" means a vehicle used for the transportation of passengers for-hire, where the route traveled, destination and number of passengers is controlled by the customer(s) and the fare is based on an amount recorded and indicated on a taximeter, or on a special fare rate or contracted agreement.

M. "Taximeter" means any instrument or device by which the charge for hire of a passenger carrying vehicle is measured or calculated either for the distance traveled by such vehicle or for waiting time, or for both, and upon which such calculated charges are indicated by means of figures.

**Section 2. Amendment of OMC 5.00.000. Olympia Municipal Code Section 5.00.000 is hereby amended to read as follows:**

**5.00.000 Title Contents**

**Title 5  
BUSINESS TAXES, LICENSES AND REGULATIONS**

Chapters:

- 5.02 Business Licenses
- 5.04 Business and Occupations Tax
- 5.05 Administrative Provisions for Certain Taxes
- 5.10 Occupational Permits

- 5.11 Transportation Network Companies
- 5.15 Cable Communications Franchises
- 5.16 Adult Oriented Businesses
- 5.17 Community Events
- 5.18 Farmers Market
- 5.20 Gambling Activities
- 5.24 Garage Sales
- 5.48 Occult Arts
- 5.50 Pet Shops
- 5.52 Locksmiths
- 5.55 Security Alarm Businesses
- 5.60 Secondhand Dealers
- 5.64 Solicitors
- 5.68 For-Hire Vehicles
- 5.72 Towing Services
- 5.76 Miscellaneous Businesses
- 5.80 Unfair Housing Practices
- 5.84 Utility Services Tax
- 5.86 Multi-Family Dwelling Tax Exemptions

**Section 3. Adoption of OMC 5.11. A New Chapter 5.11, Transportation Network Companies, is hereby added to the Olympia Municipal Code to read as follows:**

**Chapter 5.11**  
**TRANSPORTATION NETWORK COMPANIES**

5.11.00 Chapter Contents

Sections:

- 5.11.010 Purpose
- 5.11.020 Definitions
- 5.11.030 Olympia business license required
- 5.11.040 TNC license required
- 5.11.050 TNC driver requirements
- 5.11.060 TNC requirements
- 5.11.070 Vehicle inspection and maintenance
- 5.11.080 Insurance requirements
- 5.11.090 Registered agents required
- 5.11.100 Audit
- 5.11.110 Operational requirements
- 5.11.120 Non-Discrimination; Accessibility
- 5.11.130 Revocation, suspension, or denial of TNC license
- 5.11.140 Enforcement
- 5.11.150 Penalty

**5.11.010 Purpose**

The purpose of this chapter is to provide for and promote the safety and welfare of the general public and not to create or designate any particular class of persons who will or should be specially protected by its terms. Nothing contained in this chapter is intended, nor shall be construed, to create any liability on the part of the city or its employees for any injury or damage resulting from the failure of the licensee or driver to comply with the provisions of this chapter, or by the city's or its employees' enforcement or failure to enforce any part of this chapter.

### **5.11.020 Definitions**

For the purpose of this chapter, the following definitions apply:

- A. "Transportation Network Company" or "TNC" means an entity that uses a digital network to connect passengers to TNC drivers who use personal vehicles to transport passengers for compensation between geographical points chosen by the passenger.
- B. "Digital network" means an Internet-enabled platform or application used to connect passengers with TNC drivers.
- C. "TNC driver" means an individual who uses a personal vehicle to provide transportation services arranged through a TNC's digital network.
- D. "TNC vehicle" means a personal vehicle used by a TNC driver to provide transportation services arranged through a TNC's digital network.
- E. "Operate a TNC in the City of Olympia" means a TNC uses its digital network to connect a TNC driver to a passenger for a trip originating in the City of Olympia.
- F. "Operate as a TNC driver in the City of Olympia" means a TNC driver accepts a trip request over a TNC's digital network that originates in the City of Olympia.
- G. "Person" means any natural person of either sex, firms, corporations, partnerships and associations either acting by themselves or by servant, agent or employee. The singular shall include the plural and the masculine pronoun shall include the feminine and neuter.
- H. "Director" means the Director of the City of Olympia's Administrative Services Department.

### **5.11.030 Olympia business license required**

- A. It is a violation of this chapter for any TNC to operate in the City of Olympia without a current and valid City of Olympia business license.
- B. It is a violation of this chapter for any driver, who is an independent contractor affiliated with a TNC, to operate as a TNC driver in the City of Olympia without a current and valid Olympia business license. It is the responsibility of the TNC to communicate this requirement to TNC drivers.
- C. TNC drivers must keep a copy of their business license in their vehicle when logged on and accepting rides from the TNC's digital network. It is the responsibility of the TNC to communicate this requirement to TNC drivers.
- D. Except as described in subsections B and C, the TNC shall have no obligations as to TNC driver business license requirements.

### **5.11.040 TNC license required**

- A. It is a violation of this chapter for any TNC to operate in the City of Olympia without a current and valid City of Olympia TNC license.
- B. The Director or designee may issue a TNC license provided that the TNC applicant submits an affidavit sworn under penalty of perjury, on a form provided by the City, that to the best of the

applicant's knowledge, formed after a diligent inquiry into the facts, the TNC is in full compliance with this chapter, including, but not limited to, all driver, vehicle, insurance, and operational requirements.

C. The TNC license shall be effective for one year.

D. The annual TNC license fee shall be \$1,000 and shall be paid in full at the time of submitting all initial and renewal applications.

#### **5.11.050 TNC driver requirements**

A. TNC drivers shall certify that they have no known physical or mental infirmity which jeopardizes their ability to safely operate as a TNC driver transporting the public.

B. TNC drivers shall be at least twenty-one (21) years of age.

C. TNC drivers shall possess a valid Washington State driver's license and shall have been continuously licensed as a driver by the State of Washington and/or another state for at least one (1) year immediately prior to operating as a TNC driver in Olympia. A home state Driver's License with active Military ID or Student ID with proof of full-time enrollment and nonresident status may be an acceptable alternative, subject to review and approval.

D. TNC drivers shall certify that they have insurance that meets the minimum liability requirements for the State of Washington, including insurance coverage for use of the vehicle for transportation of passenger for-hire as required by RCW Chapter 48.177 as enacted or subsequently amended.

E. TNC drivers shall not have been convicted or found to have committed three or more moving violations during any twelve (12) month period during the three (3) years prior to operating as a TNC driver in Olympia.

F. TNC drivers shall possess proof of motor vehicle registration and proof of current automobile liability insurance. The TNC shall certify that all drivers have insurance that meets the requirements of this chapter, including insurance coverage for use of the vehicle for transportation of passengers for-hire as required by RCW Chapter 48.177 as enacted or subsequently amended.

#### **5.11.060 TNC requirements**

A. The TNC or its agent shall maintain accurate and up-to-date records for all TNC drivers accessing its digital network to provide TNC services in the City of Olympia. Said records shall include the driver's name, age, address, social security number, criminal history, driver's license, motor vehicle registration, vehicle safety inspection records, and proof of at least the minimum automobile liability insurance coverage required by the State of Washington, including insurance for use of the vehicle for transportation of passengers for-hire as required by RCW Chapter 48.177 as enacted or subsequently amended.

B. Prior to permitting a person to act as a TNC driver on its digital network, and annually thereafter, the TNC shall obtain and review a criminal background check report for such person. The criminal background check shall include a search of no less than five (5) years of database history, unless prohibited by law, in which case the duration of the search shall be the maximum number of years permitted by law. The criminal background check shall include local, state, and national criminal history databases and national and state sex offender registries. Any person who is on a sex offender registry or who has a criminal conviction, within the past five (5) years, of crimes involving driving under the influence of alcohol or controlled substances, felony fraud, sexual offenses, felony property damage or theft, acts of violence, acts of terror, reckless driving or negligent driving, or use of a motor vehicle to

commit a felony, shall not be permitted to act as a TNC driver on the TNC's digital network. The TNC or its agents shall maintain records of such criminal background checks for a period of two (2) years. For purposes of this section, the term "criminal conviction" includes a "conviction or other disposition adverse to the subject" as defined under RCW 10.97.030, and bail forfeitures.

C. The TNC shall only permit an individual to act as a TNC driver on its digital network if it finds that the standards set forth in this section are met by such individual. The TNC shall revoke a driver's authority to act as a TNC driver on its digital network if the standards set forth in this section are not met.

#### **5.11.070 Vehicle inspection and maintenance**

A. TNC vehicles operating in the City of Olympia shall be no more than ten (10) years old.

B. The TNC shall inspect or cause to be inspected annually and every year thereafter, every motor vehicle used by a TNC driver before allowing the driver to use the motor vehicle to provide transportation services.

C. The inspection required in subsection B must include, without limitation, an inspection of the foot and emergency brakes, steering, windshield, rear window, other glass, windshield wipers, headlights, tail lights, turn indicator lights, braking lights, front seat adjustment mechanism, doors, horn, speedometer, bumpers, steering system, muffler, exhaust, tires, rear view mirrors, and safety belts. The inspection must ensure that all of the components listed are in proper functioning order.

D. The TNC shall maintain vehicle safety inspection records for a minimum of three (3) years.

#### **5.11.080 Insurance requirements**

The TNC shall comply with the automobile liability insurance requirements contained in RCW Chapter 48.177 as enacted or subsequently amended.

#### **5.11.090 Registered agent required**

The TNC shall maintain a registered agent for service of process in the State of Washington. The name, telephone number, and physical address of the registered agent shall be submitted to the City of Olympia at the time of license application. The TNC shall notify the City of Olympia in writing of any changes to its registered agent during the term of the license.

#### **5.11.100 Audit**

A. No more than twice per license year, the City may audit the TNC's records to review compliance with this chapter. Each audit shall be limited to records relating to no more than twenty randomly selected TNC drivers operating in the City of Olympia. In the event the audit reveals discrepancies in the records reviewed, the City reserves the right to audit all of the TNC's records related to TNC drivers operating in the City of Olympia.

B. The audit shall occur at City Hall, 601 4<sup>th</sup> Avenue E, Olympia, Washington; provided that the City may in its discretion agree to an alternative location.

C. Notwithstanding the foregoing, the City may require the TNC to produce records at any time to investigate a specific complaint regarding compliance with this chapter.

### **5.11.110 Operational Requirements**

- A. While in service in the City, TNC drivers shall only transport passengers who have arranged transportation through a TNC's digital network and shall not solicit or accept street hails by persons seeking transportation.
- B. While in service in the City, each TNC vehicle shall display removable trade dress or marks which is visible from fifty (50) feet and clearly associates the vehicle with a licensed TNC company.
- C. The TNC's digital network or website shall display for the passenger the first name and photograph of the TNC driver as well as the make, model, and license plate number of the TNC vehicle.
- D. The TNC's digital network or website shall display for the passenger the applicable rates being charged and the option to receive an estimated fare before the passenger enters the TNC vehicle.
- E. The TNC shall implement a zero tolerance policy on the use of drugs or alcohol applicable to any TNC driver on its digital network. The TNC shall provide notice of the zero tolerance policy on its website, as well as the procedures to report a complaint about a TNC driver with whom the passenger was matched and for whom the passenger reasonably suspects was under the influence of drugs or alcohol during the course of the ride. The TNC shall immediately suspend a driver upon receipt of a passenger complaint alleging a violation of the zero tolerance policy. The suspension shall last the duration of the investigation.

### **5.11.120 Non-Discrimination; Accessibility**

- A. The TNC shall adopt a policy of non-discrimination on the basis of destination, race, color, national origin, religious belief or affiliation, sex, disability, age, sexual orientation, or gender identity with respect to riders and potential riders and notify TNC drivers of such policy
- B. TNC drivers shall comply with all applicable laws regarding non-discrimination against riders or potential riders on the basis of destination, race, color, national origin, religious belief or affiliation, sex, disability, age, sexual orientation, or gender identity.
- C. TNC Drivers shall comply with all applicable laws relating to accommodation of service animals.
- D. A TNC shall not impose additional charges for providing services to persons with physical disabilities because of those disabilities.

### **5.11.130 Revocation, suspension, or denial of TNC license**

- A. A TNC license may be revoked, suspended, or denied by the Director for any of the following reasons:
  - 1. Failure to meet or maintain any of the requirements or qualifications set forth in this chapter for obtaining a TNC license.
  - 2. A materially false statement contained in the application for the license.
  - 3. Any violation of this chapter.
- B. Prior to any revocation, suspension or denial of any TNC license, the City shall inform the TNC of their right to a hearing thereon. Such hearing, if requested, shall be conducted before the City prior to the implementation of any revocation, suspension or denial.

### **5.11.140 Enforcement**

The Director shall have the administrative authority to implement and enforce this ordinance. The Director may adopt rules and regulations for its administration, not inconsistent with this chapter. This provision shall not be construed to abrogate or limit the jurisdiction of the Olympia Police Department to enforce any provisions of this chapter or of any other city ordinance relating to motor vehicles or the operation of taxicabs or TNC vehicles.

### **5.11.150 Penalty**

A. In addition to all other provisions and standards of this ordinance, the acts or omissions set forth in this section are prohibited. Any TNC or TNC driver who shall fail to comply with any provision or standard of this ordinance shall be in violation of this ordinance. A TNC may be held responsible for violations by TNC drivers if the TNC is provided notice of the violation and fails to cure it within a reasonable period. Any special license granted to a TNC may be suspended or revoked by the Director or designee for such violation.

B. Submitting a materially false affidavit or attestation. Any TNC submitting a materially false affidavit as provided for under OMC 5.11.040 shall be deemed to have committed a misdemeanor, and if found guilty, shall be subject to a fine not to exceed One Thousand Dollars (\$1,000), and/or to imprisonment not to exceed ninety (90) days or to both such fine and imprisonment. Each day shall be a separate offense. In the event of a continuing violation or failure to comply, the second and subsequent days shall constitute a gross misdemeanor punishable by a fine not to exceed Five Thousand Dollars (\$5,000) and/or imprisonment not to exceed three hundred and sixty-four (364) days or both such fine and imprisonment. Continuing violation shall mean the same type of violation which is committed within a year of the initial violation.

C. Operating without a TNC license. Any TNC affiliating with a driver who is picking up a passenger in the City of Olympia without having first obtained a TNC license shall be subject to a civil infraction as provided in OMC Chapter 4.50 and the penalties in OMC 4.50.060.

D. While in service, any TNC driver picking up a passenger in the City of Olympia without having a current contract with a special licensed TNC shall be subject to a civil infraction as provided in OMC Chapter 4.50 and the penalties in OMC 4.50.060.

E. Any independent contractor TNC driver who picks up a passenger in the City of Olympia and who has not obtained a business license under OMC 5.02.005 or determination of exemption under OMC 5.02.040 shall be subject to penalties as stated in OMC 5.02.070.

**Section 4. Severability.** If any provision of this ordinance or its application to any person or circumstance is held invalid, the remainder of the ordinance or application of the provisions to other persons or circumstances shall remain unaffected.

**Section 5. Ratification.** Any act consistent with the authority and prior to the effective date of this ordinance is hereby ratified and affirmed.

**Section 6. Effective Date.** This ordinance shall take effect five (5) days after publication, as provided by law.

\_\_\_\_\_  
MAYOR

**ATTEST:**

\_\_\_\_\_  
CITY CLERK

**APPROVED AS TO FORM:**

  
\_\_\_\_\_  
CITY ATTORNEY

**PASSED:**

**APPROVED:**

**PUBLISHED:**



**INTERLOCAL AGREEMENT  
BETWEEN  
THE CITIES OF LACEY, OLYMPIA, TUMWATER AND YELM  
REGARDING JOINT REGULATION OF  
TRANSPORTATION NETWORK COMPANIES**

THIS INTERLOCAL AGREEMENT is entered into by and between the cities of Lacey, Olympia, Tumwater, and Yelm, collectively referred to as “the Parties,” for the purpose of joint regulation of transportation network companies.

WHEREAS, RCW 39.34.030(2) permits any two or more public agencies to enter into agreements with one another for joint and cooperative action; and

WHEREAS, new technology-based companies, known as transportation network companies (“TNCs”) or commercial transportation services providers, offer a new model of commercial transportation service using online-enabled digital platforms to connect passengers with drivers using personal vehicles; and

WHEREAS, the Parties currently have regulations providing reciprocity to honor occupational permits issued by any of the Parties to for-hire vehicle drivers; and

WHEREAS, RCW 48.177 defines commercial transportation services providers and commercial transportation services provider drivers as distinct from taxicabs and for-hire vehicle companies creating the need for separate regulations; and

WHEREAS, the Parties have adopted nearly identical ordinances to provide for and protect the safety and welfare of the general public by creating regulations and enforcement provisions applicable to TNCs and TNC drivers; and

WHEREAS, by this Interlocal Agreement, the Parties seek to streamline these new regulations by authorizing the delegation of the administration and enforcement of TNCs and TNC drivers to one jurisdiction;

NOW, THEREFORE, in consideration of the term and conditions contained herein, the Parties agree as follows:

Section 1. Scope of Services.

a. The Parties have adopted nearly identical ordinances regarding the administration and enforcement of TNCs and TNC drivers which authorizes the delegation of administration and enforcement to another city that is a party to this Agreement.

b. The City of Olympia is hereby designated as the agency with authority and responsibility for providing any and all administrative services required for the licensing of TNCs. The administrative services to be performed by the City of Olympia include but are not limited to the following:

1. Create application forms for the licensing of a TNC, to include a sworn affidavit that the TNC is in full compliance with Olympia's TNC ordinance, codified as Chapter 5.11 of the Olympia Municipal Code (OMC), including driver, vehicle, insurance and operational requirements.

2. Review the application, confirm compliance, collect the license fee, and issue the annual license.

3. Perform audits of the TNC's continued compliance with OMC Chapter 5.11.

4. Enforcement of the rules and regulations consistent with OMC Chapter 5.11, including the conduct of hearings pursuant to OMC 5.11.120.

c. In exchange for Olympia's performance, the license fees paid by a TNC will be retained by Olympia and the Parties will honor valid TNC licenses issued by Olympia.

d. The Parties retain the right to supplement audit and/or enforcement activities at any time.

e. The delegation of licensing of TNCs does not apply to business license requirements of TNC drivers. TNC drivers are independent contractors and must obtain a business license from each Party.

Section 2. Duration. The terms and performance of this Agreement shall commence after the approval by the governing body of each Party and following the recording of this Agreement with the Thurston County Auditor or posting it on each Party's website as provided in RCW 39.34.040. This Agreement will terminate on January 1, 2020, unless amended by agreement of the Parties.

Section 3. Withdrawal from Agreement. Any Party may withdraw from this Agreement at any time. Withdrawal shall be effective immediately upon receipt of written notice by the other Parties.

Section 4. Changes. Any party may request changes to this Agreement, however, no change or addition to this Agreement shall be valid or binding upon

any Party unless such change or addition be in writing and signed by the Parties. Such amendments shall be attached to and made part of this Agreement.

Section 5. Administration. Each Party shall be responsible for administering the terms of this Agreement. No separate legal entity is created by reason of entering into this Agreement. No joint organization is created. No common budget is to be established. No personal or real property is to be jointly acquired or held.

Section 6. Entire Agreement. The Parties agree that this Agreement is the complete expression of the terms hereto and any oral representations or understandings not incorporated herein are excluded. Further, any modification of this Agreement shall be in writing and signed by the Parties. Failure to comply with any of the provisions stated herein shall constitute material breach of contract and cause for termination. The Parties recognize time is of the essence in the performance of the provisions of this Agreement. It is also agreed by the Parties that the forgiveness of the nonperformance of any provision of this Agreement does not constitute a waiver of the provisions of this Agreement.

Section 7. Notice. Notices required to be given by any Party shall be deemed given when served on the respective City Clerks of each Party.

Section 8. Governing Law. This Agreement shall be governed by the laws of the State of Washington as to interpretation and performance. The exclusive jurisdiction and venue for any lawsuit between the Parties arising out of this Agreement shall be in Thurston County Superior Court.

Section 9. Counterparts. This Agreement may be executed in counterparts, each of which shall be considered for all purposes as an original.

Section 10. Remedies. In addition to the remedies provided by law, this Agreement shall be specifically enforceable by any Party.

Section 11. Severability. If any provision of this Agreement or any provision of any document incorporated by reference shall be invalid, such invalidity shall not affect the other provisions of this Agreement, which can be given effect without the invalid provision, if such remainder conforms to the requirements of applicable law and the fundamental purpose of this Agreement, and to this end the provisions of this Agreement are declared to be severable.

[Signatures on following page.]

IN WITNESS WHEREOF, this Agreement is executed by the Parties as of the date set forth below.

**CITY OF LACEY**

**CITY OF OLYMPIA**

\_\_\_\_\_  
Andy Ryder, Mayor

\_\_\_\_\_  
Cheryl Selby, Mayor

\_\_\_\_\_  
Date

\_\_\_\_\_  
Date

ATTEST:

ATTEST:

\_\_\_\_\_  
Carol Litten, City Clerk

\_\_\_\_\_  
Jane Kirkemo, City Clerk

APPROVED AS TO FORM:

APPROVED AS TO FORM:

\_\_\_\_\_  
David Schneider, City Attorney

  
\_\_\_\_\_  
Mark Barber, City Attorney

**CITY OF TUMWATER**

**CITY OF YELM**

\_\_\_\_\_  
Pete Kmet, Mayor

\_\_\_\_\_  
Ron Harding, Mayor

\_\_\_\_\_  
Date

\_\_\_\_\_  
Date

ATTEST:

ATTEST:

\_\_\_\_\_  
Melody Valiant, City Clerk

\_\_\_\_\_  
Janine Schnepf, City Clerk

APPROVED AS FORM:

APPROVED AS TO FORM:

\_\_\_\_\_  
Karen Kirkpatrick, City Attorney

\_\_\_\_\_  
Brent Dille, City Attorney

## SIGN IN SHEET

Public Meeting  
Ride-Sharing Services  
March 9, 2016

NAME	COMPANY NAME	CONTACT EMAIL
Kelly Foster	Kelly Kabs	Kelly@kellykabs.com
Tim Dusschschl 1900	Kelly Kabs	Timmy@kellykabs.com
Joe Lambert		uber101ympin@gmail.com
Bruce Wooden	DC Cab	DCCAB360@AOL.COM
James Holcomb		JamesHolcomb86@gmail.com
Zack AHMED	yellow cab olympia	info@yellowcabnw.com
Joshua Miller	Ref. Cab	a2onblues@gmail.com
Trisha Wooden	DC Cab	dccab360@aol.com
Lou Massma	City of Yelm	lorim@ci.yelm.wa.us
Charles Brimmer	DC Cab	charlesbrimmer1@gmail.com
Emily Smith	Uber	mooreel@gmail.com
ANNAL H. CARR	Uber	acarr157@msn.com
ELOD BOROMISTA	UBER	elodtb@comcast.net
Valles, Osbaldo	UBER	Osbaldo.Valles.mil@mail.mil
Shauna Stewart	VCB	Shauna@visitolympia.com
Jonathan Hopkins	Uber	jhopkins@uber.com
James Fricke	Capital Reporter	jimf@capair.com
Michael Wilson		mhwilson@yahoo.com

Olympia \* Lacey \* Tumwater \* Yelm

Public Meeting  
Proposed Ordinance Ride Sharing Services  
Olympia, Lacey, Tumwater, Yelm  
March 9, 2016 6:00 p.m.

Staff Present:

Olympia Assistant City Manager Jay Burney  
Tumwater City Administrator John Doan  
Yelm Community Development Director Grant Beck  
Lacey Public Affairs Manager Steve Kirkman

Mr. Burney welcomed attendees and gave an overview of the ordinance the four jurisdictions are proposing. He noted there are no proposed changes to the existing occupational permit that governs taxi companies.

Mr. Burney indicated comments would be accepted through 5:00 p.m. on Monday, March 14.

**QUESTIONS AND COMMENTS**

1. If individual drivers will have to pay for a business license with each of the four cities, how much is it?

Fees: Olympia's initial fee is currently \$80 but may be reducing to \$30. The renewal fee is currently \$30. Tumwater's initial fee is \$40; renewal is \$20. Lacey's initial fee is \$60; renewal is \$30. Yelm's initial fee is \$35; renewal fee is \$25.

2. Do third party background checks include fingerprinting?

The third party background checks used by the Transportation Network Companies (TNCs) go a step further than City background checks do. The cities go by what is reported to the FBI in the NCIC system. The TNCs look at the history in any place a driver has lived in addition to what is in the NCIC system.

3. Has Washington Senate Bill SB-5550, which deals with insurance requirements for TNCs been ratified?

Yes, it is current state law, as of last session.

4. If TNCs are not allowed to accept hails, what recourse do cab companies have if TNC drivers are parked in spots where cab companies typically wait for fares to hail them for a ride or if TNC drivers are observed picking up hails?

Get as much information as possible, such as license plate number, vehicle and driver details, and report it to the jurisdiction it's witnessed in so that the incident can be investigated.

5. Are there parking places designated just for cabs?

There are no designated parking spots for cabs. They shouldn't be parking in short-term or loading zones.

6. Who will have oversight regarding business license and ordinance concerns?

The Admin Services Director in each jurisdiction currently oversees business licenses and will also manage ordinance concerns.

7. A Tacoma Uber driver spoke about the benefits of Uber in her community and commented she has never felt unsafe while driving for Uber.

8. Is the background check the 10-point fingerprint check?

Again, the TNCs background check goes a step deeper than the City's current process.

9. Will the ordinance require physicals to determine whether a person is medically qualified to drive?

All drivers must certify they are able to drive, but no medical examination is required. The TNCs have a zero tolerance for drugs or alcohol. The first time a driver is caught, they will no longer be able to drive for the TNC.

10. Any specific skills required to qualify as a TNC driver?

No.

11. If the audit finds a number of repeat violations, will a more in-depth audit be done on a company?



Yes, the jurisdiction will then audit all drivers.

12. Will vehicle inspections be required?

Most TNCs have vehicle requirements for their drivers, which will be included in the ordinance.

13. All of us would like to see a level playing field. What is the required liability insurance?

Under State law, insurance requirements for TNC drivers with no riders are \$50,000 per person, accident coverage \$100,000 per person, uninsured motorist coverage that meets state law, and personal injury protection. Insurance requirements for TNC drivers with riders are combined single limit liability coverage \$1,000,000, uninsured motorist \$1,000,000 and personal injury protection.

14. There have been allegations Uber has dropped rates to drive competitors out of business. Has there been any consideration for basic fare rates?

No, not in the current ordinance, but drivers display rates within the app so customers know what the rate will be up front.

15. Is there going to be a standard of how many drivers can operate in a given area at any one time? Any auditing process about that?

There is nothing in the ordinance that limits the number of drivers who can drive. In an audit, the first thing that will be asked for is a list of all drivers driving in the City. From that list a random number will be selected for the audit. If there are concerns with those, the City has the option to audit all the drivers. Audits will occur twice a year.

16. Will TNC drivers be required to have a company designation on the vehicle at all times?

TNC vehicles will need to have company designation visible at all times while driving for the TNC, but not when they are on personal time.

17. The Visitor and Convention Bureaus thanked the cities for work on transportation needs downtown.

18. If a TNC driver picks up a rider in Tacoma and drives them to Olympia, will a business license be required for both the original pick up city and the destination city?

A business license will be required for each city a rider is picked up in. If a rider is picked up in Yelm and driven to Olympia, but no passenger is picked up in Olympia, only a business license in Yelm is required. However, if a driver picks up a rider in Yelm, drives them to Olympia, picks up another rider in Olympia and drives them to Tumwater, a business will be required for Olympia and Yelm.

19. A current Uber driver said she is very impressed with the safety systems Uber has built into the network. After each ride, the driver & rider both rate each other. If a driver doesn't get enough reviews, they won't be able to continue to drive.

20. When will TNC drivers know what the driving boundaries are for having to get a business license in each jurisdiction?

TNC companies are watching the cities actions. After the ordinance is enacted in each jurisdiction, TNC companies will notify drivers they are allowed to service the community and will need a business license there.

21. Once the ordinance is complete, will there be a public hearing before it's ratified?

Yelm will hold a public hearing before taking action on the proposed ordinance. The other cities will not hold a public hearing but the public will be allowed to comment when the item is on the agenda prior to action being taken on it.

22. Does a consent agenda mean a decision has already been made?

No. An item on a consent agenda means the item is one of several items that will be voted on with one motion. However, any Councilmember may pull any item from the consent agenda for discussion or to request more information or staff work before considering an action. Nothing on a consent agenda is decided upon until it is voted on.

23. The owner of Capital Aeroporter stated his drivers have to submit an abstract driving record, go through a 4-day training session, meet driver qualification standards annually, get a medical exam every 2 years, have shift limitations and insurance requirements, get a pre-employment drug test and are subject to random drug

testing while employed as a driver. He asked the cities to take a harder look at some of these things before finalizing the ordinance.

24. The Washington Uber Operations Manager said Uber drivers typically drive 11 to 14 hours a week and undergo nationally accredited background and driving record checks. He noted the networks rating system also works well.

25. Is there a way to make the business license fee countywide instead of for each city? It seems like it could be streamlined.

At this time each City has its own business license process. When the ordinance is enacted, drivers will need to obtain a business license in each City they will pick up riders in. However, at some point in the future, the cities may elect to look at changing the process to a more regional approach.

26. If Thurston County won't consider one business license, is there a way to have one location for a driver to get a business license for each of the four jurisdictions?

Each of the cities uses the State's website for business applications, so a driver may apply for a number of different city business licenses at one time from the convenience of their computer.

The meeting ended at 7:12 p.m.

## Jay Burney

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**From:** Joe L <uber1olympia@gmail.com>  
**Sent:** Wednesday, March 09, 2016 8:18 PM  
**To:** Jay Burney  
**Subject:** Email address

Hello Jay,

Just incase you can't read my writing on the sign in log tonight

Remember I get the first license !

If I can be of any help to you in this process please let me know, including all the complaints you will be receiving from the local cab drivers

If needed I can explain the drivers app to you in detail and how I use the rider app for positioning

This might help you when you get complaints

Thanks for your time tonight

Sincerely

Joe Lambrix  
(360) 701-3264

## Jay Burney

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**From:** Joshua Miller <aeonblues@gmail.com>  
**Sent:** Wednesday, March 09, 2016 8:12 PM  
**To:** Jay Burney  
**Subject:** TNC comments

I was at the 3/9/16 meeting, and I wanted an opportunity to better articulate a comment.

First off, I can barely make a living as a taxi driver now, working with a 24 hour cab company. On Friday and Saturday nights I can average \$20/hour, but then on Monday and Tuesday nights, I average about \$5/hour after expenses.

RediCab uses an industry standard rate for Thurston county, \$2.50 / mile, and \$0.50/ minute wait time.

In regards to rates, when uber lowered their base rate across the US to \$1 per mile, they were effectively dumping on the for hire economy. I work with a local company RediCab, and even though I am an independent contractor, the owner of RediCab has an invested interest in ensuring that I make a living wage. She needs reliable drivers to maintain a 24 hour cab company. Uber has no such concern. They have a proven high record of turn over, which I am sure you are aware.

Being a company worth 14 billion dollars, they can drop rates for the sole purpose of driving out competition. In Thurston county, this means small taxi companies and their drivers.

The people who are not able to use an app, could be left with out a viable alternative for transportation.

I strongly believe a response of "We don't regulate rates for taxi" is not sufficient in this matter. No taxi company in Thurston county could drop their rate to \$1/mile with out going out of business.

Please consider the possibility that Thurston county has never needed a rule for taxi fare rates before now.

No taxi company worth 14 billion dollars has ever moved in with the intention of putting their competition out of business. Most likely, Uber intends at a later date to raise rates when they have a monopoly on the industry.

If the city of Olympia and other cities in Thurston county need to create rate rules for both TNC and taxi's, I would greatly support this.

Please add my email [aeonblues@gmail.com](mailto:aeonblues@gmail.com) to your contact list for information, also please add the owner of redicab, Kathy Haugen <[kathyhaugen7@gmail.com](mailto:kathyhaugen7@gmail.com)> to your list.

Joshua Miller  
360-584-9997



## City Council

### Approval of Amendment to Ordinance #7006 related to the Operating Budget

**Agenda Date:** 6/14/2016  
**Agenda Item Number:** 4.1  
**File Number:** 16-0706

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**Type:** ordinance **Version:** 1 **Status:** 1st Reading-Consent

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**Title**

Approval of Amendment to Ordinance #7006 related to the Operating Budget

**Recommended Action**

**Committee Recommendation:**

Not referred to a committee.

**City Manager Recommendation:**

Move to approve amending Ordinance #7006 on first reading and forward to second reading.

**Report**

**Issue:**

Whether to approve the amendment to Ordinance #7006

**Staff Contact:**

Dean Walz, Fiscal Services Director, Administrative Services Department, 360.753.8465

**Presenter(s):**

None - Consent Calendar Item

**Background and Analysis:**

To change the budget the Council must approve an ordinance amending the budget. Generally, budgetary amendments are made quarterly. On occasion a budget change is made between the quarterly updates with separate ordinances approved by the council. These ordinances do not officially amend the budget ordinance, but does provide authorization to expend funds. The attached ordinance reflects ordinances which may have been adopted relating to the budget since the last quarterly update, and other proposed changes to the budget.

No separate ordinances were passed since the adoption of Ordinance #7006 relating to the Operating Budget.

Budget Items Not Previously Presented to the Council:

- 1) Appropriation of a two-year grant from the Center for Court Innovation in the amount of

\$200,000 for the operation of a Community Court.

- 2) Appropriation of \$61,288 for the Water Street site clean-up assessment, funded for a grant from the Department of Ecology.
- 3) Appropriation of \$35,000 to purchase additional parts for Fire Department contracted services to repair and maintain equipment of other fire agencies. This is funded by revenue to be received from those agencies.
- 4) Appropriation of \$750 for defensive driving program within the Police Department, funding provided by a grant from the Washington Cities Insurance Authority.
- 5) Appropriation of \$14,080 for critical incident training within the Police Department, funding provided by a grant from the Criminal Justice Training Center.
- 6) Re-appropriation of \$10,535 for the K-9 program. Funding is from funds received from the Halloran Foundation in previous years. The budgets lapsed and need to be re-appropriated.
- 7) Appropriation of \$700 for energy programs. Funding is from Puget Sound Energy rebate programs.
- 8) Appropriation of \$350,000 for information technology improvements to financial systems. Funding is from existing resources within an Information Technology Improvement special account not previously appropriated.
- 9) Appropriation of \$600,000 for repair of the HVAC system at the Washington Center, funding provided by existing resources (fund balance) of the major maintenance fund. The City is scheduled to replace the HVAC system at the Washington Center for the Performing Arts in the summer of 2017. However, on Friday May 13, 2016 the chiller failed causing the City to seek a temporary repair. The repair includes placing a temporary repair on the roof and paying a monthly rental fee. The cost for this work is estimated at \$200,000 through December 2016.

**Neighborhood/Community Interests (if known):**

None noted.

**Options:**

- 1) Approve ordinance amending Ordinance #7006.
- 2) Do not approve the amending ordinance. The budget items not previously presented to the Council would not be authorized.
- 3) Modify the ordinance and direct staff to make appropriate changes to the ordinance to be presented on second reading.

**Financial Impact:**

Total appropriation increase of \$1,272,353. Funding for these appropriations noted above.

**Attachments:**

Ordinance

**Ordinance No.**

**AN ORDINANCE OF THE CITY OF OLYMPIA, WASHINGTON, RELATING TO BUDGETS, FINANCE, AND SALARIES, AND AMENDING ORDINANCE NO. 7006.**

**WHEREAS**, the Olympia City Council held a public hearing and considered public testimony on the 2016 preliminary budget on November 17, 2015, as required by law; and

**WHEREAS**, the Olympia City Council passed Ordinance No. 6998 approving the 2016 budget on December 15, 2015; and

**WHEREAS**, the Olympia City Council amended Ordinance No. 6998 by passage of Ordinance No. 7006 on April 19, 2016; and

**WHEREAS**, throughout the year, updates are required to recognize changes relating to budgets, finance, and salaries; and

**WHEREAS**, the following amendments need to be made to Ordinance No. 7006;

**NOW, THEREFORE, THE OLYMPIA CITY COUNCIL ORDAINS AS FOLLOWS:**

**Section 1. 2016 Budget.** The budget for the calendar year 2016 is hereby adopted in the amounts and for the purposes as shown below; and the following sums, or so much thereof as shall severally be found necessary, are hereby appropriated out of any of the monies in the several funds in the City Treasury hereinafter named.

<b>FUND</b>	<b>APPROP. FUND BALANCE</b>	<b>ESTIMATED REVENUE</b>	<b>APPROP.</b>	<b>ADDITIONS TO FUND BALANCE</b>
General, Regular Operations	\$1,716,500 <u>\$1,727,035</u>	\$67,744,155 <u>\$68,055,273</u>	\$69,460,655 <u>\$69,782,308</u>	\$-
General, Special Sub-Funds				
Special Accounts	266,720 <u>616,720</u>	1,105,660	1,372,380 <u>1,722,380</u>	-
Development Fee Revenue	-	3,037,211	3,037,211	-
Parking	588,207	1,518,700	1,926,475	180,432
Washington Center	5,000	320,872	325,872	-
Municipal Arts	400	50,000	50,400	-
Equip & Facilities Reserve	200,000	1,205,526 <u>1,206,226</u>	1,205,526 <u>1,406,226</u>	-
<b>Total General Fund</b>	<b>2,576,827</b> <b><u>3,137,362</u></b>	<b>74,982,124</b> <b><u>75,293,942</u></b>	<b>77,378,519</b> <b><u>78,250,872</u></b>	<b>180,432</b>
4 <sup>th</sup> /5 <sup>th</sup> Avenue Corridor Bridge Loan	2,306	554,673	556,979	-
LTGO Bond Fund - 2006 Parks	-	1,191,750	1,191,750	-
UTGO Bond Fund - 2009 Fire	-	1,198,140	1,193,731	4,409
City Hall Debt Fund - 2009	962	2,420,156	2,421,118	-
2010 LTGO Bond - Street Projects	-	438,667	438,663	4
L.O.C.A.L. Debt Fund - 2010	1	178,281	178,282	-
2010B LTGO Bonds - HOCM	-	420,688	420,688	-
2013 LTGO Bond Fund	-	671,675	671,675	-
Water Utility O&M	-	12,328,250	12,328,250	-
Sewer Utility O&M	86,382	18,853,133	18,939,515	-



FUND	APPROP. FUND BALANCE	ESTIMATED REVENUE	APPROP.	ADDITIONS TO FUND BALANCE
Solid Waste Utility	-	10,547,363	10,528,483	18,880
Storm Water Utility	53,861	5,137,826	5,191,687	-
Water/Sewer Bonds	15,285	2,040,532	2,028,566	27,251
Stormwater Debt Fund	-	103,311	103,219	92
Equipment Rental	-	2,138,767	2,138,087	680
<b>TOTALS</b>	<b>\$2,735,624</b>	<b>\$133,205,336</b>	<b>\$135,709,212</b>	<b>\$231,748</b>
	<b>\$3,296,159</b>	<b>\$133,517,154</b>	<b>\$136,581,565</b>	

**Section 2. Administration.** The City Manager shall administer the budget, and in doing so may authorize adjustments within the funds set forth in Section 1 above, to the extent that such adjustments are consistent with the budget approved in Section 1.

**Section 3. Salaries and Compensation.** The salaries and compensation for the City of Olympia employees for the calendar year 2016 shall be as set forth in the "Supplementary Information" section of the 2016 Adopted Operating Budget document, or as the same may be amended by the City Manager as part of his administration of the budget pursuant to Section 2 above.

**Section 4. Benefit Cost Sharing.** The City Manager is authorized to modify and establish benefit cost sharing for City employees; and such programs may be based, in part, on an employee's start date with the City.

**Section 5. Severability.** The provisions of this Ordinance are declared separate and severable. If any provision of this Ordinance or its application to any person or circumstances is held invalid, the remainder of this Ordinance or application of the provision to other persons or circumstances shall be unaffected.

**Section 6. Ratification.** Any act consistent with the authority and prior to the effective date of this Ordinance is hereby ratified and affirmed.

**Section 7. Effective Date.** This Ordinance shall take effect five (5) days after publication, as provided by law.

\_\_\_\_\_  
MAYOR

ATTEST:

\_\_\_\_\_  
CITY CLERK

APPROVED AS TO FORM:



\_\_\_\_\_  
~~DEPUTY~~ CITY ATTORNEY

PASSED:

APPROVED:

PUBLISHED:



## City Council

### Approval of Amendment to Ordinance #7007 related to the Capital Budget

**Agenda Date:** 6/14/2016  
**Agenda Item Number:** 4.J  
**File Number:** 16-0707

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**Type:** ordinance **Version:** 1 **Status:** 1st Reading-Consent

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**Title**

Approval of Amendment to Ordinance #7007 related to the Capital Budget

**Recommended Action**

**Committee Recommendation:**

Not referred to a committee.

**City Manager Recommendation:**

Move to approve amending Ordinance #7007 on first reading and forward to second reading.

**Report**

**Issue:**

Whether to approve the amendment to Ordinance #7007

**Staff Contact:**

Dean Walz, Fiscal Services Director, Administrative Services Department, 360.753.8465

**Presenter(s):**

None - Consent Calendar Item.

**Background and Analysis:**

To change the budget the Council must approve an ordinance amending the budget. Generally, budgetary amendments are made quarterly. On occasion a budget change is made between the quarterly updates with separate ordinances approved by the Council. These ordinances do not officially amend the budget ordinance, but does provide authorization to expend funds. The attached ordinance reflects ordinances which may have been adopted relating to the budget since the last quarterly update, and other proposed changes to the budget.

No separate ordinances were passed since the adoption of Ordinance #7007 relating to the Capital Budget.

Budget Items Not Previously Presented to the Council:

- 1) Appropriation of \$79,250 for clean-up assessment at the State Avenue old DOT site, funded

by a grant from the Department of Ecology.

- 2) Appropriation of \$600,000 for the Port Stormwater Diversion Project, funded by a grant from the Port of Olympia.

**Neighborhood/Community Interests (if known):**

None noted.

**Options:**

- 1) Approve ordinance amending Ordinance #7007.
- 2) Do not approve the amending ordinance or re-allocation of budget. The budget items would not be authorized.
- 3) Modify the ordinance and direct staff to make appropriate changes to the ordinance to be presented on second reading.

**Financial Impact:**

Total appropriation increase of \$679,250. Funding for these appropriations noted above.

**Attachments:**

Ordinance

**Ordinance No.**

**AN ORDINANCE OF THE CITY OF OLYMPIA, WASHINGTON, RELATING TO THE CAPITAL FACILITIES PLAN FOR THE YEARS 2016 – 2021, AND AMENDING ORDINANCE NO. 7007.**

**WHEREAS**, the Olympia City Council adopted the “Capital Facilities Plan” for years 2016 through 2021 by passing Ordinance No. 6997 on December 15, 2015; and

**WHEREAS**, the Capital Facilities Plan is periodically amended to recognize additional revenue and/or appropriations, as provided for in RCW 36.70A.130(2)(a)(iv); and

**WHEREAS**, the Olympia City Council amended Ordinance No. 6997 by passage of ordinance 7007 on April 19, 2016; and

**WHEREAS**, the following amendments need to be made to Ordinance No. 7007;

**NOW, THEREFORE, THE OLYMPIA CITY COUNCIL ORDAINS AS FOLLOWS:**

**Section 1.** That certain document entitled the "Capital Facilities Plan," covering the years 2016 through 2021, a copy of which will be on file with the Office of the Director of Administrative Services and available on the City’s web site, is hereby adopted as the Capital Facilities Plan for the City of Olympia and is incorporated herein as though fully set forth.

**Section 2.** Upon appropriation by the City Council of funds therefor, the City Manager shall be authorized to prepare plans and specifications, to take bids, and to make expenditures for the projects set forth in the CFP during the year for which said projects are scheduled; provided, however, that any award of bids and execution of contracts for construction shall be approved as provided in OMC Chapter 3.16.

**Section 3.** It is anticipated that the funding source and the construction schedule for projects identified in the CFP may be changed over the next year. Such changes shall not constitute an amendment to the Comprehensive Plan for purposes of RCW 36.70A.130.

**Section 4.** The Director of Administrative Services is hereby authorized to bring forward into fiscal year 2016 all appropriations and allocations not otherwise closed, completed, or deleted from prior fiscal years' capital budgets.

**Section 5.** The following appropriations are hereby made:

<b>FUND</b>	<b>APPROP. FUND BALANCE</b>	<b>ESTIMATED REVENUE</b>	<b>APPROP.</b>	<b>ADDITIONS TO FUND BALANCE</b>
Impact Fee Fund	\$2,704,596	\$ -	\$2,704,596	\$-
SEPA Mitigation Fee Fund	78,501	-	78,501	-
Parks & Recreational Sidewalk, Utility Tax Fund	-	2,409,750	2,409,750	-
Real Estate Excise Tax Fund	744,400	1,200,000	1,944,400	-

FUND	APPROP. FUND BALANCE	ESTIMATED REVENUE	APPROP.	ADDITIONS TO FUND BALANCE
Capital Improvement Fund	69,600	<del>10,794,757</del> 10,874,037	<del>10,864,387</del> 10,943,637	-
City Hall Construction Fund	50,000	-	50,000	-
Water CIP Fund	700,000	7,730,000	8,430,000	-
Sewer CIP Fund	1,311,700	741,300	2,053,000	-
Storm Water CIP Fund	586,000	<del>1,159,700</del> 1,759,700	<del>1,745,700</del> 2,345,700	-
<b>TOTALS</b>	<b>\$6,244,797</b>	<b><del>\$24,035,507</del></b> <b>\$24,714,787</b>	<b><del>\$30,280,334</del></b> <b>\$30,959,584</b>	<b>\$0</b>

**Section 6. Severability.** The provisions of this Ordinance are declared separate and severable. If any provision of this Ordinance or its application to any person or circumstances is held invalid, the remainder of this Ordinance or application of the provision to other persons or circumstances shall be unaffected.

**Section 7. Ratification.** Any act consistent with the authority and prior to the effective date of this Ordinance is hereby ratified and affirmed.

**Section 8. Effective Date.** This Ordinance shall take five (5) days after publication, as provided by law.

\_\_\_\_\_  
MAYOR

**ATTEST:**

\_\_\_\_\_  
CITY CLERK

**APPROVED AS TO FORM:**

  
\_\_\_\_\_  
DEPUTY CITY ATTORNEY

**PASSED:**

**APPROVED:**

**PUBLISHED:**



## City Council

### Approval of Amendment to Ordinance #6996 Related to Special Funds

**Agenda Date:** 6/14/2016  
**Agenda Item Number:** 4.K  
**File Number:** 16-0708

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**Type:** ordinance **Version:** 1 **Status:** 1st Reading-Consent

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**Title**

Approval of Amendment to Ordinance #6996 Related to Special Funds

**Recommended Action**

**Committee Recommendation:**

Not referred to a committee.

**City Manager Recommendation:**

Move to approve amending Ordinance #6996 on first reading and forward to second reading.

**Report**

**Issue:**

Whether to approve an amendment to Ordinance #6996

**Staff Contact:**

Dean Walz, Fiscal Services Director, Administrative Services Department, 360.753.8465

**Presenter(s):**

None - Consent Calendar Item.

**Background and Analysis:**

To change the budget the Council must approve an ordinance amending the budget. Generally, budgetary amendments are made quarterly. On occasion a budget change is made between the quarterly updates with separate ordinances approved by the Council. These ordinances do not officially amend the budget ordinance, but does provide authorization to expend funds. The attached ordinance reflects ordinances which may have been adopted relating to the budget since the last quarterly update, and other proposed changes to the budget.

No separate ordinances were passed since the adoption of Ordinance #6996 relating to the Special Funds Budget.

Budget Items Not Previously Presented to the Council:

1. Appropriation of \$10 within the Lodging Tax Fund to correct an error in Ordinance 6996

passed in December 2016. This change increases the amount of lodging tax to be used to support the Washington Center. Funding is from existing resources in the Lodging Tax Fund.

2. Appropriation of \$20,000 to the Park Stewardship Program, funded by a grant from REI.

**Neighborhood/Community Interests (if known):**

None noted.

**Options:**

- 1) Approve ordinance amending Ordinance #6996.
- 2) Do not approve the amending ordinance.
- 3) Modify the ordinance and direct staff to make appropriate changes to the ordinance to be presented on second reading.

**Financial Impact:**

Total appropriation increase of \$20,010. Funding for these appropriations noted above.

**Ordinance No.**

**AN ORDINANCE OF THE CITY OF OLYMPIA, WASHINGTON, APPROPRIATING FUNDS WITHIN VARIOUS SPECIAL FUNDS AND AMENDING ORDINANCE NO. 6996.**

**WHEREAS**, the Olympia City Council passed ordinance 6996 on December 15, 2015, appropriating funds within various special funds, and;

**WHEREAS**, the following amendments need to be made to Ordinance No. 6996;

**NOW, THEREFORE, THE OLYMPIA CITY COUNCIL ORDAINS AS FOLLOWS:**

**Section 1.** The following appropriations are hereby made:

<b>FUND</b>	<b>APPROP. FUND BALANCE</b>	<b>ESTIMATED REVENUE</b>	<b>APPROP.</b>	<b>ADDITIONS TO FUND BALANCE</b>
HUD Fund	\$-	\$463,265	\$463,265	\$-
Fire Equipment Replacement Fund	-	125,500	120,000	5,500
Lodging Tax Fund	-	650,000 650,010	566,188 566,198	83,812
Parks & Recreational Sidewalk Utility Tax Fund	91,725	489,403 509,403	581,128 601,128	-
Parking Business Improvement Area Fund	10,000	100,000	110,000	-
Farmers Market Repair & Replacement Fund	10,000	-	10,000	-
Hands On Children's Museum	-	434,688	434,688	-
Equipment Rental Replacement Reserve Fund	-	1,547,660	1,201,101	346,559
Unemployment Compensation Fund	-	210,500	210,500	-
Insurance Trust Fund	50,000	1,501,880	1,551,880	-
Workers Compensation Fund	140,000	1,550,000	1,690,000	-
Washington Center Endowment Fund	-	4,709	4,709	-
<b>TOTALS</b>	<b>\$301,725</b>	<b>\$7,077,605</b> <b>\$7,097,615</b>	<b>\$6,943,459</b> <b>\$6,963,469</b>	<b>\$435,871</b>

**Section 2. Severability.** The provisions of this Ordinance are declared separate and severable. If any provision of this Ordinance or its application to any person or circumstances is held invalid, the remainder of this Ordinance or application of the provision to other persons or circumstances, shall be unaffected.



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

**Section 4. Effective Date.** This ordinance shall take effect five (5) days after publication, as provided by law.

\_\_\_\_\_  
MAYOR

**ATTEST:**

\_\_\_\_\_  
CITY CLERK

**APPROVED AS TO FORM:**

  
\_\_\_\_\_  
DEPUTY CITY ATTORNEY

**PASSED:**

**APPROVED:**

**PUBLISHED:**



## City Council

### Approval of Ordinance Amending Wastewater Regulations for Septic Systems

**Agenda Date:** 6/14/2016  
**Agenda Item Number:** 6.A  
**File Number:** 16-0327

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**Type:** ordinance **Version:** 1 **Status:** Other Business

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#### **Title**

Approval of Ordinance Amending Wastewater Regulations for Septic Systems

#### **Recommended Action**

##### **Committee Recommendation:**

The Land Use and Environment Committee recommends approval of the ordinance amending the wastewater regulations for septic systems.

##### **City Manager Recommendation:**

Move to approve the ordinance amending Olympia Municipal Code Chapter 13.08 and Chapter 18.75.020 on first reading and move to second reading

#### **Report**

##### **Issue:**

Whether to approve the ordinance amending Olympia Municipal Code Chapter 13.08 and Chapter 18.75.020 regarding septic systems.

##### **Staff Contacts:**

Diane Utter, P.E., Water Resources Engineer, 360.753.8562  
Andy Haub, P.E., Director of Water Resources, 360.753.8475

##### **Presenters:**

Diane Utter, P.E., Water Resources Engineer  
Andy Haub, P.E., Director of Water Resources

##### **Background and Analysis:**

About 4,200 septic systems (also known as onsite sewage systems or OSS) are within Olympia and its Urban Growth Area. As Olympia continues to grow, these systems may pose a long-term public and environmental health risk.

The 2007 Wastewater Management Plan and related regulatory changes placed limits on property owners when repairing existing septic systems and installing new ones. With few exceptions, new septic systems are not allowed in the City of Olympia. Some property owners have contacted the City to find a way to build on lots within subdivisions that are far from sewer pipes. The owners have held

these lots for years as an investment. City staff has re-evaluated the regulations enacted after the 2007 Wastewater Management Plan. Staff determined the current regulations unnecessarily restrict development of these lots because they aren't allowed to use septic systems.

The Thurston County Health Department determined in 2013 that contamination due to septic systems in Olympia may be limited to specific locations rather than result in widespread groundwater and surface water contamination. The 2013 Wastewater Management Plan anticipated modifications of the current Olympia Municipal Code (OMC) to allow limited development with septic systems. The amended regulations will still ensure that public and environmental health is maintained. Objective 1B from the Plan reads:

*Manage existing and potential OSS so there is no net annual increase in the total number of OSS in Olympia's sewer service area.*

Further, Strategy 1B1 from the plan reads:

*Refine regulations regarding new OSS and repairs of existing OSS in order to accommodate the limited use of new OSS systems in appropriate circumstances.*

Staff presented the proposed amendments to the Utility Advisory Committee (UAC) and the Land Use and Environment Committee in 2014. Both committees recommended forwarding the OMC amendments to Council.

Amending regulations to allow more, but still few, new septic systems will require clear criteria. The proposed amendments are summarized below:

- Allow construction of septic systems on vacant lots larger than 12,500 square feet in existing neighborhoods. The lot must be more than 200 feet from sewer, served by public water, and not in a high risk area for contamination of surface water and groundwater by septic systems.
- Reduce the requirement to connect to sewer in the case of a failing septic system from 300 feet to 200 feet. The City found the 300 foot distance required sewer extensions that were unaffordable to property owners. Reducing the requirement to 200 feet is in alignment with Tumwater and Lacey and WAC 246-272A.
- Provide an appeal process for property owners who are required to connect to sewer due to a septic system failure. This appeal process is required by a state law passed in 2015.

The proposed OMC amendments will be followed by a proposal to Council to expand the City's Septic to Sewer program. The proposal will make it easier and more affordable for property owners to connect to the public sewer. The proposal will likely include:

- City funding and construction of sewer extensions to high-risk areas and to areas where septic systems are failing. Property owners would reimburse the City for a portion of the cost. The City may offer discounts for home owners connecting within two years of the sewer project.
- A monthly payment system for the City's general facility charge and LOTT's capacity development charge for properties converting from septic systems to sewer. This will decrease the up-front cost of sewer connection.

The combination of proposed amendments and the proposed Septic-to-Sewer changes will help the

wastewater utility meet the objective of no net annual increase in septic systems in its service area.

**Neighborhood/Community Interests (if known):**

Current wastewater regulations regarding septic systems do not facilitate single lot development. Multiple property owners have contacted the City looking for a way to build on vacant lots in neighborhoods served by existing septic systems. Costs of sewer service to those neighborhoods are extremely high.

**Options:**

1. Approve an ordinance amending Olympia Municipal Code Chapter 13.08 and Chapter 18.75.020 regarding regulations to septic systems. The revisions are consistent with the direction set forth by the 2013 Wastewater Management Plan.
2. Request staff to revise OMC amendments based on Council feedback. This would address Council's concerns, but would delay the OMC amendments consistent with the 2013 Wastewater Management Plan.
3. Do not adopt OMC amendments as presented. This would require staff to re-evaluate regulations regarding septic systems.

**Financial Impact:**

The City would see increased revenue for the drinking water and storm and surface water utilities by allowing additional houses to be built on vacant lots. This would also result in the collection of impact fees and property taxes.

**Attachments:**

Ordinance

Excerpt from June 19, 2014 Land Use & Environment Committee meeting minutes

UAC Letter of Support for Septic System OMC Changes

**Ordinance No.**

**AN ORDINANCE OF THE CITY OF OLYMPIA, WASHINGTON, RELATING TO WASTEWATER; AMENDING SECTIONS 13.08.000, 13.08.010, 13.08.020, 13.08.050, 13.08.180, 13.08.190, 13.08.230 AND 18.75.020 OF THE OLYMPIA MUNICIPAL CODE; REPEALING SECTION 13.08.120, OF THE OLYMPIA MUNICIPAL CODE; AND ADDING A NEW SECTION 13.08.090 TO CHAPTER 13.08, ARTICLE I OF THE OLYMPIA MUNICIPAL CODE**

WHEREAS, approximately 4,200 septic systems, also known as onsite sewage systems or OSS (the Systems), are located within the City of Olympia and its Urban Growth Area; and

WHEREAS, the Systems may pose a long-term public and environmental health risk as Olympia continues to grow; and

WHEREAS, the *2007 Wastewater Management Plan* (the 2007 Plan) and subsequent regulatory changes placed appreciable constraints on repairing existing and installing new septic systems; and

WHEREAS, after a review of the policies and regulations enacted after the 2007 Plan, staff has determined that such policies and regulations may be restricting development unnecessarily; and

WHEREAS, information compiled by the Thurston County Health Department in 2013 reveals that surface and ground water contamination due to septic systems in Olympia is likely to be limited to specific locations, rather than widespread; and

WHEREAS, the *2013 Wastewater Management Plan* (the 2013 Plan) anticipated limited modifications of current regulations to allow limited development with septic systems, while still ensuring that public and environmental health is maintained at an acceptable level; and

WHEREAS, based on the new information from Thurston County along with the 2013 Plan objectives, proposed regulation changes were presented to the Utility Advisory Committee (UAC) in April 2014 and the Land Use and Environment Committee (LUEC) in June 2014; and

WHEREAS, both the UAC and the LUEC recommended that the proposed regulation changes be forwarded to the City Council for consideration; and

WHEREAS, changing the City's regulations to allow more new septic systems will necessitate clear criteria that can be readily implemented; and

WHEREAS, the City Council determines it to be in the best interest of the City of Olympia to amend the current wastewater regulations regarding septic systems;

**NOW, THEREFORE, THE OLYMPIA CITY COUNCIL ORDAINS AS FOLLOWS:**

**Section 1. Amendment of OMC 13.08.000. Olympia Municipal Code Section 13.08.000 is hereby amended to read as follows:**

## **Chapter 13.08 SEWERS**

### 13.08.000 Chapter Contents

#### Sections:

#### ARTICLE I. SEWER CONNECTIONS

13.08.005 Purpose and policy.

13.08.010 Definitions.

13.08.020 Connection required when.

13.08.030 Permit required to open public sewer.

13.08.040 Side Sewer Installation and Maintenance.

13.08.050 ~~Adoption of Wastewater Management Plan.~~

13.08.080 Work in streets or public places.

13.08.090 Sewer connection type.

~~13.08.120 Public notice that connection required--Construction and use--City action upon nonconnection.~~

13.08.150 Tampering with and depositing rubbish in public sewer--Prohibited discharges.

13.08.180 Sewer service outside city limits.

13.08.185 Sewer service outside city limits--Agreements to run with the land.

#### ARTICLE II. SEWER RATES

13.08.190 Sewer rates--Definitions.

13.08.200 Payment of sewer bills.

13.08.205 Sewer general facility charges.

13.08.210 LOTT capacity development charge--Payment.

13.08.215 Septic to Sewer Program and line extension charges.

13.08.220 Charges become lien on property--Enforcement.

13.08.230 Shutting off water upon default--~~Reconnection charge.~~

#### ARTICLE III. AREA SERVICE CHARGE

13.08.290 Charges become lien on property.

**Section 2. Amendment of OMC 13.08.010. Olympia Municipal Code Section 13.08.010 is hereby amended to read as follows:**

**13.08.010 Definitions**

For the purpose of this Article:

A. "Building sewer" shall mean the same as "side sewer."

AB. "City Engineer" shall mean the City Engineer of the City of Olympia, or his/her designee, who has the duty and authority to enforce the codes and standards adopted by the City Council, as they relate to the development and operation of the City's infrastructure by private development, including other governmental agencies, and City projects.

BC. "Domestic user" shall mean any person who contributes, causes, or allows the contribution of wastewater into the POTW that is of a similar volume and/or chemical make-up as that of a residential dwelling unit. Discharges from a residential dwelling unit include up to 900 cu.ft. of flow, flows with up to 300 mg/l of Biological Oxygen Demand and 300 mg/l of Total Suspended Solids per month.

D. "Downtown Deferred General Facility Charge Payment Option Area" shall mean all properties located within the area bounded by: Budd Inlet to the north; Budd Inlet and Capitol Lake on the west; Sid Snyder Avenue extending between Capitol Lake and Capitol Way, and 14th Avenue extending to Interstate 5 on the south; Interstate 5 on the southeast; Eastside Street on the east, and Olympia Avenue extending to Budd Inlet on the north.

E. "Gravity sewer system" shall mean that portion of the public sewer in which wastewater flows through pipes by means of gravity and the sewer lift stations and force mains that connect the gravity pipes in the system. S.T.E.P. and grinder pump systems, and associated low pressure mains, are not part of the gravity sewer system.

F. "Grinder pump system" shall mean a facility consisting of a holding tank, grinder pump, and pressure piping system for conveying wastewater liquid and solids into the sewer system.

GG. "Industrial user" shall mean any Person with a source of discharge which does not qualify that person as a Domestic User who discharges an effluent into the POTW by means of pipes, conduits, pumping stations, force mains, tank trucks, constructed drainage ditches, intercepting ditches, and any constructed devices and appliances appurtenant thereto.

H. "Onsite sewage system" shall mean a wastewater system consisting of a tank for settling and digesting wastewater solids that disposes of effluent on the same property that produces the wastewater. This type of system is commonly called a septic system.

~~D.I.~~ "Person" shall mean natural persons of either sex, associations, copartnerships and corporations, whether acting by themselves or by a servant, agent, or employee. The singular number includes the plural, and the masculine pronoun includes the feminine.

~~E.J.~~ "Premises" shall mean a continuous tract of land, building or group of adjacent buildings under a single control with respect to connection to City sewer and responsibility for payment of fees and rates thereof. Subdivisions of such use or responsibility shall constitute a division into separate premises as defined in this section.

~~F.K.~~ "Publicly Owned Treatment Works or POTW" shall mean a treatment works, as defined by Section 212 of the Federal Water Pollution Control Act, also known as the Clean Water Act (33 U.S.C. Section 1292). This definition includes any devices or systems used in the collection, storage, treatment, recycling, and reclamation of sewage or industrial wastes of a liquid nature and any conveyances, including sanitary sewer and storm sewer collection systems, which convey wastewater to a treatment plant.

~~G.L.~~ "Public combined sewer" shall mean that portion of the public sewer system (excluding side sewers) intended to collect both sanitary sewage and stormwater in a single sewer system and located within public rights-of-way or easements and operated and maintained by the City.

~~H.M.~~ "Public sewer" shall mean that portion of the ~~sanitary sewer-wastewater~~ system (excluding side sewers) located within public rights-of-way or easements and operated and maintained by the City.

N. "Septic tank effluent pumping or S.T.E.P. system" shall mean a facility consisting of a tank or tanks for settling and digesting wastewater solids and a pressure piping system for conveying the supernatant liquid into the sewer system. Most of the wastewater solids remain in the S.T.E.P. tank and are removed periodically.

~~I.O.~~ "Side sewer" shall mean that portion of the sewer beginning ~~2-feet~~ outside the outer foundation wall of the ~~a structure, and extending~~ to and including the connection to the ~~public sewer main, STEP tank or grinder system service connection~~. Also referred to as a building sewer or a service lateral.

**Section 3. Amendment of OMC 13.08.020. Olympia Municipal Code Section 13.08.020 is hereby amended to read as follows:**

**13.08.020 Connection required when**

1. The owner or occupant of any lands, buildings or premises to which a public sewer is currently or becomes adjacent and available, shall not be required to connect the lands, buildings or premises to the public sewer so long as the property is served by an existing lawfully functioning individual onsite sewage system. In the event any lands, buildings, or premises are served by an individual onsite sewage system which fails to function and cannot be remedied through minor repairs, and there is a public sewer adjacent and available within 300 two hundred (200) feet of the property by way of a public right of way or easement, the owner or occupant shall be required to connect the property to the public sewer. All premises within two hundred (200) feet of a public



sewer main shall be deemed to be within the area served by such public sewer. The distance to the public sewer shall be measured from the nearest adequate public sewer, by way of a public right-of-way or easement, to the nearest edge of the property.

In the event lands, buildings, and premises are served by an individual onsite sewage system which fails to function and there is no public sewer ~~adjacent and available~~ within two (200) hundred feet and a replacement individual system cannot be lawfully approved to serve the property, it must nevertheless be connected to the public sewer or the premises shall cease to be occupied. A user can avoid the requirement to connect by discontinuing the generation or discharge of any waste from the site and abandoning the onsite sewage system. The abandonment of the onsite sewage system shall be in accordance with Thurston County Environmental Health regulations.

2. Pursuant to RCW 35.21.940, upon the failure of an on-site septic system for which the City requires a connection to a public sewer system, the owner of such system may appeal the City's recommendation for denial of the permit to repair or replace existing, failing on-site septic systems that:

(a) Were made for a single-family residence by its owner or owners;

(b) Were denied solely because of a law, regulation, or ordinance requiring connection to a public sewer system; and

(c) Absent the applicable law, regulation, or ordinance requiring connection to a public sewer system upon which the denial was based, would be approved.

3. Any such appeal of the City's recommendation in circumstances set forth in subsection 2 shall be to the City's hearing examiner as provided in OMC 18.75.020, who will consider, at a minimum whether:

(a) It is cost-prohibitive to require the property owner to connect to the public sewer system. In complying with this subsection 3(a) the city must consider the estimated cost to repair or replace the on-site septic system compared to the estimated cost to connect to the public sewer system;

(b) There are public health or environmental considerations related to allowing the property owner to repair or replace the on-site septic system. In complying with this subsection (3)(b), the city must consider whether the repaired or replaced on-site septic system contributes to the pollution of surface waters or groundwater;

(c) There are public sewer system performance or financing considerations related to allowing the property owner to repair or replace the on-site septic system; and

(d) There are financial assistance programs or latecomer agreements offered by the city or state that may impact a decision of the property owner to repair or replace the on-site septic system.

A copy of the City hearing examiner's decision shall be provided to the appropriate official at Thurston County for consideration in the County's decision to approve or deny the permit or in consideration of an appeal. Appeal of the final permit decision made by Thurston County shall be made through the appropriate Thurston County appeal process.

4. Within the area to be served by the public sewer of the City as it now exists and as it may be improved and extended in the future, the owner of each lot or parcel of real property, upon which is a building or structure for human occupation or use for any purpose shall, within thirty days of notification by the City for connections to be made therewith, cause a connection to be made between the sewage system and each such building or structure within such lot or parcel.

5. If any connection to the public sewer is not made within the time provided in this Section, the City Engineer or such other employee of the City as the City Council may hereafter designate is authorized and directed to cause such connection to be made and to file a statement of the cost with the City Treasurer, and a check shall be issued under the direction of the City Council by the City Treasurer, and drawn on the sewer fund of the City for the payment of such cost. Such amount, together with a penalty of ten percent (10%), plus interest at the rate of six percent (6%) per year upon the total amount of such cost and penalty, shall be assessed against the property upon which the building or structure is situated, and shall become a lien thereon as provided in this chapter. Such total amount, when collected, shall be paid into the sewer fund.

**Section 4. Amendment of OMC 13.08.050. Olympia Municipal Code Section 13.08.050 is hereby amended to read as follows:**

**13.08.050 ~~Adoption of Wastewater Management Plan~~**

~~There is hereby adopted by reference as Exhibit "A" the "City of Olympia Wastewater Management Plan, with 2007 amendments," a copy of which shall be kept on file in the offices of the City Clerk and the Public Works Department. This plan shall be considered a part of this ordinance as though fully set forth herein. Specific substantive requirements of the plan include:~~

~~A. New onsite sewage systems shall be permitted within the city limits only to serve a single family residence, provided:~~

- ~~1. The property being served is an undeveloped lot of record larger than one (1) acre located more than 300 feet from the sewer and the lot existed prior to November 21, 2006;~~
- ~~2. The lot size determination shall include only those portions of a lot unencumbered by flood hazards, wetlands and/or landslide hazards as defined in OMC 18.32;~~
- ~~3. Permitted onsite sewage systems shall be considered interim facilities and must be designed for conversion to the public sewer when sewer becomes available;~~

4. Development of properties with onsite sewage systems shall be in accordance with the Residential Districts' Development Standards for Developments without Public Sewer on Individual Lots, in OMC Section 18.04.080(E)(2).

B. All properties being served by onsite sewage systems and located within the urban growth boundary including those within the city limits shall enter into an appropriate agreement with the City agreeing to connect the residence directly to the public sewer in accordance with the provisions herein, within one (1) year after date of official notice to connect, provided that the sewer is within 300 feet of the property. A user can avoid incurring the charges provided herein by discontinuing the generation or discharge of any waste from the site and capping the wastewater connection. The capping of the wastewater connection must pass City inspection. In addition, the following shall apply to these new onsite sewage systems:

1. Application fees as established by the City Council shall be paid upon the submittal of a signed Onsite Sewage System Agreement requesting use of an onsite sewage system;
2. The cost of the sewer extension shall be borne in whole by the applicant for sewer services, subject to any provisions in effect at the time of connection for latecomer reimbursement;
3. The agreement shall not be executed prior to the time formal application is made for approval of the project for which onsite sewage system is requested. Said agreement shall terminate at the time any project application or approval expires or is revoked for any reason. A new agreement shall also be required for any extension of project applications or approvals, or when in the opinion of the Director of Community Planning and Development a substantial change or addition is made to the project; and
4. Following execution, the agreement shall be recorded by the City in the records of the Thurston County Auditor, at the cost of the applicant.

C. New septic tank effluent pump (S.T.E.P.) systems shall be permitted provided:

1. The property being served is a lot of record existing prior to February 15, 2005 abutting on any street, alley, right-of-way or easement in which there is now located a S.T.E.P. force main; or
2. The property is located within a subdivision vested as of July 2005 in accordance with Section 18.72.060, Determination of Complete Application.

D. New grinder pump systems shall be permitted only to serve properties provided:

1. The property being served is:
  - a. Contiguous to a gravity sewer, but terrain, natural features or other physical barriers prohibit a gravity connection;

b. The property being served is converting from an onsite sewage system to the sewer; or

c. The property being served is undeveloped and terrain, natural features or other physical barriers will prevent the orderly extension of the public sewer including the use of sewage pump stations.

2. All grinder pump sewer systems including the grinder pumps and side sewer shall be purchased, owned, and operated by the property owner.

3. Publicly owned grinder pump force mains shall be permitted only when it is in the City's best interest as determined by the City Engineer and only if the force main will be serving:

a. Existing residential properties where onsite sewage systems have failed or have been determined to be an impending health hazard by the Thurston County Health Department; or

b. Infill development in terrain isolated areas.

The Director of Public Works, or his/her designee, is authorized and directed to prepare a wastewater management plan for the City wastewater conveyance system, in accordance with RCW 90.48.110. The Director of Public Works will also determine the standards for development and improvement of the wastewater system to provide safe and adequate conveyance of sewage to the POTW. A copy of the wastewater management plan shall be kept on file in the offices of the City Clerk and the Public Works Department.

**Section 5. NEW SECTION OMC 13.08.090. A NEW SECTION 13.08.090 is hereby added to Chapter 13.08.090 of the Olympia Municipal Code as follows:**

13.08.090 Sewer connection type.

The City of Olympia permits only gravity sewer systems, with lift stations when needed, except as follows:

A. New onsite sewage systems shall be permitted within the city limits only to serve a single-family residence or a single-family residence with an accessory dwelling unit, provided:

1. The property being served is an undeveloped lot of record located more than two hundred (200) feet from an available sewer, as determined by the Public Works Director or his/her designee, and the lot is either larger than one (1) acre or is granted an exception to the lot size requirement under Section 5 below; and

2. Permitted onsite sewage systems shall be considered interim facilities and must be designed and constructed to facilitate conversion to the public sewer when sewer becomes available; and

3. Onsite sewage systems for new development within the shoreline jurisdiction, as defined in the Shoreline Master Program, are prohibited, regardless of lot size; and

4. The lot size determination shall include only those portions of a lot unencumbered by streams and important riparian areas, wetlands and small lakes, landslide hazard areas, and their associated buffers as defined in OMC 18.32.

5. Exceptions to the one acre minimum lot size will be considered by the Public Works Director or his/her designee when application is made in writing to the Public Works Director. Application shall be made on forms provided by the City. New onsite sewage systems for undeveloped lots of record smaller than one (1) acre will be evaluated using the following criteria:

a. New onsite sewage systems shall not be permitted on lots located within an area at high risk for onsite septic systems, nor within a marine recovery area, nor within a shellfish protection area, as determined by input from Thurston County Environmental Health; and

b. New onsite sewage systems shall only be permitted on lots served by public water service; and

c. New onsite sewage systems shall not be permitted within two hundred (200) feet of an available sewer as defined in OMC 13.08.020; and

d. New onsite sewage systems shall not be permitted on lots smaller than 12,500 square feet.

6. Each property owner constructing a new residence with a new onsite sewage system located within the Urban Growth Boundary, including those within the city limits, shall enter into an Agreement for Interim Onsite Sewage System with the City, agreeing to connect the residence directly to the public sewer in accordance with the provisions herein within one (1) year after the date of official notice to connect; provided, that an available sewer is within two hundred (200) feet of the property. In addition, the following shall apply to new onsite sewage systems:

a. Recording fees shall be paid upon the submittal of a signed Agreement for Interim Onsite Sewage System; and

b. Following execution, the agreement shall be recorded by the City in the records of the Thurston County Auditor; and

c. Said agreement shall terminate if at any time any project application or approval expires or is revoked for any reason; and

d. Any cost of sewer extension required at the time of connection shall be borne in whole by the property owner.

B. New septic tank effluent pump (S.T.E.P.) systems shall be permitted provided:

1. The property being served is a lot of record existing prior to February 15, 2005, abutting on any street, alley, right-of-way or easement in which there is now located a S.T.E.P. force main; or

2. The property is located within a subdivision vested as of July 2005, in accordance with OMC Section 18.72.060, Determination of Complete Application.

C. Grinder pump sewer systems shall not be installed and used in lieu of the orderly extension of gravity sewers. Grinder pump installation and use shall be subject to the following requirements and/or limitations:

1. New individual grinder pump system use is limited where:

a. A public gravity sewer is contiguous to the property, but terrain, natural features, or other physical barriers prohibit a gravity connection; or

b. For the conversion of onsite sewage systems to public sewer or for infill development only where it is specifically determined by the City Engineer to be in the best interest of the City of Olympia.

2. Grinder pumps and side sewers which are installed as part of a grinder pump sewer system shall be purchased, owned, maintained and operated by the property owner.

3. Grinder pump force mains receiving effluent from more than one property shall be publicly owned and maintained. Publicly-owned grinder pump force mains shall be permitted only where the City Engineer determines it to be in the best interest of the City and construction of a gravity and lift station sewer system is not feasible, provided that:

a. The proponent of the grinder pump force mains can demonstrate that no other feasible alternative is available; and

b. In such cases, the cost of installation of the public grinder pump force mains shall be borne by the proponent; and

c. The installation is in accordance with the Olympia Engineering Design and Development Standards.

4. Grinder pump side sewers and force mains shall not be permitted to discharge to designated Septic Tank Effluent Pump (S.T.E.P.) force mains unless it is determined by the City Engineer or his/her designee to be in the best interest of the City.

**Section 6. Repeal of OMC 13.08.120. Olympia Municipal Code 13.08.120 is hereby repealed:**

**~~13.08.120 Public notice that connection required—Construction and use—City action upon nonconnection~~**

~~A.—All premises within 300 feet of a public sewer line by way of a public right-of-way or easement, shall be deemed to be within the area served by such public sewer.~~

~~B.—Within the area to be served by the public sewer of the City as it now exists and as it may be improved and extended in the future, the owner of each lot or parcel of real property, upon which is a building or structure for human occupation or use for any purpose shall, within thirty days of notification by the City for connections to be made therewith, cause a connection to be made between the sewage system and each such building or structure within such lot or parcel.~~

~~C.—Repealed by Ord. 6774.~~

~~D.—If any connection to the public sewer is not made within the time provided in this Section, the City Engineer or such other employee of the City as the City Council may hereafter designate is authorized and directed to cause such connection to be made and to file a statement of the cost with the City Treasurer, and a check shall be issued under the direction of the City Council by the City Treasurer, and drawn on the sewer fund of the City for the payment of such cost. Such amount, together with a penalty of ten percent (10%), plus interest at the rate of six percent (6%) per year upon the total amount of such cost and penalty, shall be assessed against the property upon which the building or structure is situated, and shall become a lien thereon as provided in this chapter. Such total amount, when collected, shall be paid into the sewer fund.~~

**Section 7. Amendment of OMC 13.08.180. Olympia Municipal Code Section 13.08.180 is hereby amended to read as follows:**

**13.08.180 Sewer service outside city limits**

A. Property lying within the urban growth boundary and contiguous to the Olympia city limits shall annex to the City as a condition of sewer connection. ~~In the alternative,~~ Alternatively, the City may elect to defer annexation and require execution of an agreement described in subsection B of this section.

B. Property lying within the urban growth area which is not annexed as a condition of sewer service shall be permitted sewer connection only upon entering into an ~~appropriate a~~ Agreement to Annex with the City containing a waiver of protest to annexation and/or power of attorney authorizing annexation at such time as the City determines the property should be annexed to the City. ~~In addition, the following shall apply:~~

~~1. Application fees as established by the City Council shall be paid upon the submittal of a signed Utility Extension Agreement requesting sewer service for property outside the City;~~

~~2. The cost of the sewer extension shall be borne in whole by the applicant for sewer services, subject to any provisions in effect at the time of connection for latecomer reimbursement;~~

~~3. The agreement shall not be executed prior to the time formal application is made for approval of the project for which utilities are requested. The agreement shall terminate at the time any project application or approval expires or is revoked for any reason. A new agreement shall also be required for any extension of project applications or approvals or when a substantial change or addition is made to the project.~~

C. Following execution, such agreements shall be recorded by the City Clerk in the chain of title for such property in the official records of Thurston County.

**Section 8. Amendment of OMC 13.08.190. Olympia Municipal Code 13.08.190 is hereby amended to read as follows:**

**13.08.190 Sewer rates--Definitions**

A. A charge for sanitary sewage disposal shall be levied against all accounts and premises connected to a sewer line ~~main~~ or City-maintained community onsite system at the rate set forth in Title 4, Fees and Fines, of this code.

B. For purposes of subsection A, the term "equivalent residential unit" or "ERU" ~~means~~ shall be as follows:

~~1. One separate single-family residence, one single-family residence with accessory dwelling unit, one mobile home, or one mobile home space in a mobile home or trailer park: one ERU; or~~

~~2. One single-family residence with accessory dwelling unit: one ERU; or~~

~~3. One mobile home, or one mobile home space in a mobile home or trailer park: one ERU; or~~

~~24. With respect to residential duplexes, one per single-family unit Duplex: two ERUs; or~~

~~35. With respect to each rResidential structure having more than two single-family residential living units, the number of units times seven-tenths of an ERU per living unit; or~~

~~46. With respect to uses other than residential, one ERU shall be designated for each nine hundred (900) cubic feet for LOTT joint facilities wastewater service charges and seven hundred (700) cubic feet for public sewer charges per month of water consumed or sewage discharged as measured at the source; provided, that for volumes in excess of nine hundred (900) cubic feet per month and seven hundred (700) cubic feet per month, the service charge per one hundred (100) cubic feet shall be~~



computed at the rate of one-ninth of the LOTT ~~joint facilities wastewater service~~ charge, plus one-seventh of the public sewer charge, ~~plus one-ninth of the LOTT equipment replacement charge~~; and

57. With respect to an account consisting of both residential and nonresidential uses, ~~or combination thereof~~, the residential uses shall be charged as set forth in subdivisions 1, 2, or 3 of this subsection B Nos. 1 through 5 and the nonresidential uses shall be charged an additional one ERU, ~~regardless of the number~~; provided, that if the total monthly volume of the account exceeds the number of ERUs computed pursuant to this subsection times nine hundred (900) cubic feet for LOTT ~~joint facilities wastewater service~~ charges and seven hundred (700) cubic feet for local collection charges, the charge per one hundred (100) cubic feet for the account shall be computed at the rate of one-ninth of the LOTT ~~joint facilities wastewater service charge, plus one-seventh of the public sewer charge, plus one-seventh of the public sewer charge, plus one-ninth of the LOTT equipment replacement charge.~~

**Section 9. Amendment of OMC 13.08.230. Olympia Municipal Code 13.08.230 is hereby amended to read as follows:**

**13.08.230 Shutting off water upon default—~~Reconnection charge~~**

In the event that any such bill for sewage disposal service rates and charges or connections is not paid by the date established by the Director of Administrative Services as set forth in Chapter 4.24 of this code, the City shall shut off the water furnished to the premises to which the services were rendered or connection made. The water shall not be turned on again until such bill, together with all penalties and interest due thereon has been paid, ~~plus a charge as set forth in Title 4 of this code for shutting off and turning on the water, has been paid~~; provided, however, that such reconnection charge shall not be assessed if the user has already paid a reconnection charge assessed for the same reconnection pursuant to Section 13.04.430.

**Section 10. Amendment of OMC 18.75.020. Olympia Municipal Code Section 18.75.020 is hereby amended to read as follows:**

18.75.020 Specific appeal procedures

A. Administrative Decision. Administrative decisions regarding the approval or denial of the following applications or determinations/interpretations may be appealed to the Hearing Examiner within fourteen (14) days, or twenty-one (21) days if issued with a SEPA threshold determination including a comment period, of the final staff decision using procedures outlined below and in OMC Chapter 18.82, Hearing Examiner (Refer to 18.72.080 for other appeal authorities).

1. All Administrative Interpretations/Determinations
2. Boundary Line Adjustments
3. Home Occupation Permits

4. Preliminary Short Plats
5. Preliminary SEPA Threshold Determination (EIS required)
6. Shoreline Exemptions and staff-level substantial development permits
7. Sign Permits
8. Variances, Administrative
9. Building permits
10. Engineering permits
11. Application or interpretations of the Building Code
12. Application or interpretations of the Housing Code
13. Application or interpretations of the Uniform Fire Code
14. Application or interpretations of the Uniform Code for the Abatement of Dangerous Buildings
15. Application and interpretations of the Uniform Code for Building Conservation
16. Land Use (Director) decisions
17. Administrative decisions on impact fees
18. A recommendation to Thurston County to deny a permit to repair or replace existing, failing on-site septic systems that meet the criteria set forth in OMC 13.08.020(2), as required by RCW 35.21.940.

B. SEPA.

1. The City establishes the following administrative appeal procedures under RCW 43.21C.075 external link and WAC 197-11-680 external link:
  - a. Any agency or person may appeal the City's conditioning, lack of conditioning or denial of an action pursuant to WAC Chapter 197-11 external link. All such appeals shall be made to the Hearing Examiner and must be filed within seven (7) days after the

comment period before the threshold decision has expired. This appeal and any other appeal of a land use action shall be considered together.

b. The following threshold decisions or actions are subject to timely appeal.

i. Determination of Significance. Appeal of a determination of significance (DS) or a claim of error for failure to issue a DS may only be appealed to the Hearing Examiner within that fourteen (14) day period immediately following issuance of such initial determination.

ii. Determination of Nonsignificance or Mitigated Determination of Nonsignificance. Conditions of approval and the lack of specific conditions may be appealed to the Hearing Examiner within seven (7) calendar days after the SEPA comment period expires.

iii. Environmental Impact Statement. A challenge to a determination of adequacy of a Final EIS may be heard by the Hearing Examiner in conjunction with any appeal or hearing regarding the associated project permit. Where no hearing is associated with the proposed action, an appeal of the determination of adequacy must be filed within fourteen (14) days after the thirty (30) day comment period has expired.

iv. Denial of a proposal. Any denial of a project or non-project action using SEPA policies and rules may be appealed to the Hearing Examiner within seven (7) days following the final administrative decision.

c. For any appeal under this subsection the City shall keep a record of the appeal proceedings, which shall consist of the following:

i. Findings and conclusions; and

ii. Testimony under oath; and

iii. A taped or written transcript.

d. Any procedural determination by the City's responsible official shall carry substantial weight in any appeal proceeding.

2. The City shall give official notice under WAC 197-11-680 external link(5) whenever it issues a permit or approval for which a statute or ordinance establishes a time limit for commencing judicial appeal. See Chapter 18.78, Public Notification.

C. Land Use Approval.

1. The Director's decisions may be appealed to the Hearing Examiner by any aggrieved or affected parties. All appeals shall be filed in writing with the Department within fourteen (14) days of the date of the decision being appealed. Where combined with an environmental threshold determination, such appeal period shall be extended to twenty-one (21) days.

2. The Department shall send written notification of receipt of the appeal to the applicant and to all appropriate city departments prior to the date the Hearing Examiner will consider the matter.

3. Any action taken by the Hearing Examiner which upholds, modifies or reverses a decision by the Director shall be final.

D. Building and Fire Permits Appeals. For building or fire code appeals, the Hearing Examiner is authorized to appoint a master, an individual with appropriate professional experience and technical expertise, to hear such appeals and to prepare findings and conclusions for issuance by the Hearing Examiner.

E. Takings and Substantive Due Process Review and Modifications.

1. The Hearing Examiner is hereby authorized to hear, by way of appeal or upon review of a project permit application, all assertions of project-specific taking of property for public use without just compensation and/or the denial of substantive due process of law, and all challenges to imposition of conditions on a project of a similar nature, whether based on constitutional, statutory or common law. Failure to raise a specific challenge to such condition or exaction shall constitute a waiver of such issue and a failure to exhaust an administrative remedy.

2. In deciding and resolving any such issue, the Examiner may consider all law applicable to the City. Should the Examiner determine that, but for a taking without just compensation or a violation of substantive due process of law, imposition of any such condition would be required by standard, regulation, or ordinance the Examiner shall so state in the decision and so report to the Olympia City Council. In lieu of failing to impose such condition, the Examiner shall first provide the City with due opportunity to provide just compensation. The Examiner shall specify a time period in which the Council shall elect to or not to provide just compensation. Upon notice of the election of the City Council not to provide such compensation, the Examiner is authorized

to and shall, within fourteen (14) days, issue a decision modifying to whatever degree necessary such condition to eliminate the taking or violation of substantive due process.

**Section 11. Severability.** If any provision of this Ordinance or its application to any person or circumstance is held invalid, the remainder of the ordinance or application of the provisions to other persons or circumstances shall remain unaffected.

**Section 12. Ratification.** Any act consistent with the authority and prior to the effective date of this Ordinance is hereby ratified and affirmed.

**Section 13. Effective Date.** This Ordinance shall take effect five (5) days after publication, as provided by law.

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MAYOR

**ATTEST:**

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CITY CLERK

**APPROVED AS TO FORM:**



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DEPUTY CITY ATTORNEY

**PASSED:**

**APPROVED:**

**PUBLISHED:**



# City of Olympia

City Hall  
601 4th Avenue E  
Olympia, WA 98501

Information: 360.753.8447

## Meeting Minutes Land Use & Environment Committee

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Thursday, June 19, 2014

5:30 PM

Council Chambers

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### 1. ROLL CALL

**Present:** 2 - Chair Steve Langer and Committee Member Julie Hankins

**Excused:** 1 - Committee Member Jeannine Roe

### OTHERS PRESENT

Public Works Director of Water Resources Andy Haub  
Planning Commissioner Roger Horn  
Community Planning and Development (CP&D) Director Keith Stahley  
CP&D Program and Planning Supervisor Karen Kenneson  
Public Works Director Rich Hoey  
Public Works Project Engineer Diane Utter  
Assistant City Manager Jay Burney  
Executive Senior Program Specialist Bonnie Herrington  
CP&D Associate Planner Stacey Ray

### 2. CALL TO ORDER

Chair Langer called the meeting to order at 5:33 p.m.

### 3. APPROVAL OF MINUTES

- 3.A [14-0615](#) Approval of June 5, 2014 Land Use and Environment Committee Meeting Minutes

**The minutes were approved.**

### 4. COMMITTEE BUSINESS

- 4.A [14-0578](#) Briefing and Discussion about Comprehensive Plan / Action Plan Process

Ms. Ray gave an update on the Action Plan and reviewed the process for identifying performance measures for the Action Plan's five action areas. She discussed considerations critical to identifying effective measures and described measures under consideration by staff.

Ms. Herrington presented examples of graphics currently being developed.

Discussion:

- Poor infrastructure on the Martin Way corridor and addressing problems of economically disadvantaged areas.
- Regulation matches consistent with Comprehensive Plan.
- Current approach being used to measure performance.
- Importance of capturing meaningful statistics.

Mr. Burney answered questions about current projects, plan measurement, and explained measures will be applicable to future projects.

Mr. Stahley discussed how measures will be implemented .

**The discussion was completed.**

**4.B**     [14-0580](#)     Briefing about Parking Improvements, Lot Upgrades, and Rebranding

Ms. Kenneson gave a briefing on the status of parking improvements made over the past several months, and discussed parking lot upgrades, rebranding efforts, and planned future parking initiatives.

Discussion:

- Dealing with abandoned vehicles and car camping in City parking lots.
- A new discounted eastside zone 9-hour permit which will serve as overflow parking for area agencies and businesses.

**The discussion was completed.**

**4.C**     [14-0571](#)     Briefing on Recommended Changes to Waste Water Regulations for Onsite Septic

Ms. Utter discussed the 2007 Wastewater Management Plan and described subsequent regulatory changes which place appreciable constraints on repairing existing septic systems and installing new ones. She detailed results of work done by the Thurston County Health Department in 2013 which revealed surface and ground water contamination due to onsite systems in Olympia may be limited to specific locations rather than widespread. She explained potential and limited modifications of current regulations and how ensuring public and environmental health would be maintained.

Mr. Stahley spoke about difficult situations homeowners have faced and efforts to alleviate some of the financial costs when they convert to sewer.

Mr. Hoey acknowledged Ms. Utter and her outstanding research and work.

**The Committee supports changing the City's regulations to allow more, but still few, new onsite systems and recommends the following criteria for implementation:**

- **Allow on-site systems to be constructed on vacant lots in existing**

neighborhoods with a predominance of septic systems.

- Reduce the requirement to connect to sewer from 300 feet to 200 feet.
- Modify sewer extension requirements.
- Fund a limited number of small-scale sewer extensions through the Wastewater capital facility program to make it more affordable for residents.
- Allow the City to set up payment plans for City General Facility Charges and potentially LOTT Capacity Development Charges.

The recommendation was completed.

**4.D**     [14-0616](#)     Status Reports and Updates

The Committee discussed how to communicate with downtown business owners who are unaware of the Downtown Project.

Mr. Stahley invited Councilmembers to the Planning Commission retreat on June 21, 2014.

Mr. Wilson gave an update on the Downtown Project (DP) and distributed the brochure "Strategic Priority: Champion Downtown" outlining DP goals and opportunities for citizen engagement.

**The report was completed.**

**5.     ADJOURNMENT**

The meeting was adjourned at 7:30 p.m.





May 28, 2014

Olympia City Council  
PO Box 1967  
Olympia, WA 98507-1967

Dear Councilmembers:

**SUBJECT: Wastewater Municipal Code Changes – Onsite Septic Systems**

This letter provides recommendations from the City's Utility Advisory Committee (UAC) to City Council about the proposed wastewater municipal code changes regarding onsite septic systems. The UAC agrees with staff regarding the proposed changes outlined in the presentation to UAC on April 3, 2014.

Wastewater Policies

The 2013 Wastewater Plan recommends changes to Olympia's strict restrictions on the permitting of new onsite septic systems. Only a small number of additional systems would be allowed by the changes, and the UAC supports this approach. The proposed changes are summarized below:

- Allow onsite systems to be constructed on infill, vacant lots in existing onsite septic system dominated neighborhoods with at least five properties with onsite septic systems located within 200 feet of the property. Require an agreement to connect as sewer becomes available.
- Require failed systems to connect to municipal sewer if located within 200 feet of sewer rather than the current threshold of 300 feet. Measure the distance based on the length to sewer pipe needed for connection rather than to the edge of the lot closest to the sewer system.
- Reduce the requirement that onsite septic system conversions to sewer extend the sewer on all property street frontages. Currently, corner lots are required to extend sewer pipes on both street frontages.
- Fund a limited number of small-scale sewer extensions to assist connecting residents (\$150,000/year). Partial reimbursement (\$10,000 per property) to the City would be required, potentially over time.
- Allow for the payment of City General Facility Charges and LOTT Capacity Development Charges for onsite septic system to sewer conversions over time rather than as a lump sum payment at the time of connection. The charges total more than \$8,000 per connection.

Financial Considerations

The financial implications of the proposed changes will be analyzed more fully by staff and include the following considerations:

- City funding for a number of small-scale sewer extension projects to assist residents in converting from onsite septic systems to public sewer. The proposed allocation in the Capital Facilities Plan is \$150,000; some of which will be reimbursed by connecting customers.
- Financing of the City General Facility Charge (GFC) and LOTT Capacity Development Charges (CDC) over time rather than as a lump sum, only for properties converting from onsite septic systems to public sewer. This will result in revenue being delayed and an appropriate fee or interest rate will be charged to compensate the utility.
- By allowing additional permitting for houses on properties that are currently not allowed onsite septic systems, revenue could be increased in the form of GFCs and utility rates.
- By allowing some properties to repair onsite septic systems, rather than connect to public sewer, there may be a decrease in associated utility revenue. However, many of the affected properties have not been connecting to the public sewer under the current regulations.

Recommendations to City Council

The UAC supports the changes to the municipal code regarding the regulation of onsite septic systems as outlined by staff to the UAC on April 3, 2014. We encourage the City Council to proceed when staff has refined the proposed regulatory changes.

Thank you for the opportunity to comment. Please let me know if you have any questions.

Sincerely,



**THAD CURTZ**

Chair

Utility Advisory Committee

TC/lm

\\calvin\PW Shared Workgroup\UAC\2014- UAC\2014 Correspondence\UAC Letter of Support for OSS OMC Proposed Changes\_05-28-14\UAC Letter of Support to City Council for OSS OMC Proposed Changes\_05-28-14.docx



## City Council

### Discussion of a Draft Ordinance Creating a Graduated Income Tax on Wage Earners in the City of Olympia

**Agenda Date:** 6/14/2016  
**Agenda Item Number:** 6.B  
**File Number:** 16-0747

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**Type:** decision **Version:** 1 **Status:** Other Business

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#### **Title**

Discussion of a Draft Ordinance Creating a Graduated Income Tax on Wage Earners in the City of Olympia

#### **Recommended Action**

##### **Committee Recommendation:**

N/A

##### **City Manager Recommendation:**

Provide feedback on the draft ordinance imposing a graduated income tax on wage earners in the City of Olympia.

#### **Report**

##### **Issue:**

Whether to move forward with a substitute income tax ordinance for the City.

##### **Staff Contact:**

Steve Hall, City Manager, 360.753.8244

##### **Presenters:**

Steve Hall, City Manager  
Jane Kirkemo, Administrative Services Director  
Mark Barber, City Attorney

#### **Background and Analysis:**

Background: In April, the City was notified of a potential initiative to apply a 1.5% income tax on Olympia residents with a household income exceeding \$200,000 for the purpose of assisting in the cost of community or technical college. Although not officially received by the City, staff and Council received a draft of the proposed City of Olympia income tax initiative.

On April 17, the Council held a study session to discuss some of the legal issues associated with the potential initiative. The City's outside legal counsel, Hugh Spitzer, identified several legal and

constitutional challenges to the proposed initiative.

On May 17, City staff presented an analysis of the initiative from an administrative and cost perspective. Staff identified a number of inconsistencies, flaws and apparent omissions. In addition, the initiative did not provide sufficient funds to properly administer the funds.

At the conclusion of the May 17 presentation, the City Council passed - on a 4 - 3 vote, a motion to direct City staff to prepare an alternative ordinance (attached).

Analysis: Staff has prepared a draft ordinance and will walk through the changes made to address some of the legal and administrative faults of the original initiative ordinance. While staff has made a number of changes to improve the administrative aspects of the draft, there is little that can be changed to affect the legal challenges inherent in the proposal.

Staff is drafting a graduated income tax table which will illustrate the level of taxation to be imposed to generate approximately \$2.5M in net proceeds for administration of the program (this table will be provided at the meeting).

**Neighborhood/Community Interests:**

N/A

**Options:**

1. Move the draft ordinance forward for adoption.
2. Amend the draft ordinance.
3. Decide not to craft a substitute ordinance and allow the original initiative to move forward.

**Financial impact:**

The financial impact of the proposed initiative is undeterminable at this point.

**Attachments:**

Draft Ordinance  
Memo and Motion from Mayor Pro-Tem Jones  
May 17 Administrative Challenges and Costs Presentation  
Opportunity for Olympia Initiative Petition

## Opportunity for Olympia – Draft Council Ordinance

**This measure would provide funding up to one year of community or technical college tuition for each City of Olympia public high school graduate or GED high school equivalency certificate recipients, or an equivalent amount of money for such public high school graduates and GED recipients who choose to attend, public universities and colleges in the State of Washington, or any public school included in the Western Undergraduate Exchange (WUE). All funds (less reasonable administrative costs) must be spent on tuition. The measure would be funded by establishing a graduated income tax on all City of Olympia taxpayer adjusted gross income.**

AN ORDINANCE of the City of Olympia, Washington imposing an income tax measure with reference to the federal tax on individual income, the revenues therefrom to be dedicated to all or a portion of tuition for a year of community or technical college for each year's City of Olympia public high school graduates or General Education Development Certificate ("GED") recipients, or an equivalent amount of money for such public high school graduates and GED recipients who choose to attend, public universities and colleges in the State of Washington or any public school in the Western Undergraduate Exchange; establishing a special fund; and providing for an advisory vote of the electors of the City.

WHEREAS, making higher education more affordable and accessible for public high school graduates and GED recipients will lead to opportunities for further education and jobs and to a higher quality of life for all citizens; and

WHEREAS, the City of Olympia has a significant interest in making higher education more affordable and accessible for its high school graduates and GED recipients: and

WHEREAS, RCW 35A.11.050 provides, in part, that the general grant of municipal power conferred on cities by Chapter 35A RCW "is intended to confer the greatest power of local self-government consistent with the Constitution of this state and shall be construed liberally in favor of such cities. Specific mention of a particular municipal power or authority contained in this title or in the general law shall be construed as in addition and supplementary to, or explanatory of the powers conferred in general terms by [that] chapter": and

WHEREAS, RCW 35A.11.020 provides, in part, that “the legislative body of each code city shall have all powers possible for a city or town to have under the Constitution of this state, and not specifically denied to code cities by law”, specifically including the rendering of educational services commonly or conveniently rendered by cities; and

WHEREAS, RCW 35A.11.020 also provides that “legislative bodies of code cities shall have within their territorial limits all powers of taxation for local purposes except those which are expressly preempted by the state as provided in RCW 66.08.120, 82.36.440, 48.14.020, and 48.14.080”; and

WHEREAS, RCW 35A.82.020 additionally authorizes code cities “to impose excises for regulation or revenue in regard to all places and kinds of business, production, commerce, entertainment, exhibition, and upon all occupations, trades and professions and any other lawful activity”;

NOW THEREFORE, THE CITY COUNCIL OF THE CITY OF OLYMPIA DO ORDAIN as follows:

**Section 1. Legislative Findings and Intent.** The above recitals are adopted and confirmed as if set forth here in full. To the extent revenues from the tax imposed by this Ordinance and other legally available amounts allocated for that purpose by the City Council are sufficient, the Council intends to fund not to exceed one year of tuition for community or technical college in the State of Washington for each year's City of Olympia public high school graduates and GED recipients, or an equivalent amount of money for such graduates and GED recipients who choose to attend public universities or public colleges in the State of Washington, or any public school in the Western Undergraduate Exchange. The City Council intends to raise such funds through the exercise of the City of Olympia's power under RCW 35.11.050, RCW 35A.11.020, and RCW 35A.82.020 by imposing an excise tax measured with reference to the federal tax on individual income. .

**Section 2. Definitions.**

The definitions in this section apply throughout this Ordinance unless the context clearly requires otherwise.

(1) The terms “community college” and “technical college” mean the public community colleges and public technical colleges in the State of Washington governed under chapter 28B.50 RCW.

(2) The terms "university" and "college" mean any public university or public college in the State of Washington governed under chapter 28B.10 RCW, together with any public institution included in the WUE for the relevant academic year.

(3) "Department" means the Administrative Services department that the city manager directs to implement the provisions of this Ordinance.

(4) "GED" means General Education Development Certificate.

(5) "Gift aid" means financial aid received from federal and state grant and scholarship programs that provide funds for educational purposes with no obligation of repayment. Student loans and work study programs are not included.

(6) "Income" means income as determined under the Internal Revenue Code. A federal income tax return filed with the United States Internal Revenue Service creates a presumption of a taxpayer's income for purposes of this Ordinance.

(7) "Internal Revenue Code" means the United States Internal Revenue Code of 1986, and amendments thereto, and other provisions of the laws of the United States relating to federal income taxes, as the same may be or become effective at any time, or from time to time, for the relevant taxable year.

(8) "Qualified student" means an individual who:

(a) earned either a high school diploma from a public high school in the City of Olympia, Washington or a GED as provided under RCW 28A.305.190; and

(b)(i) legally resided or was domiciled in the City of Olympia during the entire academic year in which he or she received a high school diploma or GED; or

(ii) had no regular, fixed residence but was domiciled in the City of Olympia in a temporary shelter, institution or place not ordinarily used as a residence during at least 50% of the year preceding the date on which he or she received a high school diploma or GED; and

(c) enrolled in a community college, technical college, university or college within two years of earning a high school diploma or GED.

(9) "Resident taxpayer" means a taxpayer who:

(a) has maintained a residence or domiciled in the City of Olympia for the entire tax year; or

(b) is not domiciled in the City of Olympia, but maintains a permanent place of abode in the City of Olympia and spends in the aggregate more than one hundred eighty-three consecutive days of the tax year in the City of Olympia unless the individual establishes to the satisfaction of the department that the individual is in the City of Olympia only for temporary or transitory purposes; or

(c) claims the City of Olympia as residence for federal income tax purposes.

(10) "Tax" means the excise tax established by this Ordinance, unless the context requires a different meaning.

(11) "Taxpayer" means a taxpayer as defined in Section 7701 of the Internal Revenue Code who is subject to a tax imposed under Section 1 of the Internal Revenue Code, excluding estates and trusts. As used in this ordinance, and by way of example, a taxpayer may be a married individual who makes a single return jointly with his spouse, a surviving spouse, an unmarried individual (other than surviving spouses and heads of households), a married individual filing a separate return, or other categories of taxpayer as defined in Section 7701 of the Internal Code, excluding estates and trusts.

(12) "Year" means (3) quarters or two (2) semesters

### **Section 3. Imposition of Excise Tax.**

- (1) The tax imposed by this Ordinance is effective with respect to income received on and after January 1, 2017.
- (2) An annual excise tax is imposed on each resident taxpayer in an amount equal to \_\_\_ percent of the amount shown as that taxpayer's "Total Tax" on the taxpayer's federal income tax return.
- (3) Every resident taxpayer subject to the tax assessed under this Ordinance shall make and file a return, and pay the tax owed, on or before April 30th of the year following the taxable year. Within three months from the final determination of any federal tax liability affecting a taxpayer's liability for the tax imposed under this Ordinance, such taxpayer shall make and file an amended return based on such final determination of federal tax liability, and pay any additional tax shown due thereon or make claim for refund of any overpayment.
- (4) All taxes imposed under this Ordinance and remaining unpaid after they become due shall bear interest at the rate of 1% per month or fraction thereof. At the department's discretion, the department may abate the interest owed, in whole or in part, upon showing of good cause.

### **Section 4. Establishment of the Opportunity for Olympia Fund.**

(1) A fund of the City called the "Opportunity for Olympia Fund" is hereby created to support grants for higher education to qualified students.

(2) All revenues from the tax imposed by this Ordinance must be deposited in the fund and used for the purposes set forth in this Ordinance.



(3) The City of Olympia may (but is not required to) solicit and receive grants and or other bequests from public and private entities, including commercial enterprises, to be deposited in the fund and used for the purposes set forth in this Ordinance.

(4) The total revenue received from the proceeds of the tax imposed less reasonable administrative fees will be devoted to grants or other related educational services under section 5 of this Ordinance. (5) Pending the receipt of excise taxes imposed by this Ordinance, the City may issue short-term obligations pursuant to chapter 39.50 RCW to pay for any portion of the costs of the Olympia Grant Program. Such short-term obligations may be paid or refunded with the tax proceeds received by the City.

### **Section 5. Opportunity for Olympia Grant Program.**

(1) A qualified student shall be eligible for a grant under this section each term that such student is enrolled in one or more courses that are either:

(a) offered at a community college or technical college for one or more credits that can be applied to (i) a one-year or two-year curriculum for students who plan to transfer to another post-secondary institution of education; (ii) an associate's degree; (iii) certificate program

(b) offered for credit at a college or university.

(2) Except as provided in paragraphs (3) and (4) of this section, the amount of a grant shall not exceed the actual cost of tuition for courses satisfying the criteria in paragraph (1) of this section, including tuition as defined in RCW 28B.15.020, less other gift aid received by the student that is and must be dedicated solely to such tuition. The department, in administering this program, shall take all reasonable steps to minimize the impact of grants awarded under this subsection (2) on other gift aid.

(3) Except as provided in paragraph (4) of this section, the total amount of dollars in grants awarded to a particular student under this chapter must not exceed the average cost of tuition for one year at South Puget Sound Community College, as determined by the department.

(4) The total amount of dollars in grants awarded in a calendar year under this chapter shall not exceed the amount of dollars deposited in the fund the prior tax year. If funds are insufficient, the department, in consultation with the City Council, will determine the priority by which grants are awarded.

(5) Nothing in this Ordinance shall be deemed to create an enforceable right in

any individual to receive a grant under this section.

### **Section 6. Implementation and Accountability.**

(1) The City Manager is authorized to adopt any rules, procedures, forms and policies, to execute contracts and agreements, as he or she deems appropriate and to coordinate with any other public entity, including but not limited to the Olympia School District, the Washington Student Achievement Council, the Washington State Department of Revenue, and the Internal Revenue Service, to implement the provisions of this Ordinance. Rules adopted by the City Manager may, among other things, provide mechanisms by which taxpayers may, or may be required to, make partial payments or to have payment deductions in order to provide for the payment of the tax imposed by this Ordinance.

(2) The city manager, or his or her designee, may prepare or cause to be prepared an annual report of the monies deposited in the fund, reporting on how the monies have been spent and estimating the number of residents benefited.

### **Section 7. Advisory Vote.**

(1) The City Council seeks advice and direction from its citizens regarding the excise tax imposed in this Ordinance and the expenditure of proceeds of that tax on the Opportunity Grant Program. The City Council retains its full power and authority to impose the excise tax for local purposes under RCW 35A.11.020, but it is the Council's intent to repeal this Ordinance if it is not supported by a majority of the electors of the City voting on an advisory proposition regarding the excise tax and the Opportunity Grant Program.

(2) It is found and declared that an emergency exists requiring the calling of a special election and the Auditor of Thurston County, Washington, as ex officio Supervisor of Elections, is requested to find and declare the existence of an emergency. The Auditor of Thurston County further is requested to call and conduct a special election in the City, in the manner provided by law, to be held therein on November 8, 2016, for the purpose of submitting to the voters of the City, for their advisory approval or advisory rejection, the question of whether or not the excise tax imposed by this Ordinance should be maintained, with the proceeds of that tax to be devoted to the Opportunity for Olympia Grant Program created by this Ordinance. The City's advisory proposition,

Proposition No. 1, and suggested ballot title, is set forth in Attachment A, incorporated herein by this reference.

(3) The City Clerk is authorized and directed to certify, no later than August 2, 2016, to the County Auditor, as ex officio Supervisor of Elections in the City, a copy of this ordinance and the propositions to be submitted at that election. For purposes of receiving notice of any matters related to the ballot title, as provided in RCW 29A.36.080, the City Council designates the City Manager and the City Attorney as the persons to whom the Director of Elections shall provide such notice.

(4) Authorizations. The proper City officials are authorized to perform such duties as are necessary or required by law to the end that this advisory measure be submitted to the voters of the City at the November 8, 2016 election.

**Section 8. Severability.** If any provision of this Ordinance or its application to any person or circumstance is held invalid, the remainder of the Ordinance or application of the provisions to other persons or circumstances shall remain unaffected.

**Section 9. Ratification.** Any act consistent with the authority and prior to the effective date of this Ordinance is hereby ratified and affirmed.

**Section 10. Effective Date.** This Ordinance shall take effect five (5) days after publication, as provided by law.

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**ATTACHMENT A**  
**Excise Tax Rates**

DRAFT

**ATTACHMENT B**  
**Proposed Ballot Title**

CITY OF OLYMPIA  
PROPOSITION No. 1  
ADVISORY VOTE ON EXCISE TAX FOR OLYMPIA EDUCATION GRANT PROGRAM

The City Council of the City of Olympia has adopted Ordinance \_\_\_\_\_ concerning an advisory vote on excise taxes for college tuition. If approved, this advisory vote would indicate voter approval or disapproval of the excise tax imposed by Ordinance \_\_\_\_\_ and calculated [at \_\_\_% of] [based on a sliding scale of] individual [adjusted] gross income and the dedication of tax revenues to fund an Olympia Grant Program for certain college tuition expenses of Olympia residents.

Should the City Council of Olympia retain the tax imposed by Ordinance \_\_\_\_\_?

- Yes       •
- No       •

## Opportunity for Olympia – Draft Council Ordinance

**This measure would provide funding up to one year of community or technical college tuition for each City of Olympia public high school graduate or GED high school equivalency certificate recipients, or an equivalent amount of money for such public high school graduates and GED recipients who choose to attend, public universities and colleges in the State of Washington, or any public school included in the Western Undergraduate Exchange (WUE). All funds (less reasonable administrative costs) must be spent on tuition. The measure would be funded by establishing a graduated income tax on all City of Olympia taxpayer adjusted gross income.**

AN ORDINANCE of the City of Olympia, Washington imposing an income tax measure with reference to the federal tax on individual income, the revenues therefrom to be dedicated to all or a portion of tuition for a year of community or technical college for each year's City of Olympia public high school graduates or General Education Development Certificate ("GED") recipients, or an equivalent amount of money for such public high school graduates and GED recipients who choose to attend, public universities and colleges in the State of Washington or any public school in the Western Undergraduate Exchange; establishing a special fund; and providing for an advisory vote of the electors of the City.

WHEREAS, making higher education more affordable and accessible for public high school graduates and GED recipients will lead to opportunities for further education and jobs and to a higher quality of life for all citizens; and

WHEREAS, the City of Olympia has a significant interest in making higher education more affordable and accessible for its high school graduates and GED recipients: and

WHEREAS, RCW 35A.11.050 provides, in part, that the general grant of municipal power conferred on cities by Chapter 35A RCW "is intended to confer the greatest power of local self-government consistent with the Constitution of this state and shall be construed liberally in favor of such cities. Specific mention of a particular municipal power or authority contained in this title or in the general law shall be construed as in addition and supplementary to, or explanatory of the powers conferred in general terms by [that] chapter": and

WHEREAS, RCW 35A.11.020 provides, in part, that “the legislative body of each code city shall have all powers possible for a city or town to have under the Constitution of this state, and not specifically denied to code cities by law”, specifically including the rendering of educational services commonly or conveniently rendered by cities; and

WHEREAS, RCW 35A.11.020 also provides that “legislative bodies of code cities shall have within their territorial limits all powers of taxation for local purposes except those which are expressly preempted by the state as provided in RCW 66.08.120, 82.36.440, 48.14.020, and 48.14.080”; and

WHEREAS, RCW 35A.82.020 additionally authorizes code cities “to impose excises for regulation or revenue in regard to all places and kinds of business, production, commerce, entertainment, exhibition, and upon all occupations, trades and professions and any other lawful activity”;

NOW THEREFORE, THE CITY COUNCIL OF THE CITY OF OLYMPIA DO ORDAIN as follows:

**Section I. Legislative Findings and Intent.** The above recitals are adopted and confirmed as if set forth here in full. To the extent revenues from the tax imposed by this Ordinance and other legally available amounts allocated for that purpose by the City Council are sufficient, the Council intends to fund not to exceed one year of tuition for community or technical college in the State of Washington for each year's City of Olympia public high school graduates and GED recipients, or an equivalent amount of money for such graduates and GED recipients who choose to attend public universities or public colleges in the State of Washington, or any public school in the Western Undergraduate Exchange. The City Council intends to raise such funds through the exercise of the City of Olympia's power under RCW 35.11.050, RCW 35A.11.020, and RCW 35A.82.020 by imposing an excise tax measured with reference to the federal tax on individual income. .

**Section 2. Definitions.**

The definitions in this section apply throughout this Ordinance unless the context clearly requires otherwise.

(1) The terms “community college” and “technical college” mean the public community colleges and public technical colleges in the State of Washington governed under chapter 28B.50 RCW.

(2) The terms "university" and "college" mean any public university or public college in the State of Washington governed under chapter 28B.10 RCW, together with any public institution included in the WUE for the relevant academic year.

(3) "Department" means the Administrative Services department that the city manager directs to implement the provisions of this Ordinance.

(4) "GED" means General Education Development Certificate.

(5) "Gift aid" means financial aid received from federal and state grant and scholarship programs that provide funds for educational purposes with no obligation of repayment. Student loans and work study programs are not included.

(6) "Income" means income as determined under the Internal Revenue Code. A federal income tax return filed with the United States Internal Revenue Service creates a presumption of a taxpayer's income for purposes of this Ordinance.

(7) "Internal Revenue Code" means the United States Internal Revenue Code of 1986, and amendments thereto, and other provisions of the laws of the United States relating to federal income taxes, as the same may be or become effective at any time, or from time to time, for the relevant taxable year.

(8) "Qualified student" means an individual who:

(a) earned either a high school diploma from a public high school in the City of Olympia, Washington or a GED as provided under RCW 28A.305.190; and

(b)(i) legally resided or was domiciled in the City of Olympia during the entire academic year in which he or she received a high school diploma or GED; or

(ii) had no regular, fixed residence but was domiciled in the City of Olympia in a temporary shelter, institution or place not ordinarily used as a residence during at least 50% of the year preceding the date on which he or she received a high school diploma or GED; and

(c) enrolled in a community college, technical college, university or college within two years of earning a high school diploma or GED.

(9) "Resident taxpayer" means a taxpayer who:

(a) has maintained a residence or domiciled in the City of Olympia for the entire tax year; or

(b) is not domiciled in the City of Olympia, but maintains a permanent place of abode in the City of Olympia and spends in the aggregate more than one hundred eighty-three consecutive days of the tax year in the City of Olympia unless the individual establishes to the satisfaction of the department that the individual is in the City of Olympia only for temporary or transitory purposes; or

(c) claims the City of Olympia as residence for federal income tax purposes.



(10) "Tax" means the excise tax established by this Ordinance, unless the context requires a different meaning.

(11) "Taxpayer" means a taxpayer as defined in Section 7701 of the Internal Revenue Code who is subject to a tax imposed under Section 1 of the Internal Revenue Code, excluding estates and trusts. As used in this ordinance, and by way of example, a taxpayer may be a married individual who makes a single return jointly with his spouse, a surviving spouse, an unmarried individual (other than surviving spouses and heads of households), a married individual filing a separate return, or other categories of taxpayer as defined in Section 7701 of the Internal Code, excluding estates and trusts.

(12) "Year" means (3) quarters or two (2) semesters

### **Section 3. Imposition of Excise Tax.**

- (1) The tax imposed by this Ordinance is effective with respect to income received on and after January 1, 2017.
- (2) An annual excise tax is imposed on each resident taxpayer in an amount equal to \_\_\_ percent of the amount shown as that taxpayer's "Total Tax" on the taxpayer's federal income tax return.
- (3) Every resident taxpayer subject to the tax assessed under this Ordinance shall make and file a return, and pay the tax owed, on or before April 30th of the year following the taxable year. Within three months from the final determination of any federal tax liability affecting a taxpayer's liability for the tax imposed under this Ordinance, such taxpayer shall make and file an amended return based on such final determination of federal tax liability, and pay any additional tax shown due thereon or make claim for refund of any overpayment.
- (4) All taxes imposed under this Ordinance and remaining unpaid after they become due shall bear interest at the rate of 1% per month or fraction thereof. At the department's discretion, the department may abate the interest owed, in whole or in part, upon showing of good cause.

### **Section 4. Establishment of the Opportunity for Olympia Fund.**

(1) A fund of the City called the "Opportunity for Olympia Fund" is hereby created to support grants for higher education to qualified students.

(2) All revenues from the tax imposed by this Ordinance must be deposited in the fund and used for the purposes set forth in this Ordinance.

(3) The City of Olympia may (but is not required to) solicit and receive grants and or other bequests from public and private entities, including commercial enterprises, to be deposited in the fund and used for the purposes set forth in this Ordinance.

(4) The total revenue received from the proceeds of the tax imposed less reasonable administrative fees will be devoted to grants or other related educational services under section 5 of this Ordinance. (5) Pending the receipt of excise taxes imposed by this Ordinance, the City may issue short-term obligations pursuant to chapter 39.50 RCW to pay for any portion of the costs of the Olympia Grant Program. Such short-term obligations may be paid or refunded with the tax proceeds received by the City.

### **Section 5. Opportunity for Olympia Grant Program.**

(1) A qualified student shall be eligible for a grant under this section each term that such student is enrolled in one or more courses that are either:

(a) offered at a community college or technical college for one or more credits that can be applied to (i) a one-year or two-year curriculum for students who plan to transfer to another post-secondary institution of education; (ii) an associate's degree; (iii) certificate program

(b) offered for credit at a college or university.

(2) Except as provided in paragraphs (3) and (4) of this section, the amount of a grant shall not exceed the actual cost of tuition for courses satisfying the criteria in paragraph (1) of this section, including tuition as defined in RCW 28B.15.020, less other gift aid received by the student that is and must be dedicated solely to such tuition. The department, in administering this program, shall take all reasonable steps to minimize the impact of grants awarded under this subsection (2) on other gift aid.

(3) Except as provided in paragraph (4) of this section, the total amount of dollars in grants awarded to a particular student under this chapter must not exceed the average cost of tuition and fees for one year at South Puget Sound Community College, as determined by the department.

(4) The total amount of dollars in grants awarded in a calendar year under this chapter shall not exceed the amount of dollars deposited in the fund the prior tax year. If funds are insufficient, the department, in consultation with the City Council, will determine the priority by which grants are awarded.

(5) Nothing in this Ordinance shall be deemed to create an enforceable right in

any individual to receive a grant under this section.

### **Section 6. Implementation and Accountability.**

(1) The City Manager is authorized to adopt any rules, procedures, forms and policies, to execute contracts and agreements, as he or she deems appropriate and to coordinate with any other public entity, including but not limited to the Olympia School District, the Washington Student Achievement Council, the Washington State Department of Revenue, and the Internal Revenue Service, to implement the provisions of this Ordinance. Rules adopted by the City Manager may, among other things, provide mechanisms by which taxpayers may, or may be required to, make partial payments or to have payment deductions in order to provide for the payment of the tax imposed by this Ordinance.

(2) The city manager, or his or her designee, may prepare or cause to be prepared an annual report of the monies deposited in the fund, reporting on how the monies have been spent and estimating the number of residents benefited.

### **Section 7. Advisory Vote.**

(1) The City Council seeks advice and direction from its citizens regarding the excise tax imposed in this Ordinance and the expenditure of proceeds of that tax on the Opportunity Grant Program. The City Council retains its full power and authority to impose the excise tax for local purposes under RCW 35A.11.020, but it is the Council's intent to repeal this Ordinance if it is not supported by a majority of the electors of the City voting on an advisory proposition regarding the excise tax and the Opportunity Grant Program.

(2) It is found and declared that an emergency exists requiring the calling of a special election and the Auditor of Thurston County, Washington, as ex officio Supervisor of Elections, is requested to find and declare the existence of an emergency. The Auditor of Thurston County further is requested to call and conduct a special election in the City, in the manner provided by law, to be held therein on November 8, 2016, for the purpose of submitting to the voters of the City, for their advisory approval or advisory rejection, the question of whether or not the excise tax imposed by this Ordinance should be maintained, with the proceeds of that tax to be devoted to the Opportunity for Olympia Grant Program created by this Ordinance. The City's advisory proposition,

Proposition No. 1, and suggested ballot title, is set forth in Attachment A, incorporated herein by this reference.

(3) The City Clerk is authorized and directed to certify, no later than August 2, 2016, to the County Auditor, as ex officio Supervisor of Elections in the City, a copy of this ordinance and the propositions to be submitted at that election. For purposes of receiving notice of any matters related to the ballot title, as provided in RCW 29A.36.080, the City Council designates the City Manager and the City Attorney as the persons to whom the Director of Elections shall provide such notice.

(4) Authorizations. The proper City officials are authorized to perform such duties as are necessary or required by law to the end that this advisory measure be submitted to the voters of the City at the November 8, 2016 election.

**Section 8. Severability.** If any provision of this Ordinance or its application to any person or circumstance is held invalid, the remainder of the Ordinance or application of the provisions to other persons or circumstances shall remain unaffected.

**Section 9. Ratification.** Any act consistent with the authority and prior to the effective date of this Ordinance is hereby ratified and affirmed.

**Section 10. Effective Date.** This Ordinance shall take effect five (5) days after publication, as provided by law.

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**ATTACHMENT A**  
**Excise Tax Rates**

DRAFT

**ATTACHMENT B**  
**Proposed Ballot Title**

CITY OF OLYMPIA  
PROPOSITION No. 1  
ADVISORY VOTE ON EXCISE TAX FOR OLYMPIA EDUCATION GRANT PROGRAM

The City Council of the City of Olympia has adopted Ordinance \_\_\_\_\_ concerning an advisory vote on excise taxes for college tuition. If approved, this advisory vote would indicate voter approval or disapproval of the excise tax imposed by Ordinance \_\_\_\_\_ and calculated [at \_\_\_% of] [based on a sliding scale of] individual [adjusted] gross income and the dedication of tax revenues to fund an Olympia Grant Program for certain college tuition expenses of Olympia residents.

Should the City Council of Olympia retain the tax imposed by Ordinance \_\_\_\_\_?

- Yes       •
- No       •

Fellow Councilmembers,

The number of Olympia residents who have signed on in support of the Opportunity for Olympia initiatives is enough to put the initiative on the ballot. Signature gathering continues to be sure that there are more than enough supporters on the petition. We now have several thousands of our constituents speaking out clearly through the local initiative process. In addition, recent opinion polls show overwhelming support for the initiative.

The initiative speaks to the value of education and the impact of a higher-education financing system, which makes post-secondary education out of reach or an experience that requires many years of debt. Olympia voters have consistently demonstrated their support for education levies and bonds – our public schools are far better than many in the state -- yet Olympia's young adults are facing the same financial burden for higher education as other Washingtonians.

The initiative also acknowledges that our state has the most regressive tax system in the country. Washington sits dead last for fair taxes. It is just this sort of inequity that is fueling the demand for change, so prevalent in the national election dialogue.

#### Initiative Language

I have found a handful of problems with the initiative language:

- Many undefined or confusing terms
- No enforcement provisions, and
- An inadequate administrative structure, which hampers revenue collection and distribution

#### Revenue Collection

The revenue collection procedures provided by the initiative are challenging. While existing RCWs are clear that Olympia has the authority to collect funds for educational services; there are complications from case law that set awkward precedent on either a privilege tax or an income tax.

From the April 19 study session with Hugh Spitzer, we learned that Washington had a graduated income tax until 1933 and that the original tax had been approved through state-wide initiative by a wide margin. Then a narrow majority of the court determined that income is a form of property, thereby voiding the use of this public revenue tool (Culliton vs Chase) -- a finding that is uniquely Washingtonian.

A more recent attempt to tax income through the state's privilege tax authority also failed because of a court ruling that working for wages is not a privilege, but a right (Cary vs Bellingham – 1952).

In effect, the initiative challenges the 1952 ruling and seeks to tax income as a privilege.

### Legal Expenses

The ballot measure appears quiet likely to pass. It is also likely to draw legal challenges due to the protracted legal dispute over income as a basis for taxation. By law, the City of Olympia is obligated to defend initiatives of its citizens. Yet, the initiative provides no means of facing what could be an expensive and drawn-out legal case.

### Collection Complications

Without streamlined means of identifying an individual's tax obligation under the proposed new law, Olympia could be facing a substantial administrative burden. Other jurisdictions, in other states, with local taxes tied to income, have a state and federal infrastructure in place to determine an individual's local tax obligation. To date, we have not identified a feasible method of quantifying the individual tax obligations proposed by the initiative. Our attempts to meet with the Dept. of Revenue have not been successful.

### Lack of Fairness

As proposed, the initiative would apply a flat tax on household income over \$200,000. Those below this threshold would pay nothing; those above would pay the full cost of the benefits. This is not progressive taxation – rather, this approach seeks to further a community value (education) by imposing the full cost on the top 3% of the population.

In my view, this is not the Olympia way. A fully graduated, progressive income tax sends a clear message that our community, as a whole, is willing to support our young adults, their education, and our community's future. A graduated tax does not perpetuate the regressive state taxes we are living with today; rather it spreads the burden, with those more able to pay, paying more.

### Lack of Administrative Feasibility

It's unreasonable to think that the content of this initiative could be implemented and maintained with 5% overhead. If this limit on administrative support is not addressed the City will need to cut back other, existing programs. And that's just not responsible. Innovation is needed in tax collection and in the distribution of tuition benefits to make this work.

### Limited Options

As written, the initiative is flawed. Yet, I believe that our community wants us to address two objectives: supporting educational opportunities and helping to make taxes more fair. It is impossible to change the initiative language. However, we can cure all of the shortcomings I have identified:

- Poorly defined terms
- Lack of enforcement authority
- Legal defense expenses
- Complicated collections
- Unfair tax burden
- Under-supported administration



### Proposal

Rather than allowing a flawed proposal to pass at the ballot, and then face a powerful legal challenge at public expense, it is far more responsible, as elected leaders, to bring forward a measure that effectively addresses the education and tax fairness objectives identified in the opinion polls and the initiative petition -- a measure that is well crafted and which reflects Olympia's values.

We can craft a significantly improved ballot measure which fixes the errors I have pointed out. In addition, I am working with members of the business community and private interests who are actively working to address concerns about legal fees and administrative costs. I am optimistic that we will find a path forward that will not burden the City, rather, Olympia's residents will be relieved of these costs. In addition, I am confident that a streamlined collection system is reasonably achieved with the support of the Dept. of Revenue.

### Motion

Therefore, I move that the Olympia City Council direct City staff to draft an ordinance to place a referendum on the November 2016 ballot enacting a graduated income tax for city residents, under RCW 35A.01.050, to support the one year of no cost tuition at a community or technical college for each year's City of Olympia high school graduates and GED recipients, or an equivalent amount of money for those high school graduates or GED recipients who choose to attend public universities or public colleges in the State of Washington, and that this draft ordinance be brought before the City Council at their June 19, 2016 meeting for approval.

# Proposed Income Tax Ordinance/Petition

## Administrative Challenges and Costs

May 17, 2016



# Overview

## 1. Legal Issues – Addressed by City’s Bond Counsel April 19

- Authorization questions
  - Constitutional questions
  - Gift of public funds questions
- **Not going to repeat tonight**

## 2. Policy Issues

- Tax equity questions – taxes individual earnings but not corporate or business income
  - Threshold is too high or too low (e.g. reduce to \$100,000 household)
  - Tuition grant is not needs based – students from high-income families also get money
- **Not going to address tonight**



# Focus on Administrative Issues and Costs

## Three Parts

**I. Administrative-Definitional problems, inconsistencies, apparent omissions and other administrative issues**

**II. Collection of Income Data and Revenue Challenges/Costs**

- Data collection system (20,000 households - confidential and secure)
- Review and auditing system
- Accounting and reporting
- Enforcement
- Public education, dispute resolution administration

**III. Use of Grants**

- Adjudication and dispute system
- Accounting and auditing
- Financial distribution
- Enforcement of eligibility
- Support to potential advisory committee
- Eligibility criteria
- Grant application system



# Key Provisions

**Proposal cannot be changed in any way: “City Council can adopt the following proposed ordinance or submit it, unaltered, to a citywide vote”.**

***Administrative Impact:*** Clarifications of definitions, conflicting statements, inaccurate information or omissions **cannot** be made.

***Example:***

1. Ordinance lacks a penalty provision for enforcement (addition of a penalty clause would be an alteration of the original ordinance).
2. Proposal does not tax business or corporate earnings, only individual wages and income.



# Administrative

## Definitional Issues:

### Petition says “household income” – not defined

- Appears to tax only individual wages/income

#### *Does not tax:*

- Other household income
- Corporate or business income
- Capital gains



# Administrative

## Definitional Issues:

### Definition of University or Colleges

- All say Washington “public” – only Washington State
- Specifically omits private colleges
  - St. Martin’s – No
  - Western Undergraduate Exchange (WUE) Schools – (163 participating schools would not qualify)
  - Other Out-of-State – No
- Intentional to omit St. Martin’s and WUE schools?

### Definition of Resident Taxpayer

- “Spends in excess of 183 days of the year in Olympia”
- Appears to exempt snowbirds
- What if one person in a household spends less than 183 days in Olympia?
- Does not say consecutive days
- What documentation is required?



# Administrative

## Inconsistencies/Complications

**Ballot says, “funding at least one year of free community college or technical college...”**

- But, Sec. 5(2) says, “shall be actual cost of tuition and fees” – not all college costs
- Sec. 5(4) “if funds are insufficient, the department in consultation with the committee, may determine the priority by which grants are awarded” implies less than one year tuitions or fees or some eligible may get zero

**Sec 3(3) Assessment of excise tax requires filing on or before April 15, at the same time Federal tax is due. Effective date is presumably 2017.**

- Some taxpayers get extensions and don’t know by April 15. City could have to do extensive outreach, education early 2017 to advise taxpayers of their obligation.
- If Olympia receives confidential tax information from 20,000 households it will take substantial time for the City to collect this confidential data, review it, audit, collect payment and issue enforcement for non-payment.





# Administrative

- Need 2016 dollars for certification of signatures
- Need 2016 dollars to place on ballot/ voters pamphlet
- Need some outside assistance from tax accountant/attorney
  - Does the City need to issue 1099 to recipients?
- Will we need outside counsel to defend initiative? How much will it cost?
- “The People of Olympia adopt and confirm the above recitals”
  - Whereas...free first and second year tuition will allow students to start their professional lives with little or no student debt.
  - Whereas....3% of households exceed \$200,000...
  - Whereas....wealthy residents use a greater proportion of City services...
  - Whereas....tuition costs are \$3,846 which is more than 10% of household incomes...



# Administrative

- “People intend to fund at least one year of free community or technical college” Is this a general fund commitment?
- Violation of OMC –Section 6–Implementation and Accountability
  - A Department does not have authority to sign interlocal contract
  - A Department may not delegate it’s duties and responsibilities to a committee
- No response from Olympia School District
- Timing of Initiative
  - Two readings of ordinance plus pro/con appointments by 7/26
  - Effective date/Tax year



# Collection of Funds

- ✓ How do we get the income information to assess the tax?
- ✓ 5% is inadequate to administer the program
- ✓ How do we enforce? No Penalty
- ✓ No appeals process
- ✓ Multiple references to household income—definition section refers to Adjusted Gross Income (AGI)
- ✓ Section 3—Assessment of Excise Tax
  - (4) Refunds—Are they included in 5% administrative fee or general fund balance?



# Use of Funds

## ✓ No appeals process

- how do we handle legal challenges?

## ✓ Qualified Student

- B(1) resides in the City of Olympia at least 50% of the year preceding the date on which he/she received diploma.  
What documentation is required?

## ✓ Section 5

- B(2) tuition and services and activities fees
  - How do I determine average amount?
  - Can it be challenged?

# Opportunity for Olympia Initiative Petition



This measure would establish a city fund dedicated to funding at least one year of free community or technical college for each year's City of Olympia public high school graduates and GED high school equivalency certificate recipients, or an equivalent amount of money for such public high school graduates and GED recipients who choose to attend public universities and colleges in the State of Washington. 95% of all funds raised must be spent on tuition or related educational services, not administrative costs. The measure would be funded by establishing an excise tax of 1.5% on household income exceeding \$200,000 in the City of Olympia

## INITIATIVE PETITION TO THE OLYMPIA CITY COUNCIL:

We, the undersigned registered voters within the City of Olympia, hereby petition the City Council to adopt the following proposed ordinance or submit it, unaltered, to a citywide vote pursuant to state law:

This measure would establish a fund dedicated to funding one year of free community college for each year's public high school graduates and those students receiving GED high school equivalency certificates who live in the City of Olympia, or an equivalent amount of money for those public high school graduates and GED recipients who choose to attend public universities and colleges in the State of Washington. 95% of all funds raised must be spent on tuition, not administrative costs. The measure would be funded by establishing an excise tax of 1.5% on household income exceeding \$200,000.00 in the City of Olympia.

## WARNING:

Every person who signs this petition with any other than his or her true name, or who knowingly signs more than one of these petitions, or signs a petition seeking an election when he or she is not a legal voter, or signs a petition when he or she is otherwise not qualified to sign, or who makes herein any false statement, shall be guilty of a misdemeanor.

Each signature shall be executed in ink or indelible pencil and shall be followed by the name and address of the signer and the date of signing.

SIGNATURE <i>Please sign as registered to vote</i>	PRINT NAME HERE <i>For positive identification</i>	FULL MAILING ADDRESS <i>Street, City, State and Zip</i>	Date <i>MM-DD-YY</i>
1			<input type="text"/>
2			<input type="text"/>
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The full text of the ordinance is on the back.

# Opportunity for Olympia Initiative Petition

TO THE OLYMPIA CITY COUNCIL:

We, the undersigned registered voters within the City of Olympia, hereby petition the City Council to adopt the following proposed ordinance or submit it, unaltered, to a citywide vote pursuant to state law:

**This measure would establish a city fund dedicated to funding at least one year of free community or technical college for each year's City of Olympia public high school graduates and GED high school equivalency certificate recipients, or an equivalent amount of money for such public high school graduates and GED recipients who choose to attend public universities and colleges in the State of Washington. 95% of all funds raised must be spent on tuition or related educational services, not administrative costs. The measure would be funded by establishing an excise tax of 1.5% on household income exceeding \$200,000 in the City of Olympia.**

AN ORDINANCE of the City of Olympia, Washington, imposing an excise tax on household income above \$200,000 per year derived from financial transactions, personal activities, business, commerce, occupations, trades, professions and other lawful activities, the revenues therefrom to be dedicated to funding at least one year of free community or technical college for each year's City of Olympia public high school graduates and General Education Development Certificate ("GED") recipients, or an equivalent amount of money for such public high school graduates and GED recipients who choose to attend public universities and colleges in the State of Washington.

WHEREAS the accelerating costs of higher education over the past decade have created significant obstacles for college participation and completion for public high school graduates and GED recipients living in the City of Olympia.

WHEREAS making higher education more affordable and accessible for public high school graduates and GED recipients will lead to opportunities for further education and jobs and to a higher quality of life for all citizens.

WHEREAS free first-year and second-year tuition will allow students to enroll in college, obtain degrees and certificates much sooner and start their professional lives with little or no student debt.

WHEREAS one year of community college tuition costs approximately \$3,846, which is more than 10% of household income for two out of five households in the City of Olympia.

WHEREAS the City of Olympia has a significant interest in making higher education more affordable and accessible for its public high school graduates and GED recipients.

WHEREAS the Legislature authorizes the City of Olympia to assess excises for revenue in regard to all places and kinds of activities, including personal activities, business, production, commerce, entertainment and exhibition, and upon all occupations, trades and professions and any other lawful activity, as those activities take advantage of and use current and future city services.

WHEREAS the City of Olympia has authority to assess excises on personal activities that correlate to greater or more intense utilization of city services.

WHEREAS wealthy residents take advantage of and use a greater proportion of certain city services than do less wealthy residents. These services include without limitation police protection from theft, city utilities, educational programs, neighborhood improvement projects, property protection and other municipal services.

WHEREAS local income taxes are levied by both counties and cities, in 4,983 jurisdictions across the United States.

WHEREAS the average cost of living within the City of Olympia for a married couple with two children is approximately \$60,000, according to the Workforce Development Council of Washington State.

WHEREAS less than 3% of households in the City of Olympia benefit from annual incomes in excess of \$200,000.

WHEREAS residents in Washington with incomes below \$21,000 pay 16.8% of their income in state and local taxes, and residents with income between \$40,000 and \$65,000 pay 10.1% of their income in state and local taxes, while residents with income between \$200,000 and \$500,000 pay only 4.6% of their income in state and local taxes, and residents with income in excess of \$500,000 pay only 2.4% of their income in state and local taxes.

WHEREAS the People in their legislative capacity find that in raising revenue it is appropriate to assess taxes on the disproportionate use by wealthy residents of certain municipal services by imposing a 1.5% tax on household income in excess of \$200,000 a year, and to dedicate those funds to make higher education affordable and accessible for Olympia public high school graduates and GED recipients.

NOW THEREFORE, BE IT ORDAINED BY THE CITY OF OLYMPIA as follows:

**Section 1. Legislative Findings and Intent.** The People of the City of Olympia adopt and confirm the above recitals. In exercising their direct legislative authority, the People intend to fund at least one year of free community or technical college in the State of Washington for each year's City of Olympia public high school graduates and GED recipients, or an equivalent amount of money for such graduates and GED recipients who choose to attend public universities or public colleges in the State of Washington. The People intend to raise such funds through the exercise of the City of Olympia's power under RCW 35A.82.020 by imposing a 1.5% tax on household income in excess of \$200,000 a year. 95% of all funds raised must be spent on grants and related educational services, not administrative costs.

**Section 2. Definitions.** The definitions in this section apply throughout this chapter unless the context clearly requires otherwise.

(1) The terms "community college" and "technical college" mean the public community colleges and public technical colleges in the State of Washington governed under chapter 28B.50 RCW.

(2) The terms "university" and "college" mean the public universities and public colleges in the State of Washington governed under chapter 28B.10 RCW.

(3) "Committee" means the Opportunity for Olympia Committee, which shall be comprised of the Mayor Pro Tem and four additional members appointed by the Mayor for three year terms. Members may serve successive terms.

(4) "Department" means the department or departments that the city manager directs to implement the provisions of this chapter.

(5) "Fund" means the Opportunity for Olympia Fund defined in this chapter.

(6) "Gift aid" means financial aid received from federal and state grant and scholarship programs that provide funds for educational purposes with no obligation of repayment. Student loans and work study programs are not included.

(7) "Income" means adjusted gross income as determined under the federal internal revenue code. A federal individual income tax return filed with the United States Internal Revenue Service ("IRS") creates a presumption of a taxpayer's income for purposes of this chapter.

(8) "Internal revenue code" means the United States internal revenue code of 1986, and amendments thereto, and other provisions of the laws of the United States relating to federal income taxes, as the same may be or become effective at any time, or from time to time, for the taxable year.

(9) "Qualified student" means an individual who:

(a) earned either a high school diploma from a public high school in the State of Washington or a GED as provided under RCW 28A.305.190; and

(b)(i) resided or was domiciled in the City of Olympia at least 50% of the year preceding the date on which he or she received a high school diploma or GED; or

(ii) had no regular, fixed residence but lived in the City of Olympia in a temporary shelter, institution or place not ordinarily used as a residence at least 50% of the year preceding the date on which he or she received a high school diploma or GED; and

(c) enrolled in a community college, technical college, university or college within two years of earning a high school diploma or GED.

(10) "Resident taxpayer" means an individual who:

(a) has resided in the City of Olympia for the entire tax year; or

(b) is domiciled in the City of Olympia unless the individual:

(i) maintains no permanent place of abode in the City of Olympia; and

(ii) maintains a permanent place of abode elsewhere; and

(iii) spends in the aggregate not more than one-hundred and twenty days in the tax year in the City of Olympia; or

(c) is not domiciled in the City of Olympia, but maintains a permanent place of abode in the City of Olympia and spends in the aggregate more than one hundred eighty-three days of the tax year in the City of Olympia unless the individual establishes to the satisfaction of the department that the individual is in the City of Olympia only for temporary or transitory purposes; or

(d) claims the City of Olympia as the tax home for federal income tax purposes.

(11) "Tax" means the excise tax established by this chapter, unless the context requires a different meaning.

(12) "Taxpayer" means (i) an individual who is not married, who is a surviving spouse or who does not make a single return jointly with his or her spouse; or

(ii) a married couple filing jointly for federal income tax purposes.

**Section 3. Assessment of Excise Tax.**

(1) This act applies to income received on and after January 1, 2017.

(2) For each resident taxpayer, an annual levy is assessed on income exceeding \$200,000 per tax year at the rate of 1.5%.

(3) Each resident taxpayer who is subject to the tax assessed under this chapter shall make and file a return, and pay any tax owed, on or before April 15th of the year following the taxable year. The department may extend this deadline upon the request of the taxpayer for a period not to exceed one year.

(4) Within three months from the final determination of any federal tax liability affecting a taxpayer's liability for the tax assessed under this chapter, such taxpayer shall make and file an amended return based on such final determination of federal tax liability, and pay any additional tax shown due thereon or make claim for refund of any overpayment.

(5) All taxes assessed under the provisions of this chapter and remaining unpaid after they become due shall bear interest at the rate of 1% per month or fraction thereof. At the department's discretion, the department may abate the interest owed, in whole or in part, upon showing of good cause

**Section 4. Establishment of the Opportunity for Olympia Fund.**

(1) A new City of Olympia fund called the "Opportunity for Olympia Fund" is hereby created to support grants for higher education to qualified students.

(2) All revenues from the excise tax assessed under this chapter must be deposited in the fund and used exclusively for the purposes set forth in this chapter.

(3) The City of Olympia and the committee may solicit and receive gifts, grants and bequests from other public and private entities, including commercial enterprises, to be deposited in the fund and used exclusively for the purposes set forth in this chapter.

(4) At least 95% of the total revenue received by the fund must be devoted to grants or other related educational services under section 5 of this chapter, not to administrative costs.

**Section 5. Opportunity for Olympia Grant Program.**

(1) A qualified student shall be eligible for a grant under this section each term that such student is enrolled in one or more courses that are either:

(a) offered at a community college or technical college for one or more credits that can be applied to (i) a one-year or two-year curriculum for students who plan to transfer to another post-secondary institution of education; (ii) an associate's degree; (iii) a program in career and technical education; (iv) Basic Education for Adults; (v) Integrated Basic Education Skills Training I-Best; (vi) the first two years of study for an Upper Division/ Applied Bachelor's Degree provided through a community college; or (vii) such other programs as the department determines are appropriate; or

(b) offered for credit at a college or university.

(2) Except as provided in paragraphs (3) and (4) of this section, the amount of a grant shall be the actual cost of tuition and fees for courses satisfying the criteria in paragraph (1) of this section, including tuition and fees as defined in RCW 28B.15.020 and services and activities fees as defined in RCW 28B.15.041, less other gift aid received by the student that is and must be dedicated solely to such tuition and fees. The department, in administering this program, shall take all reasonable steps to minimize the impact of grants awarded under this subsection (2) on other gift aid.

(3) Except as provided in paragraph (4) of this section, the total amount of dollars in grants awarded to a particular student under this chapter shall not exceed the average cost of tuition and fees for one year at a community college, as determined by the department in consultation with the committee.

(4) The total amount of dollars in grants awarded in a tax year under this chapter shall not exceed the amount of dollars deposited in the fund the prior tax year. If funds are insufficient, the department, in consultation with the committee, may determine the priority by which grants are awarded. At the end of a tax year in which more than 10% of the revenues deposited in the fund during the prior tax year are not disbursed, the department, in consultation with the committee, may (i) dedicate the surplus, or any portion thereof, to fund grants for the average cost of up to two years of community college; and/or

(ii) implement or support programs or policies that improve the academic success or completion rates for students who receive or will be eligible for a grant under this chapter.

**Section 6. Implementation and Accountability.**

(1) The department shall have authority to adopt any rules, procedures, forms and policies, to execute contracts and agreements, to delegate its authority to the committee as the department deems appropriate and to coordinate with any other public entity, including but not limited to the Olympia School District, the Washington Student Achievement Council, the Washington State Department of Revenue, and the IRS, to implement the provisions of this chapter.

(2) The city manager, or his or her designee, shall prepare an annual audit of the moneys deposited in the fund, reporting on how the moneys have been spent and estimating the number of residents benefited. Annual disclosure of tax collection and spending under this chapter must be posted on a web site maintained by the City of Olympia and such disclosure must, at a minimum, include the information set forth in RCW 43.08.150, localized for the City of Olympia.

**Section 7. Miscellaneous.**

(1) The provisions of this chapter shall be interpreted and implemented in a manner consistent with the United States Constitution, the Washington Constitution and federal and state laws and regulations.

(2) If any section, subsection, paragraph, sentence, clause, or phrase of this ordinance is declared unconstitutional or invalid for any reason, such decision shall not affect the validity of the remaining parts of this ordinance.

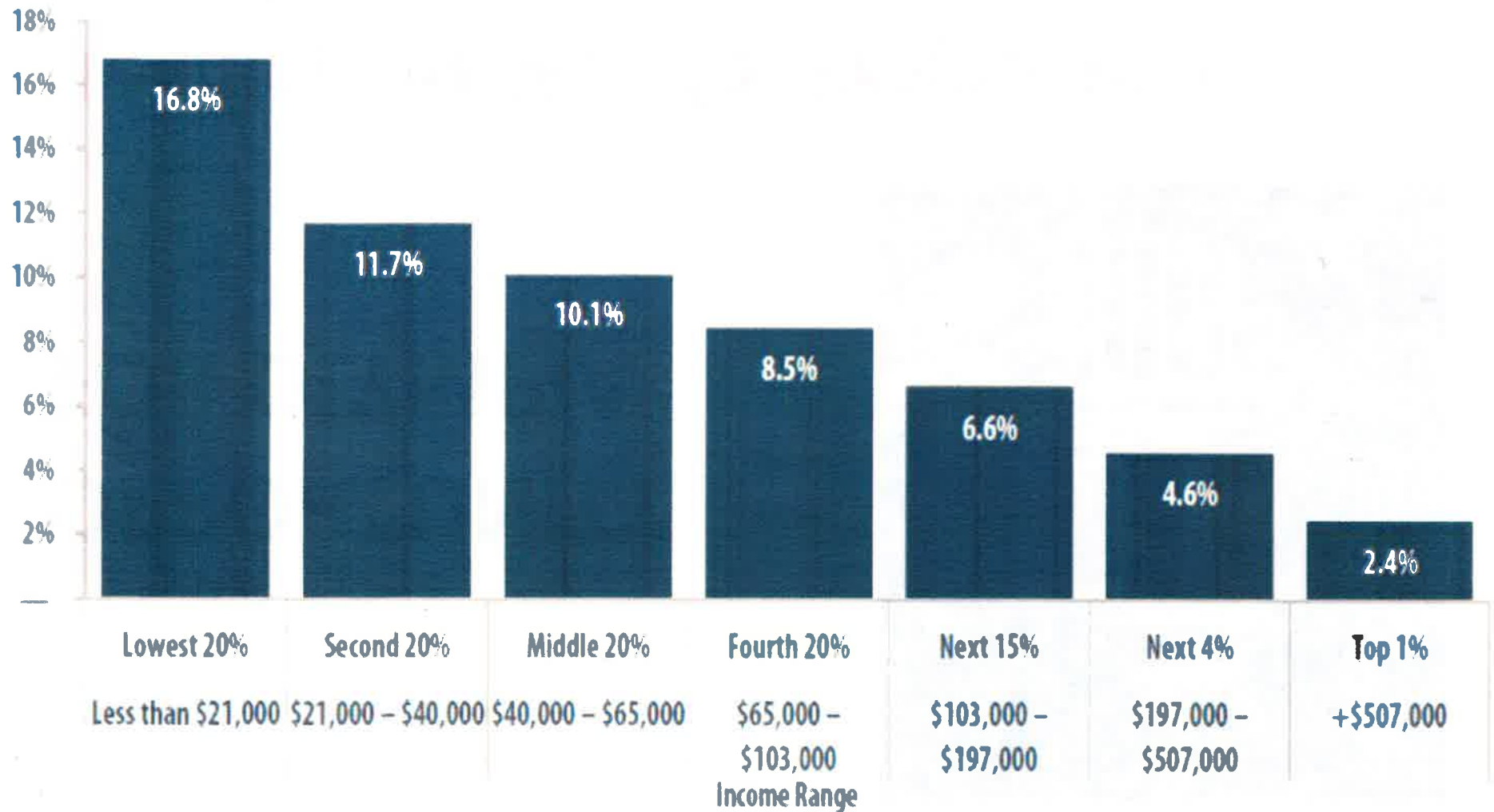
# **OPPORTUNITY FOR OLYMPIA**



**Leading the Way for Progressive  
Taxation in Washington State**

## % OF INCOME PAID IN STATE AND LOCAL TAXES WASHINGTON STATE

### Shares of family income for non-elderly taxpayers





# Polling Results

- Fund free community college tuition for all public high school graduates or an equivalent amount of money for those attending public four year universities and colleges.
- Establishing a tax on households with income in excess of \$200 thousand dollars in the City of Olympia.
- YES: 70%      NO: 22%
- YES: 71%      NO: 24%

# Opportunity for Olympia Leading the way for progressive taxation

- **Olympia 2016**
- **Seattle 2017**
- **Bellingham, Shoreline 2018**
- **Statewide 2020**

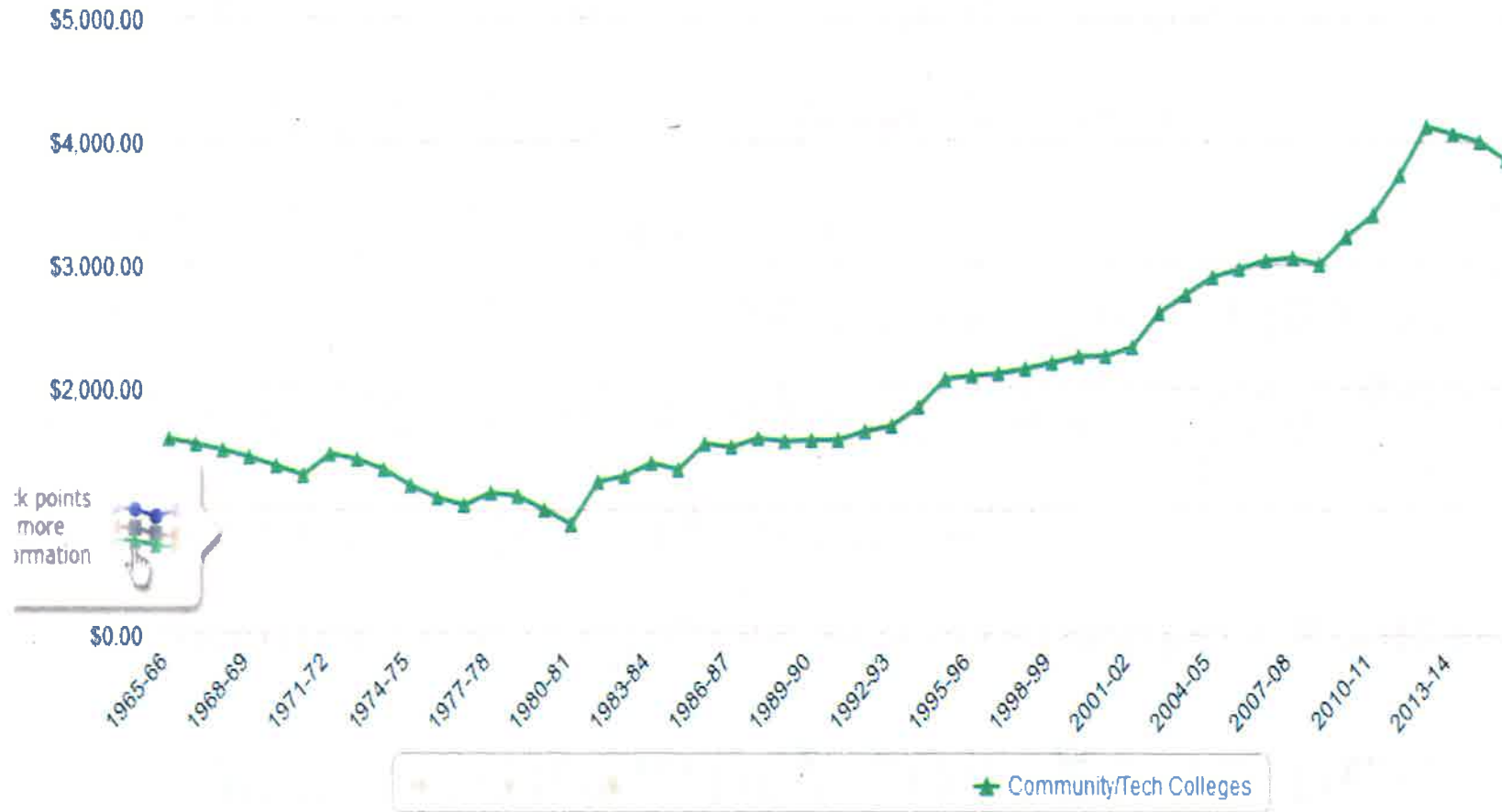
**Forward!**



# Olympia Public High School Graduates and Community College Tuition

- Olympia High Schools graduated 647 students
- 70% live in the City of Olympia
- 25% go to community college and 26% go to public four-year universities. That's fewer than 250 students in all.
- Add in 100 GED certificate gainers.
- Total students for free tuition: 350
- Annual cost: \$1.4 million

# Community College Tuition



EQI calculations based on WA LEAP, WA Student Achievement Council, and WA Office of Financial Management data. In constant 2014 dollars.

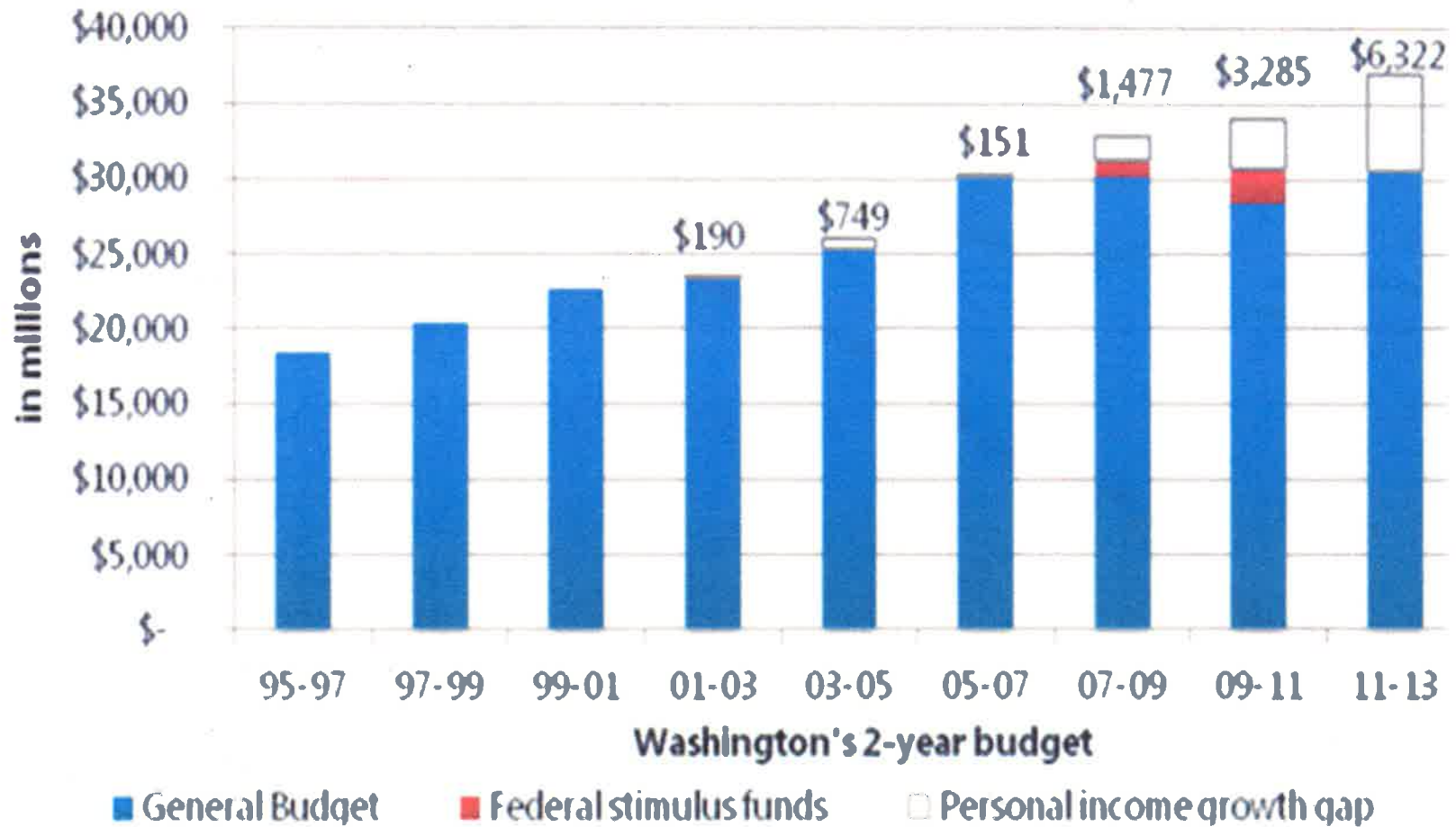
# Olympia Details

- **Signatures Needed: 4,702**
- **Authority to Tax: Privilege Tax**
- **Suggested Tax: 1.5% tax on income in excess of \$200,000**
- **Revenue \$2.5 million**
- **711 taxpayers**
  
- **Percentage of households:  $\$200,000 = 3\%$**
- **Percentage of households:  $< \$50,000 = 56\%$**
- **Percentage of households:  $50K - 200K = 41\%$**

# Olympia can lead the way to a state income tax

- **I-1098 vote: 56% Yes**
- **I-1351 vote: 57% Yes**
- **I-1366 vote (Eyman initiative): 70% No**
- **Olympia School District Levy: 78% Yes**
- **Olympia School District \$160 million Bond: 74% Yes**

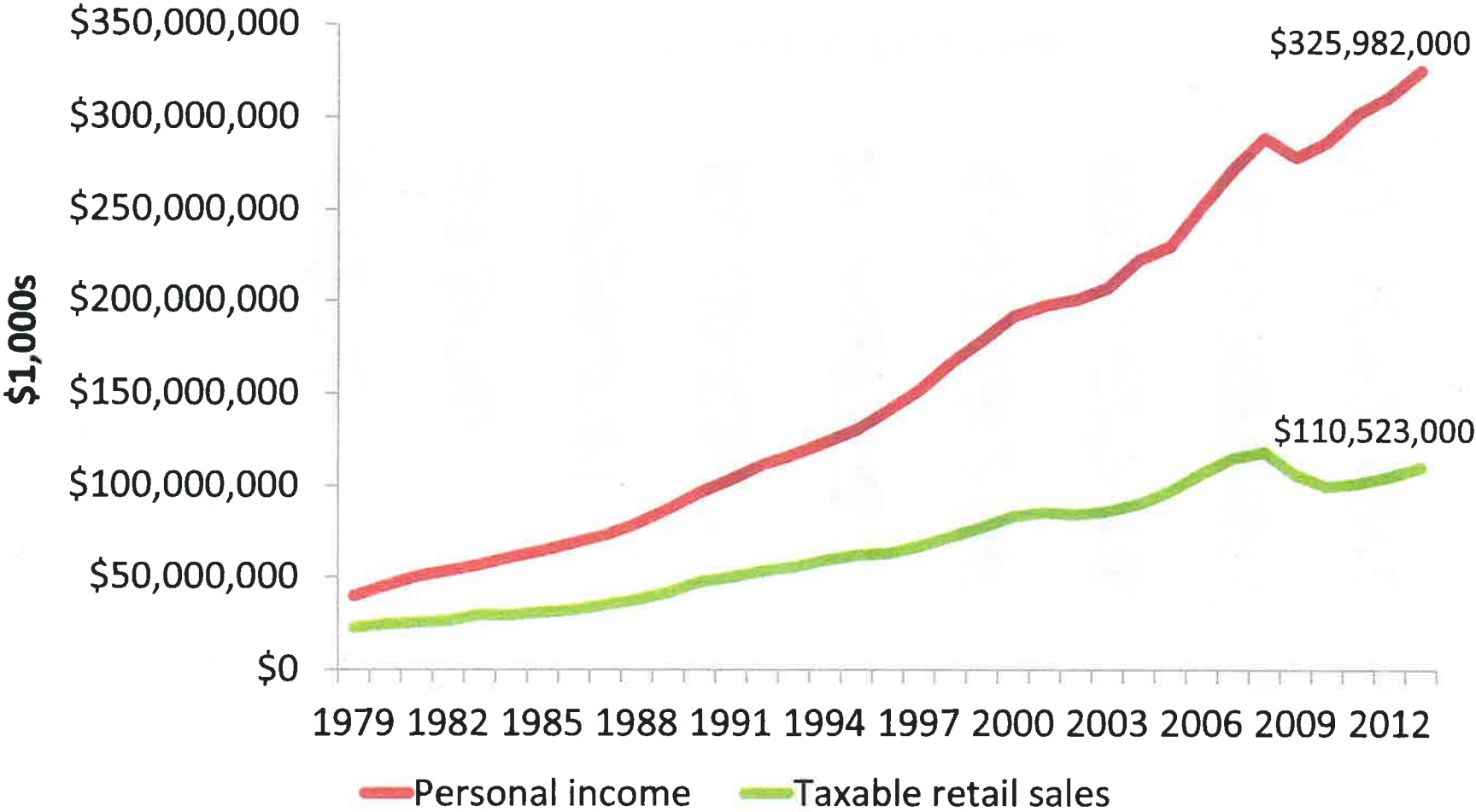
# If revenue just kept up personal income....



For academic year ending in given year. Source: [fiscal.wa.gov](http://fiscal.wa.gov)  
[www.eoionline.org](http://www.eoionline.org)

# We are leaving a lot of money on the table!

Personal income is growing much faster than sales tax base in WA



Sources: U.S. Bureau of Economic Analysis, Washington Economic and Revenue Forecast Council

[www.econline.org](http://www.econline.org)





**TO:** Interested Parties

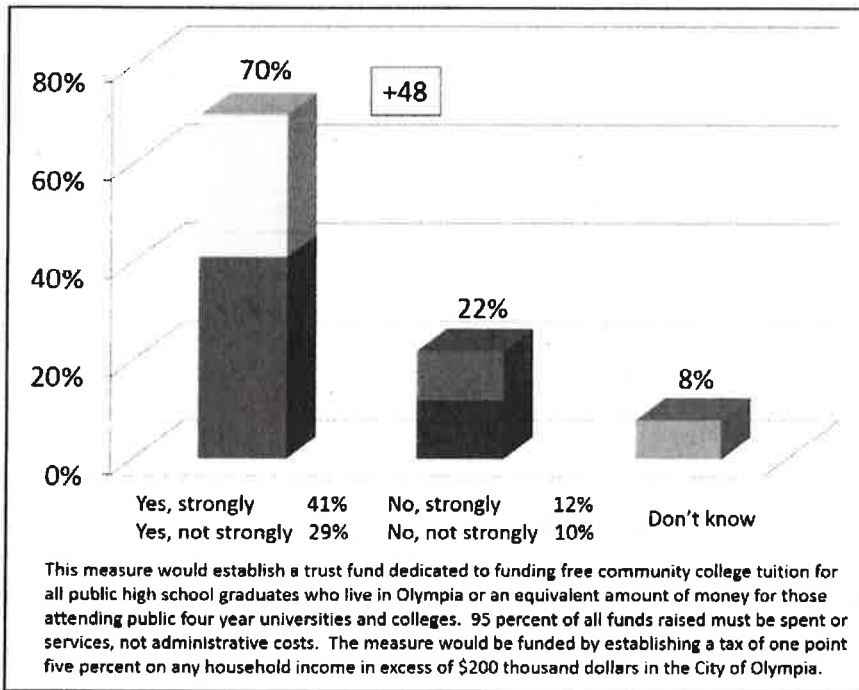
**FROM:** Patinkin Research Strategies, LLC  
Ben Patinkin

**RE:** Olympia voters support a wealth tax paying for free community college for local high school graduates

**Date:** February 19, 2016

*This analysis is based a telephone poll of n=300 registered, likely November, 2016 voters in Olympia, WA. Interviews were conducted February 16-18, 2016 and the margin of error is +/- 5.7 percentage points at the 95% level of confidence. The margin of error for subgroups varies and is higher.*

**Broad support for a wealth tax funding free community college for Olympia high school graduates**



Likely November voters in Olympia are strongly supportive of a proposed wealth tax funding free community college for local high school graduates. Seven in 10 (70%) say they would vote "yes" on the proposed initiative, while over four in 10 (41%) are "strongly" supportive.

On the other hand, opposition to the proposal is extremely weak. Only slightly more than one in five (22%) say they'll vote "no" while only one in 10 (12%) are "strongly" opposed.

In fact, the initiative receives support from every partisan subgroup. Democrats (88%), independents (68%) and Republicans (47%) all express a willingness to vote "yes" on the proposed wealth tax. Put simply, this measure is both viable and extremely popular.



**PATINKIN  
RESEARCH  
STRATEGIES**

**City of Olympia**

**Feb 18, 2016**

**Gender**

male	47 %
female	53 %

q1. Before we begin, I need to know whether I have reached you on a cell phone, and if so, are you in a safe place where we can continue this conversation?

No, not on a cell phone	68 %
Yes, on a cell phone, but in safe place	32 %

q2. Thinking ahead, on November 8th, 2016, there will be a vote-by-mail General Election for President, Governor, US Senate and other state and local offices and ballot measures. How likely would you say you are to vote in this General Election—are you almost certain to vote, will you probably vote, would you say the chances are 50-50 that you will vote, are you probably not going to vote or will you definitely not vote in the November 8th, 2016 General Election?

Almost certain to vote	74 %
Probably will vote	26 %

q3. Thinking about all the telephone calls that you receive, do you get: **[READ; DO NOT ROTATE]**

All of your calls on a cell phone	30 %
Almost all of your calls on a cell phone;	6 %
About half on a cell phone and half on a regular home phone;	29 %
Almost all of your calls on a regular home phone; or	19 %
All of your calls on a regular home phone?	16 %
DK/NA <b>[DO NOT READ]</b>	0 %

q4. I am going to describe to you a potential initiative that may appear on the November 2016 ballot in the City of Olympia.

This measure would establish a trust fund dedicated to funding free community college tuition for all public high school graduates who live in Olympia or an equivalent amount of money for those attending public four year universities and colleges. 95 percent of all funds raised must be spent on services, not administrative costs. The measure would be funded by establishing a tax of one point five percent on any household income in excess of \$200 thousand dollars in the City of Olympia.

Having heard this, if the election were held today would you vote "yes" or "no" or are you undecided? [IF YES/NO, ASK:] Do you feel that way strongly or not so strongly?

Yes, strongly	41 %
Yes, not strongly	29 %
No, not strongly	10 %
No, strongly	12 %
DK/NA	8 %
<b>NET YES</b>	<b>70 %</b>
<b>NET NO</b>	<b>22 %</b>

I'm going to read you a number of aspects of this potential initiative establishing a tax of one point five percent on any household income in excess of \$200 thousand dollars in the City of Olympia. If you aren't sure, you can tell me that, too and we will move on. [IF FAVOR/OPPOSE, ASK:] Do you feel that way strongly or not so strongly? [READ; ROTATE]

	Favor, strongly	Favor, not strongly	Oppose, not strongly	Oppose, strongly	DK/NA
q5. Offer one year of free community college tuition for all Olympia public high school graduates and adults receiving continuing education who live in Olympia or an equivalent amount of money for those attending public four year universities and colleges	45%	31%	12%	7%	5%
q6. Build a city-wide free Wi-Fi network for use by businesses, individuals, and visitors	42%	32%	12%	5%	8%
q7. Create urban rest stops with free 24-hour access to clean and safe restrooms as well as showers and laundry facilities where people who need to shower and wash clothes can get a fresh start	27%	42%	14%	8%	9%
q8. Expand the Food for Kids Program to address childhood hunger - which currently affects one-in-five children - in our community	52%	31%	7%	3%	6%
q9. Require that 95 percent of all funds raised must be spent on services, not administrative costs	55%	27%	7%	5%	6%
q10. Establish a tax of one point five percent on any household income in excess of \$200 thousand dollars in the City of Olympia	45%	27%	9%	9%	10%

**[ROTATE SECTIONS I AND II]**

\_\_\_ I. I'm going to read you some statements people have made as a reason to consider opposing the potential initiative establishing a tax of one point five percent on any household income in excess of \$200 thousand dollars in the City of Olympia. After each, please tell me whether you find that statement a very convincing reason to oppose this initiative, somewhat convincing, not too convincing or not convincing at all. If you aren't sure, you can tell me that, too, and we will move on. **[READ; ROTATE]**

	Very convincing	Somewhat convincing	Not too convincing	Not at all convincing	DK
q11. <b>[COMPLICATED]</b> This tax is far too complicated. To make it work, the City will have to use hundreds of thousands of taxpayer dollars just to set up a whole new bureaucracy to oversee it-creating more rules and more regulation	20%	25%	32%	17%	6%
q12. <b>[JOBS]</b> In order to keep our economy moving and create more good-paying jobs, we need to attract wealthy investors and their businesses to Olympia. But a tax like this will push more wealthy individuals and families out of Olympia, hurting our local economy	17%	28%	25%	24%	6%
q13. <b>[ANOTHER WAY]</b> While all of the services funded by this tax are good ones, we need to find another way to do it. Instead of putting all the burden on residents of Olympia, the burden should be shared across the state because this issue impacts all of Washington, not just our City	17%	29%	21%	23%	9%
q14. <b>[CONSTITUTION]</b> This tax is a hidden income tax—which means it's unconstitutional. If it passes, it will be subject to expensive court fights that cost Olympia taxpayers millions of dollars that would be better spent on priorities like improving education, addressing homelessness, and improving our local infrastructure	24%	28%	23%	19%	5%
q15. <b>[INCOME TAX]</b> Supporters of this initiative are using it as a backdoor route to create an income tax on every city resident. After numerous tries, it should be clear that the residents and families of Washington do not want an income tax	22%	27%	23%	23%	4%

\_\_II. I'm going to read you some statements people have made as a reason to consider supporting the potential initiative establishing a tax of one point five percent on any household income in excess of \$200 thousand dollars in the City of Olympia. After each, please tell me whether you find that statement a very convincing reason to support this initiative, somewhat convincing, not too convincing or not convincing at all. If you aren't sure, you can tell me that, too, and we will move on. [READ; ROTATE]

	Very convincing	Somewhat convincing	Not too convincing	Not at all convincing	DK
q16. This tax only applies to the wealthiest three percent of households in Olympia—but would raise millions of dollars that will enable high school graduates to attend community college for free. With a better educated work force, we'll be able to attract more businesses, create more good paying jobs and ensure a legacy of opportunity in Olympia.	44%	30%	16%	8%	2%
q17. Right now, the bottom 20 percent of families in Washington pay nearly 15 percent of their income for state and local taxes. Middle income families pay 10 percent, while those in the top one percent pay only two point four percent. The wealthiest families shouldn't expect to get something for nothing – if we want Olympia to thrive, we have to be willing to raise the revenue necessary to invest in our community's success.	36%	40%	12%	8%	5%
q18. America now has more wealth and income inequality than any major developed country on earth, and the gap between the very rich and everyone else is wider than at any time since the 1920s. This proposal is one step on the road towards fixing this problem	33%	39%	13%	10%	4%
q19. Our quality of life in Olympia is outstanding – but that quality of life depends on local revenue – and we've left money on the table. We have chosen not to collect revenue from those who could actually afford it the most. This sensible tax reform allows us to have more revenue for things that make our city prosper, like free community college education for high school graduates	34%	35%	13%	11%	7%

q20. Let me ask you one more time:

I am going to describe to you a potential initiative that may appear on the November 2016 ballot in the City of Olympia.

This measure would establish a trust fund dedicated to funding free community college tuition for all public high school graduates who live in Olympia or an equivalent amount of money for those attending public four year universities and colleges. 95 percent of all funds raised must be spent on services, not administrative costs. The measure would be funded by establishing tax of one point five percent on any household income in excess of \$200 thousand dollars in the City of Olympia.

Having heard this, if the election were held today would you vote "yes" or "no" or are you undecided?  
**[IF YES/NO, ASK:]** Do you feel that way strongly or not so strongly?

Yes, strongly	45 %
Yes, not strongly	26 %
No, not strongly	8 %
No, strongly	16 %
DK/NA	5 %
<b>NET YES</b>	<b>71 %</b>
<b>NET NO</b>	<b>24 %</b>

q21. Generally speaking, do you think of yourself as a Republican, a Democrat, an Independent, or something else? **[IF REPUBLICAN/DEMOCRAT, ASK:]** Do you consider yourself a strong \_\_\_\_ **[REPUBLICAN/DEMOCRAT]** or a not so strong \_\_\_\_ **[REPUBLICAN/DEMOCRAT]**? **[IF INDEPENDENT, ASK:]** Would you say that you lean more towards the Republican or more towards the Democratic Party?

Republican, strongly	16 %
Republican, not so strongly	10 %
Independent, leans Republican	6 %
Independent	21 %
Independent, leans Democrat	9 %
Democrat, not so strongly	16 %
Democrat, strongly	21 %
DK/NA/OTHER	2 %
<b>NET REPUBLICAN</b>	<b>32 %</b>
<b>NET DEMOCRAT</b>	<b>46 %</b>

q22. What was the last level of education that you completed?

High school graduate or less	11 %
Some college education	25 %
College graduate	51 %
Postgraduate	13 %
DK/NA	0 %

